

NIVAARAN

MEDIATORS OF SUPREME COURT OF INDIA

Inaugural Edition

NEWSLETTER

(2020-2021)

“Peace cannot be kept by force; it can only be achieved by understanding”.

-Albert Einstein

*A premier on all the
Webinars, Guest
Lectures, Discussion,
Book Talk, and summer
school*

All the webinars, lectures etc. are available on our YouTube Channel and can be accessed at:

https://youtube.com/channel/U_C44weVUilfL2tJnQEN8yYOG

&

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About Nivaaran

Nivaaran: Mediators of the Supreme Court of India is a body of Mediators from the Supreme Court of India working for the advancement of amicable settlement of disputes through Mediation.

Mediation is an informal negotiation assisted by an impartial third party (the mediator) that encourages disputing parties to craft their own solutions and the main aim of the organization is to build a bridge using which more people can be encouraged to opt for ADR methods. The team is creating a social awareness campaign for showcasing mediation as a future of alternative dispute resolution to provide ease to the judiciary by encouraging and empowering Law Professionals to take up the mantle of Mediation.

Mediation is widely relied upon to ease the burden on the courts and as a means to more cost-effectively resolve disputes between the parties than litigation. The public policy benefits of reducing the backlog of cases on the courts' dockets are substantial. Similarly, mediation reduces the cost of resolving a dispute because mediation is less expensive than the high cost of litigation. This is the initiative of the some of the lawyers of the supreme court to bring down the pendency of the cases in the supreme court and provide people with an alternative to resolve the disputes amicably.

We are thankful to Youth Bar Association of India (YBAI) & Commonwealth Lawyers Association (CLA) for their constant support and association with us since June 2020.

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1. International Webinar on
“POST COVID MEDIATION- CHARTING THE PATH OF THE FUTURE.”

(Online Mediation Protocols, Ethical Values, Regulation of Cross Border Mediation and Legislative Mechanism)



The graphic is a dark blue rectangular poster with white and orange text. At the top left, it reads "Post COVID Mediation - Charting the Path of the Future" and "Online mediation protocols, ethical values, regulation of cross border mediation & legislative mechanism". Below this, it says "Hosted by: Supreme Court of India Mediators, the Commonwealth Lawyers Association and the Youth Bar Association of India". In the center, there is an orange box with the text "27th June at 12:30pm IST – 8am BST". On the right side, there is a circular portrait of a man, identified as "Chief Guest Hon'ble Mr. Justice Sanjay Kishan Kaul, Judge, Supreme Court of India". At the bottom, there is a row of eight circular portraits of other speakers, each with a name and title below it.

Date: 27 June 2020

Panelists:

- **Hon'ble Mr. Justice Sanjay Kishan Kaul, Judge, Supreme Court of India, Chief Guest**
- **Brian Speers, President, Commonwealth Lawyers Association, Panelist**
- **Sriram Panchu, Senior Advocate & Mediator, Panelist**
- **George Lim, Chairman, Singapore International Mediation Centre (SIMC), Panelist**

Hosted By: Supreme Court of India Mediators, the Commonwealth Lawyers Association and the Youth Bar Association of India.

The Webinar commenced with an introductory address by Mr. **R. Santhana Krishnan**, Advocate, the Supreme Court of India and the former President, Commonwealth Lawyers Association. He briefly introduced the session and the speakers for the Webinar. Mr. Rakesh Khanna, Senior Advocate,

Mediator and former President, Supreme Court Bar Association gave the welcome address by welcoming Hon'ble Mr. Justice Sanjay Kishan Kaul, Judge, Supreme Court of India, **Brian Speers**, President, Commonwealth Lawyers Association, **Sriram Panchu**, Sr. Advocate & Mediator, Supreme Court of India, George Lim, Chairman Singapore International Mediation Centre (SIMC). He also welcomed **J.M. Sharma**, Senior Advocate, Mediator and former Vice-President, Supreme Court Bar Association, Moderator for the day. **Rajiv Dutta**, Senior Advocate, Mediator and former Vice-President, Supreme Court Bar Association, delivering Vote of Thanks for the day, **and Sanpreet Singh Ajmani**, National President, YBAI, and all the attendees from all across the world, to the 1st Edition of International Webinar on "POST COVID MEDIATION- CHARTING THE PATH OF THE FUTURE." (Online Mediation Protocols, Ethical Values, Regulation of Cross Border Mediation and Legislative Mechanism)

Rakesh Khanna in his Welcome Address highlighted as to how mediation plays an important role during the prevailing time and the importance of Mediation as a dispute resolution mechanism. He then invited Mr. J.M. Sharma to take over and moderate the session. Jitendra Sharma as a moderator briefly highlighted the importance of Mediation and invited George Lim, the first speaker for the day. George centered his thoughts on 'the use of mediation in India, mediation as a preferred mode of dispute resolution and the shift towards use of online mediation'. The passion that has been put into mediation by the legal fraternity has turned its time in India for the present and future. Signing of the Singapore Convention has played a major role here. He gave a brief history of the convention's formation and the objective behind it. 46 countries, including the world biggest economies, signed the Convention then. There are presently 52 signatory countries and out of them 4 countries ratified the Convention. The Indian Government, Judiciary and practitioners have come together to take mediation to new Heights in India. The place for mediation is changing for better in India as its use is being promoted at every level. Covid-19 is a very difficult time for the world, but it will raise a Tsunami of disputes on various manifestations. Mediation is one of the best and most effective dispute resolution mechanism that can be adopted, both during the pandemic time and post Covid. Mediation should be chosen as it is highly effective and empowers all the people associated with it in any manner. Online mediation has now commenced worldwide because of the prevailing pandemic situation. It is quite advantageous in multiple ways. It has multiple counts as

well but when compared to other alternatives, it proves to be highly efficient over the others. Many mediators are not yet comfortable using this technology, but such proficiency can be achieved over time as this growth from the day of commencement to the present is quite evident. Online mediation saves a lot of time as there are no logistical barriers in the way. George advised the ones who are interested to go ahead and take the required trainings and then enter the field.

Jitendra Sharma introduced & invited the next speaker. Sriram Panchu in his presentation stressed on the importance of ethical issues that arise in the mediation mechanism in India. Online mediation is here to stay, even post Covid and it will be practiced effectively all around the world. The facilities for online communication have been existing since a long time but it was only during Covid that we realize how effective working online can be. It was like a pool we were scared to jump into, but after entering it, it seems to be manageable and rather convenient. Traditionally, litigation has been a public forum that involves a lot of human interaction at almost all stages. Shifting it entirely online has definitely raised multiple obstacles and continuing it only online post pandemic is not feasible alternative. Mediation on the other hand, includes confidential information as well. It has always remained more of a private and confidential forum and can definitely be continued online post Covid. Shifting mediation online hasn't really given rise to many serious obstacles. The Singapore Convention has assured the people who choose to mediate more about the reliability of the process. Mediation in commercial disputes saves a lot of time and encourages more people to go for it rather than piling up more cases in the courts. He suggested on having Court centers and institutions that provide assistance and training to parties on how to operate online portals, to make online mediation more reachable. The mediator should be able to match with the disparities of the parties in order to ensure their comfort. He suggested on giving online mediation module for the budding lawyers entering this field. Arbitration these days is also becoming mediation friendly. He concluded his presentation by giving a broader view of mediation over litigation and arbitration and how it will chart the path even post Covid.

Jitendra Sharma then introduced and invited the next speaker. Brian Speers gave a gist of his personal experience and training as a mediator. The recent time is more propitious for mediation to rise. He questioned if justice is sustained despite time delay and logistical difficulties and for the

stated how the ones involved in mediation as well stand in the interest of speedy justice delivery. People during and post Covid will have a pent-up demand for justice delivery due to the stop on this mechanism entirely for about 3 months. He said that mediation online has been very satisfactory for everyone involved, provided there is a strong internet connection. The question of efficiency arises, which brings along the question of skill. There will always be obstacles everywhere, but it does not mean that we deny looking at the benefits. Brian said that timely and effectively, preparation can ensure overcoming these drawbacks. He highlighted, how being more comfortable in the environment one stays in, helps the party speak more openly and conveniently. He mentioned some of the legislations involved for mediation in Ireland and discussed their benefits. He mentioned the Council of Bars and Law Societies of the European Union (CCBE) and shared his experience there. He threw light on the benefits of the Singapore Convention and how it sets a huge bar for mediation worldwide. The mediator must have integrity and not jump into decision-making. He must always prioritize the parties' comfort. He concluded by saying that mediation is a globally progressing phenomenon which with the help of good facilities will reach new heights.

Finally, it was time for the Chief Guest's address, who had been waiting and listening to all the panelists patiently. Jitendra Sharma extended a very warm welcome to the Chief Guest for the day, Hon'ble Mr. Justice Sanjay Kishan Kaul and invited him to share his views. Justice Kaul firstly said that rising challenges force people to think and experiment which makes them come up with solutions and alternatives that are largely acceptable to the majority. The pandemic has forced the legal fraternity to undergo some very revolutionary changes. Mediation is a mechanism which has a bright future and will be carried on in the online form, post the pandemic as well. A lot of progress can be made if parties sit together on the same table to solve things prior to the litigation. It should rather be made compulsory as it will prevent many parties from reaching the stage of litigation. The government also looks forward to the Centralized Mediation Act. The fact that most people look forward to sorting out things rather than complicating them makes mediation a highly suitable mechanism. After analyzing the monetary aspect and brainstorming the thought process, more people shift towards mediation as an alternative for dispute resolution. Mediation helps the parties reach the empathetic point, which actually makes them want to resolve the issue peacefully rather wanting to suffer together in the same

sinking boat. The important aspect is that India realized the need for mediation even during pre-Covid times. Signing of the Singapore Convention is a very evident step for the same. Post Covid online mediation and face-to-face mediation, both will go hand-in-hand taking the forum to new heights. Many private mediation centers have also been set up. The legal fraternity will continue with its job despite the pandemic. There will definitely be many ethical issues contradicting the working mechanism of online mediation in both private institutions and courtroom mediation. Despite that, it is nowhere said that these contradictions would pose a threat to the objectives of mediation. He said that the mechanism is quite flexible and stagnancy in the process should not be given a chance. Indian litigation is a bit different if compared to other countries. A change in mindsets is the most essential element to resolve any dispute. It must be ensured that all sectors are satisfied to the extent of effectively resolving disputes. Justice Kaul concluded by saying that even judges should encourage and promote mediation and from a very grass root level a proper training must be provided to the young Advocates. Mediation has a bright future and leaves both parties satisfied which is very difficult to ensure in litigation.

After the enlightening address of Justice Kaul, the question-and-answer session commenced, where the doubts of the attendees were collectively addressed by all the panelists. Followed by this session, the Vote of Thanks was proposed by Rajiv Dutta, Senior Advocate and Mediator, which successfully marked the end of the very informative and fruitful session.

2. International Webinar on

"POST COVID MEDIATION- CHARTING THE PATH OF THE FUTURE."

(Resolving instead of Adjudicating)



Date: 12 September 2020

Panelists:

Hon'ble Ms. Justice Indira Banerjee, Judge, Supreme Court of India, Chief Guest

Hon'ble Ms. Justice Hima Kohli, Judge, Delhi High Court, Guest of Honour

Hon. Lady Justice Joyce Aluoch, Former Judge ICC, Panelist

Bertha Cooper-Rousseau, Council Member CLA, Arbitrator, Managing Partner Rousseau & Cooper, Panelist

Nadja Alexander, Professor of Law, Director, SIDRA, Panelist

Rebecca Clark, Leading Mediator & Associate IPOS Mediation, Panelist

Gunavathi Subramaniam, Seasoned Mediator & Lecturer ADR, University of Malaya, Panelist

Hosted By: Supreme Court of India Mediators, the Commonwealth Lawyers Association and the Youth Bar Association of India.

The event commenced with an introductory address by Abha R. Sharma, Advocate, Mediator, Member Gender Sensitization Internal Complaint Committee, Supreme Court of India. She welcomed the guests and panelists for the day, Hon'ble Ms. Justice Indira Banerjee, Judge, Supreme Court of India. Hon'ble Ms. Justice Hima Kohli, 1st Puisne Judge, Delhi High Court. Hon. Lady Justice Joyce Aluoch, EBS, CBS, former Judge & First Vice-President, International Criminal Court, The Hague. Erstwhile Judge of the Appeal Court, Kenya; and, International Mediator, Bertha Cooper-Rousseau, Council Member CLA, ICSID Arbitrator, pioneer for the development of the legislative infrastructure for Mediation/ADR in The Bahamas, Managing Partner of Rousseau & Cooper Law Firm, Nadja Alexander, Director, Singapore International Dispute Resolution Academy (SIDRA) at S.M.U; Member, International Advisory Board for the Global Mediation Panel, Office of the Ombudsman for United Nations Funds and Programs, Rebecca Clark, Leading Mediator in London and an Associate at IPOS Mediation, Gunavathi Subramaniam, (Malaysia), Seasoned Mediator & Trainer, Lecturer on ADR for the LLM Program at the Faculty of Law, University of Malaya. Nandini Gore, Advocate and Senior Mediator, Supreme Court of India, Moderator for the day. Asha Gopalan Nair, Advocate & Senior Mediator, Supreme Court of India, delivering Vote of Thanks for the day, and the attendees from all across the world, to the 2nd Edition of International Webinar on "POST COVID MEDIATION- CHARTING THE PATH OF THE FUTURE." (Resolving instead of Adjudicating).

Abha invited Bertha Cooper-Rousseau to give a welcome address. She gave a glimpse of the history of the Commonwealth Lawyers Association and briefly discussed its experience in the field. Nandini being the moderator took over the session and invited Nadja Alexander. She discussed in detail the Singapore Convention on Mediation, 2019 and its role as a 'Game Changer'. She mentioned its signatories and discussed it's need. A survey was conducted by SIDRA, asking the uses of international dispute resolution, which revealed many important factors like 'Enforceability', 'Impartiality and 'Cost'. She compared the Singapore Convention on Mediation, 2019 to the New York Convention and the Hague Convention on Foreign Judgement. The Singapore Convention on Mediation has now come into force and now puts forth the 'Framework for a Mediation Ecosystem.' She discussed the top ten factors of the Convention like, Courts' attitude to and relationship with Mediation, impact of commencement of mediation on litigation limitation

periods, and many others. She concluded her note by saying that Mediation's diverse culture will rise as a blooming era in the future.

Nandini then invited the next speaker, Gunavathi Subramaniam, who talked about the Mediation Act, 2012 in Malaysia. The Act and its enforcement were being looked forward to, but when it was enforced, it raised many eyebrows, due to multiple drawbacks. It was applicable in various institutions and in Private Mediations, specifically excluding court-annexed mediation and also excluding the Legal-Aid department. It was not applicable to a vast category of cases like revision, prerogative writs, injunctions, etc. She discussed some of the faulty sections. Post Covid, online mediation commenced in Malaysia for the first time. A new act by the name of "Temporary Measures for Reducing the Impact of Coronavirus Disease, 2019 (Covid 19) Act 2020" was released with specific purposes. This act is officially the first piece of legislation highlighting mediation post pandemic, which makes this a very important statute. She believed that mediation should be moved forward in the future and this Act is an evidence for the same.

