



A MISSION; A RESPONSIBILITY

Towards creating a loving and caring world

: ANIL XAVIER

Paswan from West Bengal, India, was not fortunate enough to see the murderers of his son tried for their acts. Paswan, a prime witness in his son's case died on 29 July 2004, one day after the 'Special Bench' of the Kolkata High Court ruled that the case against the perpetrators in the murder of his son could proceed on the finding that *"government permission is not required to prosecute Singh, now a Deputy Inspector General, as kidnapping was not among his official duties as a police officer"*. It took the Indian judiciary ten years to decide a matter that any informed person would have resolved in a few minutes. There are also instances where adjudication of matters of management of minor's estate became infructuous because the child became a major before the matter could be heard and instances where the civil right of a person was decided after his death. According to Mr. Justice M.N. Venkatachaliah, former Chief Justice of India, a matter came up before him when he was sitting as the Chief Justice, which he himself had drafted in his early years as a lawyer about 27 years back.

According to recent statistics, in India, the judge population ratio is 12 - 13 judges per million. This is the lowest in the world, as compared to 135 to 150 per 10 lakh people in advanced countries. A study conducted by the Ministry of Finance reveals that at the current rate it will take 324 years to dispose of the backlogs of cases in Indian courts. "California's population was almost touching 38 million. In India, that's the number of cases pending in courts across the country". Providing this peculiar comparison was none other than the Chief Justice of India, Mr. Justice K G Balakrishnan.

The denial of justice through delay is the biggest mockery of law, but in India it is not limited to mere mockery; the delay in fact kills the entire justice dispensation system of the country. The legal system is simply not equipped to handle the number of cases filed. It is often said that litigation is an unwelcome houseguest that stays for years or decades together. This has led to instances of people settling scores on their own, resulting in a growing number of criminal syndicates and mob justice at least in some parts of the country reflecting the frustration of the people in the long wait for justice they are compelled for, by our legal system.

A recent study also concluded that 70 percent of the "winners" in litigation were unhappy in the end. One can safely assume that close to 100 percent of the "losers" in litigation were also unhappy. To make rule of law a reality, the arrears will have to be reduced. Speedy justice is an assurance extended to a citizen under the right to life guaranteed by the Constitution. Right to speedy trial is an important right in the UK and US.



India has huge potential to become an economic superpower. Its population stands at over a billion, making it the second largest population in the world. The middle class alone is greater than the population of the United States or the European Union. India is also the fourth largest economy in the world and has the second largest GDP of developing countries. But in spite of all this, India has failed to live up to expectations, and foreign investment has not been as high as expected. No amount of prosperity or development is either possible or worthwhile, if it is not accompanied by social infrastructure, one of which is a good legal system and an efficient dispute redressal mechanism, which provide the citizenry the assurance that they live under the protection of an efficient legal regime.

Conflict and Resolution

Conflict is a part of life. Everyone has differing points of view, and we all need to figure out how to live with each other. No matter how trivial the conflict, it causes serious stress for everyone involved. Matrimonial disputes can shake the entire social fabric of existing families. They have such an effect upon the society and impact the whole society as such. Sometimes there may not even be a clear legal remedy for the problem. Conflict often results in a breakdown of communication, hurt feelings and defensiveness among individuals. Longer the conflicts persist, worse the problems seem to get. Sometimes victims of crime need answers and apologies more than they need to know perpetrators are being punished; and sometimes offenders need to find out just who they've hurt to realize what they've done is wrong. There is no conflict without emotion. There can be no resolution of violent conflict without addressing the underlying emotions that gave rise to it and sustained it. Behind almost every human conflict someone feels dismissed, discounted, disenfranchised, or disrespected.

“Blessed are the peacemakers: for they shall be called the children of God”, the words may not be the same, but a similar philosophy exists in all religions. Reconciliation, love and peace have enormous moral, spiritual and ethical value.

People with problems, suffers from mental trauma and obviously yearns relief as quickly as possible preferably in an inexpensive way. It is in this context that the Indian Institute of Arbitration & Mediation (IIAM) brought out the concept of establishing Community Mediation Clinics as an inexpensive option with the motto; **“Resolving conflicts; promoting harmony”**. It is a way to bring peace to people without litigation. Time has come for the people to acknowledge our ancestral wisdom which used mediation as a method to generate dialogue and discussion rather than intimidation and aggression.



The concept of IIAM Community Mediation Service (IIAM CMS) was launched throughout India by the Chief Justice of India, Mr. Justice K.G. Balakrishnan on 17th January 2009 at New Delhi.

Community Mediation Clinics enhance access by helping to bring justice to the society. It helps preserve relationships by avoiding the embarrassment of being hauled into court, and by giving people the opportunity to air concerns that a court would rightly ignore when evaluating a legal claim. The process also allows people the freedom to solve their problems in a way that best fits their situation, increasing the likelihood that they will abide by their agreements and feel good about the resolution. Mediation Clinics has the potential to change society and empowers the community to resolve disputes. Mediation may be able to plow beneath the surface of frequently vexatious litigations by addressing the underlying conflicts. The mediator acts as a bridge to iron the wrinkles of differences affecting the parties.

