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Policy Document & Report on
International Conference on Mediation

6-7th April 2019
At Conference Centre,
University of Delhi



Mediation and
Conciliation Project
Committee,
Supreme Court of India



Indian Council of Social
Science Research
Government of India

A REPORT ON MEDIATION

The Policy document & report is based on the inputs made by the speakers at the International Conference on Mediation held on 6th & 7th April 2019 in association with Mediation and Conciliation Project Committee, Supreme Court & Indian Council of Social Science Research, Government of India.



Submitted to

**ICSSR
Ministry of HRD
Government of
India**

**MCPC,
Supreme Court of
India**



**LAW CENTRE –II
FACULTY OF LAW
UNIVERSITY OF DELHI**

in association with

**MEDIATION AND CONCILIATION PROJECT COMMITTEE
SUPREME COURT OF INDIA**

organises

INTERNATIONAL CONFERENCE ON MEDIATION

6-7 APRIL 2019

**Venue: Conference Centre, University of Delhi
and Umang Bhawan, Faculty of Law, University of Delhi**

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Assistant Professor**

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Report on International Conference on Mediation

Dr. Ashutosh Mishra

“Our current system is based on the Rule of Law, but common man wants justice and not the Rule of Law.”

Ease of doing business and expeditious justice are possible simultaneously in contemporary scenario through the mediation. Both Supreme Court of India and Government of India have shown their seriousness and putting all endeavors to promote Mediation to impart expeditious justice and ease of doing business. This conference was organized with the objective to understand all the possible dimensions of mediation and how it can be beneficial for the common people in the future.

This report is based on speech delivered by the speakers in International Conference on Mediation. The International Conference on Mediation was organized by Law Centre-II, Faculty of Law, University of Delhi in collaboration with the Mediation and Conciliation Project Committee, Supreme Court of India and ICSSR, Ministry of HRD, Government of India. The conference was attended by more than 500 participants from India & abroad and more than 150 Judges, right from the District Courts to the Supreme Court of India. This report is a result of the suggestions given by legal luminaries to chart the way forward for mediation in India. The suggestions include a critical analysis of the hurdles that the country may face in adopting mediation as mainstay dispute resolution mechanisms, while also suggesting various international models that one can emulate. This report is divided into five parts according to the themes that the conference was divided into, followed by a summary analysis of the development of mediation in our nation.

Scope of Mediation in Matrimonial Disputes

There is a need to understand that matrimonial disputes encompass other disputes including property disputes, custody related disputes and related civil disputes. Hence, there is a need to develop mediation not just for matrimonial disputes, but family disputes as a whole. There is a need to shift the focus from individual positions to interest based positions, as it is possible that in matrimonial disputes, the interests of other family members are involved.

Intervention is required to make the parties understand that how this process of mediation can end their trauma and make their present situation better by not wasting time and resources in multiple litigations.

Mediators need to overcome bias, must have patience, not be judgmental and have notional ability to counsel. Mediators should create a level playing field for parties irrespective of their financial status.

The parties live in close proximity (Too Close concept) and their lives are tightly intertwined, suggests that members of a family need individual spaces and mediators can create those spaces to resolve the dispute by giving temporary cooling off period that helps sometimes in such cases.

The mediator can also play an important role in meting out gender justice by allowing women to speak their mind. Further, in cases of domestic violence, the mediator should be trained to handle the situation delicately while dealing with the trauma of the victim. Mediators need to undergo sensitization workshops and training in order to equip them to handle delicate matters.

Children and elder family members (parents) can act bridges to resolve the dispute. Parents can give financial assurance. It is important that the environment of mediation is relaxed and hence

comfortable and air conditioned rooms with kids play area have been provided which facilitates the process. Medical help may also be required in such matters and hence- psychiatrists, psychologists as well as sexologists should be available for consultation. It is crucial that judges come down to Mediation Centres to give a sense of assurance to the parties that their matters are under the supervision of the court.

Scope of Mediation in Consumer Disputes

The consumers have benefitted from the Consumer Protection Act, yet a lot needs to be done to protect consumer interests and to ensure speedy and inexpensive justice to consumers and mediation has an important role to play here. Alternative Dispute Resolutions in consumer disputes should strive to bring peace and harmony between adversaries. It should encourage exchange of information, provide new information and come up with innovative solutions.

Public tort gets disguised as consumer disputes where small people go against powerful corporations. In such cases, mediation can create a level playing field. Consumers are impatient and lack the resources and their situation is dire. Their plight is further accentuated in cases of negligence by hospitals or property matters where in consumers spend their entire life savings on purchasing a property.

In addition to this are the costs of litigation. Even the builders and hospitals do not want to get involved in litigations owing to the time costs attached to it. Mediation can in such cases create a meeting point and reduce monetary and time costs.

There is a need for better and more equipped Mediation Centres, where there is expertise in different subjects, regular training, able to strive for reaching a resolution, and not only passing a value judgement but also uncovering the truth of the stands of the parties, thus keeping in mind that the actual nature of claims is exposed. Therefore, mediators should be wonderfully educated.

India can look to adopt ODR mechanism which is called Online Dispute Remedy, instead of going through the ordinary mechanism, consumer will put on his video of his claim on that website and in response, manufacturer will also put his video justifying that claim may not be made out. Users of Internet will judge and vote from zero to hundred from which average will be taken out and the outcome will be binding on the parties.

Scope of Mediation in Intellectual Property Matters & Commercial Disputes

In IPR related issues, the traditional court is not fully competent (due to lack of specific technical knowledge) and a skilled mediator possessing the exact technical knowledge and the ability to provide the actual remedy which is sought, unlike the court that only distinguishes between right and wrong. In patent infringement issues, mediation can really be fruitful, keeping in mind that a patent is only granted for a period of 20 years. Even if a court proceeding goes for 6 to 7 years, it will demolish the entire reason behind the grant of such monopoly.

In the United States, they have a detailed system in place and a lot of matters have been solved by mediation. There are two models followed:

- (i) Facilitation model: where parties have control over the direction in which their issue goes.
- (ii) Evaluation model: where the mediator helps in evaluating what should be opted by the parties.

Mediation can be used to preserve on-going relationship between parties include cases where monetary damages are involved, matters of complex and technical nature including licensing of trademark, multimedia, contract for joint R&D ventures and negotiation on royalty

In the case of individuals, there is always an opportunity to talk and reconcile but in the case of multinational companies which act as corporate citizens, there are big players, power play, no connection and nothing personal between parties. They could have signed some agreement on mail, or might have had a video conference but that is all. If such connection is not there, the disputes become larger. Therefore, a trained mediator comes to play.

Some effective ways to fetch better results from mediation including: encouraging lawyers to suggest mediation, court monitored system of mediation, personal presence of the parties and regular hearings at shorter intervals. Countries must amend their existing laws in consonance with the International Conventions for the Uniformity throughout the International disputes.

Scope for Online and Pre-Institutional Mediation

There is a need to develop jurisprudence in this field in order to truly harness the potential of this mechanism. Mediation is making leaps and bounds in the dispute resolution arena and there is more latent potential that needs to be harnessed. We need to unleash this potential and mold mechanisms suited to channelize mediation in the right direction. There are also several obstacles that need to be accounted for while formulating a development plan for online and pre-institutional mediation.

Section 12-A of the Commercial Courts Act that makes it mandatory for the plaintiffs to first go for mediation unless urgent interim relief is required. Two drawbacks that need to be addressed in this section:

- (i) Any settlement arrived at by way of mediation shall be in the nature of an arbitration award that makes it subject to the restrictions under Section 30 of the Arbitration and Conciliation Act, 1996.
- (ii) The mediation is to be administered by the authorities under the respective Legal Services Authority. The problem is that the main duty of the Legal Services is to administer Lok Adalats and not Mediation and they are not trained mediators.

Policy makers should consider better structural frameworks for including Pre-Institutional Mediation. With regard to Pre-Institution Mediation, there are two ways forward, one is to start with what we have and build on it and second is to take a step back and then launch forward, brick by brick. Right now, India's strategy is to build on what currently exists and there is a fundamental problem with it. For example, in commercial disputes, the representatives of the Legal Services Authority not only lack the skill set but lack specialized knowledge pertaining to the business. To solve this, we should have intensive training and wider course structures, i.e. we need to adopt a bottom up approach.

Online mediation has a two-pronged strategy, one is to cater to the existing pending cases and the second is to settle disputes related to e-commerce. However, the pending issues settled online lack human intervention and effectively lack the same authority as a court order or decree would have had. And, on the second front, disputes solved by way of online mediation pertaining to e-commerce lack enforcement.

The government creates 40% pendency within courts. Models where in online portals for mediation could be set up and nodal officers appointed in the ministries who would explore alternative dispute resolution. There is a need for a stand-alone sui generis mediation law in India.

Italy had set out a goal to achieve one case solved through mediation for every 2 cases in the court. Italy showed a great success rate. 150,000 cases go to mediation in Italy every year since 2013. 50% of such cases are solved via a settlement. They adopted the easy opt out mandatory mediation. The essential elements of this model are:

(i) **Mandatory:** Making the first meeting compulsory, in both civil and commercial cases under various heads. This is essential because parties at loggerheads do not want to sit in the same room as each other. This also enables lawyers to suggest mediation as a solution without sounding weak themselves.

(ii) **Voluntary:** voluntariness is sacred in Mediation. This voluntary element comes from the easy opt out aspect of the model.

Mediation services could help resolve not just disputes, but also more disruptive conflicts. These services include Geo tagging, providing security consultancy, machine learning, and visual reality and block chain technology.

What We Can Learn from the Recent Trends in Mediation

In India, mediation is not a new concept. In Mahabharata, Krishna played the role of a mediator. India has been a peace loving country and the obvious mechanism for it is mediation. One can learn from the indigenous methods and bring back such sustainable methods into modern mediation.

Similar to the state of Bihar, each state should empower its Panchayati Raj Institutions to act as a mediator in as many disputes as possible at Gram Kachahri Level and only in case of their failure to arrive at a mutually agreeable decision parties should be allowed to move to the courts of the country.

There is a need for Civil Adjudicatory System to be compulsorily taught to law students at university level. Disputes of commercial nature should first be resolved amicably through mediation and in cases of failure, only parties should be allowed to initiate a suit.

The way forward for mediation requires concerted efforts from all stakeholders in the legal arena including students, teachers, judges, lawyers and the parties themselves. There is a call for creating a mediation culture and shifting the narrative from mediation being an alternative dispute resolution to it being the most appropriate dispute resolution mechanism. Mediation is a very good concept and in any democracy, a concept has to have certain yardstick to become an eminent procedure such as acceptability, creating stakeholders, satisfying legislature, etc. We also need trained and specialized mediators. Judges should refer matters for ADR, along with it, a huge amount of trained and expert mediators should be procured to make mediation more common and academic universities should incorporate mediation as a core subject. It is only through mediation that antagonistic relations can turn into collaborative ones.

ACKNOWLEDGEMENT

I would like to express my sincere gratitude to our Professor-in-Charge Prof. V.K Ahuja Sir, for the encouragement and motivation he provided for conducting this conference. Without him, this conference would not have been a success. On behalf of Law Centre II, Faculty of Law, University of Delhi, I would like to give special thanks to Hon'ble Justice A.K. Sikri (then Chairman of MCPC Supreme Court of India) for granting permission and for all the assistance.

I want to give sincere thanks to the present Chairman MCPC, Hon'ble Justice Rohintan Nariman, Judge Supreme Court of India. I would like to give special thanks to Hon'ble Justice Sanjay Kishan Kaul (member of MCPC and Judge of Supreme Court of India) for inaugurating this conference and for taking keen interest in organizing and for providing all assistance to successfully organize this conference. I would like to give special thanks to Hon'ble Justice Indu Malhotra (Member of MCPC and Judge Supreme Court of India) for accepting our invitation to be the chief guest in valedictory session and for giving her valuable guidance.

I would like to share my gratitude to ICSSR (Indian Council for Social Science and Research), Ministry of Human Resource and Development, Government of India for all the support and partially funding the conference. I would also like to give my special thanks to Shree Braj Bihari Kumar Ji, Chairman ICSSR and Shri Virendra Kumar Malhotra Ji, Member Secretary ICSSR, for their sincere support.

I would like to give special appreciation to Mr. Dharmender Rana, Member Secretary MCPC, for all the encouragement, support and motivation in organizing this conference. I would also like to further thank Shree Anuj Aggarwal, Addl. Secretary, and Supreme Court Legal Services Committee.

I am highly grateful to Mr. Ashutosh Acharya, Assistant Professor, Law Centre II, Faculty of Law, Delhi University and Co-Director of the conference for helping me in organizing this conferences and played a key role in success of this conference and I am further grateful to Mr. Ajay Sonawane, Assistant Professor, Law Centre II, Faculty of Law, Delhi University for all the support that he provided during the organizing of the conference.

I would like to give appreciation to the students of Faculty of Law, Abhishek Bhati, Gurkaran Singh, Taniya Malhotra and Arunita Mitash for organizing the conference and compiling this report. I am highly grateful to all our students, without whom we could not have organized this conference.

Last but not the least I am highly grateful and indebted to all our speakers who have played pivotal role in policy making regarding mediation for sparing their valuable time and agreeing to be a part of the conference.

