

‘Launching of Dispute Prevention and Management (DPM) Services’

Organised by

Indian Institute of Arbitration and Mediation (IIAM) – Delhi Chapter

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Comments by Justice K.G. Balakrishnan, Chief Justice of India

Respected Justice M.N. Venkatachaliah / Justice Madan B. Lokur /
Shri K. Parasaran / Dr. Abid Hussain / Mr. Prabhat Kumar / Mr. Anil Xavier
/ Mr. Joseph Varghese / and all those present here,

It is a great honour for me to have been invited to this programme, where Justice M.N. Venkatachaliah is in attendance. The very fact of Justice Venkatachaliah’s presence here today is indicative of the importance of the inauguration of the Delhi Chapter of the Indian Institute of Arbitration and Mediation (IIAM). Throughout his distinguished career, Justice Venkatachaliah has set a great example for his peers as well as those who have followed him. Even after his retirement he has maintained an active public profile and regularly offers his insights on important legal as well as socio-political issues.

On this occasion, I would like to congratulate all those who are involved with the functioning of the Indian Institute of Arbitration and Mediation (IIAM) as well as the IC Centre for Governance, which have organised this programme to inaugurate their operations in Delhi as well as an ambitious project for Dispute Prevention and Management (DPM) services. I would like to wholeheartedly endorse these efforts for promoting

Alternative Dispute Resolution (ADR) methods. I have been made to understand that this body has been approved by the International Mediation Institute, based in The Hague – to conduct specialised training and grant certificates for qualified mediators. The credentials of this institution are further bolstered by the presence of eminent jurists, experts and academics on its’ advisory board as well as by tie-ups with academic institutions and other private bodies that promote ADR techniques.

The Dispute Prevention and Management (DPM) services are intended to have two broad dimensions. The first of these services – described as ‘International Certification of Legal Audit’ (ICLA) is designed to meet the needs of business interests. It involves an independent appraisal and evaluation process in order to ensure that individuals, corporations, institutions and other forms of business entities adequately comply with applicable laws and regulations. Compliance with existing laws is important at various stages of business processes – for instance in the sale or purchase of goods and inputs, the terms of service for employees, arrangements for loans, raising funds through the capital markets, compliance with safety and health regulations among others. In many instances- especially with relatively smaller business that cannot afford the services of specialised commercial law firms, there is not enough awareness about applicable regulations. In such a scenario, an independent audit by a credible institution can go a long way in not only preventing litigation but also enhancing the reputation of the concerned business. The adoption of such best practices for legal compliance can also have a significant impact on the overall climate for attracting investment.

However, the more ambitious aspect of the project being launched today is that of providing 'Community Mediation Services'. The thrust of this initiative is to promote reliance on mediation at the grassroots level, by way of local capacity-building. This will entail the establishment of mediation clinics in numerous locations with the ultimate objective of establishing such clinics in every district in India. This project is especially laudable since it seeks to not only provide mediation services but also to train individuals from the concerned local communities as skilled mediators. The larger intent of course is to promote access to cheap and reliable methods of dispute-resolution, which can help in reducing the caseload before the formal courts.

This focus on 'local capacity-building' holds a potential lesson for the various Legal Services Authorities that have been functioning at the National, State and District Levels. Most of the 'Legal Aid' services and 'Lok Adalats' being organised so far have predominantly relied on personnel from a formal legal background such as practicing advocates as well as sitting and retired judges. While social workers have routinely assisted in the provision of legal services to the needy sections, personnel with a legal background have continued to play a central role. Empirical studies indicate that this happens because in most ordinary disputes - the parties are more likely to defer to the decision of a person perceived to have legal expertise, as opposed to interventions by individuals without legal training.¹ This rationale of privileging formal legal expertise is apparent even in the

¹ See Marc Galanter & Jayanth K. Krishnan, 'Bread for the poor: Access to justice and the rights of the needy in India', 55 *Hastings Law Journal* 789-833 (March 2004)

proposed Grama Nyayalayas Bill² which aims to improve access to justice through the decentralisation of the judiciary. The scheme envisaged in this Bill is centered around the role of ‘*Nyaya Adhikaris*’ – who will be selected from among law graduates and appointed at the village-level. Their work will be supplemented by individuals from non-law backgrounds who will be involved as ‘conciliators’.³

This aspect deserves thorough reflection since the aggregate number of individuals who take up legal practice and subsequently volunteer for legal aid services in our country is quite inadequate for a systemic improvement in ‘access to justice’. While the training of more lawyers is a long-term solution, we must also encourage relatively short-term and immediate solutions such as imparting training in mediation and conciliation for individuals who have not received formal legal training. In this respect, the proposed ‘Community Mediation Services’ hold a lot of promise, wherein the central role of judicial officers could be meaningfully supplemented by skilled mediators and conciliators who are drawn from the same locality as the parties. Such an initiative by a credible private institution such as the Indian Institute of Arbitration and Mediation (IIAM)

² A policy-brief on the proposed Gram Nyayalayas Bill is available through the website of the *Parliamentary Research Service (PRS)* – an independent institution functioning under the aegis of the *Centre for Policy Research (CPR)*, New Delhi.

