

THE *Indian* Arbitrator

THE INDIAN ARBITRATOR

News magazine of the Indian Institute of Arbitration & Mediation



Volume 9, Issue 3, September | October 2017

www.arbitrationindia.org



QUOTE OF THE MONTH

**"Always find time
for the things that make you
feel happy to be alive."**

1

View Point: Why is Mediation a Better Option over Litigation?

3

2

Article: Right to Privacy in Alternative Dispute Resolution

6

3

Out of the Box

11

4

News & Events

13

EDITORIAL:

EDITOR: Anil Xavier | ASSOCIATE EDITOR: Pallavi Dehari

EDITORIAL BOARD: Justice B.K. Somasekhara, Geetha Ravindra (USA), Rajiv Chelani (UK)

PUBLISHER: Indian Institute of Arbitration & Mediation, G-254, Panampilly Nagar, Cochin 682 036, India

www.arbitrationindia.org | Tel: +91 484 4017731 / 6570101

For previous editions of The Indian Arbitrator, log on to www.arbitrationindia.org/magazine.html

Editor's Note



Alternative Dispute Resolution is no longer considered second class justice delivery. Every country is competing with each other in making new laws to make ADR effective and more attractive and as a method to woo international business community to do business in their country and to make that country a destination for ADR! Business communities are opting for innovative ADR systems so as to proclaim their commitment to corporate governance and amicable solutions! The governments and Courts are supporting growth of ADR!

Are we seeing a revolution in the access to justice world over? Let us hope so. Only time would tell!

Anil Xavier

The views expressed by the authors do not necessarily represent those of the publisher. The publisher makes all reasonable effort to ensure that the information provided is accurate, but does not guarantee or warranty accuracy, validity, completeness or suitability of the contents for any purpose. The information contained in this publication should not form the basis of any decision as to a particular course of action; nor should it be relied upon as a legal advice or regarded as a substitute for a detailed legal advice in individual case. Under no circumstances shall the publisher be liable for any direct, incidental, special and consequential loss and damage that results from the readers' reliance or non-reliance of information provided in this publication. The copyright of this publication vests solely and exclusively with the publisher and no part may be reproduced or transmitted by any process or means without prior written permission of the Indian Institute of Arbitration & Mediation. The information provided in this publication is as of date of publication, however many of the articles or contents might have been written earlier and may not cover the most recent developments.

WHY IS MEDIATION A BETTER OPTION OVER LITIGATION?

MUHAMMED RAFAQE

When litigation pendency and backlogs are huge, ADR seems to be the appropriate dispute resolution mechanism to resolve the commercial disputes in India. But surveys show that Mediation is not very popular in India – Why? In this article, the author tries to examine the alternatives to litigation and why Mediation has not been tried by the people as expected.

The latest example is McDonald..!

Around 169 McDonald outlets in North and East India are about to shut. Besides the loss of business, around 10,000 employees may lose their jobs.

This is the aftermath of four years of litigation between McDonald US and the Connaught Plaza Restaurant (CPRL), the Indian franchisee. The cases filed by both Parties are pending at various courts.

In a report, it was estimated that approximately 320 years is required to clear the backlog of 31.28 million cases, pending in Indian Courts..!

Why does this pendency happen and what causes delay in disposal etc., are the questions which have many answers.

Purpose of this article is to examine the alternatives to a litigation and why not “Mediation” be explored as an alternative method to settle the disputes/conflicts.

A dispute/conflict is inevitable in life. Disputes are bound to happen in our day-to-day activities. Let it be a professional or personal relationship, you cannot always run-away from the conflict. Dispute has to be addressed and resolved for maintaining a healthy relationship as and when it crops up. Though, many of them could be sorted out through mutual discussions, certain disputes need a 'resolution mechanism' to deal with. Litigation (approaching court of law) is the most known mechanism today.

Why do we approach the courts of law?

Because, we are looking for a legal remedy to our grievances. It could be a dispute with employer, spouse, service provider, State or any other person. We feel that an 'injustice' is being done and it has to be addressed by application of law; hence we approach court.