Dr. Ashutosh Mishra
Conference Director

LIST OF SPEAKERS

HON'BLE MR. JUSTICE R.F. NARIMAN

Judge, Supreme Court of India and Chairman, MCPC

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

Judge, Supreme Court of India and Member, MCPC

HON'BLE MS. JUSTICE INDU MALHOTRA

Judge, Supreme Court of India and Member, MCPC

HON'BLE MR. JUSTICE R.K. AGARWAL

President of National Consumer Disputes Redressal Commission (NCDRC) Government of India and former Judge, Supreme Court of India

HIS EXCELLENCY VLADMIR MARIC

Ambassador and High Commissioner, Republic of Serbia

HON'BLE MR. JUSTICE KRISHNA MURARI

Chief Justice, Punjab and Haryana High Court

HON'BLE MR. JUSTICE SURYA KANT

Chief Justice, Himachal Pradesh high court

HON'BLE MR. JUSTICE A. P. SAHI

Chief Justice, Patna High Court

HON'BLE MS. JUSTICE GITA MITTAL

Chief Justice, Jammu and Kashmir High Court

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

Judge, Delhi High Court

HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN

Judge, Telangana High Court

HON'BLE MR. JUSTICE G. S. SISTANI

Judge, Delhi High Court

HON'BLE MS. JUSTICE HIMA KOHLI

Judge, Delhi High Court

HON'BLE MR. JUSTICE RAJIV SHAKDHER

Judge, Delhi High Court

HON'BLE MR. JUSTICE D.K. UPADHYAYA

Judge, Allahabad High Court

HON'BLE MR. JUSTICE GURMEET SINGH SANDHAWALIA

Judge, Punjab and Haryana High Court

HON'BLE DR. JUSTICE ANITA SUMANTH

Judge, Madras High Court

HON'BLE MR. JUSTICE ASHWANI KUMAR MISHRA

Judge, Allahabad High Court

HON'BLE MR. JUSTICE A. MUHAMED MUSTAQUE

Judge, High Court of Kerala

HON'BLE MS. JUSTICE PRATIBHA M. SINGH

Judge, Delhi High Court

HON'BLE MR. JUSTICE RAJIV MISRA

Judge, Allahabad High Court

HON'BLE MR. JUSTICE SUNIL THOMAS

Judge, Kerala High Court

HON'BLE MR. JUSTICE AJAY MOHAN GOEL

Judge, Himachal Pradesh High Court

HON'BLE MR. JUSTICE AJAY BHANOT

Judge, Allahabad High Court

HON'BLE MR. JUSTICE MANMOHAN SINGH

Chairman, Intellectual Property and Appellate Board (IPAB)

Government of India and Chairman, Prevention of Money

Laundrying Tribunal

MR. VIKRAMJIT BANERJEE

Additional Solicitor General of India

PROF. VED KUMARI

Dean and Head, Faculty of Law, University of Delhi

PROF. POONAM PRADHAN SAXENA

Hon'ble Vice Chancellor, NLU Jodhpur

MR. SRIRAM PANCHU

Senior Advocate, Mediator and Arbitrator

MS. LAILA T OLLAPALLY

Expert Mediator

MS. SADHANA RAMACHANDRAN

Sr. Vice-President, Maadhyam International

MR. AMARJIT SINGH CHANDHIOK

Expert Mediator

MR. J.P SENGH

Expert Mediator

PROF. (DR.) KENNEDY GASTORN

Secretary General, Asian-African Legal Consultative Organisation

MR. FAHMI SHAHAB

Chairman at Asian Mediation Association (AMA)

MS. SHILPI JHA

Intellectual Property In-charge, United States Patent and Trademark Office (USPTO)

MS. MARINA K. KHAMITSEVICH

Continental Advisor at World Mediation Organisation, Switzerland

MS. RHEA MAHANTA

United Nations Secretariat, Department of Political and Peacebuilding Affairs

MR. RAJIV AGGARWAL

Joint Secretary, Department of Industrial Policy and Promotion (DIPP) Ministry of Commerce, Government of India

PROF. (DR.) SARASU ESTHER THOMAS

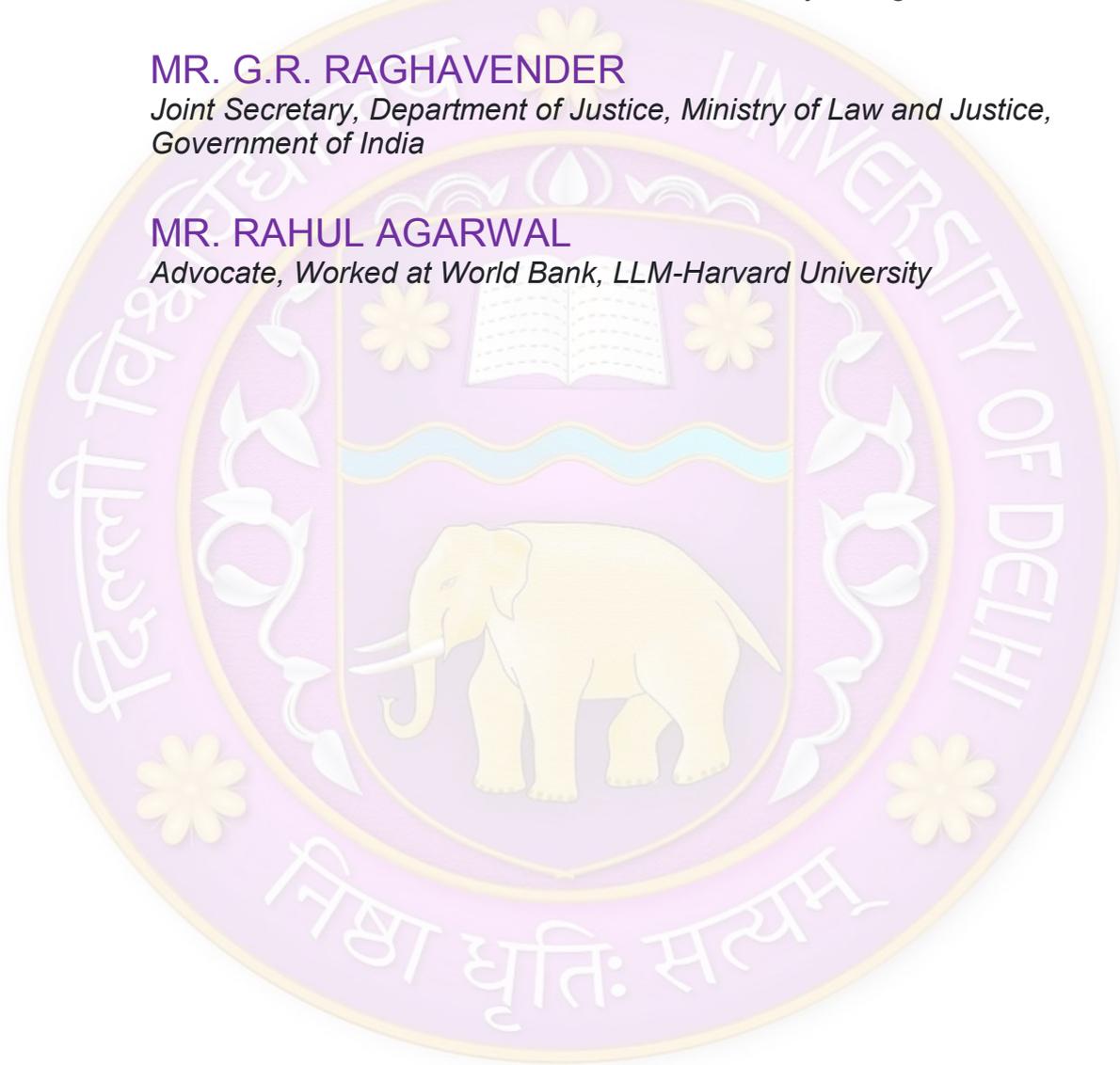
Professor, National Law School of India University, Bangalore

MR. G.R. RAGHAVENDER

Joint Secretary, Department of Justice, Ministry of Law and Justice, Government of India

MR. RAHUL AGARWAL

Advocate, Worked at World Bank, LLM-Harvard University



Suggestions Made by the Speakers at the International Conference on Mediation (ICM)-2019

A. Mediation in Matrimonial Disputes

1. Justice Geeta Mittal (Chief Justice J&K High Court)
 - Need for statutory inclusion of mediation in the existing legislations
2. Justice Sanjay Kishan Kaul (Judge, Supreme Court of India)
 - Lawyers to undergo special training focused on mediation and judges to supervise the cases referred to or undergoing mediation.
3. Justice G S Sandhawalia (Judge, Punjab & Haryana High Court)
 - Encouraging effective participation of lawyers in the process.
 - Mediators to adopt a more 'humanitarian' approach to the dispute resolution
 - Mediation centers to be equipped with facilities that ensure a comfortable and relaxed environment for the parties.
 - Medical help from psychiatrists, psychologists as well as sexologists to be made available for consultation.
4. Justice Rajeev Misra (Judge, Allahabad High Court)
 - Mediators to be equipped with the understanding of the psychology of parties in case to family or matrimonial disputes.
 - Conducting workshops to sensitize and train mediators.
5. Justice Anita Sumanth (Judge, Madras High Court)
 - Mediators to possess sensibilities and special skillset since family disputes are not only the pragmatic aspect but also involve the emotions of both parties.
6. Prof. (Dr.) Poonam Pradhan Saxena (Hon'ble VC, NLU Jodhpur)
 - Mediators to set a level playing field for both parties keeping in mind principles of gender justice, and address the dispute with a liberal and open outlook.
7. Prof. (Dr.) Sarasu Esther Thomas (NLSIU Bangalore)
 - Lawyers to be equipped with a special skill set to approach such matters with sensitivity.

B. Mediation in Consumer Disputes

1. Justice R. K. Agarwal (President -NCDRC)
 - Contain & encourage exchange of information, provide new information and understand their concern.
2. Justice Ajay Bhanot (Judge, Allahabad High Court)
 - Universities to include Mediation as a core subject.
3. Shri V. Bannerjee (Additional Solicitor General Of India)
 - Need for better and more equipped mediation centres, where there is expertise in different subjects
 - Regular training
 - Mediators must be encouraged to strive for reaching a resolution, and not only passing a value judgement but also uncovering the truth of the stands of the parties so as to uncover the actual nature of claims made.

C. Overall process of mediation (not restricted to specific disputes)

1. Justice A.P Sahi (Chief Justice Patna High Court)
 - Panchayati Raj Institutions to act as a mediator in as many disputes as possible at Gram Kachahari Level.
2. Justice Ashwini Kumar Mishra (Judge, Allahabad High Court)
 - Disputes of commercial nature should first be attempted to be resolved amicably, through the process of mediation and parties should be allowed to initiate suit only in case of failure.

D. Mediation in disputes arising from Intellectual Property Rights

1. Mr. Justice Rajiv Shakhder (Judge, Delhi High Court)
 - Making mediation mandatory for commercial matters like IPR issues.
 - Mediator to have the technical knowledge and the ability to provide an effective remedy.
2. Ms Shilpi Jha (Senior Counsel, Officer In-charge, USPTO)
 - Need for a special judge having the knowledge and extensive experience of the particular field.

E. Mediation in disputes pertaining to Multi-National Corporations.

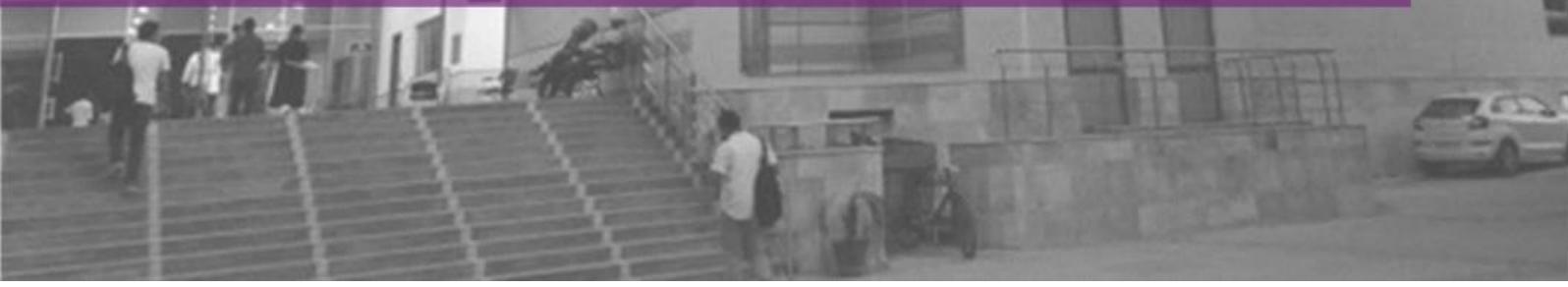
1. Justice Pratibha M. Singh (Judge, Delhi High Court)
 - Encouraging lawyers to suggest mediation
 - Introduction of a court monitored system of mediation
 - Personal presence of the parties and regular hearings at shorter intervals.
2. Prof. Kennedy Gastorn (AALCO Chairperson)
 - Forward and promote the concept of international uniformity in mediation by enforcing the international treaties.

