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THE indian arbitrator

THE INDIAN ARBITRATOR

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In this Issue.....

Editor's Note

ADR seems to be the buzzword in 2016. The Global Pound Conference series has kick-started the excitement. The recent UNCITRAL Conference at Thailand talked about the need for a Convention for mediation settlements, similar to the New York Convention, to augur the growth of global mediation. When we talk about mediation, I think we should also talk about creating credibility for the mediation process. As this would go a long way towards acceptance of the process by the Users. We need to back up the work of the International Mediation Institute in bringing in Certification and Code of Conduct for the mediators. In this increasingly complicated World, we need to bring faith in this pure system of mediation!

MEDIATION & BEHAVIOURISM: THE APPLICATION OF RATIONAL EMOTIVE THERAPY IN MEDIATION

ANKITA DAS

People opt for litigation not because they prefer it but because they consider it as the only resort. The lack of awareness about ADR system leaves them with no choice but to go through the hassles of litigation and its pre and aftermath effects. In this paper, the author is trying to analyse the basic reason for the commencement of a dispute and how the behavioural approach of a person moulds it into different forms. The author also tries to look at how Rational Emotive Theory creates various personality traits during mediation and how a mediator can use the therapeutic psychology of the same therapy to control the situation and derive success out of it.

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INTRODUCTION

The court procedure in India during independence was derived from Anglo Saxon structure of jurisprudence. The citizens of India were just freed from the shackles of colonization and its pseudo practices. People were unaware of their rights and duties. Therefore there developed a huge bridge between the common people, the constitution of India and the Government. On the other hand the laws and regulations made by the legislature to govern independent India were also not properly known to the people; they were unaware of their legal rights and their application.

India follows the “common law system” which is defined as a legal system that gives emphasis to focus on common law in the expectation that the unswerving ideology related to similar results give in to similar conclusions. The judicial system of India is classified into a three tier system. The Supreme Court is at the apex level, at the state level there is High Courts, and at the village and Panchayat level there are Original jurisdiction courts. There is also Alternative Dispute Resolution (ADR) System in our country, which includes arbitration, mediation, negotiation and conciliation.

It is been commonly seen that at the first sign of dispute or conflict people run to court. Here we need to ask ourselves – do they really like going for litigation or they go because they are unaware of any other alternatives? Most of the people in India are still illiterate when it comes to resolving disputes through alternative methods. Firstly they do not know properly about the alternative dispute

resolution methods and process, secondly this unawareness makes them opt for litigation not because they prefer it but because they consider it as the only resort. Therefore this lack of awareness about ADR system leaves them with no choice but to go through the hassles of litigation and its pre and aftermath effects.

But it seems that even though some people are aware of the ADR processes, they try to avoid the same or complicate it with their approach and behaviour, hugely influenced by the environment, situation and the people around them.

In this paper, I am trying to analyse the basic reason for the commencement of a dispute or a conflict and how the behavioural approach of a person moulds it into different forms. We will also look at how Rational Emotive Theory creates various personality traits during mediation and how a mediator can use the therapeutic psychology of the same therapy to control the situation and derive success out of it.

CONFLICTS AND DISPUTES

Have we really thought about the actual cause of a conflict? Is it because of the situation or due to the different perceptions and viewpoints we have of life? Each person has a different lifestyle and experience of life. Usually these experiences clash at some point either with a family member, an acquaintance, a colleague or a stranger. So it is fair to say that whatever is happening is just a reflection of our thoughts and the thoughts in return process conflicts in our life.

Basically a conflict gives rise to dispute, and a dispute threatens the security and safety of a person. The level of threat one feels, determine whether the same can be neutralized through simple amicable talks or should take the hard route of litigation. Here I am discussing about those people who come for mediation, when their efforts to solve the issue through personal talks have failed.

‘BEHAVIOURISM’ & ITS TRAITS

Behaviour is the result of stimulus – response i.e. all behaviour, no matter how complex, can be reduced to a simple stimulus – response association. Watson described the purpose of psychology as: “To predict, given the stimulus, what reaction will take place; or, given the reaction, state what the situation or stimulus is that has caused the reaction”. Behaviourism is primarily concerned with observable behaviour, as opposed to internal events like thinking and emotion. Observable i.e. external behaviour can be objectively and scientifically measured. Internal events, such as thinking should be explained through behavioural terms or eliminated altogether.[1]

There are some typical traits that the people who come in for Mediation usually display. For e.g., Anger, Frustration, Hostility, Carelessness etc. Usually we evaluate their behaviour on some parameters like his personality, the situation, the role he plays in the same and the reaction he displays as the mediation goes by. It is interesting to observe how self conscious people are in mediation. Here comes the theory of Rational Emotive Behavioural Theory!