We have to keep in mind that the legal system is not the place to deal with hurt feelings. Mediation is a process for individuals to resolve disputes during which they themselves provide solutions and make the decisions rather than fight it out through litigation. It is also a process that can mould a more peaceful society. Conflict prevention is one of the keys to the success and harmony in their society. Community mediation also helps in restorative justice through its variety approaches and restoring the offender in community by giving correctional practice thereby giving everyone a second chance.

Community Mediations helps to maintain peace and solidarity among the members by facilitating settlements among conflicting parties. Community mediation means neighbours helping neighbours to solve problems and resolve disputes. In this concept, mediation is provided by trained community mediators who represent the community. They are viewed as an opportunity for citizens to participate in the prevention and early intervention of conflicts as an alternative to institutional mechanisms. The theme is, "Talk it out; Not fight it out".

IIAM CMS provides an important service to the community. The program could contribute to the happiness and harmony of the community. People would get a platform near home to settle their cases hastily and harmoniously, without the trappings of a court. Through a system that resolves disputes before it requires adjudication, it is hoped the legal system will be freed up to deal with more serious cases.

IIAM CMS is intended to divert cases from court, build bridges between communities and transform society into a more tolerant, understanding people. The mission of IIAM CMS is to utilize law as a modality for healing and helping, and not just technically resolving



problems; to focus on the future and reconciling relationships, rather than simply looking to the past and punishing transgressions and to believe in peace-making. Setting up of IIAM Community Mediation Clinics in all districts of each state with a view to mediate all disputes will bring about a profound change in the Indian Legal system. Conflict management programs with the formation of such clinics will serve to defray tensions in societies and prevent them from erupting into violence.

These Mediation Clinics would function with an efficient team of mediators who are selected from the local community itself. The people so selected would be trained by IIAM, and a certificate of recognition would be issued. The mediators so selected will be persons who shall be having a good repute in the local area to whom people shall have faith and shall include educated youth, ladies and elders. Peacekeeping is a profession and can be a vocation. It is a belief, a value and a way of life. We have many people in our community who believe in peace and practice peace making.

IIAM CMS has also been endorsed by the International Mediation Institute (IMI) at the Hague, Netherlands, which is formed to generate confidence in the usage of mediation and for certifying high competency standards for mediators throughout the world.

Community mediation services were first established in Britain in the 1980's and expanded rapidly. Community mediation programs now flourish throughout the United States. In San Diego (California) having the third largest number of trial courts in the USA, 97% of the civil cases are settled through mediation. Records from US programs on community mediation throughout the country demonstrate that 85% of mediations result in agreements between the disputants. Similarly, studies show that disputants uphold these agreements 90% of the time.

Promoting harmony

IIAM CMS has the potential to shape powerful conflict transformation partnerships. Such approaches often have the power to heal even profound social wounds, so that the system can become a vehicle for creating a loving and caring world.

But as the former President of India, Mr. A.P.J. Abdul Kalam has said, "If nation is to have ethics; society has to promote ethics and value system." To promote the concept of IIAM CMS, organizations that promote peace building or conflict resolution has to partner in an effort to support peace and harmony. To make our world a safe, sustainable, peaceful and prosperous place to live, corporate houses can make an important contribution by adopting such Community Mediation Clinics. As a business opportunity and simultaneously to fulfill their Corporate Social Responsibility (CSR), Corporates can adopt



a long term approach in partnering with IIAM for a long term process of positive social transition.

Propagation and establishment of Mediation Clinics definitely enhances the social capital that is vitally needed for the society. As Mr. David Putnam has put it, it would work as a Social capital, which would be networks of cooperation in which people invest and from which they may ultimately derive benefits. Putnam looked at social capital primarily in terms of its benefits to society rather than the individual. Research has shown how powerfully social capital, or its absence, affects the well being of individuals, organizations, and nations.

Clinics, established in each district will be known as "Partner's Name Mediation Clinic" in association with IIAM Community Mediation Service. Disputes can be registered with the Clinic by one of the parties or through referrals from courts, police, community organizations, civic groups, religious institutions, government agencies, community leaders or from any of the party's friends or family members.

Legal compliance and Peace building processes could be greatly strengthened if organisations, people and society cooperate. Establishing Mediation Clinics not only help settlement of cases pending before courts but also help in preventing disputes reach courts. Community mediation can be thus helpful not only for public for avoiding lengthy litigation process but also it gives a relief for Courts from meddling with trivial issues and thereby concentrate and devote more time and energy on other important matters which calls for its attention. IIAM intends to establish at least 100 mediation clinics by 2010 and ultimately have mediation clinics in each district of India by 2015. IIAM Community Mediation Service has the potential for transforming our conflictual society into a collaborative, problem-solving one. Be part of the IIAM Community Mediation Service, which is intended to resolve conflicts, and promote social and communal harmony.

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