F. Online and Pre-Institutional Mediation

1. Justice D.K. Upadhyaya (Judge, Allahabad High Court)
 - Creating awareness and educating people on the benefits of mediation
 - Making mediation a part of the curriculum in Law Universities.
 - Considering a better structural framework for Pre-Institutional Mediation.
2. Mr. Rahul Aggarwal, Advocate
 - Need for a more intensive training and wider course structures to provide specialized knowledge pertaining to the business.
3. Ms. Laila Ollapally, Expert Mediator.
 - Incorporation of the 'easy opt out mandatory mediation' model, adopted by Italy.

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INAUGURAL SESSION



The day one of the two-day conference commenced with an inaugural



session where the Chief Guest, Hon'ble Mr. Justice Sanjay Kishan Kaul, Judge, Supreme Court of India and Guest of Honour, Hon'ble Ms. Justice Geeta Mittal, Chief Justice Jammu and Kashmir High Court graced the gathering with their presence. The other well-regarded members of the dais for the inaugural session included Professor Ved Kumari, Dean, Faculty of Law, University of Delhi

who delivered the Presidential Address; Mr. Dharmendra Rana, Member Secretary, MCPC, Supreme Court of India; and Dr. V. K. Ahuja, In-Charge, Law Centre-II, University of Delhi were present. The esteemed guests lit the ceremonial lamp and brought about an auspicious start to the grand conference.

Professor V. K. Ahuja extended the welcome address and thanked the



MCPC and the ICSSR for their indispensable help and support in conducting the event. He revealed that the idea for organizing an international level conference was conceived a year ago and was substantiated by monetary grants from the ICSSR. He also expressed his gratitude towards Retired Justice A. K Sikri, Chairman, MCPC, Mr. Dharmendra Rana, Member Secretary, MCPC and Mr. Anuj Agarwal, Additional Secretary, Supreme Court Legal Services Committee who were influential in making the event possible. In his address, Professor Ahuja deemed the academia and judiciary joint venture to be the most relevant way forward in the field of mediation.



Following the welcome address, Hon'ble Ms. Justice Geeta Mittal, Chief Justice Jammu and Kashmir High Court, in her perceptive speech, emphasized that mediation is not just an alternate method but is rapidly becoming the mainstay in dissolving disputes. She discernibly pointed out that mediation could help resolve diverse areas of disputes – from Matrimonial Disputes to Consumer Rights violation. Drawing from her years of

experience in the judiciary, she recounted the cases with interlinkage of civil & criminal dispute, and suggested that with mediation, civil suits can be resolved independently, thereby unburdening the courts of any

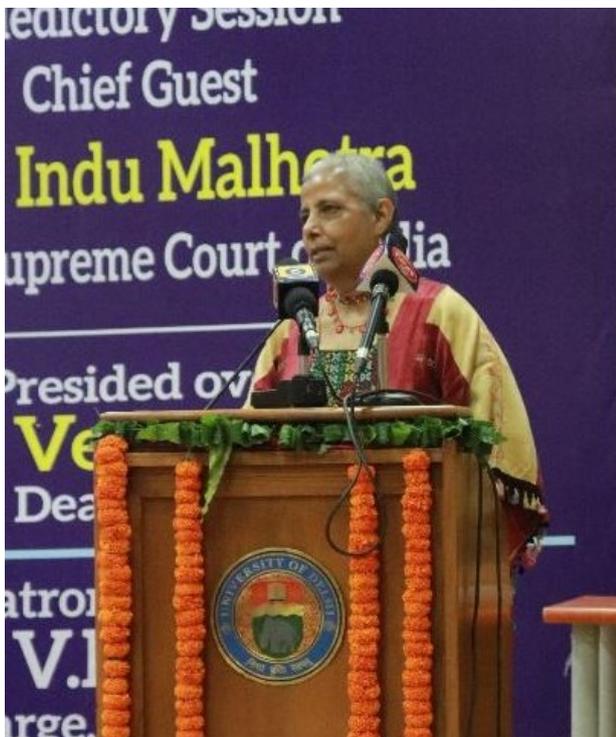
additional cases. She stressed on the need for statutory inclusion of mediation in existing legislations in order for it to become more advantageous for the justice system and the people it is meant to serve.



Chief Guest, Hon'ble Mr. Justice Sanjay Kishan Kaul, Judge, Supreme Court of India addressed the enthusiastic gathering by wishing them a happy new year of the hindu calendar. The esteemed Chief Guest spoke of the great diversity of our country and how it (diversity) gives rise to disputes, which can be solved through non-conventional legal methods like mediation. Supporting mediation, he said that in mediation the

resolutions that are reached are interest- based and that there is no loser or winner, unlike in the litigation process where people become adversaries. Furthermore, he advised that the mediation process in India needs an impetus from the judiciary. He called himself an “unabashed supporter of lawyer based mediation” and suggested that the lawyers and judges should receive special training in mediation and that judges should supervise the cases that undergo the process. He expressed his concern over the docket explosion that the country’s judicial system is suffering with and recalled that in his experience as a

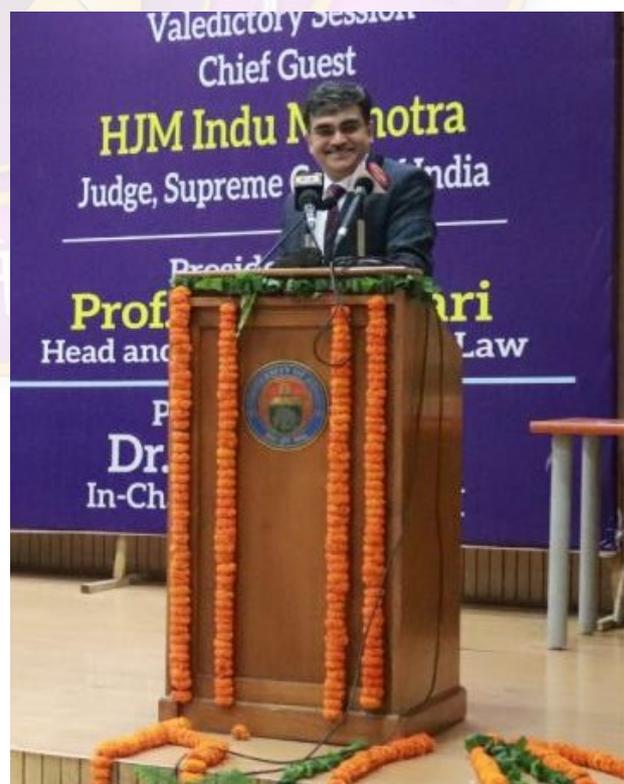
judge for many years, the conflicts that saw mediation, were resolved in more innovative and peaceable manner. Only through mediation could antagonistic relations turn into collaborative ones, he opined.



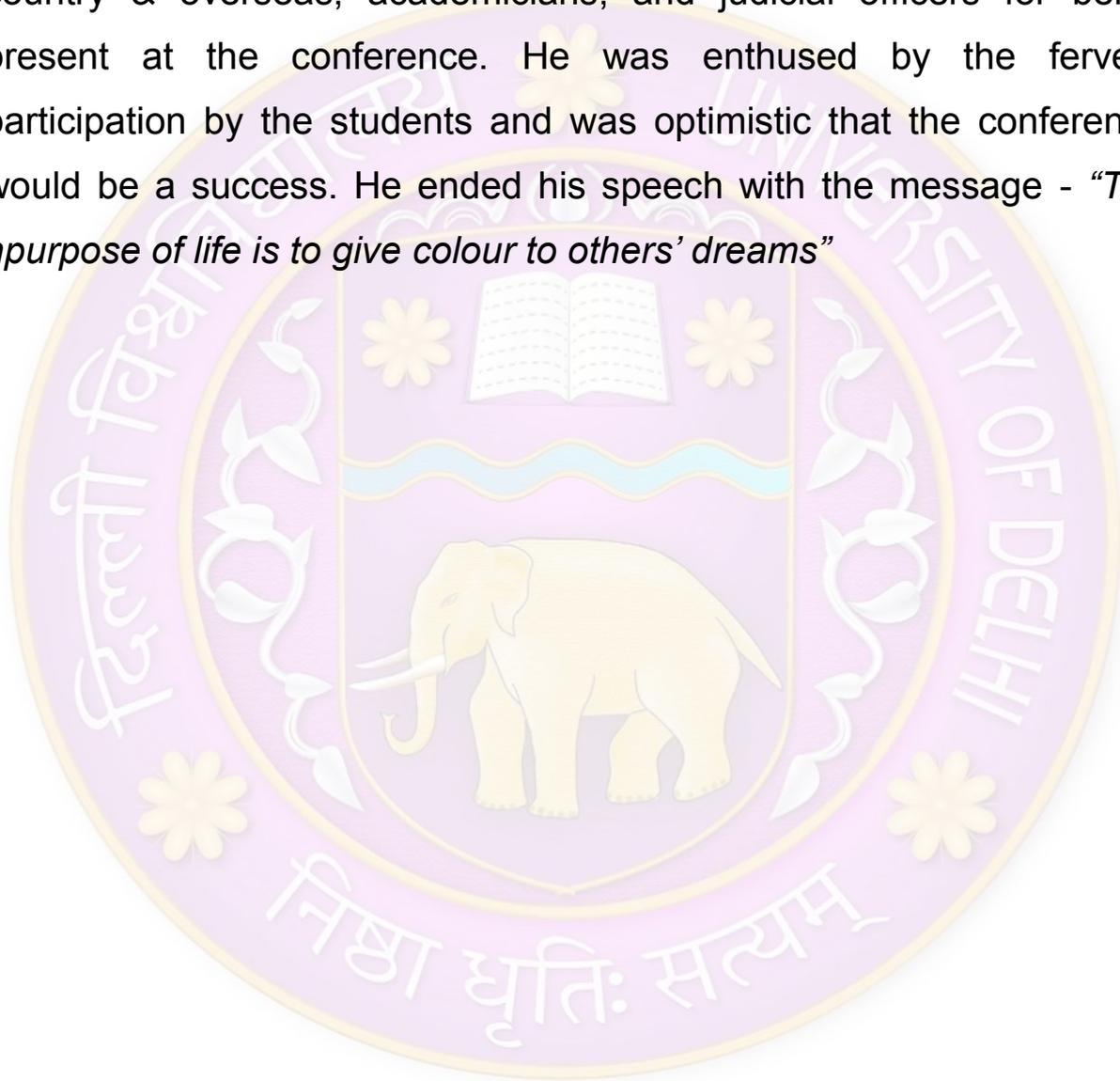
Professor Ved Kumari, Dean, Faculty of Law, Delhi University giving the presidential address, expressed her pride in the organizers of the event and her students. She spoke about the importance of teaching Mediation as a subject in law schools to encourage them to pursue it as a career path. On a hopeful note, she said that Faculty of law would

consider opening a Mediation Centre for Law Centre-II.

Extending the vote of thanks, Shri Dharmendra Rana, Member Secretary, MCPC, Supreme Court of India expressed his gratitude towards Hon'ble Mr. Justice Sanjay Kishan Kaul for his support and presence in the conference and towards Hon'ble Ms. Justice Geeta Mittal for her guidance. He also thanked Professor Ved Kumari, Dean, Faculty of Law and

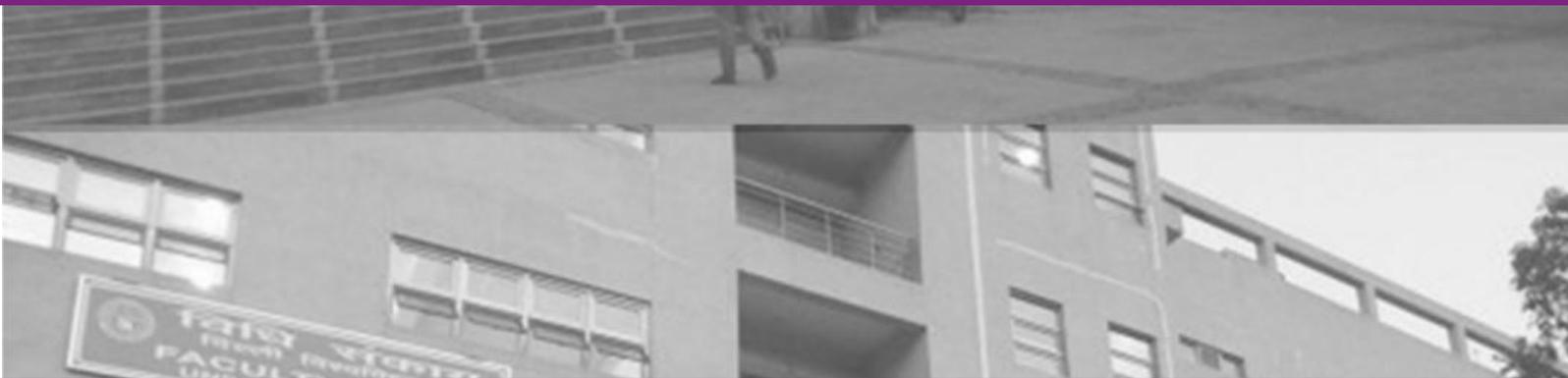


Professor V. K Ahuja, In-Charge, Law Centre-II and Dr. Ashutosh Mishra, Director of the conference. He was grateful to all the judges, trainers of the MCPC, members of mediation centres from all over the country & overseas, academicians, and judicial officers for being present at the conference. He was enthused by the fervent participation by the students and was optimistic that the conference would be a success. He ended his speech with the message - *“The purpose of life is to give colour to others’ dreams”*





