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CASE STUDIES
of Dispute Resolution outside Court

अंक : प्रथम

May, 2017

TABLE OF CONTENTS

		Pages
INTRODUCTION		1-2
1.	PUNISHING A HEINOUS CRIME <i>This case study shows how even a heinous crime like rape, if identified at its earliest stage, can be resolved outside Court without compromising on the punishment which the accused deserves.</i> - Sh. Balbir Singh Billing (Distt. Patiala, Punjab)	3-6
2.	ELIMINATING DACOITY THROUGH INFORMAL DISPUTE SETTLEMENT <i>This experiment of a Mahapachayat in District Itawah, Uttar Pradesh shows how an effective alternative to courts can result in social reform and prevent bad blood in society.</i> - Sh. Bapu S. Parihar (Distt. Itawah, Uttar Pradesh)	7-9
3.	BRINGING A PANCHAYAT DISPUTE TO A PEACEFUL END <i>This incident shows how even a civil matter which has been pending for years can be resolved outside Court by a proactive and novel approach.</i> - Sant Balbir Singh Ji Seechewal (Distt. Jalandhar, Punjab)	10-12
4.	RESTORING PEACE IN THE FAMILY <i>This incident shows how very heated parties in a matrimonial dispute can be brought together for reconciliation.</i> - Sh. Balkishan Aggarwal (Distt. Charkhi Dadri, Haryana)	13-16
5.	AMICABLY PARTING WAYS <i>This incident shows how by an early detection of dispute, protracted matrimonial litigation can be avoided and the parties can part ways amicably.</i> - Sh. Gopal Sharan Garg (Distt. Mahendragarh, Haryana)	17-20

6.	PROMOTING COMMUNITY INTEREST THROUGH INFORMAL DISPUTE RESOLUTION <i>This case study is a unique example of resolving a land dispute between two villages resulting in great benefit to the community at large.</i> - Sh. Balbir Singh Billing (Distt. Patiala, Punjab)	21-23
7.	APPENDIX : INDICATIVE QUESTIONNAIRE	24

INTRODUCTION

Resolving disputes privately without governmental support can be an uphill task. When a dispute arises between two parties, several challenges emerge before a private party attempting to resolve such a dispute. The dispute may be brought before a neutral third person by both the rival parties. Sometimes, only one of the parties approaches a neutral person seeking his intervention to resolve. On rare occasions, the person resolving the dispute can also be part of one of the rival parties. One of the foremost challenges is to agree to talk about the dispute. This can be difficult because there exist no coercive means to bring both parties to a common talking platform, and the exercise has to be taken with great patience and persuasion. Once the parties agree to get their dispute resolved out of court, there exists no compulsion for them to avoid litigation. They are often apprised of the various disadvantages of using the court process. The dispute resolution process itself may consume hours, maybe even days, to find a solution. The outcome may not always be what it would have been had there been litigation, but in order to succeed, the parties are convinced that it is a solution which caters to all of them. The heart of informal dispute resolution often lies in mutuality and a conviction to abandon bad blood for a larger objective. Informal dispute resolution cannot claim to decide, but to dissolve a dispute.

The present booklet is an outcome of our interactions with various persons in society who have undertaken such dispute resolution. We interviewed such persons, for which purpose we prepared an indicative questionnaire which has been appended to this compilation. Upon interviewing and recording the interaction

we had with them, we have suitably reduced it to a narrative form to provide readability.

The present booklet is a humble beginning to chronicle such actual real-life attempts at resolving disputes without any governmental or court intervention. Through these instances, one gains an insight into the possible approaches for a person resolving a dispute informally. It is hoped that this booklet will be part of a series of such compilation of instances of informal dispute resolution.

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PUNISHING A HEINOUS CRIME

As told by Sh. Balbir Singh Billing, former Sarpanch in District Patiala, and Advocate at the District Courts of Patiala.

This case study shows how even a heinous crime like rape, if identified at its earliest stage, can be resolved outside Court without compromising on the punishment which the accused deserves.

Background

My village is about 7-8 km from the city of Patiala. I have been Sarpanch of my village for 10 years and I am also the Lambardar in my village. In my village, there are about 5% landlords and 95% are backward classes. Our village is ancient, even prior to the emergence of Patiala State. There is great diversity of communities in the village. In fact, our village may be the only village in Punjab, where Rajput families from U.P. and Bihar came and settled more than a century ago.

