



1

2

3

4

View Point: Power Dynamics in Mediation - Part 2

Article: Arbitration - Jurisdictional Challenge at the Enforcement Stage

Thinking Out of the Box

News & Events

2

7

11

13

In this Issue.....

Editor's Note

Greetings from IIAM!

Many of our subscribers have suggested to change the layout of the magazine so that it becomes compatible to read in tablets and smart phones as well. We have tried to change the layout accordingly. Hope you will like the new format.

We are also changing the frequency of the publication. Now the magazine will come to you once in two months.

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Thank you.

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POWER DYNAMICS IN MEDIATION - PART 2

NANDINI M. NAMBIAR



The article mainly deals with the role of mediator and how he can make a difference in the entire process of dispute resolution. According to the author, the mediator wields a lot of power by virtue of the position he holds and as such, the role that he plays in settling disputes has a huge impact on the final outcome of a dispute. Further the parties themselves may have issues of power imbalances, which puts all the more pressure on the mediator to perform his role well. The article attempts to explore these facets of the mediation process, focusing on the practice in the United Kingdom, with some references to the practices in the United States. In the second Part, the author examines the mediation practice in India - how far has it been successful and what are the factors curtailing its development.

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Though the evaluative approach appears to promote the easier settlement of disputes between parties,¹ this is not necessarily so. There is a higher possibility here, than in a facilitative mediation, that the mediator may exercise more power than what he is entitled to exercise. This can also have the undesired result of compromising the mediator's neutrality.² The mediator may make an assessment more suited to one party than the other.³ In addition, he may also manipulate the information that he conveys between the parties in order to maneuver the parties to arrive at a consensus at the earliest possible opportunity. In evaluative mediation the mediator plays a very central role as against facilitative mediation, where the parties play the central role.

Several States in the United States, in the standards of conduct prescribed for mediators, adopt a strict approach that the mediator should only perform his role as a mediator, and not provide professional advice as it could amount to a breach of his

(Footnotes)

¹ The mediator will most likely propose solutions by making certain recommendations and suggestions, or will at least direct the parties towards dispute resolution by making a conscious effort.

² The author, Ms. Exon, has compiled the suggestions of various authors including Golann and Lande, and suggests that 'neutrality' can be preserved if the mediator treads with great caution, by carefully selecting the words to convey his opinion to the parties, without affecting his neutrality.

Another solution is that the mediator should not act in a partial manner, and when he gives his assessment on a particular issue, he should state the same view to both the parties so that one is not prejudiced to the benefit of the other.

The third suggestion is that the mediator could state his opinion to the parties so as to influence them, by stating that his opinion is the common view as shared by the courts/ judges, and that it would be the likely outcome of the adversarial proceedings, should the parties decide to approach the court.

³ Susan Nauss Exon, 'The Effect that Mediator Styles Impose on Neutrality and Impartiality Requirements of Mediation' (2007), <http://works.bepress.com/susan_exon/1> [As originally stated in Kimberlee K. Kovach and Lela P. Love, 'Mapping Mediation: The Risks of Riskin's Grid', (1998) 3 HNLIR 71, 101]

neutrality.⁴ However, he is entitled to give his opinion when requested. Thus, it lays down the perimeter of a mediator's powers as limited to the usual functions of a facilitative mediator, together with advising the parties and exposing them to the available options when requested to do so.⁵ In addition, in some States in the United States of America, the mediator has the power to issue 'Certificates of Non-Compliance' if the parties do not co-operate in the mandatory mediation process.⁶

One would imagine that the mediator's behaviour would be shaped according to the expected standards of conduct. However, one needs to bear in mind that despite these standards that are issued for the benefit of the mediators and the parties alike, each mediator has a different personality and approach towards issues, which may have been developed as a result of his past experiences. These differences, in turn, affect the manner in which he handles disputes and the mediation process itself. Apart from these, the complexities of the mediator's role in the United States are similar to that in the United Kingdom.