DAY 1





SESSION-I MEDIATION IN MATRIMONIAL DISPUTES

HON'BLE JUSTICE GITA MITTAL
CHIEF JUSTICE J & K HIGH COURT

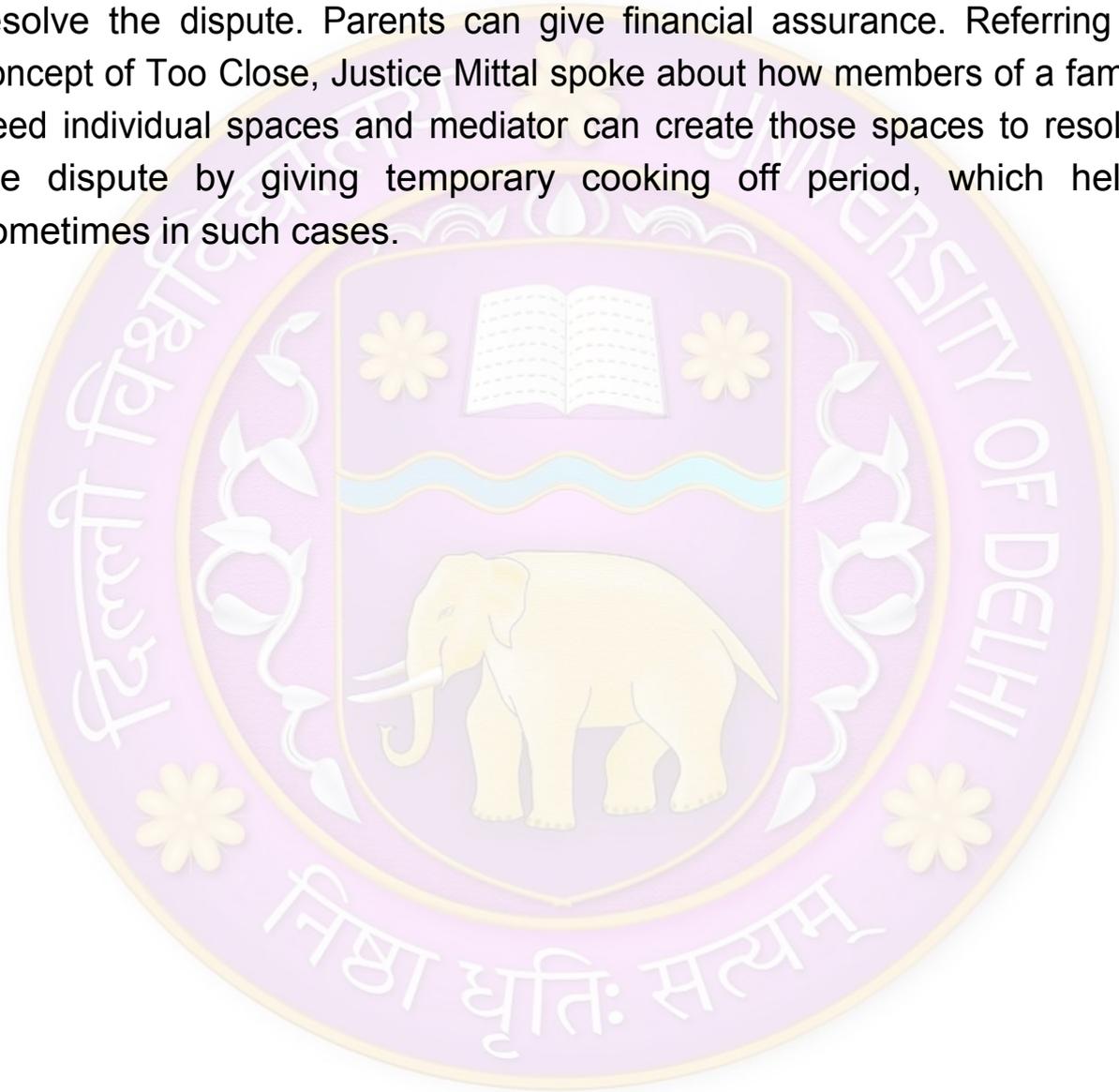


Hon'ble Justice Gita Mittal started the session with the discussion of the statutory provision under Section 23 of Hindu Marriage Act and pointed out how a statutory shift took place from reconciliation to settlement under the amended HMA 1984. While the focus earlier was to save the marriage from breaking, now the focus has shifted to settle the dispute even if it means the couple parts ways. Since matrimonial issue encompasses multiple allied issues such as property rights, child custody rights,

visiting rights and often involves extended families, it is often difficult to bring them to a table to talk to each other. If they are brought to a table, only then the blockade can be broken and the situation might lead to resolution; settlement may mean dissolution of marriage.

Another important aspect she emphasized on was shifting the focus from individual position to interest based position or in other words focusing on future long-term projections instead of short-term losses. Intervention is required to make the parties understand that how this process of mediation can end their trauma and make their present situation better by not wasting time and resources in multiple litigations. She stressed on calling this session on Mediation in Family Disputes instead of Matrimonial Disputes.

Family matters have extreme levels of emotions and are not tangible components. Mediators need to overcome bias, must have patience, not be judgmental and have notional ability to counsel. She further suggested that Children and elder family members (parents) could act bridges to resolve the dispute. Parents can give financial assurance. Referring to concept of Too Close, Justice Mittal spoke about how members of a family need individual spaces and mediator can create those spaces to resolve the dispute by giving temporary cooking off period, which helps sometimes in such cases.



HON'BLE MR. JUSTICE G S SANDHAWALIA
JUDGE, PUNJAB & HARYANA HIGH COURT



Justice Sandhawalia shared the development of Mediation Centre annexed to Punjab & Haryana High court and how it evolved with an increase in number of halls as well as trained mediators. He cited few bottlenecks, which make the success of mediation process difficult- from lawyers asking clients to agree to mediation but not accept mediation settlement to the resistance by legal professionals to the process. He further added that this process could get a push with effective participation from lawyers

where Bar Council has a huge role to play.

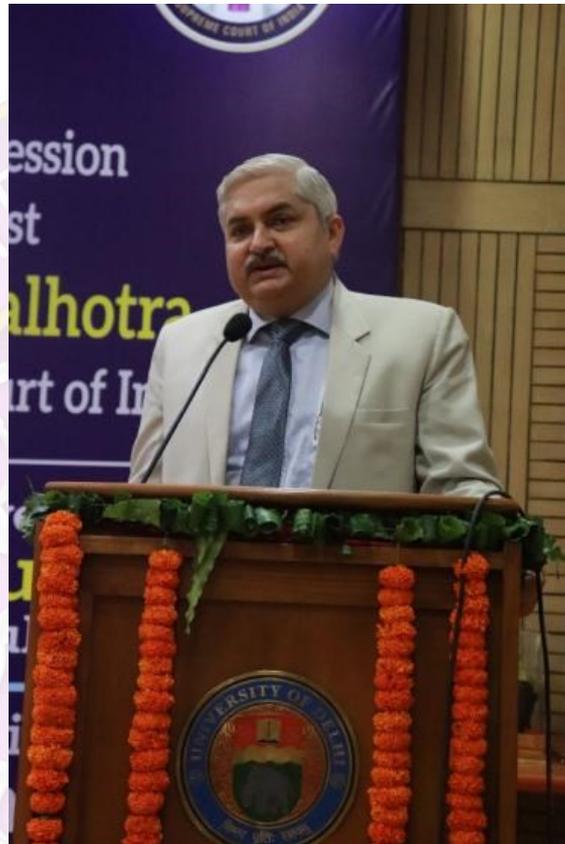
He gave example of Punjab & Haryana where 50-60% matters referred are matrimonial disputes. Citing the words of Mahatma Gandhi- "Successful Mediation is when both parties are happy". Role of mediator is that of a balm. Each party wants their side of story to be heard. The parties are often driven by irrational factors and hence cannot be controlled by rational factors. Often children of such estranged couples get involved in criminal activities and hence, mediators need to have a more humanitarian approach.

It is important that the environment of mediation is relaxed and hence comfortable and A/c rooms with kids play area should be provided which facilitates the process. Further, medical help may also be required in such matters and hence- psychiatrists, psychologists as well as sexologists

should be available for consultation. Since attitude of one spouse can affect another sometimes, separate sessions are required. Further, it is crucial that judges come down to Mediation Centres to give a sense of security to the parties that the matters are under supervision of court.



HON'BLE MR. JUSTICE RAJEEV MISRA
JUDGE, ALLAHABAD HIGH COURT



Justice Misra started with how Mediation was accepted as a forum in 1989 after Section 89 of the Civil Procedure code came into being as what it stands today. Pursuant to this, Mediation and Conciliation Centres came up across the country. He threw light on the fact that in today's date such mediators are needed who are equipped with the understanding of the psychology that when husband and wife are at loggerheads, it is the child who is sufferer. Hence, citing the Geeta Malhotra case, he emphasized on the importance of conducting Workshops to sensitize and train the mediators.

HON'BLE MS. JUSTICE ANITA SUMANTH

JUDGE, MADRAS HIGH COURT



Giving a snapshot of few facts and figures about the mediation process in Tamil Nadu, Justice Sumanth referred that 770 mediators have been trained and that since the short period from 1/7/2017 to 2/10/2018 - 312 family cases were referred out of which 44 settled, 167 returned not settled, 52 nonstarters and 148 pending. In same duration in Puducherry- 2413 matters referred- 276 settled, 1676 returned as not settled, 787 nonstarters and 1330 pending. 30% of cases referred are matrimonial disputes. However, she highlighted that the data needs to be maintained in more organized

fashion.

She spoke about the importance of mediators to possess sensibilities and special skillset since family disputes are mostly having questions of emotions. Parties are more pragmatic in commercial disputes and want to be over and done with but due to emotions, family disputes become harder to balance. In conclusion, quoting Earl Warren she said that *it is the spirit and not the form of law that keeps justice alive*. The parties need to be handheld to arrive at a settlement. She ended her session with a Sanskrit mantra, “*Lokah Samastah Sukhino Bhavantu*” (let there be happiness).

PROF. (DR.) POONAM PRADHAN SAXENA
HON'BLE VC, NLU JODHPUR



Remembering the early days when Prof. Saxena started teaching family law, she discussed how a student approached her to guide his brother for a matrimonial dispute after which she felt counselors are more appropriate people to handle such matters. She talked about the shifting trend at law colleges from Moot courts to Arbitration- Mediation competitions.

She quoted the case *Dastane v. Dastane*, which went on for about 2 decades, and yet he was left without any remedy. As mediation in its nascent stages can be very vindictive, it is mediator's duty to facilitate the parties to speak with each other and not adjudicate the matter. A mediator should set the level playing field and remind the parties that they have equal bargaining power even though outside the room one of the party may be financially stronger.

She ended by explaining the role of gender justice and how it cannot be set aside in such matters. Being a patriarchic society, generally women are asked to compromise and abide the terms set by their families since men have problem if women is not looking after her matrimonial home and looking after her career. It is often felt that men work for families while women work at cost of families. However, the mediator should not ask the women to be submissive and rather have an open liberal mind.

PROF. (DR.) SARASU ESTHER THOMAS

NLSIU BANGALORE



Stressing on the increase of Mediation as the mode of dispute resolution in family law, Prof. Thomas talked about 3 D's: Docket explosion, Diversions and Delays. She emphasized that adversarial system does not work in family law matters by giving example of child custody battles. She threw light on the fact that no institution can be bigger than individual it serves.

Further, she reminded that cases of violence being sensitive in nature need to be dealt with a very careful approach and requires a larger skill set than just being a lawyer. A lawyer often sees everything in black and white but there exists many shades of grey in such matters and they should be able to see all colors in the rainbow. It is an additional skill that young lawyers need to learn to add value to their legal career.