Let’s see how this works and nurtures the twists and turns of various situations in the process of Mediation.

WHAT IS RATIONAL EMOTIVE THEORY?

The basic idea behind this theory was first developed by Albert Ellis in the 1950’s. It was originally known as Rational Therapy.

According to Ellis a person’s cognitive process which includes that person’s viewpoint on life and anticipations of the world and the people around him, establish that person’s approach towards life. For example, a depressed person possibly can treat others in a beaten manner, whereas a non-depressed person is expected to interact with others more self-assuredly and charmingly. Therefore it can be observed that when interactions or conversations go in a wretched manner as a conclusion of the behaviour with which they were undertaken that poor conclusion can give raise to much more grave and complicated issues in the future.[2]

Rational Emotive Therapy is form of a remedial psychology that comes from behaviourism. It generally uses reasoning power and rational thinking to mark cognitive processes that are self defeating and learn to emote suitably. Efficiently the thought is that subconscious destructive behaviours are consciously acknowledged and then challenge in goodwill of more constructive behaviour.[3]

For Ellis, the acronym “ABC” offered insights into how to overcome self-defeated behaviours and cognition. Here “A” stands for “Adversity”, which can mean the everyday obstacles and difficulty that everyone is forced to deal with just as a consequence of interacting with the world. “B” stands for “Belief”, and concerns whether or not the individual in question believes that a positive outcome is possible, or whether or not the adversity really can be overcome. “C” represents the “Consequences” that arise as a result of the belief. Generally speaking, an individual undergoing

(Footnotes)

[1] McLeod, S. A. (2013). Behaviourist Approach. Retrieved from www.simplypsychology.org/behaviorism.html

[2] Rational Emotive Theory,http://www.psychologistworld.com/treatments/rational-emotive-therapy.php

[3] Ibid.

some form of rational therapy would be taught that having negative beliefs reinforces and contributes to negative outcomes, and that having positive beliefs about confronting adversity naturally leads to good results.[4]

APPLICATION OF RATIONAL EMOTIVE THEORY IN MEDIATION

It is absolutely necessary to measure the temperament of the people coming in for Mediation. According to me, to understand a person better there are three parameters of this theory that can be applied:

(1) '**A' – Adversity**

The Mediator must understand the emotional and psychological situation that the person faces in everyday life. Just separating that person from the problem is insufficient. Similarly merely understanding his present state of emotional upheaval may not be sufficient. It is true that whatever turmoil he is going through has given rise to the present dispute, but by understanding his everyday life's obstacles and difficulties, the mediator can have an idea about his personality, and how he reacts to these situations. Does he always react poorly to every difficult situation that comes to his life or it depends on the intensity? This will help the mediator to deal with his personality, problem and reaction better.

(2) **'B' – Belief**

The Mediator through his carefully and cleverly selected questions must evaluate his attitude towards the situation and the solution. Whether or not he expects an outcome? And if he does, what kind of outcome does he expect? The Mediator needs to gain the trust of the person in order to influence and convert his primary uncertain and negative expectation on the outcome to a positive or atleast a hopeful one. This can be done when the mediator understands the core thought process of the person.

(Footnotes)

[4] Ellis, A. "Rational Psychotherapy and Individual Psychology". Journal of Individual Psychology, 13, 38-44. 1957.

(3) **'C' – Consequences**

In a therapy it becomes difficult to teach a person that his/her thought process can give rise to his/her desired results. Usually a person who is having a negative thought process cannot easily believe in it or apply it. It will be very hard for them to accept the fact that the negative results in their lives are caused by their thoughts and no anyone else's. They would stoutly deny their involvement in create the disputes because they didn't want them in the first place – and moreover to avoid litigation hassles they have come for resolution. They might even argue that if they had created it, why they would want it to be resolved.