Moving further Nandini invited Hon. Lady Justice Joyce Alouch. She said Workplace Mediation is basically dispute resolution at workplace, for a fair and reasonable dispute resolution for the mediating parties, which often arise due to various mindsets. The parties mostly stand on different hierarchies in the companies, which creates imbalance in their powers and might cause an uncomfortable atmosphere, where either party might feel neglected or suppressed and might not be able to discuss the problem properly, which is taken care of by the mediator. The senior staff of companies are trained by courts for workplace mediation and are called the elected officials. Whether a dispute requires workplace mediation or not is decided by the HR department of the company, after researching about the problem. The complainant party shall convey to them if it is interested in mediating, after which the HR department selects a mediator. The mediator contacts the two parties and organizes individual meetings with them prior to the mediation proceeding. The ground rules are explained to be followed which can be modified according to the situation. He maintains the matter's confidentiality throughout and aims at speedy dispute resolution. Once the final agreement is made and signed, the path to closure is followed. The mediator is evaluated by the parties, whose evaluation is then kept with the company's HR department. Justice Alouch then discussed that mediation has

yet not been coded in Kenya and then explained its status in other African countries as well, before concluding her address.

Nandini now handed over the floor to Rebecca Clark. She highlighted how disputes have increased worldwide during the pandemic. She discussed how it had been made clear in U.K. that the courts will not be able to function in the same manner post pandemic as they did earlier. Mediation is being seen as a very effective and reliable mode of dispute resolution and is best suited for commercial disputes. It is mostly used at the dispute's initial stages which sometimes strengthens the relationship between the parties. During litigation, the control over the problem as well as over law is lost sometimes due to various factors. Mediation opens various alternatives to the parties, allowing them to have a say in the final decision. It has effectively been able to get rid of many of them in a very short span of time and is being promoted in U.K. to be followed post pandemic. She concluded by saying that the pandemic shall hopefully help the era of mediation bloom well.

Nandini invited Bertha Cooper-Rousseau. She started by discussing mediation's impact in the Bahamas. Prior to the outbreak of pandemic, everything was still like the sea before the storm, which was incapable of sensing the problem yet to come. It was decided to implement a mediation programme in the Bahamas by the Commonwealth Lawyers Association. A working committee was formed eventually, for developing the ADR legislative mechanism there. Eminent guests were invited further to support the initiative. The main question, 'Whether the women mediators of the Caribbean will be empowered enough post Covid', was addressed through this programme. The answer is a big yes. Caribbean women will open new dimensions for mediation, post the pandemic and will be able to mediate disputes very effectively post the pandemic.

After listening to these eminent legal luminaries on various topics, Nandini welcomed the Guest of Honour, Hon'ble Ms. Justice Hima Kohli. She began by talking about how old and deep-rooted the mediation mechanism has been and the extent to which it has developed over the years. The Supreme Court of India took the initiative to recommend mediation as a suitable alternative for resolving disputes. Due to the challenges brought by the pandemic, court proceedings have recently commenced online under the name of Online Dispute Resolution (ODR). The legal fraternity has been

quick in responding to this due to which, we have pretty much shifted to a virtual platform entirely now. Presently the Delhi Mediation Cell has been conducting about 25-30 sessions every day since June, further discussing the accessibility and benefits of ODR. She further discussed the procedure backed by her opinion, thereby concluding her address.

Finally, it was time for the chief guest who had been waiting and listening to all the panelists patiently. Nandini extended a wonderful and warm welcome to Justice Banerjee and highlighted some of her important judgments, gathering the attention of the attendees. Justice Banerjee firstly appreciated the Delhi Mediation Cell and the Bangalore Mediation Cell for their efficiency in the pandemic. She threw light on the history of mediation and highlighted the fact that ways to deliver speedy justice and promote mediation are being pondered about since a long time. But it was thought most about and used a lot during the pandemic situation as it was most accessible and effective during this time. Multiple disputes have risen of various kinds due to various reasons, which Justice Banerjee discussed in detail and how mediation has proved to be highly effective in all these disputes. It was proposed to start regular proceedings and put a stop to all kinds of virtual proceedings, which was not a wise option. Initially, various concerns were raised while starting with virtual proceedings, but the situation has now improved a lot and adjudication has now come to stay for a while. She elaborated on mediation's benefits over adjudication. Since mediation can be used to resolve disputes of almost all kinds, the courts can give time to settling cases which cannot be resolved by mediation like, constitutional cases, compoundable criminal offences, etc. Justice Banerjee concluded her note by saying that mediators should have persuasive traits and should follow the basic ethics of mediation as it is one of the most upcoming future alternatives.

With such an effective and informative address by all the panelists, it was time to conclude the session by proposing a vote of thanks to all those who have been instrumental in making this event a grand success. Nandini finally rested her part by welcoming Asha Gopalan Nair, to deliver the vote of thanks. Prior to her address, Asha requested to play a special message sent by Rt. Hon'ble Baroness Patricia, Scotland, the Secretary-General of the Commonwealth. She was not able to join the day's session. She shared her view on the same and highlighted how beneficial mediation is. She concluded by saying that mediation will definitely chart a part of the future,

thereby adopting resolving instead of adjudicating. Followed by her address, Asha delivered the vote of thanks, marking the end of the successful session. Needless to say, though it was all women panel, but it could not have been successful without the involvement of all men who played a prominent role in the success of this event. All credit to the Supreme Court Mediators for making it a grand success.

Mr. Rakesh Khanna, Senior Advocate and Mediator, Mr. J.M. Sharma, Senior Advocate and Mediator, Mr. Rajiv Dutta, Senior Advocate and Mediator, Mr. R. Santhanakrishnan, Advocate and Mediator have been the backbone and the torch bearers of this innovative learning by promoting Mediation. Lastly, all thanks to Mr. Sanpreet Singh Ajmani led Youth Bar Association for its technical support. The series would continue and will be back soon with some more learning and innovations.

3. International Webinar on
"POST COVID MEDIATION- CHARTING THE PATH OF THE FUTURE."
(Scope of Mediation in Sports Dispute)

Date: 10th November 2020

Panelists:

Hon'ble (Dr.) Justice A.K. Sikri, Former Judge, Supreme Court of India, Panelist

The Honourable Justice Graeme Mew, Judge, Superior Court, Canada, Panelist

Deryck Murray, Former Cricketer, West Indies, Panelist

Louise J. Reilly, Barrister, Arbitrator & Mediator, Panelist

Hosted By: Supreme Court of India Mediators, Commonwealth Lawyers Association, Sports Dispute Resolution Centre and Youth Bar Association of India.

The event commenced with introductory remarks from Rakesh Kumar Khanna, Senior Advocate & Mediator and immediate past President of the

Supreme Court Bar Association, India. He threw light on the previous webinars and the objectives behind them. He also pointed out the intention and the vision of the team towards the upcoming series. Khanna then invited Steven Thiru, Vice President of the Australasia Hub, Commonwealth Lawyers Association and a former Head of the Malaysian Bar Council. Steven welcomed the panelists for the day, Mr. Deryck Murray, a former Wicketkeeper for the West Indies and an Arbitrator in Sport disputes, Ms. Louise J. Reilly, a Barrister specializing in Sports Law and an internationally recognized Arbitrator and Mediator, Hon'ble Justice Mr. Graeme Mew, a Judge at the Superior Court in Canada and the Director at Sports Disputes Resolution Centre, Canada, Hon'ble Justice Dr. A.K. Sikri, a former Judge of the Supreme Court of India and currently Judge act the Singapore International Commercial Court. He also welcomed the participants from across the globe. After an enlightening introductory remark and welcome address, the floor was handed over to the moderator Rajiv Dutta, Senior Advocate at the High Court of Delhi and the Supreme Court of India, a mediator and former Vice-President of Supreme Court Bar Association.

Rajiv introduced and invited Deryck Murray to share his views on the topic. Deryck started by talking about the multiple disputes that threaten sports and how it is essential to have a reliable mechanism to resolve those disputes without hindering the game's spirit. Employing processes of resolution maintains the fundamental law of the sport, and the game's spirit. It is something that is unwritten, but all participants feel it acutely. He further defined Mediation as a structured interactive process, where an impartial third-party assist disputing parties in reaching out a settlement. The parties' fashion the solution as the mediator moves through the process. Sports is played to win. When coming to a dispute resolution, the parties also have an instinct to win. Mediation is a process that makes the mediator, the facilitator for resolution. The parties are the ones who have to fulfill the need for resolution. The referees, umpires, etc. are the people who take the important decisions, maintaining the game's spirit. However, the interpretation of the rules is what plays a key role here. Mediation is an extension of the same. Choosing this mechanism and the mediator requires a mutual agreement of trust and understanding. It is a movement towards compromises and reconciling the parties' positions. Perception is what sometimes prove to be the root cause of such disputes. Sometimes minute things which might not really feature as the headline issue, might be the cause behind the dispute. Sports is like a catalyst, that acts as a tool for

Nations to facilitate the sustainable development. Deryck also talked about the issues of Caster Semenya and Usain Bolt, to explain his point. He gave some more examples and elaborated on how perception plays the central role. Sometimes, nepotism also prevails where a more influential party is often seen to be giving the mechanism to be followed further, which forces the other party to follow them. But what matters more in this case are the regulations that are followed at the seat which has been chosen for resolution, along with the resolution facilitator's perspective, as he is the one who eventually balances the situation. Deryck helped the attendees understand the topic from a sportsman's point of view. He concluded his address by saying that "we are actually aiming to capture the 'Corinthian Ethos'."

Rajiv Dutta then introduced and invited Louise Reilly to give her presentation. She firstly talked about systematic bias at the Court of Arbitration for Sports (CAS). She said that there is no such bias and gave reasons for the same pointing at recent decisions where the athletes' appeals were taken to CAS against the renowned body, the International Olympic Committee. She commented on and acknowledged the fact of the CAS being western centric. She discussed the steps taken by CAS to try and be more geographical sensitive. She gave an overview of the CAS mediation rules. Mediation before the CAS is a non-binding procedure. It is essential that the parties are willing to negotiate in good faith. CAS mediation rules are for resolution of contractual disputes. The rules specifically exclude disciplinary disputes, except in certain circumstances. CAS has a list of mediators, coming from various parts of the world. Their role is to be unbiased and facilitate the parties with dispute resolution, thereby encouraging and instilling trust and understanding between them. CAS mediators specifically have the role to propose solutions. The mediators are to communicate with the parties both individually and jointly. The process remains confidential. Once the parties reach the settlement stage and the agreement is signed, it has the same binding force as a contractual agreement. Mediation remains a voluntary process throughout, but it becomes binding once this agreement is signed. As per CAS rules, a person attending the mediation cannot participate in the arbitration proceeding unless the parties expressly agree to it. Louise Reilly further shared examples from her personal experience in the field and then concluded her address.

Rajiv Dutta then introduced and invited Hon'ble Justice Graeme Mew to share his expertise on the topic. He firstly agreed by the view put forth in the Semenya decision. He talked about the progressive decisions given by the CAS in the case of the Indian athlete that indirectly led to Indian athletics changing its rules. He said that just as with any other adjudicative body there are certain improvements that can be made both with the optics in terms of how that Tribunal is seen by its constituents, and also its substantive organization. He then discussed the case of Trinidad involving the soccer association and further talked about how sports disputes can be resolved. In the aforementioned case, the CAS process had been seen as prohibitive and as unfair by the soccer federation. He then elaborated on the case's details and analysis further. He then talked about the importance of sports in our lives and how important their resolution is. He highlighted how courts are not well-equipped yet to deal with sports disputes, as it lacks the swiftness and expertise to deal with the same. He talked about how sports is in alliance and how important reservation in Sports is. Courts are not quick enough to solve sports related disputes and lack expertise in the same. He talked about Canada's status in the same. There, the sports associations are not to solve the disputes in the court. They are instead supposed to go to the Sports Dispute Resolution, Central Canada, an independent tribunal providing mediation and arbitration, and now recently safeguarding services to the sports community. He then threw light on the organization's work in the field. Mediation as a practice is quite suitable for sports disputes, since the international legal and cultural differences at different places might make it difficult for the mediating parties to follow a particular place's resolution, rather than the ones at their motherlands. Mediation facilitates communication between the parties. A 50-50 solution is not one of high possibility, but can still be at least ensured in a ratio close to these digits, as compared to arbitration. He gave a few illustrations to highlight resolution by mediation's effectiveness over courtroom and arbitration resolution in this particular field. He described Canada's prevailing system for the same in detail. In Canada there is also a process called Resolution Facilitation, which is now followed in every sports mediation or arbitration. This process is voluntary, but preferably followed in most cases to stop the parties are to mandate really talked to the mediator on phone individually and talk about the coming mediation and see what the prospects for resolution are. This process is used a lot especially in voting cases. He then talked about the other kinds of cases as well, where the process has proved to be highly

effective. He further cited multiple examples and illustrations regarding the areas in sports law where mediation manages to achieve great success, when arbitration cannot. Justice Mew also shared his personal experience in the field which was very enriching.

Rajiv Dutta then introduced and invited Hon'ble Justice A.K. Sikri, to share his experience and expertise with the attendees. He started his speech by thanking Mr. Rajiv(the host) for such a generous introduction and he also thanked the organizers of the webinar for selecting such a substantial topic. Then he mentioned the importance of this topic and its relation to sports disputes as far as India is concerned. Further, he explained that what he gathered from the other speakers of the webinar, which was of utmost significance. He highlighted crucial takeaway from the viewpoint of the other speakers. Firstly, that the courts are not well equipped to decide the dispute as far as the sports disputes are concerned. Secondly, he talked about CAS, which is the arbitration body, and the manner in which arbitration takes place. He explained how mediation is crucial between the process of courts and arbitration, as far as India is concerned. He explained that the failure of sports has a different nature from other disputes, such as commercial disputes. Then he explained how in sports everyone wants to win but in mediation, there is always a win-win situation, and they have to find out the solution for resolving their dispute amicably. He emphasized that mediation is a process which facilitates the level playing field, so that the competition, which is there between the parties get resolved by the help of mediation.

Moreover, he explained the type of disputes that may arise in sports, for instance, selection of the team, doping, sharing of revenue, etc. He explained the issues concerning the sports in India like election, corruption in sports, etc. Particularly in India, he explained the issue of gender discrimination and sexual assault in sports. 'There are many such cases where the coach has tried to indulge in such practices and several complaints have come up against them. What is more important is that these issues need to be resolved immediately. They cannot wait even for a few days sometimes. 'That is why many sports committees have ad hoc judges or arbitrators in the events. We need on the spot resolution. It is neither the courts, that is litigation, neither arbitration that can deal with it effectively. We need mediation for that,' the judge said.

He said that time has come, as far as India was concerned, to have specialized mediation, including sports mediation, and the country should now gear up and start thinking as to how we can do mediation. 'Covid-19 situation in the country has given us a chance to look into mediation. Of course, it is a pandemic which has created panic all over the world, many have died, livelihoods and lifestyle have been affected. In the whole process we have realized that technology can play an important role. 'And now ODR (Online Disputes Resolution) is seen as the next step even in Indian legal system, whether litigation or arbitration or mediation. And according to me, some of the cases which are proper for online mediation, apart from consumer disputes, are sports disputes,' the judge said.