Law Centre-II
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SESSION-II

INTERNATIONAL CONFERENCE
on
MEDIATION
6-7 April, 2019

MEDIATION IN CONSUMER DISPUTES

Valedictory Session
Chief Guest
Hon. Justice Indu Malhotra
Court of India
Presided over
Prof. Gita Malhotra
Faculty of Law



HON'BLE JUSTICE R. K. AGARWAL

PRESIDENT -NCDRC



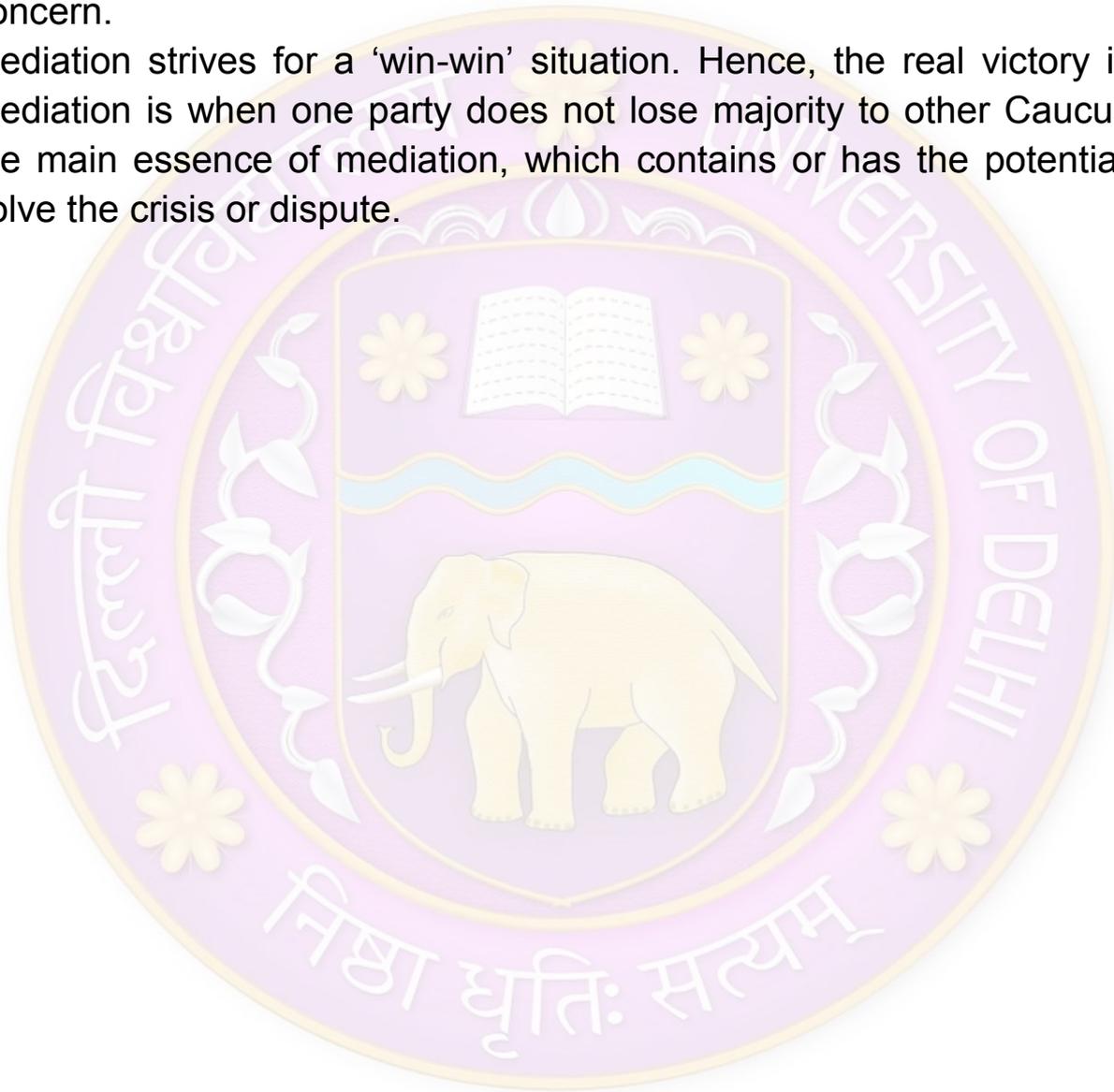
Hon'ble Justice R. K. Agarwal started the session with the discussion of need for Mediation in consumer disputes. He stated that "Mediation in consumer disputes is now required for the reason that there is a lot of pendency of cases all over India. Pendency of cases in Consumer forum has also increased very much. Consumer Protection Act came in existence after a resolution passed by UN in 1985 which laid some guidelines for better protection of consumers. Parliament of India passed Consumer Protection Act in 1986 to provide mechanism for cheaper and speedy redressal of the grievances of the

consumers. However, that object has not been achieved so far, as pendency has increased with time. Undoubtedly, a large number of consumers have been benefited from the enactment of the Act, yet a lot needs to be done in the field of consumer protection to ensure speedy and inexpensive justice to consumers.

He emphasized that one of the most left out factor is the consumer itself, as they are not aware of their rights and even does not want to enforce them. They do not want to act against the administration or executive for little damages, as the process is very hectic, time consuming and unclear. Secondly, Consumer does not have faith and confidence in consumer protection justice system. Hence instead of building new and strict laws existing laws, should be made more easy or comprehensive.

He said that Not only the fact that what is good or right for the consumer should be considered but ADR should strive at how to bring peace and harmony against adversaries. ADR should contain & encourage exchange of information, provide new information and understand their concern.

Mediation strives for a 'win-win' situation. Hence, the real victory in a mediation is when one party does not lose majority to other Caucus is the main essence of mediation, which contains or has the potential to solve the crisis or dispute.

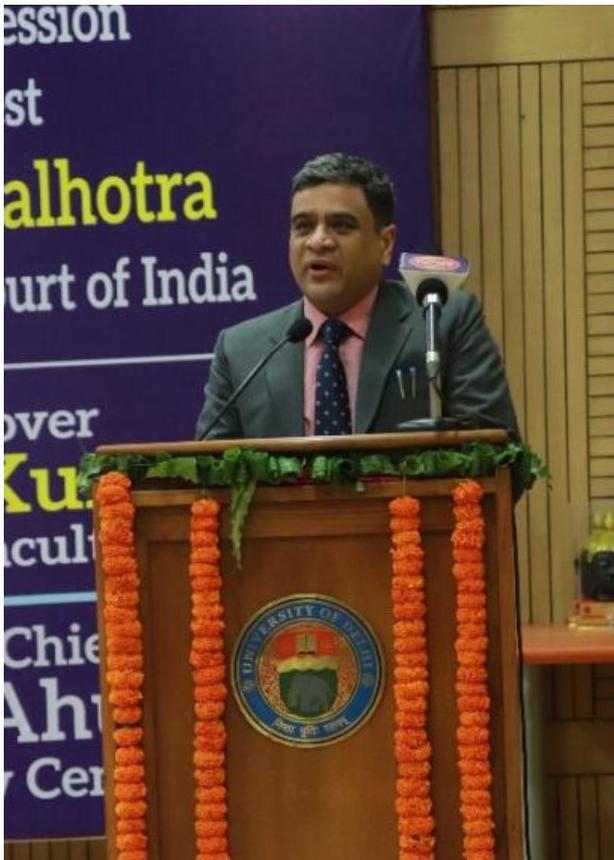


HON'BLE JUSTICE V. RAMASUBRAMANIAM
JUDGE, TELANGANA HIGH COURT



Hon'ble Justice V. Ramasubramaniam said that it has been 33 years when act was passed but still cases are increasing. Plethora of litigation still comes to court for justice. Hence in such a case where remedy is “in Personam”, Mediation can bring magnificent results or outcome in Consumer disputes. He emphasized on judgement of Afcons case where Court quoted Cases regarding ‘Rights in Personam’ cannot be resolved regarding ADR, even in such cases parties cannot be forced/compelled to apply or enforce the provisions of Arbitration Act. Now here the question is whether all cases of consumer disputes could be resolved through mediation. European Union 2013 directive says 22.5 billion Euro per year could be saved. As per UN guidelines, then the more judicious legislature/statute of Sri Lanka could also be viewed to ease out the difficulties of Indian laws regarding ADR.

HON'BLE JUSTICE AJAY BHANOT
JUDGE, ALLAHABAD HIGH COURT



Litigant is only acting a frog in a well. Even sometimes, he is guided wrongly by other persons/lawyers to initiate proceedings. Hence public should create faith in its demands and fraudulently claims should be asked, also the lawyer does not even try to understand the precedent/case laws in order to charge plaintiff. Also rigidity in procedure of enforcing law/consumer statute. Public can also shed their attitude of satisfying administrative tyrannical rule through creation of Tribunal is one of the biggest achievement but not at philosophical manner because

the procedure and proceedings in tribunals are still same.

Also, the adversaries parties should show some quality of maturity by looking at problems and non-feasibility on their side as eminent jurist Y.V. Chandrachud said choosing mediation is an end to dispute itself. Mediation is a very good concept and in any democracy a concept has to have certain yardstick to become an eminent procedure such as acceptability, creating stakeholders, satisfying legislature etc. along with all these we at the same time need lot of trained mediator and also judges should refer matter for ADR, at least give it a try, along with it a huge amount of trained and expertise, mediator should be procured to make mediation more common in academic Universities should incorporate mediation as a core subject.

SHRI V. BANNERJEE

ADDITIONAL SOLICITOR GENERAL OF INDIA



Mr. Bannerjee was of the opinion that the Mediation Centre ensures that there is an attempted settlement of disputes between parties as in the cases of consumer disputes, people are aggrieved by a number of issues, namely:

Issue I: They are out of money, hence impatient and the situations can be heart rending, for example in the negligence cases where hospitals are involved. Mr. Bannerjee narrated an incident when a father did not have any money left to travel back to his original place when his

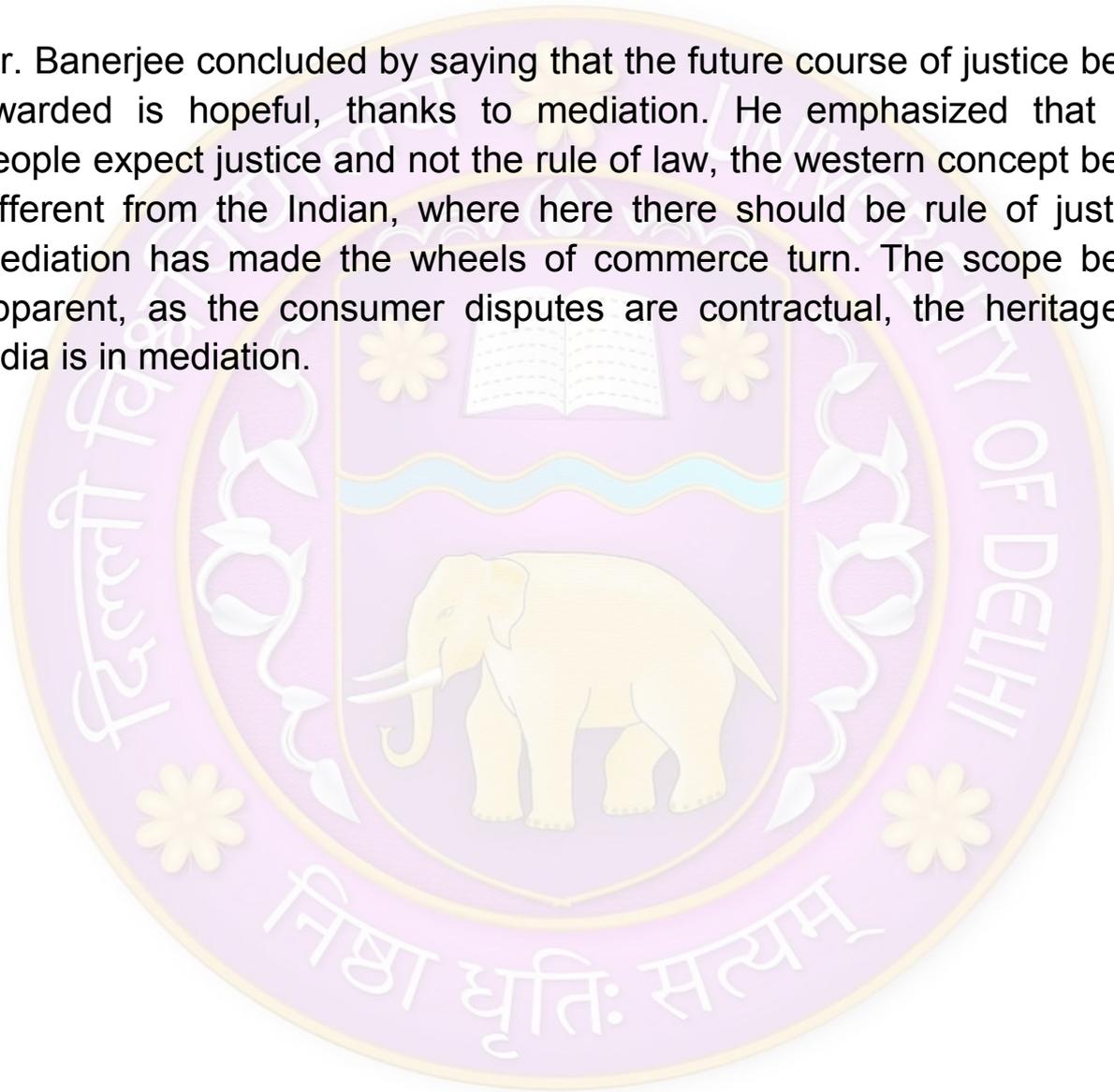
son had died due to negligence by the hospital authorities, in some cases, people invest all their money to buy a house, and when they are not able to take possession of their houses, they have to choose the legal battlefields, where the lawyers are expensive. Mr. Bannerjee found himself on the other side of the situations too representing the builders and hospitals, who are scared of taking responsibility for their actions and want to get out of the situation at any cost.

Issue II: Sometimes public tort gets disguised as consumer disputes where small people go against powerful corporations. In such cases, mediation is crucial as when these consumers get some money or compensation, they move forward. Therefore, the Bill is revolutionary.

Issue III: We need better and more equipped Mediation Centres, where there is expertise in different subjects, regular training, able to strive for

reaching a resolution, and not only passing a value judgement but also uncovering the truth of the stands of the parties, thus keeping in mind that the actual nature of claims is exposed. Therefore, mediators should be wonderfully educated.

Mr. Banerjee concluded by saying that the future course of justice being awarded is hopeful, thanks to mediation. He emphasized that the people expect justice and not the rule of law, the western concept being different from the Indian, where here there should be rule of justice. Mediation has made the wheels of commerce turn. The scope being apparent, as the consumer disputes are contractual, the heritage of India is in mediation.



