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THE indian arbitrator

THE INDIAN ARBITRATOR

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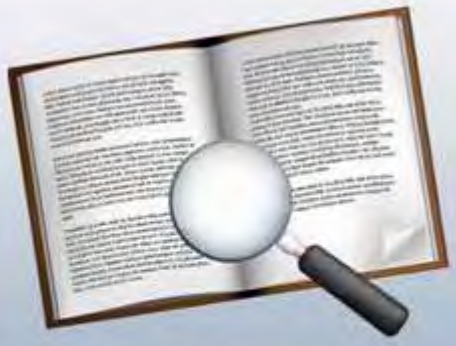

IN THIS ISSUE .....

EDITOR'S NOTE

We were unable to publish the fourth and fifth issues due to some technical problems. But it gave us an opportunity to understand ourselves. Many professionals from around the globe inquired about the interruption. Many have said that they have got addicted with the columns in the magazine. We are overwhelmed! Compliments help. We are all human. They help to keep you encouraged. Anyone who says differently isn't really being honest with themselves. The compliments taught me a valuable lesson. If you have something nice to say to someone, say it. You never know what effect your kind words will have, and you may not get a chance to have your words spoken once you leave. We all need encouragement, all of us.

EDITORIAL:

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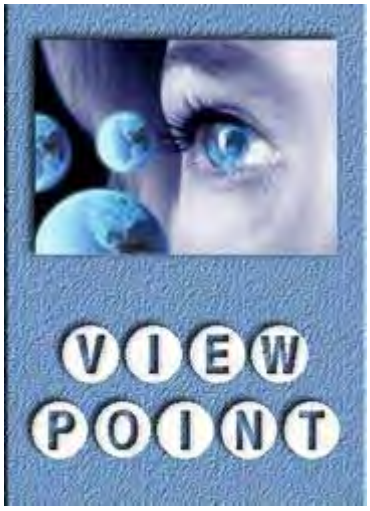
MEDIATION IN INDIA: A CRITICAL ANALYSIS

LAKSHMI ANUSHA



Mediation is one of the forms of the Alternative Dispute Resolution and the primary tool for the settlement of the disputes for the American lawyers and judges since 1980's. It had become familiar to Indian lawyers and judges in the past few years only. In this paper the Author analyzes about the role of mediation in developing countries like India.

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INTRODUCTION:

Mediation is one of the forms of the Alternative Dispute Resolution which is a attempt to resolve the disputes between the two parties by the neutral third party and help them to come to the agreed resolution of their dispute.

According to the 'The Mediation Process: Practical Strategies for Resolving Conflict', Christopher W. Moore tells us what mediation is, in the following words: "*Mediation is essentially a negotiation that includes a third party who is knowledgeable in effective negotiation procedures and can help people in conflict to co-ordinate their activities and to be more effective in their bargaining. Mediation is an extension of the negotiation process in that it involves extending the bargaining into a new format and using a mediator who contributes new variables and dynamics to the interaction of the disputants.*"

Thus from the above definition it can be said that Mediation is a form of the negotiation in which the Third party mediator makes an effort to settle the disputes and helps them to resolve the conflicts through various procedures, skills and techniques.

Mediation differs from arbitration, in which the third party (arbitrator) acts much like a judge in an out-of-court, less formal setting but does not actively participate in the discussion. Unlike a judge or an arbitrator, a mediator does not decide what is right or wrong or make suggestions about ways to resolve a problem but seeks to help parties to develop a shared understanding of the conflict and to work toward building a practical and lasting resolution. Mediation serve to identify the disputed issues and to generate options that help disputants reach a mutually-satisfactory resolution. It offers relatively flexible processes; and any settlement reached should have the agreement of all parties. This contrasts with litigation, which normally settles the dispute in favour of the party with the strongest

argument[1] and Mediation creates a fiduciary atmosphere between the parties and the mediator due to its confidential nature through which the parties can vent their frustration, understand and appreciate the other side of the story and finally come to an agreement rather than a judgment[2].

Mediation is first encouraged in India under section 30 of the Arbitration and Conciliation Act, 1996 where the parties can seek to go for mediation and conciliation when still Arbitral proceedings are underway. The term "conciliation" is considered as synonymous and used interchangeably with "mediation" in most countries but the statutory language of the Arbitration and Conciliation Act, 1996 and of Section 89 of the Civil Procedure Code, clearly demonstrates that there is existence of different definitions and meanings for "conciliation" and "mediation".