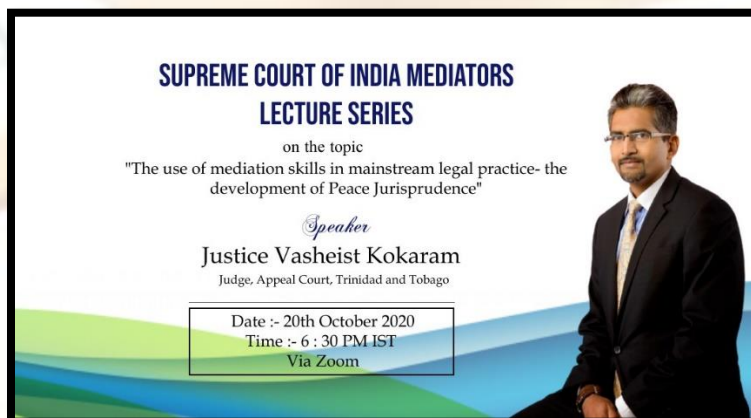
He further said what was felt now and being highlighted was that it was not necessary to go to courts and there should be self-regulation and mediation plays an important role in the process. He said there cannot be a society without conflicts but what was needed was an early and peaceful mediation of those conflicts. 'Mediation is one such process which goes into the reason why disputes have arisen. It not only looks into the past; it looks into the future also so that relationship between the parties is maintained. 'Discussions are always better than arguments because arguments are to find out who is right and a discussion is to find out what is right. It is only the mediation which brings about this. It heals the past, lives in the present and dreams the future,' the judge added. He explained that how mediation came in India, by the amendment in CPC, by inserting sec. 89 for the mediation process. Then he explained the case of the Delhi Ranji trophy, where there was a dispute in the selection of the team and that time almost 10 years ago, this case before going to court, they mediated and find out the solution just in one day. He then addressed, how mediation is an effective resolution process of dispute resolution, where there is a need for on-spot resolution. He explained mediation and its significance that how mediation not only look at the past but also the future, so that the relationship between the parties not affect. Justice Sikri said that mediation has come a long way in the last 15 years and it was here to stay as the legal system is enlarging its scope.

With such an effective and informative address by all the panelists, it was time to conclude the session by proposing a vote of thanks to all those who have been instrumental in making this event a grand success. Ms. Dutta finally rested his part by welcoming Aruneshwar Gupta, Senior Advocate at

the Supreme Court of India and Head of the Sports Disputes Resolution Centre, to deliver the vote of thanks. Gupta delivered the vote of thanks, marking the successful end of the highly enriching and informative session.

LECTURE SERIES:

1ST LECTURE OF THE LECTURE SERIES ON THE TOPIC "THE USE OF MEDIATION SKILLS IN MAINSTREAM LEGAL PRACTICE- THE DEVELOPMENT OF PEACE JURISPRUDENCE"



Date: 20th October 2020

Panelist: Justice Vasheist Kokaram, Judge, Appeal Court, Trinidad & Tobago

Hosted By: Supreme Court of India Mediators

The event commenced with a welcome address by the moderator for the day, Ms. Suruchii Aggarwal, Advocate and Mediator, the Supreme Court of India. She gave a brief of the topic and added a gist of her valuable view on the same. She extended a warm welcome to Justice Vasheist Kokaram, Judge, Appeal Court, Trinidad & Tobago, the keynote speaker for the day, along with all the dignitaries. She gave a brief of the topic for the day, "THE USE OF MEDIATION SKILLS IN MAINSTREAM LEGAL PRACTICE- THE DEVELOPMENT OF PEACE JURISPRUDENCE" and added a gist of her valuable view on the same. Ms. Aggarwal further invited Justice Kokaram to take over and share his valuable address.

Justice Kokaram presented a detailed PowerPoint Presentation in order to instill better understanding of the topic. He began by discussing the present status of mediation in the country. He stated how despite the difficulties that the pandemic brought with itself the virtual medium has been facilitating mediation. He discussed how the virus had been preventing all of us from solving human conflicts and talked about the winds of change which are working for the development of peace jurisdiction. He discussed how this development can be facilitated by transferring mediation skills into mainstream legal practices.

Further, Justice Kokaram discussed the various forces which can be inculcated to make the justice delivery mechanism more just and reasonable. He threw light on Robert Cover's and Kenneth Cloke's theories for mediation as well. He shared a gist of the cultural and historical background of mediation. He drew a relation between the peace agenda and the historical background and discussed how it plays a very important role in every State's development. The peace agenda aligns itself with the working method of judges in attorneys and further facilitates better dispute resolution. He threw light on what clients value the most, when they come for dispute resolution to the courts. He further elaborated on this with the help of an analysis, how clients mostly expect things like giving voice to disputants, no trial and searching for peaceful options.

Justice Kokaram continued with how peace jurisprudence can be referred to as the "Super Vaccine", since it facilitates things like judicial humanism leading a positive social change, gives priority to reconsideration beyond legal resolution, pursues restorative and therapeutic justice, and many other such things. He called peace jurisprudence a "Caribbean Cocktail" which comprises of essential strands to make this beautiful combination highly effective. He discussed the key elements of mediation practice and explained the various strands of the Caribbean Cocktail in detail, with the help of multiple cases.

He further elaborated on the objectives and challenges of peace jurisprudence approach and the ways to achieve those objectives. He discussed the concept of peace room and discussed the methods of promoting peace jurisprudence. He further elaborated on the lessons that can be learnt from peace jurisprudence in civil case management, along with its key features. He gave a gist of the various approaches that a civil case

management judge can go with, and how the approach with peace jurisprudence proves to be the most beneficial one. He backed up the same with multiple strategies and case laws. He discussed how important it is for the air of mediation to blow through courtrooms, since the combination of a judge's and mediator's role will definitely facilitate peaceful resolution.

Justice Kokaram talked about evolution of trial and further discussed the case of *The National Carnival Bands Association v. The Minister of Community Development Culture and Arts CV2018-00359* in detail. He mentioned the difference between the terms 'judge decides' and 'judge settles', and how the term 'settles' is more suited in all aspects. He concluded with the thought that the mediators should definitely blow the powerful forces of mediation into a legal fraternity.

Justice Kokaram's address was followed by the Q&A session, where the doubts of the attendees were entertained. Further, a brief address by Mr. Brian Spears, President, Commonwealth Lawyers Association and Mr. Sriram Panchu, Sr. Advocate and Mediator, the Supreme Court of India followed, who for the same, came up with certain suitable solutions. Mr. Sandeep Narain, Advocate and Mediator, the Supreme Court of India then delivered the vote of thanks, which successfully marked the end of the highly informative and fruitful session.

**2ND LECTURE OF THE LECTURE SERIES ON THE TOPIC
"PSYCHODYNAMICS OF MEDIATION" & "CHALLENGES TO ONLINE
MEDIATION"**

Date: 2nd November 2020

Panelists:

- **Mrs. Uma Ramanathan**, *Lawyer, Mediator & author Co-founder & Managing Trustee Foundation for Comprehensive Dispute Resolution,*
- **Mr. Sunil Kumar Aggarwal**, *Additional District & Sessions Judge, Delhi. Judge Incharge, Tis Hazari Mediation Centre.*

Hosted By: Supreme Court of India Mediators

**SUPREME COURT OF INDIA MEDIATORS
LECTURE SERIES**
2ND LECTURE
on the topic
"Psychodynamics of Mediation"
&
"Challenges in the Online Mediation"
SPEAKERS

WELCOME ADDRESS **VOTE OF THANKS**

Sunil Agarwal
Additional District & Sessions Judge,
Delhi
Incharge, Tis Hazari Mediation Centre

Uma Ramanathan
Lawyer, Mediator, Mediator trainer
and Co-founder & Managing
Trustee of Foundation for
Comprehensive Dispute Resolution.

Sangeeta Mehrotra
Advocate & Mediator, SC

Manjula Gupta
Advocate and Mediator, SC

DATE:- 1st NOVEMBER 2020
TIME:- 12:00 PM
VIA ZOOM

ZOOM ID :- 88924077088
PASSWORD :- 639445

The event commenced with a welcome address by the moderator for the day, Ms. Sangeeta Mehrotra, Advocate & Mediator, the Supreme Court of India. She gave a brief of the topic, "Psychodynamics of Mediation" & "Challenges to Online Mediation" and added a gist of her valuable view on the same. She extended a warm welcome to our speakers for the day, along with all the dignitaries and attendees. Ms. Mehrotra introduced our first speaker for the day, Mrs. Uma Ramanathan, Lawyer, Mediator &

author Co-founder & Managing Trustee Foundation for Comprehensive Dispute Resolution. Mrs. Ramanathan was to address the attendees on the topic, "Psychodynamics of Mediation".

Mrs. Ramanathan took over the session. She started by talking about the status of mediation in India. Over the years, mediation despite being popular has not been able to set a proper platform yet. Virtual mediation has

made this condition even worse as multiple challenges have been arising in the course of effective mediation. The first challenge that she talked about was getting the parties together. It is very difficult to make the parties coordinate with each other as they can easily get rid of communicating. Sometimes a party ends to mute their mics or turn off their cameras. They are presently operating from home and are in a virtual space. It is difficult to maintain the decorum, as sometimes the parties even tend to leave the proceeding in between. One party might even leave the proceeding or not participate actively while the other party is putting forth their demand or concern. This raises a very big challenge for the mediator and is sometimes difficult to take care of. The second challenge that Mrs. Ramanathan talked about was giving the party suitable alternatives. The mediator might even remind the parties of the plus points of mediation a number of times, but it is not always necessary that the parties might be happy with the suggested or chosen alternative. Sometimes the parties even tend to pick an alternative since they wish to settle the matter by in mediation anyhow and not go through of litigation.

Further, the question of confidentiality comes into picture. It is important that the mediator keep the parties engaged throughout the session. The mediator's personal emotions shall not affect the course of mediation in any manner. His experience should refine him in skills like neutrality and unbiasedness. In order to keep the parties engaged, it is important that the mediator lets them communicate among each other more. Sometimes their interpersonal values might intervene with the mediator's beliefs. For example, in South India the culture of getting married to your first cousin is popular in some places. This culture might not be acceptable to the north Indian. If a north Indian mediator mediating any conflict between such a couple, and he lets his personal emotions or beliefs enter the matter, he would not be able to facilitate an unbiased settlement.

The psychodynamics of mediation here can be divided into parts, the clear understanding of which plays a key role. It is important here that the mediator hears the parties out, helps them engage and maintains neutrality. It is important that the parties stay motivated throughout as self-efficacy is very essential. This also helps them pick the most suitable alternative. Mrs. Ramanathan talked about the "ELIAS Approach" in brief and discussed how bringing it to India would prove to be highly beneficial. The psychodynamics of mediation can be broken down into steps like, "suspending", "re-directing"

and “letting go”. If these things are done by the parties, they will be able to have a clear thought process and will be able to understand the situation along with having their emotions unleashed. The parties will be in the position to choose the best suited alternative as per the availability. Mrs. Ramanathan concluded by stating that the learning process is an ongoing phenomenon. It is necessary that mediation ecosystem develops and achieve the platform we have all been wanting it to.

Ms. Mehrotra then introduced and welcomed our second speaker for the day, Mr. Sunil Kumar Aggarwal, Additional District & Sessions Judge, Delhi. Judge Incharge, Tis Hazari Mediation Centre. Mr. Aggarwal was to address the attendees on the topic, “Challenges to Online Mediation.” Mr. Aggarwal then took over the session. He started by explaining the necessity of multitasking for a mediator during online meditation. He stated that a mediator sometimes also has to be a technical advisor for the mediating parties, since they might have difficulty in logging into the meeting, or for that matter speaking on their turn, or any such related issue. It is beneficial if the mediator guides them here so that the session can run smoothly.

The biggest question and challenge that arises relates to the confidentiality of the procedure. The parties might take screenshots or record the session or do any such activity which might be a threat to the confidentiality of the session. Nowadays, an instruction is sent in the chat box prior to the commencement of the session, which clearly states that any such actions might lead to future consequences. The question of confidentiality does not get answered right here. There are chances that the Client or the Counsel might share the meeting link with other people. The mediator has to ensure who is entering the meeting and keep a close check on it. The meetings are mostly locked, but during the caucus sessions, there are chances that the opposite party tends to enter the meeting through other devices.

The time constraint is something that is constantly to be taken care of by the mediator. There are chances that sometimes a party may go on speaking for a very long duration of time. It gets monotonous and the opposite party tends to leave the meeting. Things like peace are to be ensured. There should be no distractions at all for the proceeding to run smoothly. For example, one of the parties is in a car so it is advisable that stops the car or parks it somewhere, so that the outside noises do not act as

a distraction. Another technical difficulty that arises is that of the digital signatures. The parties are mostly asked to send them via a different medium so that the final settlement statement can be drafted and finalized there and then and sent to the authorities within that day.

Most other problems that arise are those like a party lacking access to phones on laptops. In such scenarios it is advisable that they go to some Cyber Cafe, preferably a peaceful one, and continue with the proceeding from there. Sometimes people tend to lose the meeting link, so they have to be contacted again by the mediator, which wastes a lot of time. Nowadays, the meeting links are circulated a few hours before the session commences, so that such problems can be avoided, and time can be saved. Some Counsels even call their clients to their chambers or offices and from there join the meeting together, maintaining social distancing. This is very helpful, as it reduces multiple obstacles. Mr. Agrawal further talked about the importance of legislative and judicial recognition that is required at present. He also mentioned how a check on artificial intelligence is required. He concluded by saying that we need to accept the change and challenge and go ahead accordingly.

The address of both the speakers was followed by the Q&A session, where the doubts of the attendees were entertained. Ms. Manjula Gupta, Advocate & Mediator, the Supreme Court of India, along with Ms. Mehrotra put the attendees' questions before the speakers, which were collectively addressed by them. Followed by this session, Ms. Gupta delivered the vote of thanks, which successfully marked the end of the highly informative and fruitful session.

3RD LECTURE OF THE LECTURE SERIES ON THE TOPIC
"HOW LAWYERS CAN WIN IN MEDIATION" & "HANDLING OF
PREJUDICE AND BIAS IN MEDIATION"

Date: 23rd November 2020

Panelists:

- **Ms. Laila Ollapally**, *Founder and Lead Mediator, CAMP,*
- **Dr. Sudhir Jain**, *District & Sessions Judge, Delhi.*

Hosted By: Supreme Court of India Mediators



The event commenced with a welcome address by the moderator for the day, Ms. Prabha Swami, Advocate & Mediator, the Supreme Court of India. She gave a brief of the topic, "How Lawyers Can Win in Mediation" & "Handling of Prejudice and Bias in Mediation" and added a gist of her valuable view on the same. She further laid down a brief overview of the previous lectures the Supreme Court of India Mediators have conducted. She extended a warm welcome to our speakers for the day, along with all the dignitaries and attendees. Ms. Swami introduced and welcomed our first

speaker for the day, Ms. Laila Ollapally, Founder and Lead Mediator, CAMP. Ms. Ollapally was to deliver her address on the topic, "How Lawyers Can Win in Mediation".