SHRI J. P SINGH
ADVOCATE & MEDIATOR



Shri J. P Singh, “Mediation is an idea whose time has come.” He quoted the words of Gandhiji, “A customer is the most important visitor as he is not dependent on us, but we are dependent on him.” However, today consumer’s satisfaction is the last priority. He compared and shared the difference of experience on being a consumer in childhood and at present. He said, “Rights of consumer include right to safety, right to be informed, right to choose, right to be heard and right to redressal. For the purposes of redressal Consumer Protection Act was

enacted to provide for better protection of interest of consumers and District forum, State forum & National commissions were set up. Still the backlog hails the Court system and pendency is the norm now. Mediation is not only to remove backlog of cases but also remove disputes/conflicts from society. Therefore Mediation should be referred to as most appropriate dispute resolution mechanism and not as an ADR.”

He shared that there is a squat of litigation in in real state, wherein recent past, delays in giving position to home buyers in real state has occurred. Such circumstances compelled Government to bring an amendment in Insolvency and Bankruptcy code and recognize homebuyers as financial creditors. This recent change was more consumer friendly.

He focused on another enactment, which was brought i.e. Section 32(g) of RERA Act, which says that one of the function of authorities is to

facilitate measures for amicable settlement through conciliation of disputes between promoters and allottees through dispute settlement forum set up by Consumer and Promoters Association. Maharashtra has taken the lead and became first state to initiate conciliation mechanism under RERA and can be assessed through its Maharera website where complaints can be lodged online.

He also shared about an ODR mechanism which is called Crowd Justice UJUU in which for a small claim, instead of going through the ordinary mechanism, consumer will put on his video of his claim on that website and in response, manufacturer will also put his video justifying that claim may not be made out. Users of Internet will judge and vote from zero to hundred from which average will be taken out and the outcome will be binding on the parties.

He stressed on Section 12 of Commercial Courts Act, which has also been inserted making pre litigation mediation mandatory. He shared about an organization Consumer Online Resource and Empowerment Centre in India (CORE) that provides online complaint registration and mediation where consumers can login their complaints to seek redressal by using a toll free website, which is by the government.

In the field of healthcare in medical cases if the patients are provided with proper information, probably lot of litigation would not arise.

He concluded that mediation improves free flow of information where parties can have freedom and once the people are satisfied that they are fairly treated the dispute would proceed to an end.

He again quoted words of Gandhiji “a consumer is the purpose of business”. Therefore, in consumer disputes, mediation can be advantages to both parties in terms of problem solving and developing sustainable relations. It also helps as an evaluative mode to enable parties to legally evaluate their disputes and assess the potential legal outcome. We do not need an enactment wherever a relation is involved, we need mediation for resolution.



SESSION-III
CONTEMPORARY TRENDS
IN MEDIATION



HON'BLE JUSTICE MR A.P SAHI
CHIEF JUSTICE PATNA HIGH COURT

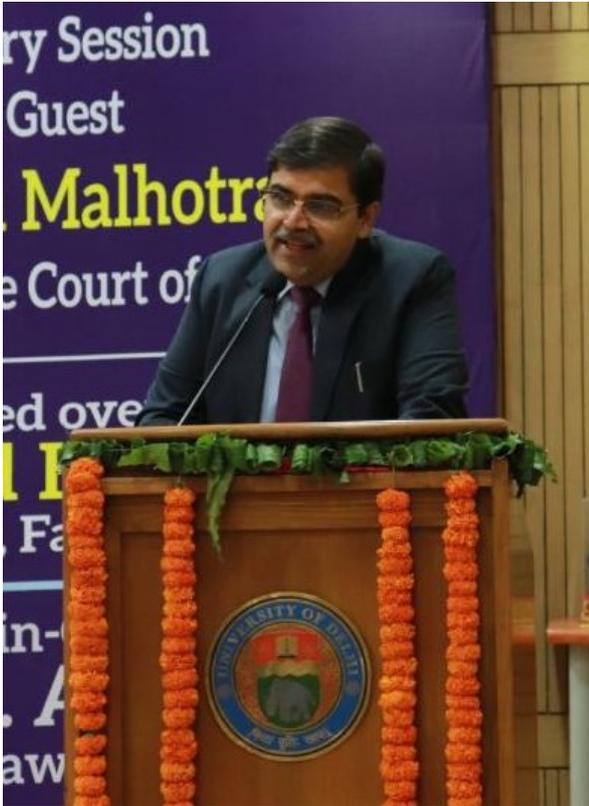


Hon'ble Justice Mr. A.P Sahi, started the session by saying that mediation is not something new to the Indian society, however the older methods of mediation, practiced through the institution of Gram Kacheri was systematically destroyed, first by the Mughals and then by the British. They imposed on us the Adversarial System of Judiciary, which in times to come unnecessarily prolonged our disputes. It is right that the said system is based on the principal of Rule of Law but common people wants justice, not Rule of Law. Role

of mediation is even more important at this point of time because of increasing number of cases and increasing level of impatience, especially among youths of the country.

He opined that India should make efforts to revive its long-lost indigenous methods of mediation. One of the suggestions he gave in this regard was -like the province of Bihar each state should empower it's Panchayati Raj Institutions to act as a mediator in as many disputes as possible at Gram Kachahri Level and only in case of their failure to arrive at a mutually agreeable decision parties should be allowed to move to the courts of the country. This may reduce the huge pendency of cases on various Courts of our country. It is expected that at least 20 per cent of cases can be easily resolved at Gram Kachahri level through such process of mediation.

HON'BLE JUSTICE MR. ASHWINI KUMAR MISHRA
JUDGE ALLAHABAD HIGH COURT



Hon'ble Justice started by observing that thinking process of all the stakeholders save the parties involved in a dispute, over the time has been molded on the lines of Adversarial System. However, from his long and varied experience he personally felt that there is something inherently wrong in the system. He touched upon the cases of insurance claims where family of the client is in the need of immediate funds but very seldom matter is settled without it reaching to courts, which in India is long-drawn process resulting into suffering and miseries to the family.

He also pointed on the fact that the delay is not always intentional but because of huge pressure of several lakhs pending cases. He also spoke in favor of Civil Adjudicatory System and said it is 'the' time to start pondering over Civil Adjudicatory Methods and it should be compulsorily taught to law students at university level. He opined that all the other disputes of commercial nature should first be resolved amicably through mediation and in cases of failure; only parties should be allowed to initiate a suit.

HON'BLE JUSTICE MR AJAY MOHAN GOEL
JUDGE, HIMACHAL PRADESH HIGH COURT



Hon'ble Justice started by saying that mediation and adjudication are two different things. India being a developing country, there is great pressure on its natural resources and environment. Because of heavy expansion of industries, roads and other infrastructure, there is a heavy degradation of environment. He discussed in details about NGT ACT, 2010 that enables creation of special tribunals to handle the expeditious disposal of the cases pertaining to environmental issues. In addition, Hon'ble Justice gave inference of Article-21 of the Constitution of India, which assures the citizen of India right to a healthy environment. Most important thing to remember from his deliberation is that the concern for environment is not concern in persona, rather concern in rem. Once a matter is settled through mediation, it creates a bond of trust between local people and the industries. At the end of the day, it results into a win-win situation for the parties involved.

SHRI SRIRAM PANCHU SENIOR
ADVOCATE AND MEDIATION EXPERT



Mediation is the fastest growing dispute resolution mechanism. In India, it was formally started in 2005, thanks to the efforts of Madras High Court and thereafter it has only seen a northward growth in its popularity and success as an alternate dispute resolution mechanism.

However, the support of Judiciary, Bar Council and enabling legalizations are still required to take it further close to the common people of the country.

He summarised the evolution of mediation through five questions-

What is mediation?

Why is mediation?

Why mediation in this case?

Why not mediation in this case?

Why not mediation before the case is filed?



DAY 2





SESSION-I
MEDIATION IN
INTELLECTUAL PROPERTY
MATTERS



HONORABLE MR. JUSTICE RAJIV SHAKDHER

HONORABLE MR. JUSTICE RAJIV SHAKDHER
JUDGE, DELHI HIGH COURT



We the academia should take it up on ourselves to nudge that policymakers and I believe rather than this presentation sort of thing a round table conference could have been opted where ideas will float from both the sides.

In India the courts will only refer the matter for mediation under section 89 CPC when the both the parties have already suffered lengthy court proceedings and its trauma.

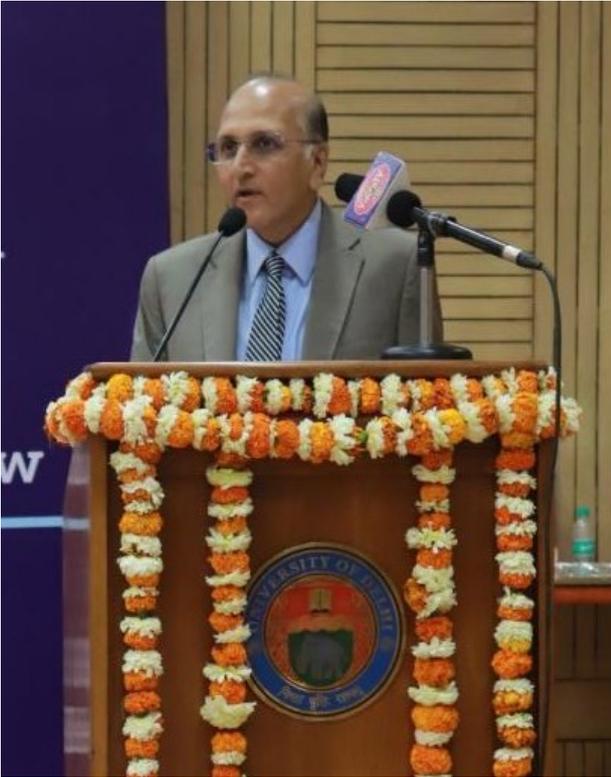
Luckily now we have a full draft of mediation and it would be really sensible to make this mandatory thing, doing so will help in improving

dispensation of immediate relief for commercial matters like IPR related issues.

In IPR related issues the traditional court is not fully competent (due to lack of specific technical knowledge) and a skill mediator possessing the exact technical knowledge and the ability to provide the actual remedy which is sought, unlike the court that only distinguishes between right and wrong.

People often criticize use of ADR in IPR related matters and often fail to understand that the judges are so overburdened that makes them incapable of going through the required technical training and ultimately making the justice dispensing system handicapped.

HONORABLE MR. JUSTICE S. RAVINDRA BHAT
JUDGE, DELHI HIGH COURT



A mediator is not the one who litigates he is supposed to be like a photographer and his duty is to frame, edit, color and put the issue in clear and more visible perspective Mediator does not decide what the parties will get but he help them to realize what they actually desire

A counsel/litigator want his client to you see the other party as their opponent their rival but mediator make sure that negative approach is avoided and both the parties realize that they can only resolve the issue by co-operation.

Usually mediation is prescribed by the court but still it is the choice of both the parties to opt for it and try to solve the dispute through it hence making mediation a consensual mechanism.

Mediation is a mechanism that eliminate any chances of a future dispute arising between the same parties that have much mutually agreed and resolved their issue through mediation

Confidentiality is the biggest Pro of mediation and then it comes to the Pre-litigation mediation; this can be really good and initiative for both the parties to quietly resolve the issues without going for a public trial where the reputation of both the parties is at risk of being lost

Both the parties are supposed to make a payment of nominal fee for the mediation and that is the biggest deterrent of this mechanism, it imposes an additional monetary burden on both the parties when they have already paid the court fees.

In patent infringement issues, mediation can really be fruitful, keeping in mind that a patent is only granted for a period of 20 years even if court a proceeding goes for 6 to 7 years it will demolish the entire reason behind the grant of such Monopoly over the technology by the state.



HONORABLE MR. JUSTICE MANMOHAN SINGH,
CHAIRMAN, INTELLECTUAL PROPERTY APPEALS
BOARD MONEY LAUNDERING



Seeing that the entire mechanism is depending on consent mediation is a vastly celebrated and successful concept all around the globe with a few exceptions

The disputes that are related to IPR can be categorized into three brackets: When the when two parties own proprietorship of deceptively similar trademarks.

Where two corporate houses have similar products/trademarks and they are fighting for the reputation and Goodwill of their brand in the market simple counterfeiting cases where one party is ready to give the brand name

and anything which is required to avoid paying damages. ADR methods can be applied in all categories.

Statutory provisions that are relevant for the concept of ADR:

1. Section 135(3) (III) Trade Mark act,
2. Section 45 Patent act,
3. Section 25 (1) Patent act,
4. Section 56 Copyright act

It's really heart wrenching to know that in almost 40% cases the patent expires during the pendency of court proceeding if such issues can be taken to mediation a lot more people will actually get the benefit of been granted with a patent over their own findings.

SPEAKER 4: MS SHILPI JHA

SENIOR COUNSEL, OFFICER IN-CHARGE, USPTO



Starting with the fact that how the scenario have changed, remembering the days when we Ms. Jha was given two cases out of which one was of copyright and the matter went for one and half years during which everything changed including the lawyers, the judges the court itself moved from the older premises to the new building the only thing that did not change was a few of court clerks and the parties to the suit. She more importantly focused on the role with US government with their work and focus on capacity development workshops.