Though Black laws dictionary failed to distinguish between the mediation and Conciliation, The French arbitrator Professor Charles Jarrosson says, there is a subtle difference between mediation and conciliation — one of degree rather than nature. Mediation is a more proactive form of conciliation, the latter being more passive in the sense that the conciliator has an evaluative role as opposed to the facilitative role of the mediator. Unlike a mediator, who has to be active and see that justice is done, the conciliator is a withdrawn neutral[3].

(Footnotes)

[1] http://www.arbitrationindia.com/pdf/mediation_tostay.pdf
[2] http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2006477
[3] http://www.thehindubusinessline.in/2001/07/02/stories/040220sa.htm

VALUE OF TIME!

To realize the value of ten years: Ask a newly divorced couple.

To realize the value of four years: Ask a graduate.

To realize the value of one year: Ask a student who has failed a final exam.

To realize the value of nine months: Ask a mother who gave birth to a still born.

To realize the value of one month: Ask a mother who has given birth to a premature baby.

To realize the value of one week: Ask an editor of a weekly newspaper.

To realize the value of one hour: Ask the lovers who are waiting to meet.

To realize the value of one minute: Ask a person who has missed the train, bus or plane.

To realize the value of one-second: Ask a person who has survived an accident...

To realize the value of one millisecond: Ask the person who has won a silver medal in the Olympics

Time waits for no one. Treasure every moment you have.

Talent is God-given, be humble.
Fame is man-given, be grateful.
Conceit is self-given, be careful.
~ John Wooden ~

HISTORY:

Mediation is not a new concept in our Country; it is very old and deep rooted in our Country. We can see Mediation even in our Epics like Mahabharatha where the war broke out only after an attempt of mediation by Lord Krishna and others had failed. And according to the Ancient Indian Jurist Patanjali, "Progress comes swiftly in mediation for those who try hardest, instead of deciding who was right and who was wrong" and centuries before the British arrived, India had followed the *Panchayat* system, where the village elders used to assist in resolving community disputes, Such traditional mediation continues to be utilized even today in villages. After the British adversarial system of litigation was followed in India and arbitration was accepted as the legalized ADR method and is still the most often utilized ADR method. Mediation has only in the past few years begun to become familiar in our Country despite being primary tool of dispute resolution in US since 1980's. And due to initiation of the Indian Supreme Court for an Indo-US exchange of information between high-ranking members of the judiciary in the year 1944-45, former Indian Supreme Court Chief Justice A.M. Ahmadi met with US Supreme Court Justices Ruth Bader Ginsburg and Antonin Scalia. Another integral member of the US team was then Chief Judge J. Clifford Wallace, of the 9th US Circuit Court of Appeals. In 1996, Ahmadi formed a national study team to examine case management and dispute resolution as part of a joint project with the United States. This Indo-US study group suggested procedural reforms, including legislative changes that authorized the use of mediation. New procedural provisions eventually were enacted in 2002, providing for case management and the mandatory reference of cases to alternative dispute resolution, including mediation (Code of Civil Procedure Section 89).[4]

NEED FOR MEDIATION IN INDIA:

In India in the daily operation of the civil litigation process, records of new filings are kept by hand, and documents filed in the court house are frequently misplaced or lost among other paper. Lawyers crowd the courtroom and wait for their cases to be called. Even when called, judicial attention is frequently deferred by innumerable adjournments: the witness is not available, the party is not present, the lawyer has not arrived, or a document is not yet available. When the case is heard, a judge orally summarizes testimony for a court reporter. There is little likelihood that this judge will be the same one to issue a decision because judges are transferred more quickly than legal dispositions are made and Once a judgment is reached, the truly hard work of enforcement and execution begins[5] and According to recent statistics, in India, the judge population ratio is 12 - 13 judges per million. This is the lowest in the world, as compared to 135 to 150 per 10 lakh people in advanced countries. A study conducted by the Ministry of Finance reveals that at the current rate it will take 324 years to dispose of the backlogs of cases in Indian courts and therefore large number of people are opting for Alternative Dispute Mechanisms. The major Alternative Dispute Resolution systems are 'Arbitration', 'Conciliation' and 'Mediation', but it is felt that mediation can be an better alternative for resolving the conflicts as the Mediator has no authority to make any decisions that are binding on the Parties but only assist the parties to come to an settlement. Mediation also preserves the relationships between the parties and settles the disputes in a rational, expedient and Cost effective manner.