How can the two Approaches be Reconciled?

In the article authored by Ms. Exon,⁷ she has made some suggestions as to how to reconcile the different approaches to mediation. Stated below are some of her opinions on the said issue.

First of all, Ms. Exon acknowledges the fact that it is extremely difficult for any mediator to remain completely neutral and impartial in all circumstances. In doing so, it is recommended that the requirement for a mediator to act impartially should be done away with. Secondly, she suggests that mediation be differentiated into two distinct approaches, namely facilitative and evaluative. By doing so, there will be no confusion regarding the role that a mediator is expected to perform. In this way, it can be clearly stated that in the facilitative approach, the mediator will be required to satisfy the requirements of impartiality and neutrality, while in evaluative mediation he will not be bound by these requirements as long as he acts in a fair manner.

(Footnotes)

⁴ Ethical Guidelines for Mediators, Supreme Court of Texas, <<https://www.supreme.courts.state.tx.us/MiscDocket/05/05910700.pdf>>; Model Standards of Conduct for Mediators (2005) prepared by members from the American Arbitration Association, American Bar Association and Society of Professionals in Dispute Resolution, <http://www.mediate.com/articles/model_standards_of_conflict.cfm#LinkTarget_391>; Revised Standards of Professional Conduct for Mediators, <http://www.aoc.state.nc.us/www/public/html/pdf/Dispute_Resolution/Standards.pdf>

⁵ Suzanne Mc. Corkle, 'The Murky World of Mediation Ethics: Neutrality, Impartiality, and Conflict of Interest in State Codes of Conduct', Conflict Resolution Quarterly, Wiley Publications Inc. (Vol.23, No.2, 2005), <<http://www3.interscience.wiley.com/journal/112371323/>>

⁶ Rule 24.1.10(5) of the Rules of Civil Procedure, Ontario; Also referred to by Colleen M. Hanycz, 'Through the Looking Glass: Mediator Conceptions of Philosophy, Process and Power', Alberta Law Review (Vol.42, No.3, 2005)

⁷ Susan Nauss Exon, 'The Effect that Mediator Styles Impose on Neutrality and Impartiality Requirements of Mediation' (2007), <http://works.bepress.com/susan_exon/1>

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According to me, in the current scenario, when parties approach the mediator, they want him to facilitate the dispute resolution process; and not to impose his views on them. If the parties wanted the ultimate decision to come from a third party they would opt for arbitration or court proceedings. In mediation, the intention of the parties is to arrive at a solution that has been mutually developed by the parties, after holding discussions with the opposing party. For all these reasons, the author believes that facilitative mediation is the preferred approach, unless the parties themselves want the mediator to play a more active role, thereby clearly defining their expectations of him.

Notwithstanding the above, however, it would be in the best interests of all the concerned parties if there is a legislation setting out the specifics of the mediation process. This, in the opinion of the author, could also result in the increased use of mediation in resolving disputes, as more people would be willing to resolve their disputes using mediation, with the existence of defined parameters under the legislation. This position could be better appreciated in comparison with the present system of mediation, where the mediator conducts the mediation as per certain broad guidelines, where immense discretion is given to the mediator.

Mediation in India

Mediation has been in use in India since ancient times, where it has been used by the village-heads to settle disputes among its members, in what are referred to as 'Panchayats'.⁸ Though the term 'mediation' wasn't coined at that time, the manner in which the dispute settlement process was conducted bears an uncanny resemblance to the present day mediation process. In fact, this method of dispute resolution is still in practice today in rural India.⁹

Though mediation existed in the Indian society from early on, its development thereafter has been slow. Mediation is not being utilized to its full potential. Currently, India suffers from the problem of a massive backlog of cases in its courts.¹⁰ At such a point, it would be expedient for India to promote the use of other forms of dispute settlement, including mediation, to ensure a speedy and effective redressal of issues. This would be in the interest of all parties concerned. However, such a transformation has not taken place to the extent required.