In our village, in those days, there was no temple, gurudwara or mosque, and all the people considered two spots in the village sacred - *Gugga Maadi* (गुग्गा माड़ी) and *Khaira Paadhshah* (खेड़ा पादशाह), where people took vows and pledges, and always spoke the truth. These were also the places where the village Panchayat met for discussing important matters.

I

This incident is of the year 1980 when I was the Sarpanch of my village. A middle-aged Rajput widow was working in the fields. A boy belonging to the Jogi-sadh community aged about 16 years who had taken his cattle for grazing, misbehaved with her and committed rape on her in the fields. When the members of the lady's family and community came to know, they raised hue and cry, complained to the police and the boy was arrested. In the police station, the boy was severely tortured.

The boy's parents were very concerned and came to me for intervention in the matter. I knew that this was an extremely sensitive matter. I told the boy's family at the outset that he had committed a heinous act and I would not exert any pressure on the victim or her family to make them agree to drop their legal proceedings – I would only speak to them. In case they did not agree, I told the boy's family that the boy should be ready to face the consequences of the law.

II

Being the Sarpanch, and also an Advocate, people respect me and take me seriously. They often come to me seeking advice on their matters.

After the boy's family went away, I contacted the victim's family members – her brothers-in-law, uncles, etc. I spoke to them and asked them what they intended to do. They were aggressive and told me that they were interested in seeing the boy punished. If required, they were ready to beat him up themselves.

I told the victim's family that I accept that the boy had indeed committed a heinous act and deserved a hefty punishment. I then told the victim's family that it will take about 4-5 years in Court and even then, one cannot be certain of the result. It will also involve expenditure in engaging lawyers, etc., despite which there can be no assurance of justice. Even if the boy is convicted and sent to prison, he will come out of prison a hardened criminal and will commit further criminal acts and become a liability in the society. Besides, in case he is not convicted, and the victim's family members indulged in violence against the boy, there were likely to be criminal cases against them, and in this manner, we must think of whether there can be a better alternative.

Upon hearing all this, the victim's family softened and requested me to suggest a solution.

I told them that it would not be better for me to suggest a solution, and it was better if they came up with the conditions on which they would be ready to close the matter. They then said that they would abide by whatever conditions would be set by the leader of their community.

III

The leader of their community was thus invited to the Panchayat, where the members of the Panchayat and other elderly people were present apart from me. I asked the community's leader if they were ready to avoid Court and settle this controversy. The leader told us that there were three conditions on which they would settle the matter.

Firstly, the boy would be brought to the *Khaira Paadhshah* (खेड़ा पादशाह) and would be publicly beaten up by the victim. Secondly, the boy's face was to be blackened and he would be paraded throughout the village. Thirdly, he would be expelled from the village for 5 years and not allowed entry for that period.

I felt that the punishment proposed by the community's leader was enough for the young boy, at the same time it was necessary for the heinous act he had committed and therefore counseled the boy's parents to agree to the same.

IV

Once the boy had been beaten up black and blue by the victim herself in front of the entire village, his face blackened and he was paraded in the village, the victim and her family felt consoled. After that, I called both the parties at *Gugga Maadi* (गुग्गा माड़ी) where I made them take a pledge that in case the boy, upon his return to the village after his expulsion, repeats his criminal activity, his entire family would be thrown out of the village, and also that the victim or her family would not pursue the matter in Court.

Both the sides accepted the outcome because they had so much faith in *Gugga Maadi* (गुग्गा माड़ी) that they knew they would not flout their vows taken at *Gugga Maadi* (गुग्गा माड़ी).

ELIMINATING DACOITY THROUGH INFORMAL DISPUTE SETTLEMENT

As told by Sh. Bapu S. Parihar, District Itawah, Uttar Pradesh.

This experiment of a Mahapanchayat in District Itawah, Uttar Pradesh shows how an effective alternative to courts can result in social reform and prevent bad blood in society.

Background

The menace of dacoity had been rampant in our area in District Itawah, Uttar Pradesh. One of the causes for this was litigation, due to which young men from the families often became dacoits on account of the courts being unable to resolve disputes satisfactorily.