JUDICIAL INTERVENTION IN THE FIELD OF MEDIATION:

The first elaborate training for mediators was conducted in Ahmedabad in the year 2000 by American trainers sent by Institute for the Study and Development of Legal Systems (ISDLS). It was followed by a few repeated advance training workshops conducted by Institute for Arbitration Mediation Legal Education and Development (AMLEAD) a Public Charitable Trust settled by two senior lawyers of Ahmedabad. On 27th July 2002, the Chief Justice of India, formally inaugurated the Ahmedabad Mediation Centre, reportedly the first lawyer-managed mediation centre in India[6]

(Footnotes)

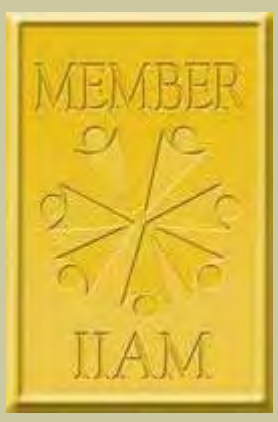
[4] http://www.arbitrationindia.com/pdf/mediation_india.pdf
[5] http://www.germanlawjournal.com/pdfs/Vol09No03/PDF_Vol_09_No_03_251-284_Articles_Chodosh.pdf
[6] http://supremecourtofindia.nic.in/MEDIATION%20TRAINING%20MANUAL%20OF%20INDIA.pdf

In Salem Advocate Bar Association, Tamil Nadu Vs Union of India[7] The Supreme Court of India upheld the constitutional validity of the new law reforms in the case filed by Salem Bar Association and appointed a committee chaired by Justice Mr. Jagannadha Rao, the chairman of the Law Commission of India, to suggest and frame rules for ironing out the creases, if any, in the new law and for implementation of mediation procedures in civil courts. The Law Commission prepared consultation papers on Mediation and Case Management and framed and circulated "Alternative Dispute Resolution and Mediation Rules, 2003". The Supreme Court approved the model rules and directed every High Court to frame them and also held that reference to mediation, conciliation and arbitration are mandatory for court matters. It is felt that it is the turning point in the field of mediation. After this judgment, the Law Commission of India organized an International conference on Case Management, Conciliation and Mediation at New Delhi on 3rd and 4th May 2003, which was a great success. Delhi District Courts invited ISDLS to train their Judges as mediators and help in establishing court annexed mediation centre. Delhi High Court started its own lawyer-managed mediation and conciliation centre. Karnataka High Court also started a court-annexed mediation and conciliation centre and trained their mediators with the help of ISDLS. Now court-annexed mediation centres have been started in trial courts at Allahabad, Lucknow, Chandigarh, Ahmedabad, Rajkot, Jamnagar, Surat and many more Districts in India[8]. In Moti Ram (D) Tr. LRs and Anr. Vs. Ashok Kumar and Anr[9], the Supreme Court held that the unlike the proceedings in court, mediation proceedings are totally confidential proceedings - If the mediation succeeds, then the mediator should send the agreement signed by both the parties to the court without mentioning what transpired during the mediation proceedings, otherwise, the mediator should send his report only stating that the "Mediation has been unsuccessful", and nothing else.

In B.S.Krishna Murthy vs B.S.Nagaraj & Ors[10], the Supreme Court held that the lawyers should advice their clients to try for mediation for resolving the disputes, especially where relationships like family relationships, business relationships are involved. Otherwise, the litigation drags for years and decades often ruining both the parties. Hence the Lawyers as well as the Litigants should follow Mahatma Gandhi's advice and try for Arbitration or Mediation. This is also the purpose of Section 89 of CPC, 1908.