Ms. Ollapally then took over the session. She started by saying how dispute resolution trends are changing worldwide and the need for us to catch up with them, since mediation has now come to stay. She talked about the 'Global Pound Conference' and threw light on its historical background. She talked about the time when this conference was to be held in India, in Chandigarh, in 2017. An observation which was made there was that most

lawyers were of the mindset that they go to the court to argue and win. That was how they defined 'win'. Their mindset needs an urgent change and they need to realise that a decent income, in a reasonable time frame, at a reasonable cost is what is required. She then talked about the Singapore Convention and the New York Convention in detail, discussing their history, the differences that lie in both the conventions and their acceptance as well as implementation by the world. The world today internationally requires multilateralism, globalisation, collaboration and dialogue. There is a need to enhance the use of mediation worldwide. COVID has taught us a lot about the effectiveness of the mechanism. Recently, Bar Council of India has made it mandatory for law schools to introduce mediation related subjects. The drastic change in the mediation scenario over the past ten years has affected the present scenario a lot. Earlier, the method was quite unknown, but at present its popularity has really shot up. Ms. Ollapally then mentioned how lawyers need to win mediation by understanding the real meaning of win which has two elements, peaceful resolution and economic empowerment. She told the story of the three blindfolded men who were to figure out what was in front of them blindfolded. They had an elephant in front of them. The first man called it a snake by feeling its trunk, the second called it a mountain by feeling its huge body and the third called it a tree trunk by feeling its legs. They started quarrelling among themselves. A mediator's job is to remove their blindfolds unbiasedly and help them see the real picture. He is to structure the negotiation table with a team of experts who facilitate the settlement. Lawyers are an integral part of this team and their job is to negotiate by creating value which happens when the problem is understood well and suitable 'trade-offs' are created, help the mediator structure the negotiation by helping him define mediation, providing their clients with legal advice at all stages since negotiation and mediation come under the shadow of law, coach the parties during negotiation and by inculcating clarity in the settlement. The lawyer should be comfortable in adapting to the change from litigation to mediation. A lawyer must possess certain human skills as well like, listening to every part of the client's problem well, take your stand but remain flexible, structure economic benefits and your participation in mediation well. Ms. Ollapally concluded by saying that both domestic and international trends for mediation are coming forward. Lawyers need to redefine win and learn to wear the hats of both mediation and litigation. That is the only way we become lawyers who are relevant to the future.

Ms. Swami then introduced and welcomed our second speaker for the day, Dr. Sudhir Jain, District & Sessions Judge, Delhi. Ms. Ollapally was to deliver her address on the topic, "Handling of Prejudice and Bias in Mediation". Dr. Jain then took over the session. He firstly talked about the history of ADR, focussing on mediation in India. He talked about the root cause for the rise of prejudice and bias during mediation. When a mediator gets to know about the problem, there are high chances that he might develop a bias towards one of the parties. But this newly developed bias should not come in the proceeding's way in any manner. It is essential that the mediator manages himself well. He further used a PowerPoint Presentation to explain the topic better. He firstly stated how 'everyone has two eyes but not everyone has the same view'. Perceptions make a huge difference. Firstly, we receive or gather some information, then the former opinion and then we deliver a judgement. How the parties convey their problem to the mediator depends entirely on their perception and what the mediator hears of it is what makes a third perception. The perceptions vary from person to person and different people perceive things differently about the same situation. However, there is no right or wrong way to perceive a particular situation. One way of perceiving something does not make that the only right way or make any other way the wrong way. In order to get the core of things, things have to be heard and analysed very well the mediator's job is to hear these things well and analyse them in a manner that his personal formed perception does not intervene with the mediation proceeding in any way or hinder it in any manner. Perception depends on things like knowledge and needs, beliefs values assumptions and attitude. It is very essential the conflict is heard well and analysed well. Conflict arises due to factors like, disagreement through which party is perceived threat to the needs concerns and interests, due to contest between people with opposing needs ideas and beliefs, values or goals. Immediate need to ensure good perception management strategies in order to facilitate the preceding well and in order to get rid of the prejudice or bias that might arise in his mind. He should be prepared for hearing the information, have some credibility, have empathy flexibility coordination, have good information Warfare, handle contradicting information of perception threatening and enhancing events well, should have good anger and emotion management skills. Dr. Jain then explained mediation and its formal legal process in detail. He simplified it a bit by explaining the dispute as a subject-matter, the disputants as the participants and the resolution which is facilitated by

an independent unbiased and neutral third party. He then explained the difference between the adjudication process and the mediation process in great detail along with highlighting the minute details of both as well. He defined mediation as a structured process in which an impartial person facilitates the parties in amicable resolution of disputes by using specialized communication and negotiation techniques. He focused on the minute details of this definition and further explained them in detail. He talked about mediator neutrality which is one of the core values of mediation and also explained its elements which have no conflict-of-interest common procedural equality and neutral outcome. He further went on to elaborate on these in great detail. He talked about the obstacles that might come in the waveform mediated by trying to be neutral. Dr. Jain then talked about the mediator's role, like ethical duty to be neutral or an impartial, being conscious about assumptions and biases about participants of the process high degree of self-awareness about the impact on parties and balancing emotional self-regulation and emotional uncertainty. He discussed strategies to evaluate prejudice and how to overcome it. The mediator should actively engage in prejudice reduction strategies and should not have any prejudice or favouritism towards any party. His duty is to avoid actual bias or appearance of bias so that the proceeding can go on smoothly. Hidden differentiated between the different kinds of buyers that might arise like personal bias, situation bias, structural bias, cognitive bias, confirmative bias, anchoring bias and optimism bias. Hi for the shade multiple buys management strategies with the help of many illustrations and his personal experience which had the attendees understand the concept much better. With these, he soon concluded his note.

The address of both the speakers was followed by the Q&A session, where the doubts of the attendees were entertained. Ms. Reema Bhandari, Advocate & Mediator, the Supreme Court of India, along with Ms. Swami put the attendees' questions before the speakers, which were collectively addressed by them. Followed by this session, Ms. Bhandari delivered the vote of thanks, which successfully marked the end of the highly informative and fruitful session.

4TH LECTURE OF THE LECTURE SERIES ON THE TOPIC
"CONSTITUTION, JUSTICE AND ACCESS TO JUSTICE: IS MEDIATION
AN ALTERNATIVE"

Date: 4th December 2020

Panelists:

- **Hon'ble Justice G.S. Sistani**, *Former Judge, Delhi High Court,*
- **Mr. A.J. Jawad**, *Mediator, Arbitrator and Trainer.*

Hosted By: Supreme Court of India Mediators



The event commenced with a welcome address by the moderator for the day, Ms. Kiran Bharadwaj, Advocate & Mediator, the Supreme Court of India. She gave a brief of the topic, "Constitution, Justice and Access to Justice: Is Mediation an Alternative" and added a gist of her valuable view on the same. She extended a warm welcome to our speakers for the day, along with all the dignitaries and attendees. Ms. Bharadwaj first introduced Mr. A.J. Jawad, Mediator, Arbitrator and Trainor, and invited him to share his views on the topic.

Mr. Jawad then took over the session. He began by saying that mediation is a very appropriate and much needed mechanism to fulfil the constitutional mandate of providing people with access to justice. A theoretical base for everything is a must. He firstly discussed the theory on which our current justice delivery mechanism is based. He talked about Amartya Sen's classical treatise, "The Idea of Justice". Our current justice delivery system is based on the social contract theory that was advocated by many enlightened scholars. This theory looks at justice and fairness and contemplates the establishment of just institutions and is based on a very unique set of principles of justice. As per this theory, people's behaviour has

to comply entirely with the demands of the proper functioning of these institutions. Our constitution is the social contract. It contemplates institutionalized justice by creating the just institutions. It creates the legislature, judiciary and executive. The law defines right and wrong and requires that the behaviour of the people has to be in compliance with its mandates, i.e., the demands of these institutions. These institutions facilitate the scrutiny of values and priorities. Mr. Jawad quoted Amartya Sen, that democracy is not symbolised merely by the institutions which exist but by the extent to which, "different voices from diverse sections of the people can actually be heard". The important thing which is mostly ignored is that how the law really translates at the ground level and how it influences people's life. He cited certain examples to answer the same. We deal with abstract principles instead of real people. The law can also be very comforting to people. To a layman, decisions based on law may appear to be opposed to reasons and common sense. He quoted Oliver Twist and explained that the application of law while meeting the requirement of justice from an institutional perspective may not be seen as complete justice. He talked about India's intellectual past, which has been home to many powerful traditions that place more reliance on reason and equity rather than on unreasoned convictions. Mr. Jawad further compared it to western history and talked about a few lacunas. He talked about "niti" and "nyaya" and discussed them in detail. He threw light on the prevailing conflict and explained it in details with the help of Amartya Sen's quotations and examples. He talked about an alternative theory that was more analytical in nature. This was the social choice theory which has now been developed largely. The difference between these theories lies in the contrast between and arrangement focused conception of justice and the realization focused understanding of justice. He then explained this difference in detail along with elaborating on the interpretation. The question arises, whether it is it enough to just have the basic institutions and the general rules right, or should we also examine their impact on the people's lives. He explained this with the help of Amartya Sen's interpretations and explanations. The realization focused approach to justice from the perspective of access to justice in Mr. Jawad view needs to satisfy 5 criterias:

1. Should be cheap.
2. Should be fast.
3. Should give parties control over its trajectory.
4. Should empower people to determine outcomes.

5. Should respect parties' privacy.

This is where mediation fits best. It qualifies all the above-mentioned criteria's and does not limit people to a few abstract legal principles. He said that in his view, mediation fulfils the constitutional promise of access to justice. We need to understand that mediation is not just an Ad-Hoc process, but it is a highly advanced, sophisticated and technically refined process that can actually complement the institutionalized justice delivery system and help in fulfilling the constitutional promise of access to justice. He concluded by saying that changing the whole paradigm of how we understand justice and dispute resolution has started happening and shall continue in the future as well.

Ms. Bharadwaj then introduced and welcomed the second speaker for the day, Hon'ble Justice G.S. Sistani, Former Judge, Delhi High Court, and invited him to share his inciteful view on the same. Justice Sistani then took over the session. He began with telling the attendees that India has often been accused of having a slow justice delivery mechanism. Mediation has often been seen as a spare wheel tyre. Mediation actually is here to stay, and this has been proved in the past is well. He talked about the historical background of mediation and its introduction in India. He firstly talked about the obstacles that arose initially. He compared that time to now, highlighting the success mediation has achieved over the years. He highlighted the fact that presently the whole mediation system in India is primarily run by the lawyers. He talked about Section 89 of the Civil Procedure Code, which talks about alternate dispute resolution mechanism. It is often assumed that mediation is embedded in the heart and soul of every Indian, but the actual scenario is not really so. He shared his personal experience during his initial mediation training period and helped the attendees understand the importance of that training better. He highlighted how important being patient is for a mediator. He compared that patience level to meditation. He explained the same from the party's point of view, helping the attendees understand the topic better. When a client is sent for mediation, he might have doubts initially. It is important that the person recommending him or sending him for mediation can clear his doubts well, so that he can have faith in the process. This person could be a mediator himself. This is where the training comes in handy and in fact proves to be an important step in the process. Justice Sistani further shared many of his personal experiences

which were very enriching. He added a few more advantages of mediation to those which were previously mentioned by Mr. Jawad. They were:

1. Restoration of relationships
2. Confidentiality of the matter
3. Far and much better compliance.

He then explained all of these in great detail with the help of examples and experiences which helped the attendees understand these better. He further threw light on some more basic advantages of mediation like it being cost and time effective, giving parties the space to contribute to the solution, and many others. He talked about arbitration having a formal structure. He linked looking at the advantages and comparing mediation to arbitration. Sometimes a single settlement takes care of 5-10 litigations, like in matrimonial or commercial matters as the process' complication might lead to multiple suits. The finality of the settlement agreement acts as a huge advantage of mediation. However, mediation cannot be done in a half-hearted manner. This is applicable not only for the parties but also for the mediator. The mediator should neither tighten not loosen the reins of the matter's control too much. The mediation proceedings should not be kept in closed doors by the mediator at any point of time. The smell of mediation must diffuse through the air. People must know what mediation is and it needs to be duly publicized at all levels. He further threw light on the responsible, strategic and systematic approach that the mediator should take care of all points of time. All these explanations were accompanied by enriching experiences from Justice Sistani's time in the field. He used all his experiences as illustrations which health the attendees understand the topic in great detail. He soon concluded his note.

The address of both the speakers was followed by the Q&A session, where the doubts of the attendees were entertained. Mr. Anil Srivastav, Advocate & Mediator, the Supreme Court of India, along with Ms. Bharadwaj put the attendees' questions before the speakers, which were collectively addressed by them. Followed by this session, Mr. Srivastav delivered the vote of thanks, which successfully marked the end of the highly informative and fruitful session.

5TH LECTURE OF THE LECTURE SERIES ON THE TOPIC

"CONCEPTS RELATED TO NEGOTIATION IN MEDIATION" & "ADDING VALUES TO THE DISPUTE THROUGH NEGOTIATION"

Date: 12th December 2020





Panelists:

- **Mrs. S. Susheela**, Senior Counsel at High Court of Karnataka, Mediator and Master Trainor,
- **Mr. Niranjan Bhatt**, Senior Counsel at High Court of Gujarat, Mediator and Master Trainor.

Hosted By: Supreme Court of India Mediators

SUPREME COURT OF INDIA MEDIATORS
LECTURE SERIES
5th LECTURE
on the topic
"Concepts related to Negotiation in Mediation"
&
"Adding values to the Dispute Resolution through Negotiation"

SPEAKERS

 S. Susheela Senior Counsel High Court of Karnataka, Mediator & Master Trainor Welcome Address	 Niranjan Bhatt Senior Counsel, High Court of Gujarat, Mediator & Master Trainor Vote of Thanks
 S.S. Ray Advocate & Mediator Supreme Court	 Savitri Pandey Advocate, Mediator & Arbitrator Supreme Court

Date: 13th Dec, 2020 | 12 PM IST
Platform: ZOOM

The event commenced with a welcome address by the moderator for the day, Mr. S.S. Ray, Advocate and Mediator, Supreme Court of India. He firstly gave a brief of the topic, "Concepts Related to Negotiation in Mediation" & "Adding Values to the Dispute through Negotiation" and added a gist of his valuable view on the same. He extended a warm welcome to our speakers for the day, along with all the dignitaries and attendees. Mr. Ray first introduced Mrs. S. Susheela, Senior Counsel at High Court of Karnataka, Mediator and Master

Trainor, who was to address the attendees on the "Concepts Related to Negotiation in Mediation". He then introduced Mr. Niranjan Bhatt, Senior Counsel at High Court of Gujarat, Mediator and Master Trainor, who was to address us on "Adding Values to the Dispute through Negotiation".