A mediator cannot give suggestions, he merely controls the process. Therefore keeping the situation in control tactfully the mediator has to make sure that the parties in mediation have a positive attitude towards the situation and the process. This will hopefully give them a drive to resolve the conflict fairly, properly and intuitively. This can give rise to some productive outcome involving various "out of the box" concepts and ideas given by both parties. This transformation of their perception will also make the mediator's work easy.

CONCLUSION

I am of the view that if Rational Emotive Therapy can be applied in ADR process of Mediation, Conciliation and Negotiation it can prove to be very useful, creative, and amicable. All that is needed is to apply the same with pre-chalked out parameters and extensive homework by the mediators on the cases before them and take it forward as the mediation progresses.

Quotes of the month.....

Brain Teaser (Answer): I told them, "You will boil me in oil". If he boils, my statement becomes true and he cannot boil me. If he burns me, my statement becomes false and he cannot burn me.

INDIAN PARTIES' ARBITRATION IN A FOREIGN SEAT: ANOTHER BRICK ON THE WALL

UMA LOHRAY

In this paper the author seeks to analyze if the law as it stands in India allow two Indian parties to take their arbitration proceedings abroad. What happens when two Indian parties enter into an agreement and willingly make certain choices in relation to arbitration? Whether a foreign-seated arbitration with a foreign "lex arbitri" and a foreign substantive law is permissible? The author looks at various judgments and the future options and role of Indian Courts.

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In the past few years, arbitration has taken shape as a preferred method of dispute resolution in contracts governing commercial relationships. More so when the parties to the contract belong to different countries governed by different systems of law. One of the reasons why arbitration has gained this status is because it gives the concerned parties, the freedom to choose how to resolve their disputes without judicial intervention. It is therefore safe to designate 'party autonomy' to be one of the basic tenets of arbitration. This piece does not intend to discuss party autonomy per se. It seeks to analyze if the law as it stands in India, allows two Indian parties to take their arbitration proceedings abroad. This question came to the forefront when the High Court of Bombay pronounced its decision in M/s Addhar Mercantile Pvt Ltd. v. Shree Jagdamba Agrico Exports Pvt. Ltd.[1] (Addhar).

The agreement for dispute resolution between the parties read as thus:

"Arbitration in India or Singapore and English law to be applied."

The dispute between the parties arose when the Applicant approached the Bombay High Court to appoint an arbitrator under section 11 (6) of the Arbitration & Conciliation Act, 1996 ("the Act"). It was submitted that the seat of arbitration was either India or Singapore and both the parties are Indian, they cannot be allowed to derogate from Indian law. The Respondent opposed it on the ground that the venue of arbitration is Singapore and the parties are governed by English law.

(Footnotes)

[1] Arbitration Petition No. 910 of 2013 decided on 12.06.2015

The parties were companies incorporated in India under the Companies Act, 1956. Relying on the Supreme Court's decision in TDM Infrastructure Pvt. Ltd. v. UE Development India Pvt. Ltd.[2] (TDM Infrastructure) the Bombay High Court appointed an arbitrator and held that Indian parties to a dispute cannot derogate Indian law. Since the seat was agreed to be either India or Singapore, and choosing Singapore, as the seat would exclude the application of Indian law to the dispute, the seat of arbitration should be India.

The Misapplied Decision of TDM

The Apex Court's reasoning in TDM Infrastructure was solely on the logic that both the parties to the dispute were entities incorporated in India. The contractual dispute in TDM Infrastructure involved a party whose shareholders and directors were residents of Malaysia and were located there. The arbitration agreement embedded in the contract provided that the law governing the dispute would be the Arbitration & Conciliation Act, 1996. While the agreement initially provided that the seat of arbitration would be India, for the sake of convenience, the Malaysia based party sought the seat to be shifted to Kuala Lumpur, a suggestion to which no consensus was reached. The Court went into the definition of 'international commercial arbitration' under the Act.

Section 2(1)(f): "international commercial arbitration" means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in for in India and where at least one of the parties is-

i. […]
ii. a body corporate which is incorporated in any country other than India; or
iii. a company or an association or a body of individuals whose central management and control is exercised in any country other than India […]

The Supreme Court held that when both the parties are incorporated in India, the arbitration between them would be domestic arbitration, not international commercial arbitration since the nationality of a company depends on the place where it is incorporated. Thus, Indian parties cannot exclude the applicability of the Arbitration Act of 1996.