(Footnotes)

[7] AIR 2005 SC 3353
[8] http://supremecourtofindia.nic.in/MEDIATION%20TRAINING%20MANUAL%20OF%20INDIA.pdf
[9] AIR 2010 SCR809
[10] AIR 2011 SC 794



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From the aforesaid judgments it is felt that Courts are trying to encourage the litigants and their lawyers to go for mediation which is cost-effective and saves the time of the parties. In a mediation process, the Parties have the full control over the mediation process, preserve relationships between the parties or help them to terminate in an amicable way. Since the outcome is in the hands of the parties there is a possibility of having a mutually satisfactory agreement than the justice system.

CONCLUSION AND SUGGESTIONS:

Despite Indian judiciary recognizing the importance of Mediation as an effective tool to resolve disputes, a brief perusal of the laws pertaining to mediation highlights that mediation has been largely confined to commercial transactions.[11] Currently, the policy makers in India have failed to provide a statutory framework which administers and regulates the growth of mediation in India. Such legislation would prove useful in codifying the goals, skills, and ethical standards of mediators. It is crucial that the legislators in India congregate the necessary will to effectuate such legislation or else the momentum gathered towards institutionalization would be lost.[12] The author feels that:

1. Awareness has to be created among the people about Mediation. The State legal services and District legal Services Authorities have to play an important role in generating awareness among the people.

2. Potential pool of mediators should be as large as possible. In addition to retired judges, Lawyers and Academic experts in ADR, non-lawyers (including doctors, accountants, engineers, family psychologists) should be considered.

3. Indian law schools are only teaching arbitration as part of the curriculum. Mediation programs are sprouting; however, they are mostly certificate courses outside the formalized degree programs. Furthermore, the tools for teaching negotiation and mediation are limited by class size, lecture-orientation, and limited training in interactive and simulation methods. To overcome these hurdles, inclusion of negotiation and mediation to the basic curriculum must be considered by the bar council and materials, interactive videos, and in-class pedagogies must be developed.[13]

4. Setting up of Community mediation Clinics in all villages of each state with a view to mediate all disputes will bring a rapid change in the legal system.[14]

(Footnotes)

[11] http://cppradr.blogspot.in/2008/07/mediation-in-india.html#!/2008/07/mediation-in-india.html
[12] http://www.law-essays-uk.com/resources/sample-essays/business-law/the-appropriateness-of-adopting-mediation.php#ixzz2DEpZCOzV
[13] http://www.germanlawjournal.com/pdfs/Vol09No03/PDF_Vol_09_No_03_251-284_Articles_Chodosh.pdf
[14] www.communitymediation.in

INTERESTED TO CONTRIBUTE ARTICLES ?

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

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EMERGING ISSUES AND CHALLENGES IN ENFORCEMENT OF FOREIGN AWARDS - II

AMIT YADAV

Section 36 of the Act states that an arbitral award is enforceable by a civil court of competent jurisdiction in the same manner as the court executes its own decrees. The public policy exception to enforcement is an acknowledgement of the right of the State and its courts to exercise ultimate control over the arbitral process. Public policy is a subjective term, which has to be determined keeping in mind the social, economic and political status of the country and also the facts and circumstances of the case on hand. The issues related to public policy; judicial intervention, distrust etc. have made it difficult to enforce foreign awards not only in India but in different countries of the world. This is the second part of the article.

AUTHOR: AMIT YADAV IS A LAW STUDENT FROM JAIPUR, INDIA

The position of a foreign award has also undergone some recent controversy. A foreign award is enforceable under Part II of the Act if it is rendered in a country that is a signatory to the New York Convention or Geneva Convention and that territory is notified by the Central Government of India. Once an award is held to be enforceable it is deemed to be a decree of the court and can be executed as such. Under the Act there is no procedure for setting aside a foreign award. A foreign award can only be enforced or refused to be enforced but it cannot be set aside. This fundamental distinction between a foreign and a domestic award has been altered by the Supreme Court in the recent case of *Venture Global Engineering v. Satyam Computer Services Ltd.*[1] (Venture Global). Here the Supreme Court was concerned with a situation where a foreign award rendered in London under the Rules of the LCIA was sought to be enforced by the successful party (an Indian company) in the District Court, Michigan, USA. The dispute arose out of a joint venture agreement between the parties. The respondent alleged that the appellant had committed an "event of default" under the shareholders agreement and as per the said agreement exercised its option to purchase the appellant's shares in the joint venture company at book value. The sole arbitrator appointed by the LCIA passed an award directing the appellant to transfer its shares to the respondent. The respondent sought to enforce this award in the USA. The appellant filed a civil suit in an Indian District Court seeking to set aside the award. The District Court, followed by the High Court, in appeal, dismissed the suit holding that there was no such procedure envisaged under Indian law. However, the Supreme Court in appeal, following its earlier decision in the case of *Bhatia International v. Bulk Trading*[2] held that even