Mr. Ray firstly invited Mrs. Susheela to address the attendees. Her address was focussed on "Concepts Related to Negotiation in Mediation." She firstly said that some concepts of Negotiation might appear to be very rudimentary and some might appear to be very interesting and different. But all of those are interlinked somewhere or the other. She used a PowerPoint

Presentation to explain these concepts better. The first concept was that, "All concepts fit for mediation might not be fit for negotiation. All disputes fit for negotiation might not be ripe for negotiation." These are two distinguishing points that are to be considered at all points of time. She gave the example of a divorce case, which might be fit for mediation, but not for negotiation. She talked about the "gain theory" and the concept of "Zero-sum gain" and explained them in great detail along with elaborating on their implementation. She then talked about the second part of the concept, which was regarding the fact that not all disputes for negotiation might be suitable for it. She gave the example of a suit for recovery of money with interest. She also gave the example of a wife willing to get divorced but not willing to do it before her eight-year-old daughter grows up and gets married. Mrs. Susheela then talked about the second concept of which was, "Negotiation is getting what you want at an acceptable price." This is one of the most accepted definitions of negotiation to exist, which she backed up with an example. What is the acceptable price in negotiation is individualistic and the controlling factors here at timing and consideration? The mediator needs to understand this fact the best so that the confusion can be avoided. She then talked about the third concept which was, "Getting what you want at an acceptable price include avoiding getting what you do not want to get." This phenomenon is called "shadow negotiation". She shared an anecdote to explain the same in detail. While defining negotiation, shadow negotiation plays a very important role. Understanding shadow negotiation is very essential prior to entering into an actual negotiation. The fourth concept that she talked about was, "Need cannot be negotiated, they have to be satisfied." Wants can be negotiated but needs cannot be negotiated as they have to be fulfilled. She further elaborated on the same with the help of examples. The fifth concept brought into light was, "Bring them to a level playing field without letting one know the anxiety of other." Some people are more anxious to settle, whereas some are more anxious to not settle. A negotiator's job is to place the parties on the negotiation table in a way that their anxieties are unknown to each other. A negotiator's skill set lies here. Mrs. Susheela further explained this with the help of highlighting the challenges in the process along with illustrations. The sixth concept was, "Common negotiation does not begin with numbers, it is about facts first." The facts are the priority and this is one of the golden rules. She further elaborated on the same with detailed examples, and her personal experience. She talked about using humanism in mediation practice and

emphasized on the same. She then came to the seventh concept, "Yes and No are dangerous words in negotiation. It is possible to avoid saying either." People who are willing to move to extremes will either go with yes or no. The moment one chooses either of the two, the negotiator is to ensure that the same choice is not extended to the other party. The negotiator shall only take the conversation forward and let the parties lead it. In such a situation, it is always possible for the negotiator to say neither of the two, especially in commercial mediation. She quoted Rudyard Kipling, "Words are the most powerful drug used by men and prescribed." She then came to the eighth concept which is also the golden rule, "Know what the party want to achieve through negotiations before commencing negotiation." Negotiation has three stages, the pre-negotiation stage, the in-negotiation stage and the post-negotiation stage. Most of the concepts are concerned with the pre-negotiation stage. Asking the parties and finding out from them if they want to settle and when they want to settle is the negotiator's job. Knowing the parties' intention is very important. Once we enter the in-negotiations stage, reversing things and fulfilling things that should have been done in the pre-negotiation state is next to impossible. The ninth concept was, "When they are dragging on the negotiations, don't get dis-heartened." The negotiator needs to stay motivated at all times. Sometimes, the parties can make strong statements which might mislead the negotiator. He needs to know if the parties want to settle or not. If they wish to, the negotiator should not get dis-heartened at all. This concept is not possible without implementing the previous concept well. The last concept that she talked about was, "Never try to take parties beyond the limit they have set in. The insult zone is to be avoided. Even zero has a value in negotiations." She explained these with examples and elaborated on how negotiation is an assistant of mediation. While assisting it is to be ensured that the insult zone is to be kept out of at any cost. The final thing that she mentioned was giving the parties a picture of the end of the negotiations. Mrs. Susheela then explained some such techniques and strategies in a very elaborate a manner that help the attendees understand the concept. With this, she concluded her note. Mr. Ray then invited Mr. Bhatt to address the attendees. His address was focused on "Adding Values to the Dispute through Negotiation". He started his address with sharing his experience in the field. He said that back in his day the concept of scientific mediation was unknown to everyone. Due to Colonial rule, people all around were brain-washed with adversarial litigation. Negotiation is used at almost every stage of life and is

very essential. Be it business deals, property transactions, marriages or any other sector negotiation takes place there in one form or the other. Negotiation is an important aspect of mediation which is done to achieve goals, to avoid exploitation, create corporation and build relationships. People usually have very stressful confrontations in mediation. Parties go to negotiation to win and demand their wants. They prepare themselves for the win-lose scenario. Everyone wants the biggest slice of the pie. They want to what is assert and emphasize, thereby using both soft and harsh bargaining. It has been established by negotiation experts worldwide that joint settlement is the best way out. Being nice, collaborative and transparent is a must to be able to reach a wise agreement. The fundamental element of dispute resolution is to build relationships between the parties. The agreement is the best when both sides benefit. The agreement contains the facts, the position of the parties, their interests, their demands, their concerns, their options, etc. He further elaborated on the need of having the interest of both the parties in the agreement. He then shared detailed illustrations and experiences to explain the same better. He talked about different scenarios and drew a comparison between the successful negotiation and an unsuccessful one, which basically varies as per the approach and outlook of the parties and negotiation towards the dispute. This approach makes them collaborative and imaginative. Mr. Bhatt shared some more of his personal enriching experiences. He said that by experience they learn that value is whatever a disputant finds useful or desirable. It may be measured in monetary terms, utility terms, in terms of happiness, benefits, etc. Negotiation helps to create value. A dispute which might look like a small pie is to be enlarged in a manner that everyone gets a satisfactory amount of the pie. All gained solutions depend upon the negotiator's ability to invent a way of satisfying the required needs while meeting with the needs of the other side as well. This is also known as the breakthrough strategy. He quoted Prof. William Urie of Harvard Law School that, "Negotiation is comparable with sailing on high seas." While sailing on high seas it is extremely difficult to go for a straight sale which is why a zig-zag pattern is to be followed. So, jumping to conclusions straightaway while mediating shouldn't be done. Mr. Bhatt called this the "Tendulkar" way of dealing with it. He said that the analogy of selling proves to be very helpful in both mediation and negotiation. Here he again quoted Prof. William Urie saying, "You build a Golden Bridge for your opponent and let him travel on it which is also a Golden Bridge for you." Therefore, parties search for values

to trade instead of win-lose situations. They search for mutual gains. If we don't think of gains for the other side, it will always become a still match situation. If you agree to give value to the other side, you receive even greater value from them. He further quoted examples given by Prof. Deepak Malhotra from Harvard Business School and explained them to the attendees in great detail. Addition of value is not limited to inputting your value. Getting the other side output in the form of value is also a part of it. Value is sometimes termed as investigative negotiation which is quite helpful. Mr. Bhatt further shared some of his personal experiences as examples. He shared \ some of the techniques for mediating and negotiating that he put to use. Negotiation and communication are some of the very important aspects of mediation. With this, he soon concluded his address.

The address of both the speakers was followed by the Q&A session, where the doubts of the attendees were entertained. Ms. Savitri Pandey, Advocate, Mediator and Arbitrator, the Supreme Court of India, along with Mr. Ray put the attendees' questions before the speakers, which were collectively addressed by them. Followed by this session, Ms. Pandey delivered the vote of thanks, which successfully marked the end of the highly informative and fruitful session.

**6TH LECTURE OF THE LECTURE SERIES ON THE TOPIC
"COMMUNITY MEDIATION"**

Date: 26th February 2021

Panelist: Judge Francis H.V. Belle, Judge, United Nations Dispute Tribunal

Hosted By: Nivaaran- Mediators of Supreme Court of India



The commenced with a welcome address by the moderator for the day, Ms. Puja Anand, Advocate and Mediator, Supreme Court of India. She firstly welcomed all the esteemed guests and attendees for the day's session. She briefly threw light on the journey of the Supreme Court Mediators' virtual lecture series, highlighting the long way that these sessions have now been through. She then brought to the audience's attention the new name 'Nivaaran' that has now been adopted by the Supreme Court Mediators of India, further

discussing its significance. Ms. Anand then introduced and invited the speaker for the day, Judge Francis H.V. Belle, Judge, UNDT, currently a Judge in Barbados, who was addressing the gathering on the topic, "Community Mediation".

Judge Belle then took over the session. He firstly shared his experience and stories associated with India. He further threw light on the importance of mediation and the significant role that it plays in the legal field. He stated how glad he was to see the fact that the senior lawyers in the legal fraternity are promoting the young minds to gain knowledge about such topics. Alongside this, he highlighted a gist of community mediation's

status in India, further talking about the status of other countries in the same as well. He threw light on the fact that any practice in the legal profession is a thing that continues for as long as a person is willing to carry it out. Any such restriction such as age does not hold a person back from following their passion. He said that the spirit of mediation is very thrilling, and mediation is actually being looked forward to in India. Mediation exists to get rid of the backlog of courts or the judicial system. However, the interpretation of mediation is far beyond than just getting rid of the court's backlog.

Mediation is a community service which saves several friendships, businesses, relationships, etc. It promotes the community to be able to work things out together. Judge Belle shared some of his personal experiences from similar situations, along with sharing his take-aways from them as well. He said that every individual considering mediation as a future career prospect should ask himself the question that why he wants to be a mediator. The answer to this question plays a very key role in such a career. You not only solve community issues, but you also play an essential role in them, since you yourself are a part of the community. Learning from these helps you learn about life and the community you live in. He further shared his experience as a prosecutor and discussed the different kinds of behaviours shown by people of the community. He shared how he tried to inculcate in himself certain skills, so that when he interacts with the criminals later, he could help them out by understanding them better and helping them become better people, so that in the future they learn to deal with such situations rather than retaliating. He shared his experience while working with a trade union, where he learnt a number of mediating skills.

Judge Belle further said that his first step towards being a mediator began while he was a prosecutor, as his zeal to be a part of peaceful conflict resolution began from there. He talked about spending his life as a prosecutor, continuing as a judge, which now spans for a period of about 35 years. He further threw light on the concept Adjudication or Mediation, while explaining William Lucy's jurisprudence and philosophy theory for the same, with the help of a PowerPoint Presentation. He then discussed Maslow's Hierarchy of Needs theory in detail, explaining the need for nourishment, protection, to be assured of the continuation of safety in the environment, know yourself as a contributing member to the society, etc. He continued by talking about Mediation and Conflict Management, explaining it in great

detail, further elaborating on the urgency of resolving a conflict. The question arose if the need for love the answer to it is all, the answer to which is subjective and a huge part of it depends on the prevailing situation. He explained the answer to this question with the help of elaborating on the community's socialization aspect, discussing its need and effectiveness. He shared many of his personal experiences to help the audience understand each of the aforementioned aspects better.

Judge Belle further threw light on the various changes that have been brought about because of technology and the various impacts that it leaves on the community. He threw light on the "Alternative is Dialogue" aspect of the situation. This basically included keeping oneself and others fully informed, refraining from using coercion to promote a view or suppress others, engage in exchanges where each side has an equal opportunity to explain or advance beliefs, critically assessing one's own assumptions, and being willing to listen and to search for a common ground. He further shared with the audience his proposal for the same context, the proposal's basis and his objective behind it. Judge Belle further threw light on his personal learnings from others, which he gained over time and shared his key take-aways from the same. He then talked about certain private mediation service providers. At the same time, he talked about certain alliances that he built. He further continued that mediation is not used in cases involving a lot of financial expenses. He shared his New York experience regarding the same. He then shared a gist of the political conflict that gets involved while dealing with the community during mediation, and elaborated on the need to narrate the conflict better. He talked about the extent of violence that this conflict can bring about and the importance of sound narration. He soon concluded his note with an encouraging message for the attendees to analyze the need for mediation and consider it as a suitable career option to consider.

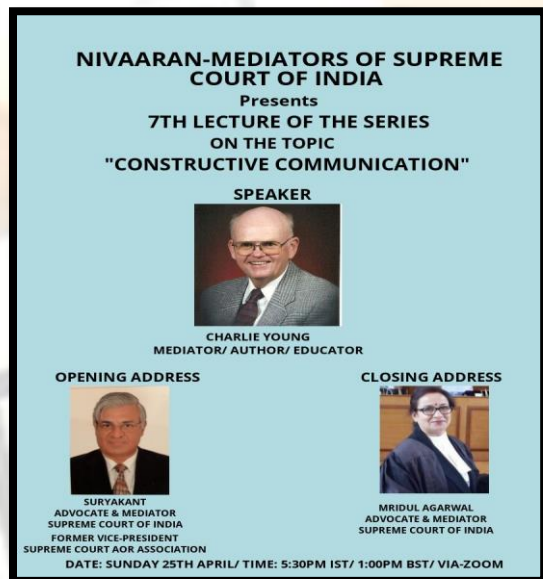
Judge Belle's address was followed by the Q&A session, where the doubts of the attendees were entertained. Ms. Sujeeta Shrivastava, Advocate and Mediator the Supreme Court of India, along with Ms. Anand put the attendees' questions before Judge Belle, which were addressed by him. Followed by this session, Ms. Shrivastava delivered the vote of thanks, which successfully marked the end of the highly informative and enlightening session.

**7TH LECTURE OF THE LECTURE SERIES ON THE TOPIC
"CONSTRUCTIVE COMMUNICATION"**

Date: 25th April 2021

Panellist: Mr. Charlie Young, *Mediator, Author and Educator*

Hosted By: Nivaaran- Mediators of Supreme Court of India



The event commenced with an opening address by Mr. Suryakant, Advocate and Mediator, Supreme Court of India, Former Vice-President, Supreme Court AOR Association. He then welcomed and introduced the speaker for the day, Mr. Charlie Young, Mediator, Author and Educator, and invited him to deliver is note on the day's topic, "Constructive Communication".

Mr. Young took over the stage. He started with telling the audience about his personal experience while writing his initial books. He referred to the book of

Tim Hicks titled, "Embodied Conflicts", and explained how it gives the neural basics of conflict and communication, and his book gives the research of that. He highlighted the three main issues he would be covering. He discussed the same with reference to mediation, and how the parties drive themselves to the possible solutions. He shared how he believed in the success of the participants by helping them through a difficult conversation. He firstly talked about the importance of institutional learning in order to achieve good training on inclusive, constructive communication. He discussed in great detail the two important elements in mediation as per him, the substance of the mediation and the quality included in the mediation, and how inclusive communication addressed both. Mr. Young further discussed the need to be proactive in mediation with the help of examples. This was followed by a brief discussion of the advantages of inclusive communication and the educational system. He then discussed the

four concepts of it which were, the idea that is shared, sharing the emotions and feelings, interest and the inclusive communication be done in a humane way. Good communication and civil dialogues therefore should be necessarily taught in schools. He talked about perceptions and explained the concept of confirmation bias, followed by ways of analysing and understanding a few points the mediator should keep in mind while reaching out to the participants' biases, like being empathetic, having integrity and being absolutely perceived as non-judgmental. He then talked about the ways of applying the constructive communication aspect in mediation. It is always better to try and understand the participant rather than trying to figure out an answer to their perspective. While understanding plays a significant role, it is also essential for the participants to feel understood, in order to be able to drive their way towards a solution. Mr. Young soon concluded his note.