We pay for the services of courts and we wait for the 'trial' and start collecting the proofs of such 'injustice' to corroborate our case. In the court room, the proof is the ultimate basis of delivering the justice. We, then wait for our turn. Since most of the adjudications are not bound by a specific timeline, it goes on and on.

Gradually, the time would make our "injustice" irrelevant. Gradually, it may take over by other priorities of life. It's no more important!

"Justice Delayed is Justice Denied"

Then, the vital question arises. If it is not courts, what's the alternative?

It is Alternative (replaced with "Appropriate") Dispute Resolution (ADR) which mainly consists of Arbitration and Conciliation (Mediation).

In India, ADR is governed by the Arbitration and Conciliation Act, 1996. Any dispute (civil or commercial in nature) can be resolved through ADR. Mediation is more of an informal process vis-à-vis Arbitration.

ADR is the appropriate dispute resolution mechanism to resolve the commercial disputes. But surveys show that Mediation is not very popular in India – Why?

Judgment Vs. Resolution

We wait for a judgment from Court, as we think that "justice" can only be accessed through written orders. We believe that delivery of justice happens through a Judgment delivered by a Court of law; not through a consensual agreement.

Does it make sense? It depends upon our perceptions about "Resolution". I believe, many a time, it's futile to wait for a judgment indefinitely. What is more important is a final resolution to the dispute and to carry on with the regular business or life.

Interest Vs. Position

The most significant part of Mediation is that you can focus on your “interest” during the process. Also, you can understand, evaluate and consider the interest of the other Party.

In Mediation you may not have to prove that the other party is wrong; whereas in litigation you should with proofs. In litigation, your dispute is re-written by your counsel as per the written laws and previous judgments. During the process, your interest may take a back seat. At the end, what you may get is what is permissible to you as per the legal provisions and positions under laws.

Often, what’s been filed/argued before the courts are the legalities of the matter and not the interest of the parties.

What is the requirement for adopting Mediation to settle the dispute?

The only requirement for Mediation is a willingness to settle the dispute with other party. How to arrive the settlement, it’s upto the mediation process.

The most significant factor of the Mediation is you can approach the court, if no settlement is arrived at. Mediation would not stand in the way of your rights to sue.

In short, you only need an un-conditional mindset to sit for mediation. From experience, I found that the resolution happens through the process and invariably it’s a ‘win-win’!



AUTHOR:

Muhammed Rafeeqe is an Advocate and IIAM Accredited Mediator from Bangalore



Interested to contribute Articles?

We would like to have your contributions. Articles should be in English. Please take care that quotations, references and footnotes are accurate and complete. Submissions may be made to the Journals Division, Indian Institute of Arbitration & Mediation, G-254, Panampilly Nagar, Cochin - 682 036 or editor@arbitrationindia.com.

Publication of the Article will be the discretion of IIAM and submissions made indicates that the author consents, in the event of publication, to automatically transfer this one time use to publish the copyrighted material to the publisher of the IIAM Journal.

RIGHT TO PRIVACY IN ALTERNATIVE DISPUTE RESOLUTION

ANIL XAVIER

When the Supreme Court of India has declared the right to privacy not only as a valuable right, but as a right Fundamental in Constitutional jurisprudence, how secure will be the choice of a party to opt an ADR process? Since it is a deliberate decision taken by the parties to the dispute, it postulates the reservation of a private space for the parties, declaring the right to be let alone. The article explores whether the right to privacy is protected when the settlement agreement or an arbitral award is challenged before a court under section 34 of the Arbitration Act.

The Supreme Court of India by a 9-Judge bench has delivered a landmark judgment in “*Justice K S Puttaswamy (Retd.) and another v. Union of India and others*” [Writ Petition (Civil) No. 494 of 2012] on 24th August 2017, where it was held that the right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution of India (hereinafter referred as “privacy judgment”).