It is noteworthy that the Indian legislature has been trying to incorporate such methods of dispute resolution into its legal system to ensure that parties exhaust such means of redressal before embarking on the often long and tedious process of litigating in courts. One such example is the Indian Civil

(Footnotes)

⁸ Anil Xavier, 'Mediation: Its Origin & Growth in India', Hamline Journal of Public Law and Policy (Vol. 27), <http://www.arbitrationindia.com/pdf/mediation_india.pdf>

⁹ P. C. Rao and William Sheffield, *Alternative Dispute Resolution: What it is and How it Works* (Universal Law, 2005); Anoop V. Mohta and V. A. Mohta, *Arbitration, Conciliation and Mediation* (Manupatra, Second Edition, 2008); Madabhushi Sridhar, *Alternative Dispute Resolution, Negotiation and Mediation* (Butterworths, 2006)

¹⁰ As per an online newspaper article dated September 4, 2014, there are more than 31.3 million pending cases in the entire judicial system in India. Further, as of December 2013, there were 4.4 million cases pending in the High Courts in India; and as of May 2014, there were 63,843 civil and criminal cases pending in the Supreme Court of India, <<http://www.hindustantimes.com/india-news/justice-has-a-mountain-to-climb-of-31-3-million-pending-cases/article1-1259920.aspx>>

¹¹ S. 89. Settlement of disputes outside the Court: (1)Where it appears to the court that there exist elements of a settlement which may be acceptable to the parties, the court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observation of the parties, the court may reformulate the terms of a possible settlement and refer the same for-

(a) arbitration;
(b) conciliation;
(c) judicial settlement including settlement through Lok Adalat; or
(d) mediation.

(2)Where a dispute had been referred.... (d) for mediation, the court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.

Procedure Code 1908, which has a provision requiring the courts to refer disputes for settlement by alternative means if there is the possibility of a settlement.¹¹ However, the Indian lawyer community is not very receptive of the idea. In fact, a Bar Association even challenged the validity of the above-mentioned provision in the Indian Civil Procedure Code 1908, in the case of *Salem Advocate Bar Association II vs. Union of India*.¹² In this case, the Supreme Court of India upheld the validity of the said provision, recognizing its importance in the Civil Procedure Code. In addition to this provision, Section 30¹³ of the Arbitration and Conciliation Act, 1996 provides that the Arbitral Tribunal may refer disputes to mediation, among others, to encourage the settlement of disputes.

In addition, the constitution of *Lok Adalats* (People's Court) in India have also been with the intention of promoting alternative modes of dispute settlement, in the pre-litigation stage. *Lok Adalats* have been constituted and given a legal status under the provisions of the Legal Services Authorities Act, 1987 ("LSA Act"). In terms of the provisions of the LSA Act, in any case pending before any court for which the *Lok Adalat* has been organised, the disputant parties can mutually agree, or one of the parties may make any application to the court, to refer the matter to the *Lok Adalat* for settlement; and if the court is *prima facie* satisfied that there is a chance for settlement or that the case is suitable for being referred to the *Lok Adalat*, then the court may refer the matter to the *Lok Adalat*.¹⁴ It is only in the event that the parties fail to arrive at a settlement at the *Lok Adalat* would the matter once again be handed over to the courts for disposal. It is also pertinent to note that any decision by the *Lok Adalat* is final and binding on the disputant parties, and no appeal shall lie from its decision to any court.¹⁵ The reason for this is the fact that the decision has been arrived at by the mutual consent and agreement of the disputant parties, and they would therefore not have the right to appeal against such a settlement.

A *Lok Adalat* functions in a similar manner as the mediator in a mediation process, in the sense that it facilitates the resolution of disputes amongst parties in an amicable way. It encourages the parties to settle the matter and arrive at a mutually satisfactory solution to their dispute, rather than to enforce its opinion/ decision on the parties.