(Footnotes)
[1] (2008) 4 SCC 190
[2] (2002) 4 SCC 105

though there was no provision in Part II of the Act providing for challenge to a foreign award, a petition to set aside the same would lie under Section 34 Part I of the Act (i.e. it applied the domestic award provisions to foreign awards). The Court held that the property in question (shares in an Indian company) are situated in India and necessarily Indian law would need to be followed to execute the award. In such a situation the award must be validated on the touchstone of public policy of India and the Indian public policy cannot be given a go by through the device of the award being enforced on foreign shores. Going further the Court held that a challenge to a foreign award in India would have to meet the expanded scope of public policy as laid down in Saw Pipes (supra) (i.e. meet a challenge on merits contending that the award is "patently illegal"). The Venture Global case is far reaching for it creates a new procedure and a new ground for challenge to a foreign award (not envisaged under the Act). The new procedure is that a person seeking to enforce a foreign award has not only to file an application for enforcement under Section 48 of the Act; it has to meet an application under Section 34 of the Act seeking to set aside the award. The new ground is that not only must the award pass the New York Convention grounds incorporated in Section 48, it must pass the expanded "public policy" ground created under Section 34 of the Act. In practice, the statutorily enacted procedure for enforcement of a foreign award would be rendered superfluous till the application for setting aside the same (under Section 34) is decided. The statutorily envisaged grounds for challenge to the award would also be rendered superfluous as notwithstanding the success of the applicant on the New York Convention grounds, the award would still have to meet the expanded "public policy" ground (and virtually have to meet a challenge to the award on merits). The Venture Global case thus largely renders superfluous the statutorily envisaged mechanism for enforcement of foreign awards and substitutes it with a judge made law. The Judgment thus is erroneous. Moreover, in so far as the Judgment permits a challenge to a foreign award on the expanded interpretation of public policy it is per incur am as a larger, three Bench decision in the case of Renu Sagar (supra) holds to the contrary. Further Saw Pipes (on which Venture Global relies for this proposition) had clearly confined its expanded interpretation of public policy to domestic awards alone (lest it fall foul of the Renu Sagar case which had interpreted the expression narrowly). The Supreme Court in Venture Global did not notice this self-created limitation in Saw Pipes nor did it notice the narrower interpretation of public policy in Renu Sagar and therefore application of the expanded interpretation of public policy to foreign awards is clearly per incur am.

But now the situation related to foreign arbitral award has totally changed after the overruling of the Bhatia International Case in which Supreme Court held that the courts in India do not have jurisdiction over international commercial arbitral award where the seat of arbitration is outside India. The court clarified that the regulation of conduct of arbitration and challenge to an award, which comes under Part I of the Arbitration Act, 1996, would have to be done by the courts of the country in which the arbitration is being conducted. The bench also noted that Section 48(1) (e) which falls under Part II (Enforcement of Certain Foreign Awards) of the Arbitration Act cannot be interpreted to mean that the foreign awards sought to be enforced in India can also be challenged on merits in Indian Courts. The court further clarified that the new law declared by the apex court would apply prospectively to all arbitration agreements executed from now on.[3]

C. DISTRUST TOWARDS ARBITRATION

What these problems or actually, loopholes will ultimately lead to is mistrust towards International Commercial Arbitration by International Business Operators and States, and will thus defeat the very purpose of Arbitration in the arena of international trade and commerce. They will, if not countered by adequate measures before they mature, deal a serious blow to the reputation and development of this international dispute settlement mechanism. Only the right legislative therapy with regard these issues can help maintain the trust and reputation of this mechanism.