The judges were of unanimous view that Privacy, in its simplest sense, allows each human being to be left alone in a core which is inviolable. This was accepting the view of Warren and Brandeis, “*The Right to Privacy*” [Harvard Law Review (1890), Vol.4, No. 5], where it is stated that as legal rights were broadened, the right to life had “come to mean the right to enjoy life – the right to be let alone”.

The judgment has analysed the nature of fundamental rights and recognized that fundamental rights, in other words, are primordial rights which have traditionally been regarded as natural rights. In that character these rights are inseparable from human existence. They have been preserved by the Constitution, this being a recognition of their existence even prior to the constitutional document. It was held that Privacy is a concomitant of the right of the individual to exercise control over his or her

personality. It finds an origin in the notion that there are certain rights which are natural to or inherent in a human being. Natural rights are inalienable because they are inseparable from the human personality. The human element in life is impossible to conceive without the existence of natural rights.

The Supreme Court went on to hold that right to privacy is an element of human dignity, stating that the sanctity of privacy lies in its functional relationship with dignity. Privacy recognises the autonomy of the individual and the right of every person to make essential choices which affect the course of life. In doing so privacy recognises that living a life of dignity is essential for a human being to fulfil the liberties and freedoms which are the cornerstone of the Constitution.

This verdict opens the gate of academic and intellectual debates as to what this really means and how does it affect our lives?

In this paper, I am considering the impact of a person's option to choose any mode of ADR (Alternative Dispute Resolution) mechanism like mediation or arbitration for resolution of his dispute, so as to preserve his right to Privacy.

The Arbitration & Conciliation Act, 1996 (hereinafter referred as "ACA") recognizes the autonomy of the individual in deciding the way in which his dispute has to be resolved. It gives him the authority to decide all the basic tenets of dispute resolution, viz., WHO should resolve it (choosing the mediator or arbitrator), HOW it should be resolved (law/rules applicable for the process), WHERE it should be resolved (Venue and seat) and WHAT should be resolved (matters referred for dispute resolution). Since the matters which could be resolved through ADR are basically rights in personam, ADR allows the party to choose a method which gives them complete confidentiality of the subject-matter and the process. Since opting an ADR process is a deliberate decision taken by the parties to the dispute, it postulates the reservation of a private space for the parties, declaring the right to be let alone.



Like to partner with IIAM Community Mediation Service

Indian Institute of Arbitration & Mediation welcomes you to take part in an exiting attempt of social transition to make our world a safe, sustainable, peaceful and prosperous place to live.

Make an important contribution by adopting or supporting Community Mediation Clinics.



For details visit www.communitymediation.in

The Privacy judgment says that this autonomy of the individual is associated over matters which can be kept private. These are concerns over which there is a legitimate expectation of privacy and protection from unwanted intrusion.

The parties are opting the process of ADR to make sure that dirty linen is not washed in public. They want total confidentiality and privacy about the facts or contents of the dispute. The Supreme Court says that Privacy protects the individual from the searching glare of publicity in matters which are personal to his life. Privacy constitutes the foundation of all liberty because it is in privacy that the individual can decide how liberty is best exercised.

But is this right to privacy protected when the settlement agreement under section 73 of the ACA or an arbitral award under section 31 of the ACA, which is the final outcome of a mediation or arbitration process is challenged before a court under section 34 of the ACA?

I do agree that the Supreme Court has said that like the right to life and liberty, privacy is not absolute. Any curtailment or deprivation of that right would have to take place under a regime of law. The procedure established by law must be fair, just and reasonable. The law which provides for the curtailment of the right must also be subject to constitutional safeguards.

Here the relevant law is the ACA. If we examine the provisions, which allow the courts to look into matters which have been referred to ADR, we know that section 5 makes it clear that no judicial authority has the power to intervene in those matters except where so provided in Part-I of the Act. This section clearly indicates the legislative intent to minimize supervisory role of the courts to ensure that the intervention of the courts is minimal. The specific provisions under Part-I, which provide those powers are sections 9, 34, 36 and 37. Out of this, sections 9 and 34 are more important, since the court gets the option to look into the facts of dispute, either to give an interim measure of protection under section 9 or when an award is challenged under section 34. Under section 9, normally the parties only provide a prima facie case to impress the court to get an order of interim protection. But under section 34, the court goes into the contents of the award and pleadings and write judgments upholding the award or setting aside the award, narrating the facts.