In the United States, they have a detailed system in place and a lot of matters have been solved by the same.

She then went on to state that there are two types of mechanism for mediation:

1. Public dispute resolution mechanism
2. Private dispute resolution mechanism

Giving more emphasis on Early Neutral Evaluation Mechanism when a mediator is given an opportunity to evaluate the prospect of matter, it is the most extensively used mechanism in the US.

She explained that in IPR related issues one special judge is needed who would have the knowledge and extensive experience of that particular field as not every judge have the same expertise of every field.

She emphasized that if there is a neutral body, which can help both the sides things become easier, citing two models followed in US:

1. Facilitation model where parties have the control over the direction in which their issue goes,
2. Evaluation model where mediator helps in evaluating what should be opted by both the parties.

Few examples where mediation can be used to preserve ongoing relationship between parties and where monetary damages are involved matters being complex and technical in nature including licensing of trademark, multimedia, contract for joint R&D ventures and negotiation on royalty

To conclude she mentioned the summed up advantages of mediation being low cost and possibility of improving parties relationship and disadvantages being no proper structure, non-binding procedure and uncertainty.

MR. A. MOHAN

IPR EXPERT



Starting with the explanation of nature of IPR Sri A Mohan said that IPR is creation of human mind is an intangible property is exclusive right and loyalty it is time bound.

Further, he referred to mediation as not being a new concept rather being used from time immemorial right from the time of Mahabharata and Ramayana where lord Krishna, lord Hanuman and Angad was sent as mediators to avoid wars.

He also mentioned a quote from Mahatma Gandhi when he said, "Both were happy with the results and both

rose in public estimate, only then I realized that the true function of a lawyer was to unite parties given as under"

Shri Mohan referred to the quote for discussing what mediation is, "It's settlement outside of court, a neutral mechanism allowing parties to solve the dispute in a private forum."

Furthermore, from his own experience he told that the area (mediation) is becoming a popular opinion to resolve IP disputes, he discussed the need of mediation in IPR citing the following reasons:

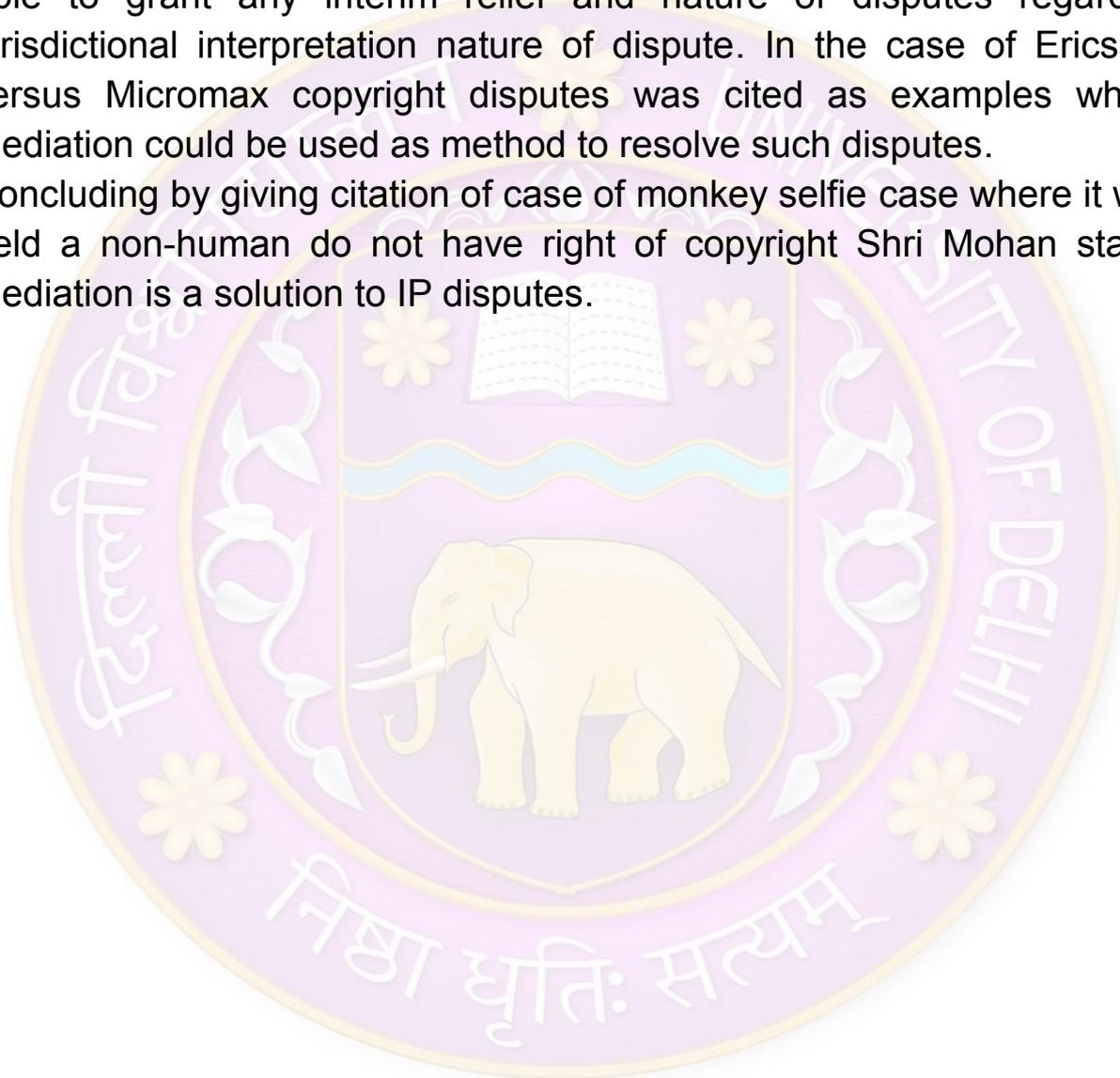
1. Delay in disposal
2. Involvement of really high stakes
3. Extensive complex nature of law

It can prove advantageous in reducing burden of courts being complex in nature. Mediation is allows the parties can control the mediation procedure. It is cost effective flexible and confidential procedure in case

mediation is not successful no lengthy reports are required giving citation for the reasons of its failure.

He also discussed few disadvantages the mediation procedure not been able to grant any interim relief and nature of disputes regarding jurisdictional interpretation nature of dispute. In the case of Ericsson versus Micromax copyright disputes was cited as examples where mediation could be used as method to resolve such disputes.

Concluding by giving citation of case of monkey selfie case where it was held a non-human do not have right of copyright Shri Mohan stated mediation is a solution to IP disputes.





SESSION-II
MEDIATION IN

DISPUTES PERTAINING TO
MULTI-NATIONAL CORPORATIONS



HON'BLE MR. JUSTICE G.S. SISTANI
JUDGE, DELHI HIGH COURT



Justice Sistani began his speech by highlighting that whereas in the Arbitration Act the object was to simplify by getting a person of their choice to arbitrate, there is a clause in which it is written that the seat of arbitration is in Singapore and the laws will be of U.K. which becomes problematic not only for clients but also for the judges. In contrast, mediation in ADR is seen as a medium to douse the fire and putting disputes to a conclusion. If successful, it can provide solutions for a large number of disputes.

He emphasized that mediation is a mechanism to repair relationships whether they are commercial or matrimonial. In the case of individuals, there is always an opportunity to talk and reconcile but in the case of multinational companies, there are big players, power play, no connection and nothing personal between parties. They could have signed some agreement on mail, or might have had a video conference but that is all. If such connection is not there, the disputes become larger.

In such a scenario, a trained mediator comes to play when the parties and their representatives do not take a stand and just come to watch the process. Thus, the mediators are trained to touch upon the reality and the problem. Justice Sistani also shared a message with the participants of the conference, especially with the students that mediation is a culture and a way of life; it should be practiced in households, university, friends etc. He highlighted that the mediator does not give

answers to the problem or solves it, but helps to clear misunderstandings by bringing the parties to the issue.

He concluded by giving an example of a case where there was a company who was making fake product jeans of a prime jeans manufacturing company. The latter after seeing the product appreciated its quality and in the end, entered into a business deal to buy the former's product.



HON'BLE MS. JUSTICE PRATIBHA M. SINGH
JUDGE, DELHI HIGH COURT



Calling the MNCs as corporate citizens, Justice Pratibha M Singh took up the example of a U.S Pharmaceutical giant and Google Inc. which have come forward themselves and opted for mediation instead of opting for litigation. Prior Conduct of the MNCs showed the option of Pre-Institution Mediation that has been a success in U.S. and other countries. This conduct of the MNCs shows their intention to adopt the mechanism of mediation and settle their disputes without developing any personal grudges.

She further suggested some effective ways to fetch better results from mediation including: encouraging lawyers to suggest mediation, court monitored system of mediation, personal presence of the parties and regular hearings at shorter intervals.

SPECIAL GUEST:
PROF. KENNEDY GASTORN
AALCO CHAIRPERSON



Stressing upon the Singapore Convention that is yet to be signed on 7 August 2019 Mr. Kennedy Gastorn emphasized that the scope of mediation includes having an international jurisdiction. Mr. Gastorn emphasized the uniformity that is required in the International arena. Promoting the concept of mediation globally, Prof. Gastorn suggested that the states must forward and promote this concept by enforcing the international treaties. Mr. Gastorn suggested that it is high time that the countries must amend their existing laws in consonance with the International Conventions for the Uniformity throughout the International disputes.

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SESSION-III ONLINE AND

PRE-INSTITUTIONAL MEDIATION

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INTERNATIONAL CONFERENCE

ON MEDIATION

April, 2019

Chief Guest

Sanjay Kishan Kaul

Justice, Supreme Court of India

of Honour

Sita Mittal

Justice, J & K High Court

Chief Justice

Director

of India

INTERNATIONAL CONFERENCE

ON MEDIATION

April, 2019

Inaugural Session

Chief Guest

Sanjay Kishan Kaul

Justice, Supreme Court of India

Chief Justice

Director

of India

Justice

INTERNATIONAL CONFERENCE

ON MEDIATION

April, 2019

Chief Justice

Director

of India

Justice

Valedictory Session

Chief Guest

H.M. Indu Malhotra

Justice, Supreme Court of India

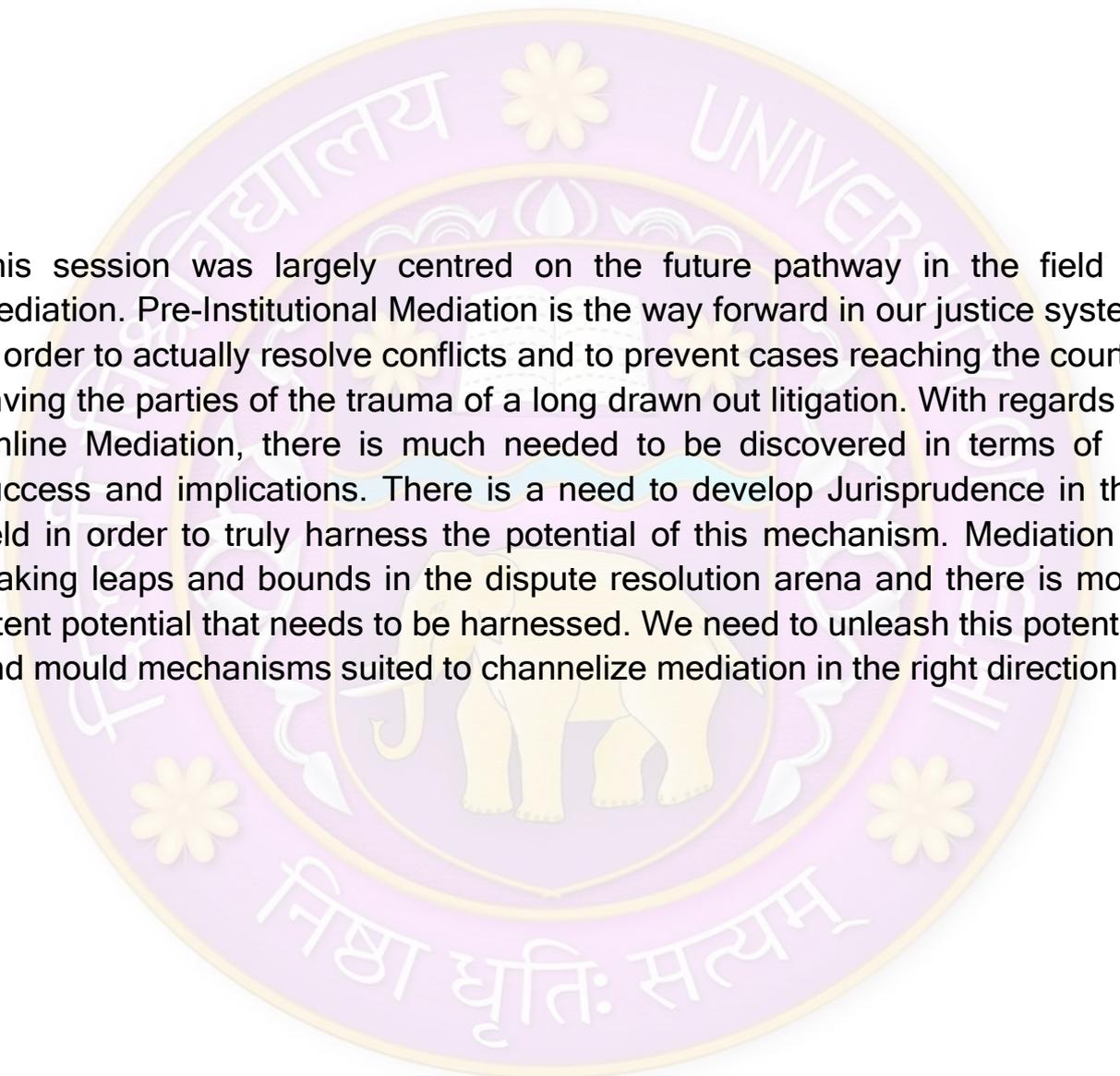
Chief Justice

Director

of India

Justice





This session was largely centred on the future pathway in the field of Mediation. Pre-Institutional Mediation is the way forward in our justice system in order to actually resolve conflicts and to prevent cases reaching the courts, saving the parties of the trauma of a long drawn out litigation. With regards to Online Mediation, there is much needed to be discovered in terms of its success and implications. There is a need to develop Jurisprudence in this field in order to truly harness the potential of this mechanism. Mediation is making leaps and bounds in the dispute resolution arena and there is more latent potential that needs to be harnessed. We need to unleash this potential and mould mechanisms suited to channelize mediation in the right direction.