What was TDM Infrastructure trying to say?

It must be considered that when the seat of arbitration is India, Indian substantive law shall govern the dispute when both the parties are Indian. Any contract excluding the applicability of Indian law would stand void for being opposed to public policy.

The legitimate question in the light of this discussion is if the designation of a foreign seat itself constitutes a party's attempt to make their arbitration, an international commercial arbitration. The provision relied upon by the Court in TDM Infrastructure does not elaborate on this. If parties to a dispute do not satisfy the conditions in section 2(1)(f), and the proceeding is termed to be domestic arbitration, how far does the designation of a foreign seat affect the soundness of the arbitral award? Besides, not only did the Court assume the choice of seat of the parties but also by doing so it misapplied section 28(1)(a). The section applies only when the place of arbitration is situated in India.

(Footnotes)
[2] (2008) 14 SCC 271

Section 28(1)(a) was applied without ascertaining if the parties did in fact chose India as their seat. The arbitration clause being vague gave a choice of seat between India and Singapore.

What is a Foreign Seat?

It must be acknowledged that a seat of arbitration is not merely a venue. It is the jurisdiction whose courts are to have a supervisory jurisdiction over the conduct of the arbitral proceedings as opposed to the venue, which is a convenient geographical location. Based on this very principle of the seat, the Supreme Court of India in BALCO v. Kaiser Aluminum[3] had held that provisions of Part I would be inapplicable to foreign-seated arbitration. Distinguishing the concept of venue from seat, the Supreme Court of India's decision in Enercon India v. Enercon GmBh[4] is significant. The parties were Indian and German and the contract provided for London, as the venue of arbitration and Indian law was to govern the contract. The German party approached the English courts whereas the Indian party approached the Indian courts. The Supreme Court found strong indications that the parties intended the seat to be India and London was merely the venue.

The courts in India have not been consistent in their view on this issue. In RIL v Union of India,[5] the question was whether the Delhi High Court had jurisdiction to entertain a petition under section 34 challenging an award made by a London-seated Tribunal. The basis of the challenge was public policy. The contract in dispute was to be governed by Indian law and the arbitration agreement was to be governed by English law. A partial consent award amended the agreement amended to the effect that the juridical seat (or legal place) of arbitration for the purposes of arbitration initiated under the Claimants' Notice of Arbitration shall be London, England. The Court held that the choice of a foreign seat results in implied exclusion of Part I of the Act since London had been designated as the seat of arbitration. Besides, other strong indications such as the parties' decision to approach the Permanent Court of Arbitration as opposed to the Chief Justice of India for appointment of the Chairperson of the arbitral tribunal under section 11 of the Act. The arbitration proceedings had to be conducted as per the UNCITRAL Rules.

(Footnotes)

[3] (2012) 9 SCC 552

[4] 2014 (5) SCC 1

[5] Arbitration Petition No. 27 of 2013 reported at (2014) 7 SCC 603

PROMOTING STUDENT AUTHORS

With a view to promote and support students in developing the qualities of legal research and presentation, IIAM is providing opportunity to law students to publish original, innovative and thought provoking articles on arbitration, mediation, conciliation, dispute resolution and similar topics and critiques on judgments relating to the same topics. Selected articles will be published in the "Indian Arbitrator". From amongst the submitted articles, every year one student author will receive the "Best Young Author" certificate from IIAM.

Opposing Views

Not too long after the Bombay High Court's decision in Addhar came the judgment of the Madhya Pradesh High Court in Sasan Power Ltd v. North America Coal Corporation India Pvt. Ltd[6] wherein the division bench dismissed a plea for an anti arbitration injunction holding that arbitration in a foreign seat under English law by two Indian parties is not against the public policy of India placing reliance on the Supreme Court's decision in Atlas Exports Industries v. Kotak & Company[7] (Atlas Exports). In that case, the Agreement in question provided for arbitration to be administered by ICC in London, England, under laws of the United Kingdom. While relying on Atlas Exports, the Court observed that when two Indian parties had entered into an agreement and willingly made certain choices in relation to arbitration, the contention that a foreign-seated arbitration would be opposed to Indian public policy was untenable. Thus, a foreign-seated arbitration would result in a foreign award irrespective of the nationalities of the parties and Part I would not apply to it. Defending its restrictive reading of TDM Infrastructure, it also rightly pointed out that the judgment in TDM Infrastructure itself stated that its findings were only for the purpose of determining the jurisdiction of the Court as envisaged under Section 11 of the 1996 Act and not for any other purpose. The interference of Courts could be solicited only when the arbitration agreement is null and void. Thus, foreign-seated arbitrations with a foreign lex arbitri and a foreign substantive law are permissible. However, in a situation where a Court is faced with a Section 11 application and the substantive law is not Indian, it would not be permissible to choose a foreign seat.