Here the question that I am posing is whether such a discussion on the facts and evidence of the case, which was subjected to an ADR method under the legitimate expectation of privacy is compromised or violated by the court? Is the right to privacy of the parties affected and the subject matter of the dispute thrown open to public causing unwanted intrusion?

The Supreme Court while considering the test for Privacy held that Privacy is always connected, whether directly or through its effect on the actions which are sought to be secured from interference, to the act of associating with others. So admittedly when the parties has opted to choose ADR expecting confidentiality to the process, discussing the same in the judgment and bringing it to public domain is definitely affecting one's right to privacy. As discussed earlier any curtailment or deprivation of that right would have to take place under a procedure established by law. Does the ACA provide such a procedure to curtail that right to privacy?

In my view, it does not! Section 34 gives only 7 grounds for scrutinising the award. Out of these, 4 grounds relate to finding out whether a party was under some incapacity, whether the arbitration agreement is valid under the law, whether the party was given proper notice of the appointment of an arbitrator or of the arbitral proceedings and as to whether the composition of the arbitral tribunal or the arbitral procedure was in accordance with the agreement of the parties. These 4 grounds does not require the court to look into the facts or dispute which was resolved, but only the agreement between the parties and the procedural documents relating to initiation and process of arbitration. The other 3 grounds under 34 gives power to the court to see whether the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matter beyond the scope of the submission to arbitration, whether the subject-matter of the dispute is capable of settlement by arbitration under the law and whether the arbitral award is in conflict with the public policy of India. For these grounds the court will have to definitely look into the facts of the case or dispute. But should they analyse and discuss the facts like dealing with the matter as if in an appeal, where the court can interfere on the findings of fact of the lower court? The Supreme Court has held in umpteen numbers of cases that the arbitrator is the sole judge of the quality as well as quantity of evidence and it will not be for the court to take upon itself the task of being judge of the evidence before the arbitrator.



Pledge to Mediate

Recognizing that the empowerment to resolve disputes amicably and voluntarily is an expression of civil maturity, IIAM along with India International ADR Association has formulated “Pledge to Mediate” among companies and organisations as part of promoting best governance and speedy justice. By becoming signatory of the Pledge, you make a public, policy statement indicating your commitment to the promotion of amicable settlement of disputes. The pledge is cost-free and not legally binding. Organisations stand to benefit from various vital outcomes, including Expression of Corporate Governance, Goodwill Generation, etc.



Become a signatory to the “Pledge to Mediate” –For details log on to www.arbitrationindia.org/pledge.html or contact IIAM Director at dir@arbitrationindia.com for details.

Never think hard about the PAST, It brings Tears...

Don't think more about the FUTURE, It brings Fear...

Live this moment with a SMILE, It brings Cheer...

So is it proper for the courts to discuss in detail the facts and disputes that were referred to mediation or arbitration, when the matter is brought before it under Section 34?

Can it be argued that when the parties take up the matter before the court under Section 34, they waive their right of privacy under the ADR process?

I think once right to privacy is included under fundamental right, it may not be possible. The Supreme Court in privacy judgment, relying on “*Behram Khurshed Pesikaka v The State of Bombay*” [(1955) 1 SCR 613] has held that fundamental rights have not been put in the Constitution merely for individual benefit, but have been put there as a matter of public policy and the doctrine of waiver can have no application to provisions of law which have been enacted as a matter of constitutional policy. The court also relied on the judgment in “*Girish Ramchandra Deshpande v. Central Information Commissioner*” [(2013) 1 SCC 212] where it was held that if the information is personal and has no relationship with any public activity or interest or it will not subserve larger public interest, the public authority or the officer concerned is not legally obliged to provide those information. So it could be seen that the information of facts determined through mediation or arbitration cannot be disclosed to public.