Source: <www.prsindia.org>

³ The *IC Centre for Governance* has also published a memorandum on the Gram Nyayalayas Bill in 2007. The main concern raised is that there is an inadequate number of quality law graduates in our country to take up the large number of proposed ‘*Nyaya Adhikari*’ positions under the proposed legislative scheme. It is feared that such positions will be occupied by those who have struggled in the other branches of the legal profession and will hence be more likely to be inefficient or corrupt. Hence, it is suggested that better service conditions and opportunities for career-advancement should be given to those who join the proposed ‘*Nyaya Adhikari*’ positions.

Source <www.iccentreforgovernance.org>

can go hand-in-hand with the promotion of Court-annexed Alternative Dispute Resolution (ADR) methods contemplated under Section 89 of the Code of Civil Procedure as well as the proposed scheme for Gram Nyayalayas.

Under Section 89 of the Code of Civil Procedure (which was inserted in 2002) judges can direct the parties in civil proceedings to resort to methods such as arbitration, conciliation, mediation and settlement through ‘Lok Adalats’ - when it is perceived that the dispute can be resolved in a cooperative and non-adversarial manner. This provision is important since a significant portion of pending litigation at the trial level such as rent disputes, property disputes and those pertaining to family matters are best resolved through these methods. Especially in instances where parties are otherwise well-known to each other, their involvement in lengthy and acrimonious civil suits can do irreparable damage to their mutual relationships. The Supreme Court has also endorsed the use of Court-annexed ADR methods in the judgment given in *Salem Advocates Bar Association, Tamil Nadu v. Union of India*.⁴ If this approach is internalised in our system, it can greatly reduce the case-load before the courts. If the ‘Community Mediation Services’ being launched today prove to be successful, then they could provide a ready pool of mediators which could also assist civil courts in the future.

However, we must keep in mind that there are wider obstacles in the promotion of Alternative Dispute Resolution (ADR) methods in our society. One practical problem is that in many instances the parties in a dispute

⁴ (2005) 6 SCC 344

themselves desire litigation at all costs – especially in social circumstances where the act of filing a civil suit is itself used as a means of confrontation and undue harassment of others. Under such circumstances, parties are less likely to resort to or even respect the solutions arrived at through ADR methods. Even in the business setting, where arbitration clauses have become quite commonplace in commercial transactions - there is a significant volume of cases pending before the courts which pertain to challenges against the decisions of arbitral tribunals. This tendency of not respecting the decisions arrived at through ‘out-of-court’ methods is proving to be a serious problem for our legal system.

Another visible problem is that a significant portion of the legal community in India has still not understood the benefits of methods such as mediation, conciliation and negotiation. Even though Court-annexed ADR methods were statutorily introduced in 2002, this provision is being given ‘lip-service’ in most of the lower courts. In some circles it has also been opined that practicing lawyers are resisting ADR methods since the same can encroach on their means of livelihood. If such an attitude exists, it can only be counter-productive and harmful for the legal system as a whole. As responsible legal practitioners and judges, we must do our best to promote the philosophy of compromise which is at the core of ADR methods.

I would like to conclude by referring to a quote that I have cited on several previous occasions as well. Mahatma Gandhi, in his autobiography, *“The Story of My Experiments With Truth”*, while writing about his experiences in South Africa, said:

“My joy was boundless. I had learnt the true practice of law. I had learnt to find out the better side of human nature and to enter men’s hearts. I realized the true function of a lawyer was to unite parties riven asunder. The lesson was so indelibly burnt into me that a large part of my time during the 20 years of my practice as a lawyer was occupied in bringing about private compromises of hundreds of cases. I lost nothing thereby – not even money, certainly not my soul”.

I would like to thank the Indian Institute of Arbitration and Mediation (IIAM) and the IC Centre for Governance for inviting me on this occasion to launch the Dispute Prevention and Management (DPM) services.

Thank You!