While the judgment in Sasan Power comes as a slight relief to some, the issue is yet to be settled by the Supreme Court and is likely to see uncertainty until then. In the meanwhile, it seems to be a breather at the most.

The Road Ahead

The 246th Law Commission Report[8] had proposed that remedies under Part I of the Act should be applicable even in cases of a foreign-seated arbitration. The Union Cabinet has accepted the proposal. The Arbitration and Conciliation (Amendment) Act, 2015 ('Amendment Act') was passed by both houses of parliament in the winter session, pursuant to which it received the Presidential assent on 31 December 2015. It provides for the amendments in the Act to this effect, which is not a welcome change.

Thus, the difficulty created by the fact that interim orders made by arbitral tribunals in offshore arbitrations as well as interim orders made by courts at the seat of arbitrations outside India are not enforceable in India, is sought to be corrected by expressly granting the Indian courts, powers to grant interim relief in support of foreign-seated arbitrations. Even if the place of arbitration is outside India, so long as the award made or to be made is enforceable and recognized under Part II of the Act, certain provisions of Part I are to apply to it.

It also introduces several steps to bring the proceedings under the Act at par with international institutional arbitration by stipulating time limits at certain stages.

(Footnotes)

[6] First Appeal 310 of 2015

[7] (1999) 7 SCC 61

[8] 246th Report of the Law Commission of India at: lawcommissionofindia.nic.in/reports/Report246.pdf accessed on 19 October 2015

OUT OF THE BOX

THINK About It

The Next Bus!

You know, love is just like someone waiting for a bus! When the bus comes, you look at it and you say to yourself “Oh...so full...cannot sit down, I’ll wait for the next one.” So you let that bus go and wait for the second bus. Then the second bus comes, you look at it and you say, “This bus is so old...so shabby!” So you let that bus go and again, decide to wait for the next bus. After a while another bus comes, it’s not crowded, not old but you say, “No it is not air-conditioned ...better wait for the next one.” So again you let the bus go and decide to wait for the next bus.

Then the sky starts to get dark as it is getting late. You panic and jump immediately inside the next bus. It is not until much later that you found out that you had boarded the wrong bus!

So you wasted your time and money waiting for what you wanted! Even if an air-conditioned bus comes, you can’t ensure that the air-conditioned bus won’t break down or whether or not the air-conditioner will be too cold for you.

So people... wanting to get what you want is not wrong. But it wouldn’t hurt to give other people a chance, right? If you find that the “bus” doesn’t suit you, just press the red button and get off the bus (as simple as that).

Hey who said life is fair??? The best thing to do is be observant and open while you scrutinize the bus. If it doesn’t suit you, get off. But you must always have an extra something which you could use for the next bus that comes.

But wait... I’m sure you’ve had this experience before. You saw a bus coming (the bus you want, of course), you flagged it but the driver acted as if he did not see you and zoomed past you! It just wasn’t meant for you!

The bottom line is, being loved is like waiting for a bus you want. Getting on the bus and appreciating the bus by giving it a chance depends totally on you. If you haven’t made a choice, WALK! Walking is like being out of love. The good side of it is you can still choose any bus you want... the rest who couldn’t afford another ride would just have to be content with the bus they rode on.

One more thing.... sometimes it’s better to choose a bus you are already familiar with rather than gamble with a bus that is unfamiliar to you.

But then again, life wouldn’t be complete without the risks involved!

While trekking through a remote jungle I was captured by cannibals. The chief told me, “You may now speak your last words. If your statement is true, we will burn to kill you in flames. If your statement is false, we will boil to kill you in oil”. I thought for a moment, and made my statement. Perplexed, the clever cannibal chief realised he could do nothing but let me go. What did I tell them?