When the Supreme Court has categorically declared that “*right to privacy of any individual*” is essentially a natural right, which inheres in every human being by birth and that such right remains with the human being till he breathes last and it is one of those cherished rights, which every civilized society governed by rule of law always recognizes in every human being and is under obligation to recognize such rights in order to maintain and preserve the dignity of an individual, it is a matter of concern as to whether the court under Section 34 can disclose those confidential information, which are confidential and the parties have a legitimate expectation of privacy. This assumes importance as the right to privacy is now recognised not only as a valuable right, but as a right Fundamental in Constitutional jurisprudence.

In such circumstances the court while dealing with a matter under Sec. 34 or 9 must be careful not to discuss the facts of the case in detail, but shall confine itself in deciding the legal aspects mentioned under Section 34.

It is just a vague point of view, but I am sure this judgment has opened up many new thoughts! As the Supreme Court has said, “*The old order changeth yielding place to new*”!

(This article was first published in the ADR World Blog (www.adrworld.in) on 27 August 2017)



AUTHOR:

Anil Xavier is an advocate, IMI certified mediator and arbitrator. He is the President of Indian Institute of Arbitration & Mediation and the Vice-President of the India International ADR Association

Out of the Box



THINK ABOUT IT...

A boy went to the Principal and said "Madam, I won't be coming to School anymore."

The Principal responded "But why?"

The boy said "Ah! I saw a teacher speaking bad of another teacher; you have a Sir who can't read well; the staff is not so good; students look down upon their fellow students and there are so many other wrong things happening in this School"

The Principal replied "Alright, but before you go, just do me a favour. Take a glass full of water and walk three times around the School without spilling a drop on the floor. Afterwards, leave the School if you desire."

The boy thought, that's too easy! And he walked three times around as the Principal had asked. When he finished, he told the Principal he was ready.

The Principal asked "When you were walking around the School, did you see a teacher speaking bad about another teacher?" The boy replied "no."

"Did you see any student looking at other students in wrong way?" "No"

"Do you know why?" "No"

"At that time, you were focused on the glass, to make sure you didn't tilt it and spill any water. It's the same in our life too. When our focus is on our priorities, we don't have time to see the mistakes of others."



You are shown three boxes with labels that contain respectively oranges, apples and a mixture of both of them. You were told that all labels were wrongly pasted on the boxes. You are asked to close your eyes and put your hand into any box of your choice and blindly take one fruit. You can now open your eyes, see the fruit in your hands. You are asked to re-paste the labels correctly. Can you? If so how?

**Brain
Teasers**

[Answer at Page 18]

A newly married couple was walking through a garden, suddenly a dog ran towards them.

They both knew it will bite them..

The husband lifted his wife and let the dog bite him rather than his sweetheart

The dog stopped before them, unsure what to do, barked a little while and ran away.

The husband put his wife down, expecting a hug and a few kind words of gratitude from her.

But his wife shouted: "I have seen people throwing stones and sticks at dogs, this is the first time I am seeing someone trying to throw his wife at a dog"!!

No one else can MIS-UNDERSTAND a husband better, than a Wife!



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.

INDIA'S MOVE AS ARBITRATION HUB HITS ROADBLOCK

India's attempt to reform alternative dispute resolution (ADR) mechanism and turn the country into an international hub of arbitration is likely to hit a roadblock. A panel appointed by the government to review the arbitration mechanism has recommended a slew of reforms, including allowing representation by foreign lawyers. But this has ruffled the feathers of the lawyers' community. The Bar Council of India (BCI) – the apex body of advocates – has objected to the idea of allowing foreign lawyers and law firms in arbitration proceedings in India.

The Law Ministry had constituted a high-level panel to review the existing arbitration mechanism and suggest reforms. The panel, headed by Justice (retired) BN Srikrishna, submitted its report to the law minister where it recommended a host of reforms, including setting up an autonomous Arbitration Promotion Council of India (APCI), and amending the existing laws related to ADR. On the issue of foreign lawyers practising in India, the panel suggested for an amendment in the Advocates Act, which governs and regulates legal practice in the country.