HON'BLE MR. JUSTICE D.K. UPADHYAYA
JUDGE, ALLAHABAD HIGH COURT



Justice Upadhyaya addressed the topic of Pre-Institutional Mediation. He was wary of the adversarial system of justice because of the hierarchies of the redressal fora making it rigid and time consuming, and the fact that the case is decided but the issue between the two parties may persist. He believes that mediation takes into account these drawbacks and provides better solutions. He stressed on the change in mind-set of people in order for them to understand the benefits of mediation, the solution for this is through education and awareness. “There is a need to

create a mediation culture” for which he made a plea to the representative of law universities to make mediation a part of their curriculum.

He further discussed the existence of Pre-Institutional Mediation in existing state legislations stating examples from the State of Uttar Pradesh. He discussed Section 12-A of the Commercial Courts Act that makes it mandatory for the plaintiffs to first go for mediation unless urgent interim relief is required. He discussed two drawbacks that need to be addresses in this section:

1. Any settlement arrived at by way of mediation shall be in the nature of arbitration award that makes it subject to the restrictions under Section 30 of the Arbitration and Conciliation Act, 1996
2. The mediation is to be administered by the authorities under the respective Legal Services Authority. The problem is that the main

duty of the Legal Services is to administer Lok Adalats and not Mediation and they are not trained mediators.

In the end, he requested the policy makers to consider better structural framework for including Pre-Institutional Mediation.



HON'BLE MR. JUSTICE MOHAMMAD MUSHTAQ
JUDGE, KERALA HIGH COURT



Justice Mushtaq admitted that while the Indian diaspora is contributing to the technological developments worldwide in companies such as Google and Microsoft, it is unable to tap this potential within India. There is worldwide a lack of Jurisprudence with respect to technology in the legal arena. He mentioned that the brick and mortar physical court systems have great philosophers like Hart but the same is not available in the field of legal technology. Technology is changing with a pace no one can comprehend and hence one is not able to predict the

future.

According to him online mediation has a two-pronged strategy, one is to cater to the existing pending cases and the second is to settle disputes related to e-commerce. However, he feels that the pending issues settled online lack human intervention and effectively lack the same authority as a court order or decree would have had. And, on the second front, disputes solved by way of online mediation pertaining to e-commerce lack enforcement.

He strongly believes that mediation is the future and that online mediation will create its own identity aided by the youth that has the potential to think out of the box. He also stressed on the constitutional aspect of access to justice that can perhaps be attained via Online Mediation.

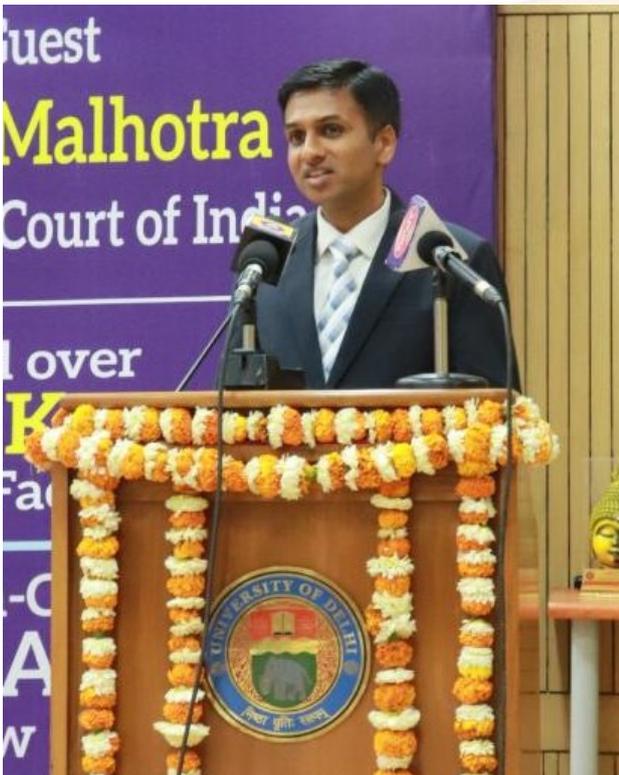
HON'BLE MR. G. RAGHAVENDRA
JOINT SECRETARY, DEPARTMENT OF JUSTICE,
MINISTRY OF LAW AND JUSTICE, GOVERNMENT OF
INDIA



Mr. Raghavendra discussed the administrative aspect of mediation and how to navigate a system within the Ministry of Law and Justice to pave way for mediation. He pointed out that government creates 40% pendency within courts. He suggested using Alternative Dispute Resolution to the government. He also introduced a model where in online portals for mediation could be set up and nodal officers appointed in the ministries who would explore alternative dispute resolution.

He emphasized the need for a stand-alone sui generis mediation law in India. He looks to the Singapore model for inspiration. In addition, he identified an issue with the Pre-Institution Mediation is the fee which is set and requested the policy makers a strong consideration on the same.

MR. RAHUL AGGARWAL
ADVOCATE
(LL.M. HARVARD UNIVERSITY AND WORKED FOR THE
WORLD BANK)



Mr. Aggarwal was positive about the benefits of mediation, which include reductions in barriers to access to justice and creating a level playing field among entities. He asked a pertinent question of why we do not prevent cases from going to court and thereby supported alternative dispute resolution mechanisms and how online modes can make this an efficacious solution. Online modes would be cost saving not just for the parties concerned, but also the economy at large, because it costs

a country approximately thirty thousand crores per annum to just hear cases.

With regard to Pre-Institution Mediation, he outlined two ways forward, one was to start with what we have and build on it and secondly to take a step back and then launching forward, brick by brick. Right now, India's strategy is to build on what currently exists and there is a fundamental problem with it. He took the example of commercial disputes and stressed on the fact that representatives of the Legal Services Authority not only lack the skill set but lack specialized knowledge pertaining to the business. For this, he suggests more intensive training and wider course structures. He believes that while mandatory Pre-Institution Mediation is taking a step in the right direction and a lot more needs to be done if we want it to be a game changer. For this, he suggests a bottom up approach.

MS. LAILA OLLAPALLY,
EXPERT MEDIATOR



Ms. Ollapally answers the question of how should India implement Mediation? She suggested the model that Italy adopted in 2013. In her opinion, India is going through a similar crisis that Italy had gone through. Italy had set out a goal to achieve one case solved through mediation for every two cases in the court. They adopted the easy opt out mandatory mediation.

The essential elements of this model

are:

- **Mandatory:** making the first meeting compulsory, in both civil and commercial cases under various heads. This is essential because parties at loggerheads do not want to sit in the same room as each other. This also enables lawyers to suggest mediation as a solution without sounding weak themselves.
- **Voluntary:** According to Ms. Ollapally, voluntariness is sacred in Mediation. This voluntary element comes from the easy opt out aspect of the model.

Italy showed a great success rate. 150,000 cases go to mediation in Italy every year since 2013. 50% of such cases are solved via a settlement. There is an increase in the voluntary mediation.

She suggested that India also incorporates this model and to include it by way of legislation.

MS. RHEA MAHANTA

WORLD MEDIATION ORGANISATION, SWITZERLAND



Ms. Rhea critically analyses the impact of online mediation. According to her, the drawbacks include, access to only a specific sample size belonging to a particular socio-economic setting, and the lack of social cues such as body language, that reveal a lot about the parties. However, she admits that there are many benefits that exist in the online mediation arena, such as, creation of a level playing party between the parties and time to craft the responses owing to the time given by way of emails.

She draws our attention to another field that is mediation services that could help resolve not just disputes, but also more disruptive conflicts. These services include, Geo tagging. Providing security consultancy, machine learning, visual reality and block chain technology.

She concluded by saying that conflict is here to stay because it is intrinsic to human nature, and hence there is a need to constructively respond to conflict. We need to learn to surf and ride the tide of conflict and conflict resolution and mediation helps us do so. She also emphasizes that as educators; we should not only include conflict resolution as a part of the curriculum but also as a way of life making values of peace intrinsic. She encouraged that mediators not only need to be neutral, they need to be impartial. What this means is that mediators should not be passive but should impart values. Their purpose is not only to resolve cases, it is also to empower communities to enable them to resolve conflicts on their own.

UNIVERSITY OF DELHI
FACULTY OF LAW

VALEDICTORY SESSION

UNIVERSITY OF DELHI
FACULTY OF LAW

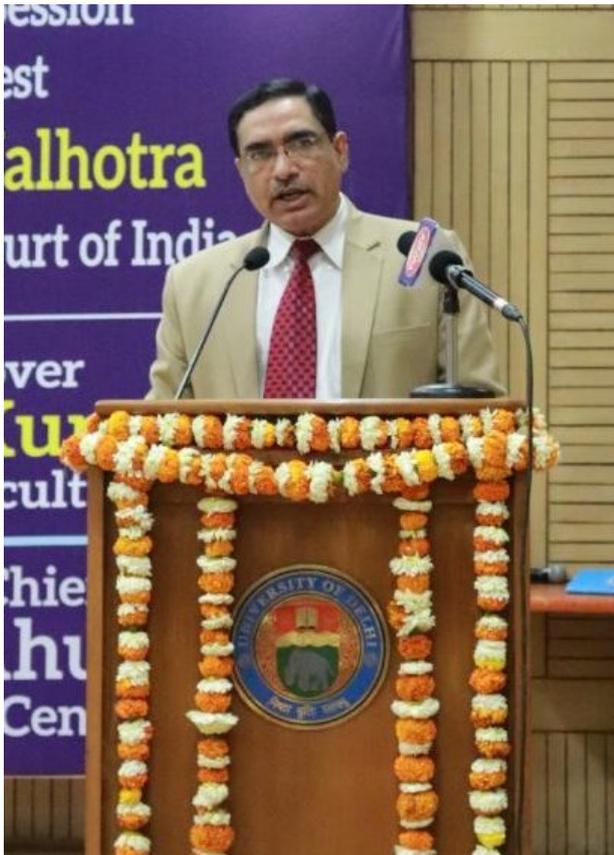




The monumental conference was concluded by a valedictory address by Hon'ble Justice Ms. Indu Malhotra, Judge, Supreme Court of India, as Chief Guest who delivered the Valedictory address, in which she lauded the success of the conference in which many judges, mediators, judicial officials and students participated. Justice Malhotra also recounted the relevance of mediation as an efficacious and pertinent mechanism of dispute resolution in the country.

In her Presidential address, Professor Ved Kumari, Dean, Faculty of Law, Delhi University, commended the efforts of the MCPC and LC-II for organizing the conference, which saw unprecedented participation from the legal fraternity. She also appealed to the august gathering to rethink mediation in criminal cases- restorative justice. According to her, the victims of crimes have one lingering question that persists even after conviction, "Why me?" And, hence, mediation is required for healing the hurt.





Professor V. K. Ahuja addressed the attendees, exhilarated at the success of the conference. He was particularly impressed by the turnout which was more than 400 participants from India and abroad. He also informed that more than 125 Judges right from Supreme Court to lower judiciary from across the country attended the Conference, which was a rare sight in events organized by academic institutions.

Dr. Ashutosh Mishra was the brains behind this event; he conceived this conference in June 2018 and has ever since worked hard to make it a reality. He has worked with utmost devotion and created a student body who took in charge of making the event a success. He was overwhelmed by the success of such a conference on a very pertinent issue. He was extremely grateful to all present at the gathering, and hopes to reconvene with more enthusiasm in 2020.





The conference ended on a promise for a better future. Students were motivated to explore the field of mediation, academicians enthused at the prospect of including mediation in their curriculum the legal fraternity in reaching a milestone, and creating history and leaving a legacy behind. A legacy that would completely change the justice system for the better.

**International Conference on Mediation would not have
been a success without following students of
Faculty of Law**

Aditya Pranav Dwivedi

Arunita Mitash

Gaurang Kulsreshtha

Himanshu Kala

Joshua Charan

Kanika Kalra

Manmeet Kaur

Piyush Ahuja

Sanjay Kumar

Swastika Upadhyay

Vartika Sinha

Vikas Sachdeva

Vivek Trivedi