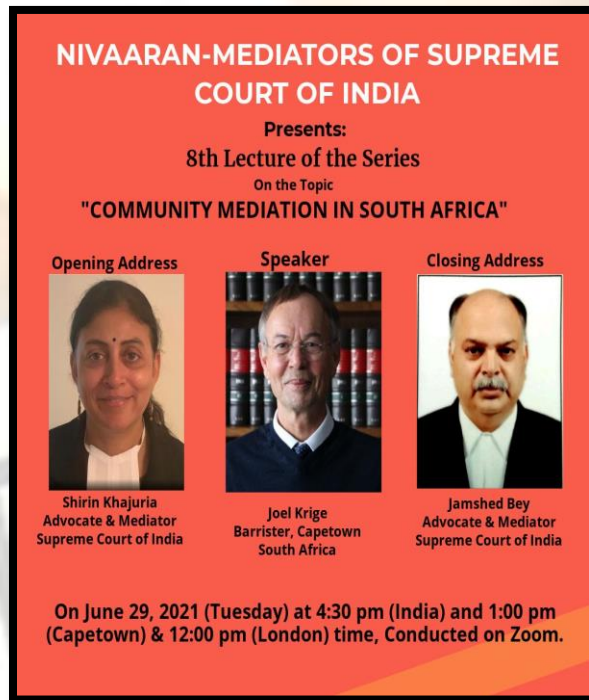
The session then moved on to the Q&A part where the doubts of all the attendees were clarified. This was followed by the closing address by Ms. Mridul Aggarwal, Advocate and Mediator, Supreme Court of India, which marked the end of the highly fruitful session.

**8TH LECTURE OF THE LECTURE SERIES ON THE TOPIC
"COMMUNITY MEDIATION IN SOUTH AFRICA"**

Date: 29th June 2021

Panellist: Mr. Joel Krige, *Barrister, Capetown, South Africa*

Hosted By: Nivaaran- Mediators
of Supreme Court of India



The event commenced with an opening address by Ms. Shirin Khajuria, Advocate and Mediator, Supreme Court of India. She then welcomed and introduced the speaker for the day, Mr. Joel Krige, Barrister, Capetown, South Africa, and invited him to deliver his note on the day's topic, "Community Mediation in South Africa".

Mr. Krige took over the stage. He firstly threw light on the history of mediation and its position at the time of its commencement in the 1980s. He talked about his first mediation

and gave a brief historical review of the same. He explained the whole dispute and how it went by in great detail, for the attendees to get a better understanding of it. Alongside this, he discussed the benefits that South Africa had while this dispute took place. He then talked about the independent mediation practice that had started in Johannesburg and how it progressed over time, along with discussing its need as per the hour. He talked about the four basic principles of mediation in which the forefathers of dispute resolution from South Africa believed in, further discussing their importance, which were, the mediation process should not bargain in positions but focus on interest, and others. He shared a few anecdotes on the same areas to help better understanding. Mr. Krige further moved onto the difference between mediation and arbitration. He talked about the water shortage incident and prediction in Johannesburg and how the dispute regarding the same was mediated, which happened to be both a success and

a failure. He also threw light on the significant role the Constitution of South Africa played in the whole community mediation era's welcome. He talked about a mediation technique, which was never present it or take it or leave it option parties and further explained it with the help of multiple examples and his personal experiences. To turn to the complexity of a community, mediation is central to land plans. Claims related to land laws and farmlands are brought by communities for restitution of land that was dispossessed under apartheid and colonial times. In a community mediation some facilitator would suggest a mediation and then pro members would step in. Mr. Krige discussed how being flexible is one of the key elements of mediation. He put forth his view that it is generally better to ask a question than to make a proposition when dealing with interests. He talked about a few other principles related to the same and the constitution, discussing the principles of mediation which were into practice long before mediation became a fast word. With this, Mr. Krige soon concluded his note.

The session then moved on to the Q&A part where the doubts of all the attendees were clarified. This was followed by the closing address by Mr. Jamshed Bey, Advocate and Mediator, Supreme Court of India, which marked the end of the highly fruitful session.




9TH LECTURE OF THE LECTURE SERIES ON THE TOPIC
"THE INCREASING IMPORTANCE OF MEDIATION IN GLOBAL SOCIETIES WITH RESPECT TO EDUCATION, SECURITY, JUSTICE, AND COMMERCE"

Date: 4th July 2021

Panelist: Mr. John Bassie, *Global Vice President, CI Arb*

Hosted By: Nivaaran- Mediators of Supreme Court of India

NIVAARAN-MEDIATORS OF SUPREME COURT OF INDIA
Presents:
9th Lecture of the Series
On the Topic
"The increasing importance of mediation in global societies with respect to education, security, justice and commerce"

Opening Address	Speaker	Closing Address
		
Pusshp Gupta Advocate & Mediator Supreme Court of India	John Bassie Global Vice President, CI Arb	Praveena Gautam Advocate & Mediator Supreme Court of India

On July 04, 2021 (Sunday) at 6:30 PM IST/ 2:00 PM BST/ 8:00 AM JAMAICA/ Conducted on Zoom.

The event commenced with an opening address by Ms. Pusshp Gupta, Advocate and Mediator, Supreme Court of India. She then welcomed and introduced the speaker for the day, Mr. John Bassie, Global Vice President, CI Arb, and invited him to deliver his note on the day's topic, "The increasing importance of mediation in global societies with respect to education, security, justice, and commerce".

Mr. Bassie then took over the stage. He firstly talked about the Mediation and Conciliation Project

Committee (MCPC), set up to encourage amicable dispute resolution within civil courts. They were able to initiate a successful court integrated project which has conducted many training programs and initiatives across India. Mediation has had a significant impact on dispute resolution in India. He gave a statistic of the same and highlighted the progress of India in the field of mediation so far. He talked about the several organizations in the Caribbean, that will develop and grow organizations such as the Charter Institute of Arbitrators, and many others. He gave a detailed history of the DRF and its progress so far as well. He mentioned the names and contributions of a few other significant people in the fraternity. Mr. Bassie talked about the re-emergence of ADR in the Caribbean regions and which

forms an integral part and contributes significantly to the fabric of America. Mediation was spearheaded in the Caribbean by the dispute resolution foundation. He then talked about the major contribution of organizations within the criminal region. It must be recognized that mediators are in a unique position, in which we are in an industry where we are obligated for mediation services and to partner with like-minded regional organizations. Mr. Bassie believes that the key to the continued future growth of mediation is to be able to adapt and ensure that mediation becomes a catalyst for change in culture. The need for mediation must definitely be recognized in the post-pandemic era, further throwing light on the significant role that the mediators can play. The importance of mediation globally with respect to education, security, justice and commerce cannot be understated. He drew a comparison between the mediation techniques and practices followed in the Caribbean and countries like India, Bangladesh, etc., along with discussing the similarities between them. He talked about international mediation, which has taken the role of quite the leadership role, when considering all the limitations of the former court system. He talked about some of the statutory provisions related to ADR as well. He also talked about the growth of mediation in the industrial sector. He then talked about a few changes related to mediation which should be adapted everywhere, in order to make the procedure more efficient. With this, Mr. Bassie soon concluded his note.

The session then moved on to the Q&A part where the doubts of all the attendees were clarified. This was followed by the closing address by Ms. Praveena Gautam, Advocate and Mediator, Supreme Court of India, which marked the end of the highly fruitful session.

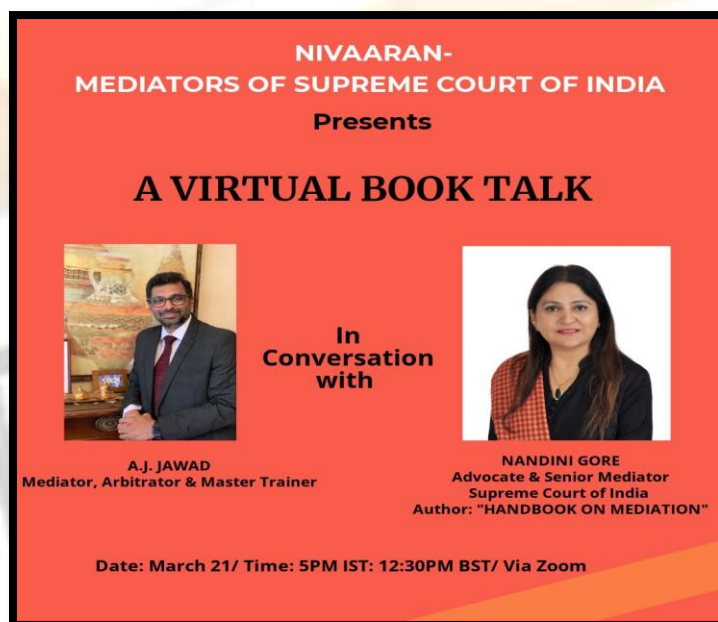
A VIRTUAL BOOK TALK

"A.J. JAWAD IN CONVERSATION WITH NANDINI GORE"

Date: 21st March 2021

Panelist: Ms. Nandini Gore, Advocate and Senior Mediator, Supreme Court of India, Author of "Handbook on Mediation"

Hosted By: Nivaaran- Mediators of Supreme Court of India



The event commenced with an opening note by the host and moderator for the day, Mr. A.J. Jawad, Mediator, Arbitrator and Master Trainer. He then welcomed and introduced the guest for the day, Ms. Nandini Gore, Advocate and Senior Mediator, Supreme Court of India, Author of "Handbook on Mediation". Through the day's event, the recent book written by Ms. Gore, "Handbook on Mediation",

was to be discussed.

The conversation soon began. Ms. Gore firstly told the audience a bit about herself, her aspirations and how she has always tried to maintain a balance in order to be able to devote the perfect amount of time to everything. Mr. Jawad further asked her about the various challenges she came across while authoring the book, to which Ms. Gore responded by talking about the roller coaster ride she had during the time. She talked about Mr. Sriram Panchu's book on mediation, which she referred to as the Gita and Mahabharat while drawing inspiration for her book. She talked about the vital role her family played while she was focussed on her book. Ms. Gore then talked about the significant role Mr. Fali S. Nariman played in guiding her and supporting her while she wrote the book, who is has also

fore-warded and launched the book. Mr. Jawad further mentioned his personal takeaway from the book from the foreword by Mr. Nariman. Mr. Jawad asked her about the uniqueness of her book. Mr. Gore very gladly explained how her book has touched the various aspects of mediation and how her well-crafted book serves as a crisp and handy source to rely on while looking into mediation. She further talked about the various references her book mentions which help in simplifying the research and concepts. Mr. Jawad then asked Ms. Gore about her research methodology, which she answered next. She talked about the importance of being a diligent listener in order to be able to gather thoughts and questions regarding the same and put them in a well-structured manner. Ms. Gore then answered Mr. Jawad's next question regarding the future of mediation in India. She also included her personal experience while putting forth her perspective and hopes regarding the same. She talked about her opinion on Judges being Mediators, followed by a brief expression on the question, whether women make better mediators than men. This was followed by a series of rapid fire questions that Mr. Jawad asked Ms. Gore. The questions happened to touch various aspects of her book as well as her personal opinions regarding mediation. This concluded the 'in-conversation' part of the session.

The session then moved on to the Q&A part where the doubts of all the attendees were clarified. This was followed by the closing address by Mr. Jawad, which marked the end of the insightful conversation.

AN INTERACTIVE SESSION ON
**"MEDIATION-FUTURE COURSE OF DISPUTE RESOLUTION: INDIA-
BANGLADESH PERSPECTIVE"**

Date: 11th April 2021

Panelists: Mr. J.M. Sharma, Senior Advocate and Mediator, Supreme Court of India, Judge Abdul Halim, District & Sessions Judge, Senior Fellow, Weinstein International Foundation, USA, Founder & Chairman Bangladesh International Mediation & Arbitration Centre

Hosted By: Nivaaran- Mediators of Supreme Court of India



The event commenced with an opening note by the host and moderator for the day, Mr. J.M. Sharma, Senior Advocate and Mediator, Supreme Court of India. He then welcomed and introduced the guest for the day, Judge Abdul Halim, District & Sessions Judge, Senior Fellow, Weinstein

International Foundation, USA, Founder & Chairman Bangladesh International Mediation & Arbitration Centre. The day's event aimed at discussing "MEDIATION-FUTURE COURSE OF DISPUTE RESOLUTION: INDIA-BANGLADESH PERSPECTIVE".

Judge Halim took over and talked about his brief perspective of mediation. Mr. Sharma firstly asked him about the history of mediation in Bangladesh, and the changes it brought about. Judge Halim answered the same along with explaining the types of mediations that exist in Bangladesh, further throwing light on a few areas where mediation is needed in Bangladesh. Mr. Sharma also highlighted the status of India in the same, which was followed by a valuable discussion between the two luminaries. Further the existing statutory provisions in the countries regarding mediation were discussed, where the status of various tribunals in both the countries was also discussed. Mr. Sharma further asked Judge Halim the purview of the judges of Bangladesh on the concept of mediation. Judge Halim explained how the

judges have responded to the concept and talked about the current status of mediation the judicial fraternity of Bangladesh. At the same time, he highlighted the scope of development in mediation in Bangladesh that is yet to be worked upon. Mr. Sharma then explained how the judges of India, from all hierarchies have interpreted the concept of mediation, since the time it was introduced. At the same time, both the panellists discussed the lacunas that lied in the way as well. They both also drew on their personal experiences and helped the audience understand the concept better. They also discussed the working of the various courts in both the countries, with respect to their response to mediation. Mr. Sharma explained how the training of mediators in India has always been considered as an art which must definitely been learnt by each and every single person going in to mediate. He mentioned the eligibility criteria for the same and discussed a few other factors related to mediation that are recognized as essential components of mediation. Judge Halim added his view on the same and explained the situation of Bangladesh, further talking about the importance of effective training of mediators. The final point of discussion between the panellists was the future of mediation in both the countries.

The session then moved on to the Q&A part where the doubts of all the attendees were clarified. This was followed by the closing address by Mr. Sharma, which marked the end of the insightful conversation.

VIRTUAL SUMMER SCHOOL ON "MEDIATION: THEORY & PRACTICE"

ABOUT THE SUMMER SCHOOL

In the words of Gautam Buddha, "Better than a thousand hollow words is one word that gives peace", which even is reflected in the famous Sanskrit quote "*santosham paramam sukham*". Mediation is one of the modes for attainment of 'Peace'.

The idea of this innovation developed after we concluded our International Webinar on 27th of June on "**Post COVID Mediation-Charting the Path of the Future.**", that was presided by **Hon'ble Mr. Justice Sanjay Kishan Kaul, Judge, The Supreme Court of India** along with other eminent panelists namely Mr. Sriram Panchu, Mr. George Lim, Mr. Brian Speers, Mr. Rakesh Khanna, Mr. J.M. Sharma, Mr. Rajiv Dutta, Mr. Santhana Krishnan, who rightly emphasized knowledge of mediation for the young budding lawyers.

Taking from there Supreme Court of India Mediators Supported this initiative under the technical assistance of Youth Bar Association of India and agreed to come up with 10-day long summer school in order to provide the students with some basic knowledge in Mediation.

The main objective of this summer course is to best equip the young budding minds with the concept of ADR with a special reference on Mediation. The other objective behind this initiative is to provide the best of knowledge by some really wonderful and experienced people in the field of Mediation.

The scope of mediation can only be increased if the young budding lawyers accept his process as an integral part of the justice system, and hence in order to do so, it is necessary that such minds are well trained and well educated.