BUILDERS CAN'T FORCE BUYERS TO GO FOR ARBITRATION - NCDRC

Real estate players cannot force buyers to settle their disputes through arbitration by restraining them from approaching consumer forums, India's apex consumer commission has ruled. A three-member bench of the National Consumer Disputes Redressal Commission (NCDRC) has said it is not a compulsion for buyers to go for arbitration even if the seller-buyer agreement stipulates that disputes be settled through a private resolution mechanism. Builders had cited changes made in the Arbitration and Conciliation Act in 2015 to make the point that all cases of flat buyers be referred to arbitration. Now the matter will have to be finally decided by the Supreme Court.

GLOBAL POUND CONFERENCE INDIA



The Global Pound Conference (GPC) India, was held at the Judicial Academy, Chandigarh, India on the 12-14 May 2017, as part of the GPC series happening all around the world in over 40 places in over 30 countries during 2016-17, with the conference title, “*Shaping the Future of Dispute Resolution and Improving Access to Justice*”. GPC India was co-organized by the Punjab and Haryana High Court, Mediation Cell Chandigarh and the Judicial Academy Chandigarh in collaboration with the International Mediation Institute, The Hague and the Indian Institute of Arbitration & Mediation. The goal of the GPC Series was to stimulate and continue conversations about forms of commercial dispute resolution and how they are practiced throughout the world.

The GPC India was inaugurated by Mr. Justice Dipak Misra, Judge, Supreme Court of India. The welcome address was given by Mr. Justice Suryakant, Judge, High Court of Punjab & Haryana and the vote of thanks by Mr. Justice Mahesh Grover, Judge, High Court of Punjab & Haryana. Introductory address was given by Mr. Jeremy Lack, Coordinator GPC, ADR Neutral & Attorney-at-Law, UK. Mr. Justice Madan B. Lokur, Judge Supreme Court of India, Mr. Justice Sikri, Judge, Supreme Court of India and Mr. Justice S.J. Vazifdar, Chief Justice, High Court of Punjab & Haryana spoke on the occasion.

The conference sessions began with an introductory session titled, “*Status of Justice Delivery System in India – Issues and concerns*”, chaired by Mr. Justice Madan B. Lokur, Judge Supreme Court of India and moderated by Mr. Anil Xavier, President IIAM. Panelists included Mr. Justice Tarun Agarwal, Judge, Allahabad High Court, Mr. Justice P.S. Dinesh Kumar, Judge, High Court of Karnataka, Mr. Justice Rajesh Bindal, Judge Punjab and Haryana High Court, Prof. Nadja Alexander Professor, Institute for Conflict Engagement and Resolution at Hong Kong Shue Yan University, Ms. Nandini Gore, Advocate & Mediator, and Mr. Ashok Barat, Former Managing Director and Chief Executive Officer of Forbes & Company Limited. This was followed by 5 different sessions including voting on core questions.

Do you know why God created gaps between Fingers?
So that someone, who is Special to you, comes and fills those gaps,
by holding your hand forever!

MEDIATION, ARBITRATION TO ENTER LAW SCHOOL CURRICULUM

To make India a hub of mediation and arbitration, the Ministry of Law and Justice will include Alternative Dispute Resolution (ADR) practices and techniques in law schools' curriculum. The ministry is also mooting for collaboration with foreign law schools and universities and experts in mediation to conduct lectures and courses on mediation practice and techniques. The law school curriculum on ADR mechanisms will educate students by optimally combining theoretical understanding of mediation with practical simulations and role play sessions.

The ministry is also planning to train existing and prospective judges about fundamentals of mediation to improve their understanding of its role as an ADR mechanism, and to train them for their role in preparing parties for mediation. The study also recommended that Chief Justices of all High Courts should enforce a rigorous training framework for all judges in courts within their respective jurisdictions and should also monitor programmes focussing on continued training of judges.

HONG KONG PASSES BILL ALLOWING THIRD-PARTY ARBITRATION FUNDING

The landmark Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance 2017 ("Amendment Ordinance") has been published in the Government Gazette. The Amendment Ordinance sets out the framework for third party funding ("TPF") for arbitrations and mediations in Hong Kong. Singapore, Asia's other leading arbitration seat, passed a similar bill in January.