Accordingly, we set up a Mahapanchayat Kaleshwar Ji catering to about 25-30 villages of a total population of nearly 50,000. This Mahapanchayat was a large body of about 100 respected citizens from these villages. The objective of this Mahapanchayat was that it would hear the disputes of people and give its decision. People would not lie before the Mahapanchayat because they were all local persons and they faced the risk of being socially boycotted if discovered lying. Moreover, people had faith in the Mahapanchayat's impartiality and sense of justice. Hence, people

always spoke the truth, which made justice-delivery simple and straightforward.

The decisions of the Mahapanchayat had to be implemented through social sanctions because it was essential to emphasise the collective decision taken by a large body of the entire community such as the Mahapanchayat. This is because we have realised that courts are unable to dispense justice, which causes enmity between individuals resulting in an unending cycle of violence and litigation. People manipulate the court system through false testimonies, etc., thereby resulting in the court often being unable to reach the correct conclusion.

Therefore, we had to take it upon ourselves to resolve disputes so that comity in society is maintained. Due to the people's respect for the impartiality of the Mahapanchayat, it was successful in resolving hundreds of disputes.

As examples, I wish to recount two instances of disputes resolved by the Mahapanchayat. Although the nature of these disputes may be trivial, yet they were significant because each one had the potential of producing a dacoit, which could cause severe harm to the society at large.

I

Bhola Singh and Shiv Kumar Bhadoria were neighbors. Due to lack of proper demarcation, the passage (*raasta*) in front of Bhola Singh's house was very narrow and to make matters worse, water from Shiv Kumar's fields used to accumulate in that already narrow passage. This led to litigation between the two and the matter was pending in court.

On 8.6.2008, this dispute was brought before the Mahapanchayat. Both the parties narrated their versions, and the Mahapanchayat decided that a demarcation would be conducted so that there is a proper passage for Bhola Singh, and to enable Shiv Kumar to construct a wall. This was accepted by both the parties.

Both the parties entered into the compromise and withdrew the court case.

II

Another dispute which comes to mind is between Lalla Singh and Bhoop Singh. Bhoop Singh had borrowed a sum of Rs. 32,000/- from Lalla Singh. However, he had returned only Rs. 17,000/-. For the remaining amount, the cheque he had issued in favour of Lalla Singh had been dishonoured. This had prompted Lalla Singh to register criminal complaint against Bhoop Singh.

The dispute was brought before the Mahapanchayat on 28.10.2008. Both the parties narrated their versions. Bhoop Singh accepted that he had indeed borrowed the alleged sum of money and had failed to repay the same. The Mahapanchayat therefore directed Bhoop Singh to return the remaining amount to Lalla Singh. Bhoop Singh returned the amount to Lalla Singh along with nominal interest, and the matter was resolved.

BRINGING A PANCHAYAT DISPUTE TO A PEACEFUL END

As told by Sant Balbir Singh Ji Seechewal, a pioneer in community-based conservation. With his efforts, the Kali Bein river, which is of great religious significance to Sikhism, has been resurrected. He was conferred the Padma Shri in 2017.

This incident shows how even a civil matter which has been pending for years can be resolved outside Court by a proactive and novel approach.

Background

I was Sarpanch of my village for two terms from the year 2003 till 2013. Prior to being elected Sarpanch unanimously by the village, I had no political or administrative experience, and had been active only as a social worker. When I took over as Sarpanch, one of the biggest challenges was that many of the Panchayat properties had been under the illegal occupation of some villagers. When I took over in 2003, the income of the Panchayat was about Rs. 18,000.

I

A large piece of agricultural land which belonged to the Panchayat had been under the illegal occupation of some village families. They never paid any rent to the Panchayat, and claimed that it was *mushtarka khaata* (joint ownership of many families). My

predecessor Sarpanch had also actively pursued the matter to get the land vacated, and despite being a lawyer by profession, he could not succeed.

II

I had determined to bring this matter to a close and discussed the same with my colleagues in the Panchayat. All my colleagues reposed full faith in me and assured me that they would stand by whatever steps I took in this direction. I immediately discussed the matter with the revenue officials, i.e. the village Kanungo and Patwari, and sought their assistance on the status of the disputed land. They replied that the land was indeed Panchayati land, and not *mushtarka khaata* as claimed by the encroachers. Having verified the factual position, I called those families and told them that the position reported by the village Kanungo and Patwari. They sought 15 days' time to check their records, take legal advice, etc.