YBAI has tried to make this ADR mechanism accessible to all through this initiative of launching ten day long program focusing on Theoretical as well as the practical parts.

"Access to Justice is basic to human rights. The right to justice is fundamental to the rule of law and so „we, the people of India“ have made social justice an inalienable claim on the state, entitling the humblest human to legal literacy and fundamental rights and their enforcement a forensic reality, however powerful the hostile forces be...Declarations and

proclamations, resolutions and legislations remain a mirage unless there is an infrastructure which can be set in locomotion to prevent or punish a wrong and to make legal right and inexpensively enforceable human right. Injustices are many, deprivation victimizes the weaker sections and the minority suffers the oppression syndrome."

– Justice V.R. Krishna Iyer.



YOUTH BAR ASSOCIATION OF INDIA



Presents

VIRTUAL NATIONAL SUMMER SCHOOL

On

MEDIATION: THEORY & PRACTICE



*Hon'ble Mr. Justice Kurian Joseph,
Former Judge, The Supreme Court of India*



*Mr. Sriram Panchu,
Senior Advocate and Mediator, SC*



*Mr. Teh Joo Lin
Deputy CEO, SIMC*



*Mr. Brian Speers, President
Commonwealth Lawyers Association*



*Mr. Rakesh Khanna,
Senior Advocate and Mediator, SC*



*Prof. (Dr.) Rajesh Bhauguna, Dean,
Law College Dehradun & officiating
VC, Uttarakhand University*



*Mr. J.M. Sharma
Senior Advocate and Mediator, SC*



*Hon'ble Judge Joyce Aluoch, Former Judge ICC,
IIAM Accredited International Mediator*



*Ms. Aishwarya Bhati,
ASG, Senior Advocate*



*Mr. R. Santhanakrishnan,
Advocate & Mediator SC*



*Mr. Rajeev Dutta, Senior
Advocate and Mediator, SC*



*Mr. Sanpreet Singh Ajmani,
President YBBI, Advocate SC*

For query @7903435470

10th of July to 20th of July | Via Zoom | [bit.do/MEDYBAI](https://bit.ly/3MEdYBAI)

SESSIONS

1. Date: 10th July (Opening Ceremony and General Overview)

Speaker: Justice Kurian Joseph, Former Judge, the Supreme Court of India, **Mr. Jitendra Mohan Sharma**, Senior Advocate, the Supreme Court of India

Topic: Introduction to Mediation and Alternate Dispute Resolution (ADR)

YOUTH BAR ASSOCIATION OF INDIA
Present
VIRTUAL NATIONAL SUMMER SCHOOL 2020
10-20, JULY, 2020

Hon'ble Mr. Justice Kurien Joseph
Former judge Supreme Court

Opening Ceremony

Mr. J.M Sharma
Senior Advocate S C

Ms. Harsheen Anand
CA,LL.B

Mr. Sanpreet Singh Ajmani
Advocate S C

Topic:
Mediation: Theory and Practice

The event commenced with a warm welcome by Ms. Harsheen Anand, Moderator for the day to Justice Kurian Joseph, Former Judge, the Supreme Court of India, Mr. J.M. Sharma, Senior Advocate, the Supreme Court of India, Mr. Sanpreet Singh Ajmani, Advocate, and the Supreme Court of India and to all the dignitaries and attendees for the day. She the invited Mr. Ajmani to give the opening remarks. Ms. Anand then introduced Justice Kurian Joseph and invited him to deliver the inauguration address and give his view on the topic.

Justice Joseph then took over and firstly congratulated Youth Bar Association for organizing the Summer School. He threw light on the challenges the pandemic brought along, and the number of difficulties the courts' functioning had to face. Now that the activities of the courts have been resumed via virtual courts, they are able to serve their functions again. He talked a bit about the court procedures and discussed some of their loopholes. He then highlighted how they have been able to resolve some of these loops through ADR. He further said that, at such a time, the only alternative left is to develop and strengthen dispute resolution mechanism. It would also help the justice delivery mechanism to move a step ahead and explore new directions. He discussed a gist of arbitration, its procedure and the

Arbitration and Conciliation Act, 1996. He explained the important terminology concerned along with discussing other ADR mechanisms. Justice Joseph finally talked about mediation, which so far is not bound by any legal framework. Mediators at every level function in a similar manner, which gives automatically lays down a symmetric procedure, followed everywhere. He further threw light on the various branches of ADR that follow and elaborated on them. He then talked about the official guidelines laid down for mediation in India. He then compared mediation to an art, to practice which, training the enthusiasts to learn this craft is a must. He then mentioned the components of training and soon concluded his note.

Ms. Anand then invited Mr. J.M. Sharma to address the gathering, who then took over. He said that it is assumed that if a litigating lawyer is going to the court, he will definitely be going to go through the adjudicatory process and advocate only one point of view. Once the judge hears both the parties, he will give his decision, putting an end to the adjudicatory process. He said that sometimes the disputes are of such nature that the outcome of the adjudicatory process, i.e., the judge's decision might leave one party totally unsatisfied. He said that the process of mediation helps the parties resolve the dispute through settlement, rather than adjudicating the matter and compromising on only one person's satisfaction. He discussed how mediation is a structured process in order to minimise the chances of not being able to come up with a favorable settlement. He further discussed some more benefits of the mediation process over adjudicatory process, like it being party-centered, being able to discover more about the dispute than restricting it to what has been submitted in documents, helping lessen the burden on courts and many others. He also discussed a gist of the Arbitration and Conciliation Act, 1996, and when the mediation mechanism comes in handy as per this. He soon concluded his note. Ms. Anand then announced the interactive session, where the attendees directly got their queries addressed from the dignitaries. The session continued for a very long time and helped the attendees clear all their doubts. Mr. Santhana Krishnan then delivered the vote of thanks, which marked the end of the successful session.

2. Date: 11th July (1st Session)

Speaker: Prof. (Dr.) Rajesh Bahuguna, Dean, Law College Dehradun, Vice-Chancellor (officiating), Uttaranchal University.

Topic: Introduction to ADR



Prof. Bahuguna started the session by drawing the comparison between modern and traditional system of adjudication. He raised the most common question 'What Is ADR' to which he responded that is the method of resolving a conflict that is capable of settlement between the parties without court intervention. Further he said that ADR mechanism is popularly known as dispute resolution outside the courts. The main objective of ADR is to achieve Speedy, Inexpensive solution to a dispute

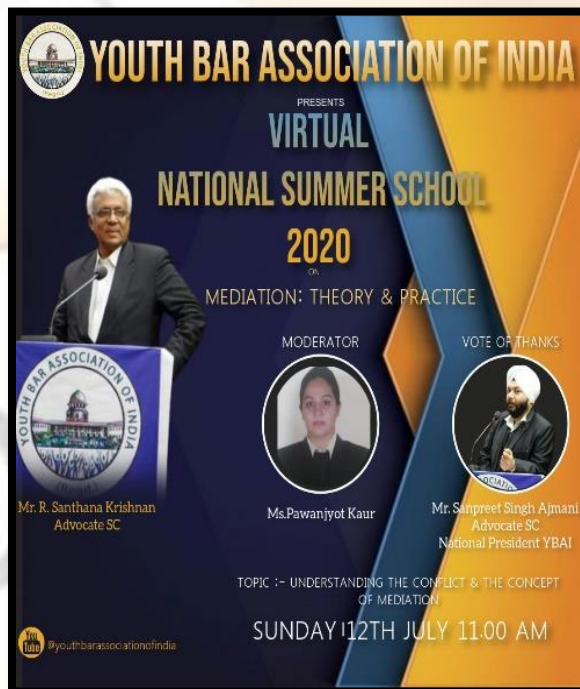
avoiding the situation of procedural delay and formalities that one has to face in court trials. He stated that the modern system of adjudication i.e. ADR is an alternative to the Traditional System. He then gave the brief idea of the ADR techniques. The division of ADR into two procedures includes Adjudicatory and Non- Adjudicatory technique. He then stated that all the techniques of ADR have been evolved with the rapid changes taking place in thinking, lifestyle and philosophy of the people. Each of the process facilitates the resolution of the dispute more effectively and amicably. Prof. Bahuguna then laid emphasis on ADR being the need of the hour and discussed the topic further in detail. Then he stated the statues and amendments related to the ADR mechanism. Prof. Bahuguna brought up the advantages of ADR mechanism and later discussed its limitations in detail as well. As in ADR the win-win strategy is evidently observed because the parties get the opportunity to talk out for the resolution of dispute and the preservation of relationships. After concluding the session Prof.

Bahuguna shared his experience with the attendees. He then specified that our nation actually lacks knowledge of the technique and, most significantly, the shift of people's attitude is essential to adopt this technique.

3. Date: 12th July (2nd Session)

Speaker: R. Santhana Krishnan, Advocate & Mediator, SC

Topic: Understanding the Conflict & Concept of Mediation



An eye for an eye will make the whole world blind - Mahatma Gandhi. With this convection, the Youth Bar Association of India after two thriving sessions of 10 days Mediation School has now come up with the subject of "Understanding the conflict & concept of Mediation" with Mr. R. Santhana Krishnan, Advocate & Mediator, SC on the floor. This has not only cleared the concept of mediation which is the aftermath of different conflicts but moreover asserted the inception and need of the advent of mediation. In the

epoch of adjudication, mediation is booming seemingly, and its comprehensive excursion was analyzed.

Mr. R. Santhana Krishnan commenced the session with the definition of "conflict". And illustrated the birth of conflicts from disagreements followed by arguments. Going deep down to it he strode to the reasons behind disagreement and conflicts- injustice, distrust, and helplessness. For surplus understanding, he began with a small unit family dispute which can arise with unintentional discrimination done to a daughter if a family has only one male child. Starting from a simple unit of the family he went to the dispute between French & English which led to World Wars. And those combats resulted in an

institution labeled United Nations for maintaining peaceful relations between countries.

Shedding the light on the expedition of dispute resolution in India, Sir narrated the outline of how different mechanisms were set-up to resolve the disputes from micro to the macro level. Further, different stages were illustrated which acted as a base for mediation in India for untangling quarrels. Seeing the prominent rise in commercial disputes in America, thinkers hit upon the creation of a mechanism called mediation where the mediator acts as a neutral party and facilitates the conversation between disputing parties, and for the first time, it was implemented by America in the 1970s. Furthermore, mediation was defined, and its applicability was explained in several areas. Moreover, a clear picture was exhibited by comparing each phase of mediation with the trial. In a statutory passage, Sir has told that no specific statute is there for mediation, but numerous Acts and provisions are there to resolve disputes in prominent areas like Industrial Act, Arbitration and Conciliation Act, and provision in CPC. Adding to it, he mentioned the Singapore convention which is a big name when it arrives at the mediation. The session was deduced to the Q&A segment and fulfilled the purpose.

4. Date: 13th July (3rd Session)

Speaker: Mr. J.M. Sharma, Advocate & Mediator, SC

Topic: The Process and The Stages of Mediation



With a snapshot of the essence of mediation, Mr. Sharma began the session. He then threw light on the points that needs to hold in mind before opting a mediator to settle a conflict. He additionally explained the phases of the process of the mediation in detail along with the seating arrangements. He also explained the characteristics and function of the mediator in the mediation process. He then stressed the importance of neutrality along

with the other ethical principles for a mediator. Mr. Sharma offered introductory suggestions to the attendees. He established the technicality of the stages in detail after this. He backed up the explanation of each stage, with appropriate illustrations. Mr. Sharma then brought up the list of questions that should be asked from the parties in mediation followed by some objectives for the mediator. He also shared with the attendees his personal experience. He then offered some suggestions on writing the document at the end of the mediation. Stating his own experience, he remarked that 'Mediation Never Fails'. He concluded the session by addressing the need for the statutes in this field.

5. Date: 14th July (4th Session)

Speaker: Mr. Rakesh Khanna, Advocate & Mediator, SC, Former President, SCBA

Topic: Role of Negotiating Parties in Mediation

YOUTH BAR ASSOCIATION OF INDIA
Presents
VIRTUAL NATIONAL SUMMER SCHOOL 2020
ON
MEDIATION : THEORY & PRACTICE
TOPIC :- ROLE OF NEGOTIATING PARTIES IN MEDIATION.

MODERATOR
Ms. Anjali Chauhan
Advocate SC,
Executive Member SCBA

Mr. Rakesh Khanna
Senior Advocate & Mediator, SC

VOTE OF THANKS
Mr. Sanpreet Singh Ajmani
Advocate SC

DATE:- 14TH JULY
TIME:- 06:00 PM

Mr. Khanna commenced the session by defining Mediation and discussed his agendas. He focused on the point that the negotiating parties are the focal points of the mediation, and the mediator is just to facilitate the conversation. He then deals with negotiation part of mediation. Negotiation is used in mediation to help the parties to arrive at an agreement which is satisfactory as possible to both the parties. The mediator uses an interest-based approach and helps the parties to solve the problem during the negotiation. He Then explained the shuttle

diplomacy i.e., negotiations conducted by a mediator who travels between two or more parties that are reluctant to hold direct discussions. Mr. Khanna then clarifies the role of every person in the

mediation process. Then he talks about the role of negotiating parties in the process of Mediation which is to openly and honestly discuss and negotiate a solution to the dispute. He then stated that the parties are entitled to a neutral mediator who can generate options for them along with it the parties should have a win- win mindset and not I win you lose intention to have a successful mediation session. He then shared some strategies to a successful Mediation which he has derived from his personal experience. At last Mr. Khanna said Negotiation is the heart and soul of the mediation and to covet successful Mediation two parallels lines needs to bend in good faith.

6. Date: 15th July (5th Session)

Speaker: Hon'ble Lady Justice Joyce Aluoch, (former Judge) ICC, Certified Mediator, International Mediation Institute (IMI), CERD-Accredited Mediator

Topic: Role of Mediator Towards Successful Mediation

YOUTH BAR ASSOCIATION OF INDIA
Presents
VIRTUAL
NATIONAL SUMMER SCHOOL 2020
MEDIATION : THEORY & PRATIC

KEYNOTE SPEAKER

MR. KRISHNA RASTOGI
MODERATOR

HON. LADY JUSTICE JOYCE ALUOCH
EBS, CBS, (Retired) is a former Judge and - First Vice-President of the International Criminal Court at The Hague, The Netherlands.

MR. SANPREET SINGH AJMANI
ADVOCATE, SC,
VOTE OF THANKS

TOPIC :-
ROLE OF A MEDIATOR
TOWARDS A SUCCESSFUL
MEDIATION

DATE :- 15TH JULY 2020
TIME :- 5.00 PM IST

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The 6th session of the Virtual National Summer School 2020 commenced with a warm welcome to the key-note speaker of the day, Hon'ble Lady Justice Joyce Aluoch, (former Judge) ICC by the event moderator Mr. Krishna Rastogi. The moderator then addressed the attendees and introduced the key-note speaker. Lady Justice Joyce Aluoch began the session by explaining the process of mediation & responsibilities of a mediator which is to facilitate communication between the parties, assist them in focusing

on the real issues of the dispute, and generate options that meet the interests, needs, and concerns of the parties, to resolve the dispute or

difference. She emphasized that a mediator's role is not to decide the dispute which has arisen between the parties but to remain neutral and impartial. She said that while performing this role, a mediator transforms herself/himself into an information gatherer, educator, a problem explorer, a facilitator, a coach, a catalyst for problem-solving, a negotiator and a reality tester.