[Answer at Page 6]

Mildred, the church gossip, and self-appointed monitor of the church’s morals, kept sticking her nose into other people’s business. Several members did not approve of her extracurricular activities, but feared her enough to maintain their silence.

She made a mistake, however, when she accused Frank, a new member, of being an alcoholic after she saw his old pickup parked in front of the town’s only bar one afternoon.

She emphatically told Frank (and several others) that every one seeing it there WOULD KNOW WHAT HE WAS DOING !

Frank, a man of few words, stared at her for a moment and just turned and walked away. He didn’t explain, defend, or deny. He said nothing.

Later that evening, Frank quietly parked his pickup in front of Mildred’s house... walked home... and left it there all night.

You can buy a man’s time;
you can buy his physical presence at a given place;
you can even buy a measured number of his skilled muscular motions per hour.

But you cannot buy enthusiasm...
you cannot buy loyalty...
you cannot buy the devotion of hearts, minds, or souls.

You must earn those.

~Clarence Francis~

THE GLOBAL POUND CONFERENCE SERIES

The Global Pound Conference (GPC) is the place for you to meet like-minded and passionate individuals and stakeholders to discuss the future of dispute resolution and access to justice. The inaugural GPC was held at Singapore in March 2016. As per the present schedule the last of the conference will be held in London in 2017.

The GPC series will convene all stakeholders in the field of dispute resolution around the world to expound upon key challenges in Appropriate Dispute Resolution (ADR) of interest and relevance to all. Whether you are a dispute resolution user, mediator, lawyer, judge, arbitrator, academic or student, you will not want to miss this golden opportunity! The GPC is scheduled in India during January 2017. If you would like to be part of the organizing group or would like to partner with the program, contact editor@arbitrationindia.com. See http://www.arbitrationindia.com/gpc.html for further details.

(With the Chief Justice of Singapore, Justice Sundaresh Menon at the Singapore GPC.
Standing from Left: Mr. Suresh Kumar, Committee member IIADRA, Mr. Anil Xavier, President IIAM, Mr. G. Shrikumar, President IIADRA and Mr. Rajiv George, Committee member, IIADRA.)

GOVERNMENT OF INDIA TO CREATE POOL OF ARBITRATORS

The government of India has initiated an exercise to create a pool of arbitrators at a time when most entities prefer to settle their high-value commercial disputes through arbitration. The Department of Legal Affairs in the Law Ministry has put out an advertisement calling retired judges, advocates, engineers, chartered accountants, shipping experts and senior commercial executives to apply for empanelment as arbitrators.

This is for the first time the government has decided to create a panel of arbitrators which it can recommend to settle high-value commercial disputes under the 'alternative dispute resolution mechanism' in cases where government, a Union ministry or a government department is a party. For empanelment as an arbitrator, the person should have experience of at least 20 years in his or her field and possess 10 years' experience as an arbitrator and must have dealt with at least 20 arbitration cases, the advertisement said.

ARBITRATION AFFECTING COURTS' OPPORTUNITY: CHIEF JUSTICE

London's status as the world's legal capital is being undermined because too many cases are being diverted from court to be dealt with behind closed doors in private arbitration hearings, says the Lord Chief Justice, Lord Thomas. According to him even though the use of arbitration is encouraged since it could offer a cheaper and quicker way of resolving differences, the trend had gone too far and was stopping judges from ruling on key points of commercial law that needed to be clarified if London's position as a centre of legal excellence was to be maintained.

Lord Thomas said that the construction industry, engineering, shipping, insurance and commodities were among important areas of London's commercial law that were suffering because of the lack of judgments on emerging legal issues. "We must restore an essential part of the way in which courts are able to continue the development of the law that underpins our trade, financial system and our prosperity," he said. "The UK went too far in favouring the perceived advantages for arbitration as a means of dispute resolution in London. The time is right to look again at the balance."

INDIA TO MAKE NEW LAW TO ENCOURAGE OUT-OF-COURT SETTLEMENTS

With an aim of encouraging pre-litigation settlements and reduce court cases, the government is considering to bring a law that will give legislative backing to such out-of-court settlements. The Law Ministry has proposed that the process of mediation should be given statutory backing by enacting a stand-alone law on mediation. As of now, the mediation process is mostly used to settle marital disputes and the new legislation could encourage use of mediation in commercial disputes.