(Footnotes)

[3] Bharat Aluminium Co. Ltd. vs Kaiser Aluminium Technical AIR 2005 Chh 21, 2006 (1) MPHT 18 CG

D. EXTENT OF JUDICIAL INTERVENTION IN ARBITRATION

The position of judicial intervention in India with regard to enforcement of foreign awards has been through a lot of debate and change. The current position is that it does not allow judicial intervention unless a specific provision is present in that regard brings back all the arguments in favor of more judicial intervention. The concept of public policy also comes into focus for it is only Indian courts that can decide upon the public policy prevalent and whether the foreign award is in compatibility with it. The requirement of an agreement reduces greatly, the say that Indian courts will have in enforcing foreign arbitral awards. A decent balance needs to be struck between intervention of domestic courts and finality of the award made in outside India. Proper legislative provisions, instead of only Supreme Court decisions in this regard will provide more authority and give a final position with regard to judicial intervention with regard to enforcement of foreign awards like in the case of Venture Global Engineering the winning party was held to have breached the public policy of India in trying to enforce the English award in the US. This was on the basis that the first respondent had been motivated by the intention of avoiding the operation of section 48 of the Act, which the Supreme Court viewed as an attempt to avoid the legal and regulatory scrutiny of the Indian courts in the face of facts which had an “intimate and close nexus” with India.

CONCLUSION:

Foreign arbitral award can be enforced under Section 36 of the Act which states that an arbitral award is enforceable by a civil court of competent jurisdiction in the same manner as the court executes its own decrees. In other words, all arbitral awards are enforceable by a court as though they are decrees passed by the court itself. Also, a foreign arbitral award, which cannot be enforced under Part 2 of the Act, can be enforced under Section 36 of the same Act. Further, under Sections 52 and 60, even awards which can be enforced under Part 2 can be enforced with the help of Section 36 instead. But, there was certain problem in the enforcement of these awards was that the beneficiary of the award was required to show to the Court before which the matter came for enforcement that the award had become final in the country in which it was made. The Convention also laid too much emphasis on the remedies that were open to the parties to invoke the law of the country where the award was made, for the purposes of setting aside of the same. However this problem was repealed by the Arbitration and Conciliation Act, 1996. The new Act lays down in detail provisions relating to recognition and enforcement of both Geneva and New York Convention Awards. But, this does not end the problem of the enforcement of Foreign Arbitral Awards as the issues related to public policy, judicial intervention, distrust etc. have made it difficult to enforce these awards not on in India but to the different countries of the world. Also, the overruling of the Bhatia International Case provide some relief that foreign arbitral award cannot be challenged in India but still the problem continued.

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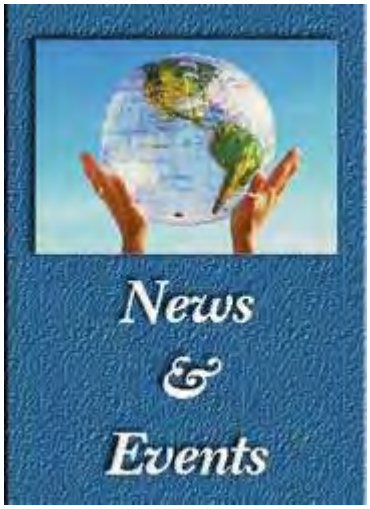
NEWS & EVENTS



INDIA INTERNATIONAL ADR ASSOCIATION (IIADRA) INAUGURATED

From left: Mr. Justice M.N. Venkatachaliah, Mr. Justice Madan B. Lokur, Mr. Justice Anthony Gates and Mr. Oommen Chandy

The India International ADR Association (IIADRA) was officially inaugurated by Mr. Justice M.N. Venkatachaliah, former Chief Justice of India on May 16, 2013 at Kochi, India. The official launch was followed up with a 2-day international Seminar & Business Summit. Mr. Justice Madan B. Lokur, Judge Supreme Court of India inaugurated the International Seminar and Mr. Oommen Chandy, Chief Minister of Kerala inaugurated the Business Summit. The keynote address was delivered by Mr. Justice Anthony Gates, Chief Justice of Fiji. Felicitations were offered by Mr. K.P. Dandapani, Advocate General of the State and Mr. C.J. Mathew, Chairman of the Business Summit. The speakers, guests and delegates were welcomed by Mr. Anil Xavier, Vice-President IIADRA. Mr. G. Shrikumar, President IIADRA presided over the function and Mr. George Poothicote, Secretary General IIADRA gave the vote of thanks. With over 100 delegates from India and abroad, the major topic of discussions and deliberations of the speakers and delegates were focussed on the need for making India more ADR-friendly and for the purpose suggested perfecting the ADR law, creating professionalism amongst the ADR professionals and propagating the advantages of ADR among the corporate houses who are the primary users of ADR.