Lady Justice Joyce Aluoch opined that for a mediator to successfully perform the above-outlined roles, they would need to acquire a variety of skills through training, practice, and experience which are mentioned below but not limited to:

- Active listening which also includes reading the body language of the person,
- Matching – a way of developing rapport by accurate observation.
- Use of silence and minimal verbal prompts, which demonstrates to the listener interest, respect, and patience, and places the initiative on the listener.
- Reflecting – Putting into words the impact of a situation on the other party including the underlying emotions.
- Empathy
- Rapport Building
- Paraphrasing
- Reframing
- Summarizing

She further emphasized that a mediator needs these skills to assist the parties as she/he takes them through the five stages of the mediation process, which are: Preparation, opening phase, exploration phase, bargaining phase, and the concluding phase. She also talked about the challenges a mediator must overcome which the current pandemic has created. She talked in depth about the technicalities of the process of mediation being performed virtually and how it can be performed successfully on virtual platforms. Lady Justice Joyce Aluoch said that they must watch the facial expressions of the parties much more than before, as they cannot see their whole bodies as they used to when mediation was being conducted "face to face," with people seated around a table. Soon, Lady Justice Joyce Aluoch concluded and the highly informative session.

7. Date: 16th July (6th Session)

Speaker: Mr. Rajiv Dutta, Senior Advocate & Mediator, SC

Topic: Importance and Role of Lawyers in Mediation

Mr. Dutta started the session by citing the wise words of General De Gaulle



to clarify the previous mediation scenario globally. With the support of Indian statutes, he addressed the Indian position. Mediation is a more humane approach to dispute resolution, he added, since it incorporates the conflicting parties in the resolution process, and they have an opportunity to speak freely about an issue. Mediation is a creative mechanism in which a person needs to think out of the box. Mr. Dutta further identified the homely example of an orange. He then discussed the forms in which mediation can be popularized across the globe. He then spoke about the accelerated evolution

of the method, which today uses a new approach that supports both clients and counselors in best of their ways. He said the mediation process has opened new legal aspects that have a professional effect on emerging lawyers; He backed this point up averring his personal life experience. He discussed the role of a lawyer as a mediator to serve both the client and the counsel for their best. He mentioned that a lawyer's primary and true purpose is as same as that of a mediator. He dealt with some of the technological aspects as well, such as BATNA, WATNA. Later, along with the characteristics one must possess to be an efficacious mediator, he discussed the benefits of mediation. With this brief explanation, Mr. Dutta soon concluded his note.

8. Date: 16th July (Special Session)

Speakers: Mr. K.T.S. Tulsi, Senior Advocate and Member of the Parliament, **Mr. Justice Lokpal Singh**, Judge, Uttarakhand High Court

Topic: Plea-Bargaining & The Scope of Mediation in Criminal Cases



A special session was organized by the organizers to acquaint all the participants with the concept of Plea Bargain and the scope of mediation in Criminal matters. The evening of 16th July saw a stellar panel that included the well renowned criminal law stalwart, Senior Advocate and a member of the Parliament, Mr. KTS Tulsi. He was joined by Hon'ble Mr. Justice Lokpal Singh, Judge, Uttarakhand High Court. The session began with a warm welcome by the ever-energetic moderator and a very young yet popular

name Ms. Tanvi Dubey. She briefly introduced both the speakers and handed over the floor to Mr. KTS Tulsi.

Mr. Tulsi started his address by giving a background of the enactment that led to insertion of the concept of plea bargaining. He mentioned in his address that Plea bargaining was introduced in 2006 as a part of the set of emendation to the Cr.P.C containing sections 265A to 265L. The deadlock of the system is innocent until proven guilty preferably prosecution needs to prove their guilt beyond reasonable doubt. In border *Warden, Butcher v. the US Supreme Court* held the constitutional rationale for plea bargaining is that there is no element of punishment or retaliation. The provision is the plea bargaining is

often criticized. That it is a derivative of coercion threat or other undue influence, which could deteriorate the outcome of the criminal justice system.

Moving on, he added Emancipation lies in the soul of an individual. Presence of fear is the finality of judgment in compliance to Section 261[G]. In America, all offences are subject to plea bargaining if we give the more publicity to this disclosure of law. Though we should not help is contrary to the assertion. Even Our thoughts are not ours we cannot read our mind how can we expect someone to read our mind too. The contention is the bone that senior lawyers are not aware. The position in India is abysmal only 0.45% of cases, under IPC disposed of by plea bargaining. In India only cases, which are punishable with more than seven years or more than seven years. In those it's not a well available, but the remaining cases where the punishment is seven years or less.

There is a difference between Confession and Plea Bargain. Then the guidelines for mutually satisfactory disposition are contained in Section 265 (C). If one was to tag a single largest factor or collapse of criminal justice system in our country, it is lack of understanding of the plea bargain and plea bargaining. There has been opposition to be gagging even in America. And they have said it in so many words, that if we were to relinquish the bargaining, the criminal justice system would wither. And that is exactly what's happening. Emphasizing economic issues, murder cases, mass murder cases. However, the reality is most criminal cases do not go to the trial. In this country, every single person pleads guilty to the crime they do not commit because Pride is the pathway to offence leading to isolation. So far the suspicion with drone is also one of the type of a reducing the unjust litigation and this is the harassment of a little icky, but fact remains that plea bargain is started the purpose is to reduce the pendency in the issues for our country is concerned in our country, the pendency of criminal matters is increasing day by day. Plebeians are oblivion to reality of indicting liability over the legitimate individual in consonance with *Estipona v. Lombrigo* benches plea bargaining is unconstitutional.

With so much of learning Mr. Tulsi handed over the floor for Justice Singh. Justice Singh went on to address the attendees by agreeing partially with the former speaker. He said that though the concept is

new in our laws but the origin still lies in the old practices whereby our parents used to bargain with us for the mistakes in order to give us less punishment. He also shared few of his experiences where he highlighted the use and prevalence of this concept that has proved to be successful. He later on pointed out that we must profess the concept of "Bail being the right and jail being the exception" and in order to do so, this concept will prove important. But he also pointed that, considering the society in India, no every case that has been provided under the concept of Plea bargaining can prove to be successful and he while partially disagreeing from Mr. Tulsi, pointed out that the success in America cannot be equated in India considering our legal system and this concept may prove its worth in coming times whereby courts would take this concept forward upon considering the nature of the offence as well as the offender. He based his address on his experiences with this concept as a judge.

After the enlightening session, the panelists entertained the questions of our attendees and after that Vote of thanks by Mr. Sanpreet Singh Ajmani, President, YBAI marked the end of this wonderful session.

9. Date: 17th July (7th Session)

Speaker: Mr. Brian Speers, President, Commonwealth Lawyers Association

Topic: Cross Border Mediation

YOUTH BAR ASSOCIATION OF INDIA
PRESENTS
VIRTUAL NATIONAL SUMMER SCHOOL 2020
MEDIATION : THEORY & PRACTICE
TOPIC :- CROSS BORDER MEDIATION .

KEY NOTE SPEAKER
MR. BRIAN SPEERS
PRESIDENT COMMONWEALTH
LAWYERS ASSOCIATION .

MODERATOR
MS. HARSHEEN ANAND
CA, LL.B.

VOTE OF THANKS
MR. SANPREET SINGH AJMANI
ADVOCATE , SUPREME COURT .

DATE :-
17TH JULY
TIME :-
12.30 PM IST

Just prior to the conclusion of the Summer School on Mediation, the theme was dealt with under the topic "Cross Border Mediation" by keynote speaker Mr. Brian Speers, President Commonwealth Lawyers Association. First and foremost, Mr. Speers opened with the comparison between the disadvantages of litigation and the advantages of mediation. Both client and society are at plus point in mediation. Further, he handled his whole sermon under two principles, one European Cross Border Directives

and the other is the Singapore Convention of Mediation. Heading with the former one, he told several vital provisions of it and in the European Union, there are plenty of scopes of cross border mediation. Further, he led the way towards the brand-new Singapore Convention of Mediation where agreement is made enforceable just like court orders. Mediation has been the part of International global trading for resolving conflicts. Then after stating some windfalls of cross border mediation, he illustrated the concept of Med-Arb and Arb-Med. Putting pause to his words now the session headed towards Q&A round where ample questions we are dealt with by the speaker and the session ended successfully.

10. Date: 18th July (8th Session)

Speaker: Mr. Teh Joo Lin, Deputy Chief Executive Officer, SIMC

Topic: Pre-Litigation Mediation & Med-Arb



Not deterred by the boundaries the keynote speaker for this session was Mr. Teh Joo Lin Deputy Chief Executive Officer, SIMC who forwarded with the topic " Pre-Litigation Mediation & Hybrid Processes. Mr. Lin then illustrated factors for success in mediation. Then the presentation of the chart was there where different mediums of dispute resolution under the categories of cost, collaborative, successful outcome. Further, he went to the aspect of Hybrid dispute resolution where he exemplified one of his cases of category Med-Arb.

Adding to the component he deciphered the entire concept of Arbitration-Mediation-Arbitration. Moving ahead Sir cited the Queen Mary Survey, 2020 which indicated the most prominent way resolving a commercial dispute and user perspectives of factor importance w.r.t

enforceability, neutrality, expenses, and speed in reference to the arbitration, mediation, and litigation. It was also stated by him that hybrid dispute resolution benefits the parties to get the advantage of both worlds, and with that Singapore Convention 2020 started reflecting and its crucial junctures were also effectively dealt with a tiered dispute resolution just to resolve the dispute by approaching different methods. Then the session concluded with the Q&A round where participants put forward their questions from various perspectives.

11. Date: 19th July (9th Session)

Speaker: Mr. Sriram Panchu, Senior Advocate & Mediator, SC

Topic: Singapore Convention: A Way Forward

YOUTH BAR ASSOCIATION OF INDIA
Presents
VIRTUAL NATIONAL SUMMER SCHOOL 2020
ON
MEDIATION : THEORY & PRACTICE

MS. CHITRANGDA RASTRAVARA
ADVOCATE, SC
MODERATOR

MR. SRIRAM PANCHU
SENIOR ADVOCATE & MEDIATOR, SC

MR. SANPREET SINGH AJMANI
ADVOCATE, SC
VOTE OF THANKS

TOPIC :-
SINGAPORE CONVENTION : THE WAY FORWARD.

19TH, JULY
11 AM IST

VIA ZOOM

The session began with a prefatory speech by Ms. Chitrangda Rastravara, Lawyer, SC, the moderator of the session. She welcomed the dignitaries and audience for the day. Later she introduced Mr. Sriram Panchu and invited him for the addressal. Mr. Sriram Panchu then took the session forward with a snapshot of the meaning of mediation. He referred to the mediation process as a consensual and voluntary one. He then explained the advantages of mediation in detail. Further, he mentioned the requirements of the mediation procedure that includes time, solutions, parties' presence, and enforceability. He stated that mediation is not in a competitive business. Later then, he explained the Singapore Convention. He also pointed to the Singapore convention as a benchmark as well as a turning point for foreign

business. He then addressed the most prevalent issue of enforceability. Mr. Panchu then drew light on the primary purpose of the convention. Further, he outlined the distinction between mediation and conciliation in-depth with several illustrations. Then Mr. Panchu set forward the intent of the Singapore Convention which is to work on the enforceability of agreement between different parties. Moreover, he clarified the mechanism according to the convention. He emphasized the fact that "if one country defies sticking to the agreement then the other party i.e. the other country can take the party to the board of law in any country which is the signatory to the convention and not necessarily to the country of the defendant." Furthermore, Sir clarified enforceability as well as the grounds for relief with the assistance of statues. Also, he referred the convention as 'Mantra- A magic word.' The use of the Convention for foreign business is later discussed in the session. He then discussed the convention in the backdrop of India and with the use of illustrations, he clarified the issue. He also added the value of pre-institution mediation as well as a mediator's skill set was finely clarified. He then retained some points that can be taken to expand the practice of mediation. Mr. Panchu then explained the pros and cons of the practice of virtual mediation. He concluded his note by addressing the broader mediation perspective in India. The Q&A commenced soon which was interactive, as the attendees got the opportunity to get their queries solved by directly speaking to the speaker.

12. Date: 20th July (10th Session & Closing Ceremony)

Speaker: Ms. Aishwarya Bhati, Senior Advocate, SC, Additional Solicitor General of India

Topic: Existing Laws & Need of Basic Legislations to Make Mediation Effective

YOUTH BAR ASSOCIATION OF INDIA
Presents
**VIRTUAL
NATIONAL SUMMER SCHOOL
2020**
CLOSING CEREMONY

MS. AISHWARYA BHATI
ADDITIONAL SOLICITOR GENERAL OF INDIA

**TOPIC : THE EXISTING LAWS & NEED OF BASIC
LEGISLATIONS TO MAKE MEDIATION EFFECTIVE.**

**20TH JULY
05:00PM ONWARDS** | **VIA ZOOM**

MODERATOR
MS. SHWETA PANDEY
ADVOCATE, SC
NATIONAL COORDINATOR
YBAI

CONCLUDING REMARKS
MR. SANPREET SINGH AJMANI
ADVOCATE, SC
NATIONAL PRESIDENT
YBAI

VOTE OF THANKS
MR. ABHIJEET KASHYAP
VICE PRESIDENT
YBAI (STUDENT WING)

With the sheer hard work of organizing the 10 days Summer School on Mediation, it came to its concluding session where the floor is taken up by Ms. Aishwarya Bhati, Senior Advocate of SC where she propelled upon "The Existing Laws & Need of Basic Legislation to make mediation effective". Ms. Bhati commenced with the provisions of different Acts which empowers mediation other than the Hindu Marriage Act and Special Marriage Act as these

two are the main sectors where mediation prominently works. Further, she compared our laws with European Laws where more than 60% of cases are resolved through mediation or by plea bargaining. So to embrace the justice delivery system India needs to encompass mediation which can be accomplished by keeping mediation mandatory at various stages of the trial. She even raised a point that most of the lawyers view mediation as a threat to their profession rather, it will make more footfall into the justice delivery system. Besides this Ms. Bhati dealt the regions where mediation is gripped as a foremost measure of resolving a dispute like Lok Adalat where the judge by omitting the uniform act as a mediator and elbow every court has a mediation center or have trained mediators which can come into play at any time of litigation by a court order. Then she concluded her discourse by saying that there is a need to build a robust mechanism through the initiation of higher authorities and volunteers to bring mediation into the mainstream. Then the queries of the participants

were addressed by Ms. Bhati which further clarified all their doubts. The 10-day Summer School finally came to an end with this, in which over 105 people had participated, thereby making virtual learning program from across the world possible and successful.

NEWSLETTER EDITORS:

1. Mr. R. SanthanaKrishnan
Advocate, Supreme Court of India
(Chief-Editor)
2. Rahul Kumar, Final Year Student, Law College Dehradun
(Student Editor)
3. Aditi Bansal, 3rd Year Student, Law College Dehradun
(Student Editor)

NIVAARAN ACTIVITIES AT A GLANCE