This will open the way for third party funders ("Funders") to fund arbitration proceedings in Hong Kong in return for a financial benefit in the event that the arbitration is successful within the meaning of the relevant funding agreement. Funders will also be allowed to fund services provided in Hong Kong in relation to arbitrations seated outside Hong Kong. The legislation provides that a funded party must notify the tribunal and every party of the existence of funding and the identity of the funder either at the commencement of the arbitration or, if the agreement is made later, within 15 days of it being made. Such a requirement does not currently exist in other major arbitration jurisdictions.



MEDIATION CAMP AND SEMINAR



Legal Integrity LLP, a law firm in Panvel, Maharashtra in association with IIAM conducted Mediation Awareness Seminar & Free Dispute Resolution Camp at Panvel, Navi Mumbai on Saturday, 10th June 2017. The seminar was inaugurated by Mr. Mukund Sewlikar, District Judge and the keynote address was given by Mr. Anil Xavier, President IIAM. Mr. Gajanan Patil, Advocate and Mr. Balram Patil, Chairman, KES Campus spoke on the occasion.

The seminar was attended by advocates, business community and litigants. Fourteen cases relating to business, family and commercial disputes were registered for the mediation camp and 9 were resolved on the same day and the other matters were agreed to be pursued further.

UAE TO ENACT NEW LAW ON ARBITRATION

By the end of 2017, the United Arab Emirates is expected to enact a new federal arbitration law based on the UNCITRAL Model Law and associated international standards. The draft law, which is in its final stages of approval, is understood to have been passed by the UAE's National Assembly and Cabinet of Ministers and is currently being submitted to Sheikh Khalifa bin Zayed bin Sultan Al Nahyan, President of the UAE, for his signature.

The UAE does not have a modern, dedicated, formal arbitration code in place and currently addresses arbitration matters under Articles 203 - 218 of Chapter 3 of the UAE Civil Procedure Law which do not conform to the UNCITRAL Model Law.

SAUDI ARABIA PASSES IMPLEMENTING REGULATIONS OF ARBITRATION LAW

On May 22, 2017, the Saudi Council of Ministers passed the Implementing Regulations of the 2012 Arbitration Law. The Implementing Regulations came into force on June 9, 2017, when they were published in the Saudi Official Gazette.

The new Implementing Regulations serve as a further step towards achieving Saudi Arabia's goal of enhancing its business environment to make it more attractive to foreign investment. In 2012, Saudi Arabia took its first transformative step toward international norms and a more business-friendly environment when it replaced the old 1983 arbitration law with the 2012 Arbitration Law.



COMMERCIAL MEDIATION TRAINING PROGRAM & CERTIFICATE IN INTERNATIONAL BUSINESS NEGOTIATION - 9-13 OCTOBER 2017

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. The training program combines the art and science of mediation through highly interactive, skill-based courses in negotiation and mediation. The program will enhance the understanding and ability to negotiate and resolve conflicts, as well as provide a solid foundation in the processes and to serve as a negotiator and mediator. The training will cover the basic foundations for effective deal-making negotiations, understanding the bargaining style, setting goals in negotiation, understanding shadow negotiation, nurturing relationships critical to negotiation success, and maximizing leverage to conclude a deal. The training will also explore underlying negotiation orientations and strategies and how they are confronted and employed by mediators.

The program provide participants with the opportunity to practice this structured dispute resolution process through a series of interactive presentations, role play simulations, real life case studies and discussion groups. This unique program offers you the flexibility of undertaking the training in 3 different options and getting 2 certificates!

As per IIAM Mediator Accreditation System, a participant having successfully completed Mediation Training Program is categorised as a Grade B Mediator and will be eligible for empanelment as IIAM Mediator. The program will be for 40 hours | 5 days, during 9-13 October, 2017 (Monday to Friday) at Cochin, Kerala, India. You can join for two days and opt for the Certificate in International Business Negotiation.