III

After about 20 days, I called those families to a meeting of the Panchayat, where I had also called the village Kanungo and Patwari with the complete record pertaining to the disputed land. I told the families that in case the land belongs to the Panchayat, then they had no right to illegally occupy it and they must consequently vacate it. On the other hand, if the land was indeed *mushtarka khaata* as claimed by them, the Panchayat would stop claiming that it is Panchayat land.

The families initially insisted that there was a stay order operating in their favour from a court of law, and when I showed

the same to the village Kanungo and Patwari, they informed me that the same has no relevance to the land in question. I told the encroachers that since the factual position is now clear, and they are certainly encroaching upon Panchayat land, they must now vacate the land. If they did not do so, the Panchayat would initiate strong legal action and also seek the relief of *mesne* profits from the encroachers for having illegally utilised Panchayat land for the past several years. At this, the families sought a week's time to think over and respond.

After a week, the families offered to vacate the land in question, bringing an amicable end to the decade-long dispute.

IV

Due to the illegal occupation by these families, prime Panchayat land was lying waste. The land is very fertile and is given by the Panchayat on contract and fetches an income of about Rs. 1,00,000/-. In the recent past, crops such as maize, potatoes, etc. have been grown on this land.

RESTORING PEACE IN THE FAMILY

As told by Sh. Balkishan Aggarwal, who hails from Charkhi Dadri (Haryana) and presently lives in Delhi.

This incident shows how very heated parties in a matrimonial dispute can be brought together for reconciliation.

Background

My permanent residence is in Charkhi Dadri, which is a *mandi* in Haryana. Family disputes often arise and a lot of times, what is important is to create a conducive atmosphere for discussion. Several times, parties may not know the dispute resolver directly, but with empathy and sympathy, parties quickly develop trust and confidence, which prompt them to agree to an outcome suggested by the resolver.

I

A boy in Charkhi Dadri was married to a girl from Tohana. Charkhi Dadri and Tohana are about 150 km apart. I was in my shop in the *mandi* that day, when I got a message that four large vehicles full of men and weapons have arrived in Charkhi Dadri from Tohana. The men included the brothers and father of the girl, who

had come with the intention to attack the boy and his family. They were in no mood to let things go. I was approached by the boy's father. The situation was very grim, as there was a real risk of some violence.

II

I went to the girl's family members. Initially, they were very aggressive, so I started with some small talk. I then talked about some general matters, such as asking them about a common acquaintance from Tohana and how he was. I then enquired softly as to what had happened and what the matter was. The girl's father told me that his daughter was married in Charkhi Dadri, and she was being ill-treated by her family. I told them that if that were so, then I am on their side. I told the brothers that I am also a brother and how can I relax if my sister is being maltreated. The brothers immediately responded that they were ready to kill and be killed. I told them that even though I was a resident of Charkhi Dadri, but on principle, I was with them because I strongly oppose any violence against women.

With this, the girl's family members became more forthcoming. I enquired about the entire matter from all concerned and came to know that while the boy's family generally was very submissive, the boy's mother was a little taunting at times. On the other hand, the girl was extremely stubborn and hot-tempered, and it was because of the boy's mother that she would get provoked.

I told the girl's father that I had enquired about the entire situation. I told him that he was himself a respected businessman and indulging in violence will only harm his reputation. People will say that the girl is hot-tempered and aggressive, and on top of that,

her family members are so violent. All that was required was to call the boy and admonish him so that he ensures that matters remain under control. By this time, the girl's father and brothers had somewhat calmed down and felt that they had gone too far. They called the boy and warned him of dire consequences in case he did not set things right. After that, they thanked me for my intervention and proceeded back to Tohana.

I counseled the boy to take control of things, and I also advised the boy's father to ensure that his wife did not taunt the girl. I warned them that doing so may result in horrible criminal consequences, and they may end up spending their remaining life in prison. The boy's father assured me that he would explain to his wife.

III

Few weeks later, the boy's father came running to my house and pleaded to accompany him to his house. When I went to his house, I saw that the girl had locked herself in a room, thrown kerosene on herself and was intending to commit suicide. When I reached there, she saw me from the window and said to me, "Uncle ji, I would not like to see or meet anyone today". I replied, "But if you don't tell me what happened, what these people did to you, how will I ensure that they are punished? Tell me from the window itself. Otherwise such wicked people will go unpunished, and society will never come to know what they did."