2016 UNCITRAL THAILAND SYMPOSIUM

The UNCITRAL Regional Centre for Asia and the Pacific (UNCITRAL-RCAP) and the Thailand Arbitration Center (THAC) hosted a symposium on “The Future of Legal Harmonization - New Horizons for International Commerce” on 8 April 2016 at Bangkok, Thailand.

The symposium was opened by a keynote address by Minister of Justice, General Paiboon Koomchaya. The conference was attended by approximately 200 legal practitioners, judges, experts and scholars from Thailand and overseas. Apart from the various presentations, there was a special address by Prof. George Bermann, Columbia Law School and Remark on the UNCITRAL Convention by Mr. Joao Ribeiro, Head, UNCITRAL-RCAP. Anil Xavier, President IIAM gave a presentation on “International Commercial Conciliation: Enforceability of Settlement Agreements”.

(Presenting session. Sitting from left: Athita Komindr of Thailand Arbitration Centre, Justice Sorawit Limparangsri, Office of the President of the Supreme Court, Kim Rooney, Gilt Chambers UK and Michael Lee of AAA/ICDR USA.)

CERTIFICATE PROGRAM ON MEDIATION ADVOCACY TO BE LAUNCHED BY IIAM

Mediation has become a mainstream dispute resolution process. Business and commercial mediation has developed into a sophisticated form of managed negotiation, where the resolution has to satisfy the needs and interests of the parties and help to build great relationships. It has grown beyond the skills of the mediators alone. Mediation would become more successful and credible when the parties’ advocates or advisors are knowledgeable and skilled in the mediation process. Trained mediation advocates can bring value addition to the process and outcome and a comprehensive professional exposure to mediation advocacy has become necessary to engage in cutting edge and high quality law practice. The changing role of a lawyer as a dispute resolution specialist, brining in specialist representation in mediation has raised the standard, credibility and acceptance of mediation.

The Certificate on Mediation Advocacy at IIAM would offer the opportunity to learn what is necessary to become specialist mediation advocate. The program would give emphasis to pre-mediation process, working up the mediation brief, mediation process, effective mediation management and settlement agreements and helps to develop and sharpen the specialist skills required of effective mediation advocates. Contact training@arbitrationindia.com for further details.

Upcoming Training Programs from IIAM

COMMERCIAL MEDIATION TRAINING PROGRAM JUNE 13-17, 2016

Are you interested to become a Commercial Mediator or a specialist Dispute Resolution Practitioner? With the rise in the volume of business, dispute resolutions and enforcement have also increased. Mediation has become an undeniable part of the legal landscape. Domestic and international business community is increasingly incorporating mediation as the primary method of dispute resolution. A trained mediator / professional helps in assisting the parties in identifying and clarifying shared interests, shared needs, individual interests and individual needs. The mediator guides the parties toward solutions that are workable and longstanding. Effective conflict resolution skills is the key to prevent destructive conflict, enabling lawyers and consultants to better assist their clients in business deals and disputes. Mediation has become a truly global profession, earning international recognition. The IIAM Mediation Training Program combines the theory of ADR through highly interactive, skill-based courses in negotiation and mediation.

As per IIAM Mediator Accreditation System, a candidate having successfully completed Mediation Training Program is categorised as Grade B Mediator. The program will be for 40 hours conducted in 5 days, during June 13-17, 2016 (Monday to Friday) at Cochin, Kerala, India.

For further details log on to www.arbitrationindia.org/events.html

CERTIFICATE IN DISPUTE MANAGEMENT (CDM)

CDM is an ongoing distance learning course of IIAM, valid for six months from the date of enrolment. You can enroll at any time of year and you study entirely at your own pace, submitting your assignments when you are ready. Your tutor will be available to mark your assignments and give feedback on your progress for a period of six months from the date of enrolment. You will be sent four ‘reading and study assignments’ with your course materials, and these form an essential part of your distance learning course. They are designed to help you to work through the course manual and understand the concepts. The course will provide a good basic knowledge of ADR – Negotiation, Mediation & Arbitration – in theory and practice. On successfully completing the assignments included in the course a certificate will be awarded.

For further details log on to www.arbitrationindia.org/cdm.html