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

PROFESSIONAL CERTIFICATE IN COMMERCIAL ARBITRATION - NOVEMBER 2017

The course offers the participants to know the underlying theory of arbitration law and practice, with emphasis on drafting of arbitration clauses and agreements, awards, procedure of arbitration, important case laws, ethical issues and institutional arbitration methods. The program will also look at the art of drafting dispute resolution clauses appropriate to the parties' business needs and dispute resolution desires. The program will provide a solid foundation in ADR processes and to serve as ADR practitioners and neutrals. After successful completion, the participant will be eligible for empanelment as an IIAM Arbitrator, subject to the norms of enlistment. The program will be for 15 hours conducted in 2 days, during November 2017 at Cochin, Kerala, India.

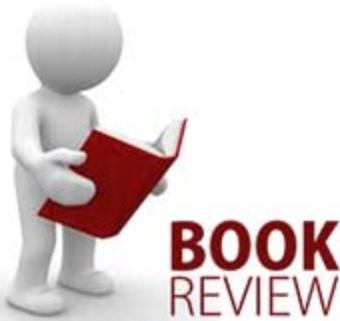
For further details log on to <http://www.arbitrationindia.org/htm/events.html>

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

Brain Teaser (Answer): Blindly take a fruit from the box labelled "MIXTURE". If you get an orange, then the entire box contains them, as there cannot be mixture in it. Write the label "ORANGE" on it. Now you have two other bottles with titles 'Oranges' and 'Apples'. The box on which the label "Oranges" is pasted cannot have oranges in it because all the labels are wrongly pasted. Hence write "MIXTURE" on the apples box, and "APPLES" on the bottle labelled as mixture.



PRIVATE DISPUTE RESOLUTION IN INTERNATIONAL BUSINESS: NEGOTIATION, MEDIATION, ARBITRATION [WOLTERS KLUWER LAW & BUSINESS 2015]

Klaus Peter Berger*

Review by Michael Leathes**

Private Dispute Resolution in International Business (PDR) exemplifies Confucius' famous proclamation: *I read and I forget; I see and I remember; I do and I understand.*

This imaginative, practical, captivating multi-media skills training experience plots the life cycle of a quickly-developing case scenario from its origin as a deal, through dispute resolution phases.

Volume I is the Case Study. Following a concise and helpful User's Guide, it salami slices the case into 29 digestible factual segments in under 150 pages. At the end of each of the 29 scenario slices, a series of key questions are presented, each of which sits at the heart of the illustrated issues.

Volume II, the Handbook, cross-refers to Volume I and analyses the issues in each scenario segment. Wonderfully written and presented, it discusses them, digs deep, and helps trainees and role players to arrive at appropriate answers and solutions. As a result of the comprehensive and detailed Table of Contents and a great Index, the Handbook doubles as an excellent free-standing reference work.

PDR is a valuable toolkit for educators and skills trainers. But what's also interesting is that, with care, you can run the entire experience alone (as I did) or together with colleagues. You can effectively simulate the parties and dispute resolvers, facing the dilemmas they are experiencing and instantly feeling the consequences. The experience is realistic, whether you are a business negotiator, student, internal counsel, external adviser, or a dispute resolver such as a mediator or arbitrator. There is much in this eclectic, kaleidoscopic work for everyone. The arbitration segments provide a genuinely hands-on feel for how a major arbitration proceeds, from the formal process aspects, through the arguments and advocacy and atmosphere, and onto the Award and beyond.

* *Professor Klaus Peter Berger is the founder and Executive Director of the Centre for Transnational Law (CENTRAL) at the University of Cologne, and Director of the Cologne Academies. He is a member of the Board of the German Institution of Arbitration (DIS) and the Arbitration Institute of the Stockholm Chamber of Commerce (SCC) as well as the co-editor of "Arbitration International".*

** *Michael Leathes is a former in-house counsel and is the author of Negotiation: Things Corporate Counsel Need To Know But Were Not Taught [Wolters Kluwer Law & Business, 2017].*