(Footnotes)

¹² (2005) 6 S.C.C. 344

¹³ S. 30. Settlement- (1) It is not incompatible with an arbitration agreement for an arbitral tribunal to encourage settlement of the dispute and, with the agreement of the parties, the arbitral tribunal may use mediation, conciliation or other procedures at any time during the arbitral proceedings to encourage settlement....

¹⁴ Section 20 of the Legal Services Authorities Act, 1987

¹⁵ Section 21(2) of the Legal Services Authorities Act, 1987

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One of the main reasons for the low use of mediation in India, according to this author is the low awareness of the mediation process among the general public. They, therefore, end up referring matters to the courts in the belief that ‘the known is better than the unknown’, without actually making an effort to understand the mediation process. However, in the past few years, the government and the judiciary have been making conscious efforts to increase the use of alternative dispute resolution methods, and have also set up Mediation Centres across India.¹⁶ Currently, these Centres are settling matters mainly pertaining to the laws of property, matrimony and partnerships. With these schemes receiving more support from the government and the judiciary, there seems to be a bright future for mediation in India. It is hoped that in the near future mediation becomes the preferred choice for disputant parties for all matters which can be resolved by settlement.

Conclusion

With the growing importance and use of mediation, especially in the pre-litigation period, it is receiving the necessary impetus to develop. Spreading awareness about mediation is the need of the hour. According to many of the proponents of mediation, one of the main reasons that parties do not opt for mediation is because they are not aware of the process itself and its benefits. As suggested by Morgan Brigg,¹⁷ the mediator should channel his efforts towards directing the process rather than tendering advice to the parties, thereby encouraging the parties to take up responsibility for their decisions. By doing so, not only will the parties be satisfied with the outcome, but it could also result in easing the possible additional burden on the adversarial system of dispute resolution.

With regard to the role of a mediator, it can be concluded that if the mediator knows how to use his power, the mediation will be successful. In addition, if the parties are aware of the mediation process itself, they in turn could also act as checks and balances on the way the mediator conducts the proceedings. Despite this, the discussion of where exactly the line should be drawn regarding the mediator’s power of intervention will continue to exist until such time that there is some definitive legislation or authoritative conclusion settling the issue once and for all.

(Footnotes)

¹⁶ Mediation Centre’s in Delhi have a record of settling more than 60% of the matters referred to them, <<http://delhimediationcentre.gov.in/statistical.htm>> accessed on September 22, 2014. Mediation Centre’s in Kerala have a record of settling more than 25% of the matters referred to them in 2012, <<http://www.newindianexpress.com/states/kerala/Many-takers-for-mediation/2013/05/06/article1576935.ece>>. The Mediation Centre in Bangalore (Karnataka) has a record of settling 65% of the cases that were mediated on by it in the period between January 2007 and August 2014, <<http://bangaloremediationcentre.kar.nic.in/statistics.html>>

¹⁷ Researcher and author of various articles and books on mediation, Morgan Brigg, ‘Mediation, Power, and Cultural Difference’, Conflict Resolution Quarterly, Wiley Periodicals Inc. (Vol.20, Issue3, 2003), <<http://www3.interscience.wiley.com/journal/104087654/>>

ARBITRATION - JURISDICTIONAL CHALLENGE AT THE ENFORCEMENT STAGE

SURATH BHATTACHARJEE



In an arbitration does the award debtor have a ‘menu of choices’ to challenge the award – can he avail the ‘active remedy’ by applying for the award to be set aside or could rely on a ‘passive remedy’ which would entitle him to challenge the award during enforcement stage? The author analyses the interpretation of Article 16(3) of UNCITRAL Model Arbitration Law by the Singapore Court of Appeals in these circumstances.