The girl's temper cooled down. She narrated all the incidents, and upon hearing each of them, I expressed my sympathy and how I was with her. I told her that these wicked people deserved to be punished. After a while, after narrating all the incidents, she opened the door and came out of the room.

With this, I had prevented the girl from committing suicide by listening patiently and generating trust. The girl took my phone number and promised to call me in case of any difficulty. I received calls from her very frequently for some time. But eventually, things became normal and peace was restored in their family.

AMICABLY PARTING WAYS

As told by Sh. Gopal Sharan Garg, who hails from Narnaul (Haryana) and is presently Chairperson of the Haryana Traders Welfare Board.

This incident shows how by an early detection of dispute, protracted matrimonial litigation can be avoided and the parties can part ways amicably.

Background

These days, matrimonial disputes are constantly on the rise. It is often believed that laws are sometimes abused by the woman's side and the husband and his family are subjected to large amounts of civil and criminal litigation at the hands of the wife. Due to the unbalanced nature of the laws, efforts are often made to arm-twist and make unreasonable demands for settling the cases amicably.

Being a responsible member of the society, my effort is always to prevent marriages from breaking. However, in certain cases, either due to the adamantness of one of the parties to not resume marital ties or because it is too late to reconcile, I make an effort to facilitate a smooth divorce, without undue litigation. The present instance is a recent instance of two families, one of which was a resident of my town Narnaul, and was therefore, directly known to me.

I

The boy and his family belong to Narnaul and is engaged in cloth trade. The girl's family is residing in Singhana (District Jind, Haryana) and is engaged in general merchandise. The boy's father, along with a few of his other relatives, approached me and told me that after 3-4 months itself, the girl had left her matrimonial home and gone to her parents. Numerous efforts had been made by the husband and his family-members to bring her back, but she refused to resume cohabitation. She was adamant in leaving the marriage. I was told that after these efforts had failed, the girl also complained to the police and got registered an F.I.R. under Section 498A against the husband and his family members. It was on account of the registration of this criminal case that I was approached and I was requested to facilitate a settlement.

I asked the boy's family about the girl's family, and what the issue was. The boy's father told me that while the girl's parents had spent about Rs. 1.5 lakh in the marriage, yet were demanding Rs. 10 lakh to settle. I asked them who the matchmaker was, but the boy's father told me that the matchmaker had expressed his complete inability to help them in settling the matter. The boy also told me that he was still willing to resume marital ties with the girl.

I know Sh. Mohan Lal, a respected person from Singhana (the girl's place), and therefore, called him. I asked Sh. Mohan Lal if he knew the girl's family. He replied that he indeed knew them and that they were an ordinary family without too many means. I then told him about the matter and asked him as to how much they may have spent at the wedding. He replied that in his estimate, they may not have spent more than 1.5-2 lakh rupees at the wedding. I then told him about the unreasonable demand of Rs. 10 lakh that they are putting forward to settle, despite the boy having no difficulty in

living with the girl. He was supportive and assured me that he will take up the matter with the girl's father, and will call me back the following day.

II

The next day, Sh. Mohan Lal called me and told me that he had spoken to the girl and her family. He told me that despite his best efforts, the girl is adamant and wants a divorce. However, they were ready to have a dialogue and resolve the matter outside court. Sh. Mohan Lal volunteered to bring the girl's family to agree to a reasonable sum for settling the matter.

Meanwhile, I had counseled the boy's family about the dangers of litigation and how they are likely to be arrested by the police soon. In this manner, the boy's family had become ready to settle the matter for whatever reasonable amount I may decide.

III

The next day, Sh. Mohan Lal along with the girl's family came to Narnaul and brought the boy and his family to my place. I spoke to them and told the girl's family that they were being unreasonable. If the girl was determined to take divorce, it was best to do so swiftly and reasonably, so that both parties can move on in their respective lives. I asked them how much they had spent in the wedding and the girl's father told me that he had spent about Rs. 2

lakh. I then asked them if they would be willing to settle for Rs. 3 lakh, at which they agreed.

Both parties then engaged their respective lawyers to present a petition under Section 13B of the Hindu Marriage Act for divorce by mutual consent.

With this, an unending litigation between the parties lasting their entire lives had been prevented by identifying at an early stage that reconciliation and resumption of marital ties was not possible.