INDIA SEEKS NEW LAW FOR EFFECTIVE DISPUTE RESOLUTION IN PUBLIC CONTRACTS

Dispute resolution in large public contracts is an area of growing concern and the Prime Minister has initiated the first steps in improving the institutional arrangement for dispute settlement. Following the rapid expansion of Public Private Partnerships (PPP) which have already attracted investment of a few lakh crore of rupees in different sectors, there are concerns about the dispute resolution mechanisms in place. There is a certain dissatisfaction among private sector participants arising from the responses they receive from project authorities about the obligations of project authorities. Given the current state of arbitration in India and the likelihood of arbitral awards being challenged in courts, project developers face a long process which imposes a heavy burden on them. The Prime Minister has asked the Planning Commission to formulate a draft Bill on Dispute Resolution in public contracts in consultation with all stakeholders and Ministries.

ENGLISH COURTS PUTS AN END TO "SPECULATIVE" CHALLENGES TO ARBITRAL AWARDS

Over the past few years, there has been a substantial rise in the number of applications to the English court challenging arbitral awards on grounds of "serious irregularity". Such applications are made under s68 of the Arbitration Act 1996 and require the applicant to show that a serious irregularity has occurred which has caused or will cause substantial injustice to the applicant. While the bar is set high, it has not stopped parties making backdoor appeals dressed up as s68 challenges or mounting "speculative" applications to the court under s68 for tactical reasons (for example, delaying enforcement). This sort of application may now be given very short shrift in the English courts. The 2013 Commercial Court Guide came into effect and includes an expanded provision, which aims to reduce the number of such unmeritorious challenges by imposing cost consequences on the party that brings them.

CLIENTS FAVOUR COMMERCIAL MEDIATORS

A survey conducted by the International Mediation Institute (IMI) with in-house dispute resolution counsel from 76 large international corporations in North America and Europe, which took place between January and March this year, indicates that while deciding on whom to select as a mediator, only 56 per cent of respondents relied upon the mediator having experience as a lawyer, while a further 38 per cent were neutral on the subject. The majority of survey respondents (85%) relied on the mediator having expertise in the core issue of the case. A proactive mediator who not only facilitates but also generates and proposes solutions and settlement options was highly favoured by 77 per cent of survey respondents. Almost half of the in-house counsel felt that external lawyers were often an impediment to the mediation process. Most respondents were either senior in-house legal counsel (63%) or senior management (20%); 71 per cent of respondents were from corporations with more than 10,000 employees, and 18 per cent were employed by companies with between 1000 and 10,000 employees.

Some people feel the rain.
Others just get wet.
~ Bob Marley ~

COURT OF ARBITRATION UPHOLDS INDIA'S POSITION ON KISHENGANGA

In a major victory, the International Court of Arbitration at The Hague has upheld India's right to divert water from the Kishenganga hydro-electric project in Kashmir. The court rejected Pakistan's contention that India was violating the 1960 Indus Waters Treaty in the project in Gurez valley near Bandipura in north Kashmir.

CERTIFICATE IN DISPUTE MANAGEMENT (CDM)

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One day in the Garden of Eden, Eve calls out to God, "Lord, I have a problem!"

"What's the problem, Eve?" God asks.

"Lord," she says, "I know you've created me and have provided this beautiful garden and all of these wonderful animals, and that weird snake, but I'm lonely."

"Well, Eve, in that case, I have a solution. I shall create a man for you," the good Lord tells her.

"What's a 'man', Lord?" she inquires.

"A flawed creature, with aggressive tendencies, an enormous ego and an inability to empathize or listen to you properly. All in all, he'll give you a hard time. He'll be bigger and faster and more muscular than you."

"Sounds great," says Eve, with raised eyebrows.

"Yeah, you can have him on one condition."

"What's that, Lord?" she asks.

"You'll have to let him believe that I made him first."