PROMOTING COMMUNITY INTEREST THROUGH INFORMAL DISPUTE RESOLUTION

As told by Sh. Balbir Singh Billing, former Sarpanch in District Patiala, and Advocate at the District Courts of Patiala.

This case study is a unique example of resolving a land dispute between two villages resulting in great benefit to the community at large.

Background

During the decade of 1980, large scale acquisition was made by the Central Governmental for defence purposes. As a result, some families whose houses were part of the acquired land, had been displaced. These displaced families comprised people from various families such as farmer, barber, tailor, gardener, etc. There were 13 such houses in all.

Our neighbouring village is Raoni, where a large tract of empty land belonging to a resident of that village, was adjacent to our village. There existed no strict boundary between our two villages, as the relations were cordial.

I

The displaced families from my village went and occupied parts of this empty land for the purpose of residence. Approximately

three bighas of land (about $\frac{3}{4}$ acre) was occupied by them in this process. The landowner was outraged and he reported the matter to the police. The police arrested these encroachers and arrested them. Some of their relatives and friends came to me and alerted me about what had happened. Being the Sarpanch at that time, I was responsible for the people of my village and therefore I rushed to the police station. I convinced the police officials that the dispute is purely civil in nature, and there is no justification for arresting these people. The police official was persuaded to release them. The arrested persons expressed their gratitude to me and left.

II

The following evening, Sarpanch and other Panchayat members of the village Raoni, accompanied by the said landowner, came to my house. They asked me why I had helped law-breakers and illegal encroachers. I told them that we can sit and resolve the issue after getting to know the complete facts. I invited them to a meeting with the Panchayat the following day.

The following day, I had called the displaced persons at the Panchayat meeting, and the landowner and Panchayat members of village Raoni joined us. I told the Raoni persons that since my village residents were homeless, I could not just ignore that fact. At the same time, I told them that I was willing to persuade my village residents to pay the market value of the land to the landowner. Initially, my residents expressed difficulty in doing so, but I convinced them that if they were to occupy someone else's land, they would have to pay for the same.

This suggestion of mine initially did not cut ice with the Raoni persons. The landowner was determined to have his land back, and being an influential person, his village Panchayat was supporting him. I then explained to them that the land in question was anyway

lying waste – it was barren and no agricultural activity could go on at that land. Therefore, I suggested that apart from the payment, we could utilise a part of that land for common public purposes which can be utilised by both the villages.

The Panchayat members of Raoni heartily accepted this suggestion – they felt that a primary school was imminently required as there was no school in the nearby areas. I also suggested that we have religious places for various communities, which will enable us to utilise the land for public use. The landowner also said that if his waste land was being put to common public use, he would cooperate. I then asked the landowner about the possible market value of the land.

III

Having persuaded the persons from Raoni village, I turned to my own villagers and asked them to pay the land value to the landowner. The villagers made arrangements and paid Rs. 90,000/-. They executed a written compromise deed, and no litigation ensued between the landowner and the displaced families.

Those displaced families built their houses. Today, there exists a primary school apart from four religious places for different communities, which are used by people of both the villages. Had there been litigation, it would never have seen the light of the day, and both villages would have developed enmity with each other.

INDICATIVE QUESTIONNAIRE

ACCESS

1. How did the disputant approach you?
2. Did both parties approach you?
3. Why were you approached? Did you know the disputant(s) personally or because of your standing in the society?
4. Which side (e.g. the victim or the aggressor) approached you?
5. If only one side approached you, did you call upon the other side? If so, how?

HEARING

6. How did you hear the disputant(s)?
7. Did you hear them together/in the presence of each other?
8. What were the different versions put forth by the two sides? [Facts]
9. Were the parties aggressive? If so, how did you intervene?
10. Did you play a pro-active role while hearing the parties, or did you merely listen to them?

ANALYSIS AND SOLUTION

11. How did you identify the root cause of the controversy?
12. What was the root cause of the controversy – e.g. money, ego or a particular person?
13. How did you persuade the parties to avoid litigation, or in case their litigation was pending, to opt out of it?
14. What were the various solutions proposed by you? What was the attitude of the parties to these solutions?

CONCLUSION

15. How did the parties settle the matter – in a written form or otherwise?
16. Any events subsequent to the dispute having been settled?