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INTRODUCTION

In the polemics as to whether the award debtor in an arbitration would have a ‘menu of choices’ to challenge the award, the presence of dual remedies appears to have been the touchstone of the Model Law irrespective of the nationality of the award. Consequently it appears that the award-debtor could either avail the ‘active remedy’ by applying for the award to be set aside, or, he could alternately rely on a ‘passive remedy’ which would entitle him to challenge the award during enforcement stage, provided there hasn’t been acquiescence to a waiver whereby the award-debtor forfeits such power of objection. The recent decision of the Singapore Court of Appeals makes crucial interpretation of Article 16(3) of UNCITRAL Model Arbitration Law by not considering it as a ‘one-shot’ remedy and that the jurisdiction of the Tribunal could also be challenged at the enforcement proceeding.

FACTS IN BRIEF

The case in point involved a Share Subscription Agreement in a Joint venture gone awry. The arbitration proceedings between a Malaysian media group named Astro, and an Indonesian conglomerate named Lippo,¹ arose out of a joint

venture (‘JV’) for providing digital satellite TV and other multimedia services in Indonesia. Both parties entered into a Subscription and Shareholders’ Agreement (‘SSA’) setting out the JV’s obligations. While fulfilment of the conditions precedent to the SSA was pending, three subsidiaries of the Astro group (who were not signatories to the SSA) provided funds and services to the JV entity. Eventually, the conditions precedent were not met and a dispute arose as to the continued funding of the JV.

(Footnotes)

¹ [2013] S.G.C.A. 57

In 2008, the five Astro companies (who were parties to the SSA) and three parties from Astro group that joined in the arbitration proceeding (amidst objection by Lippo) by applying to the Tribunal under r.24(1)(b)² of 2007 SIAC Rules (“Rules”), commenced arbitration against Lippo in Singapore vide the arbitration agreement in the SSA. However, the Tribunal determined in a preliminary award that it had the jurisdiction under r.24(1)(b) to join the three respondent-parties to the arbitration. However, at this instant Lippo did not challenge the Tribunal’s preliminary award on jurisdiction before the Singapore High Court within the 30 day time limit under Article 16(3) of the Model Law (which has force in Singapore through the Singapore International Arbitration Act). Instead, it proceeded with the arbitration marking its objection to the Tribunal’s jurisdiction. The Tribunal subsequently issued four domestic international awards in Astro’s favour for around US\$250 million. Again, the Lippo companies did not apply to set aside the Awards in Singapore based on the grounds of Article 34(1) of the Model Law within the prescribed time. The challenge to the jurisdiction was raised by the Appellants only at the enforcement stage on the rationale that the parties joined under Rule 24(1)(b) of SIAC Rules 2007 weren’t privy to the arbitration agreement.

(Footnotes)

² Rule 24(1)(b) of SIAC Rules 2007 24(1). In addition and not in derogation of the powers conferred by any applicable law of the arbitration, the Tribunal shall have the power to: (b)allow other parties to be joined in the arbitration with their express consent and make a single final award determining all disputes among the parties to the arbitration.



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RATIONALE OF THE COURT OF APPEAL: AN ANALYSIS

The Court elucidated the *raison d'être* of the Tribunal's decision. The Tribunal had, in the opinion of the Court, erroneously construed the words 'other parties' to include those outside the ambit of the arbitration agreement who could be joined in the proceedings without the express consent of the other parties. Had that been the case, even complete strangers could have been included in an arbitration proceeding which would not only run contrary to the consensual basis of dispute resolution but such an interpretation would also have vitiated the confidentiality requirement embedded in r.34 of the Rules. Evidently, when the three respondent-parties weren't party to the SSA containing the arbitration clause, the Tribunal had erred by including them in the arbitration proceeding consequent to an erroneous construction of r.24(1)(b). Subsequently, the appellant could avail the 'passive remedy' i.e. challenge the award at the enforcement stage.

KOMPETENZ-KOMPETENZ

The competence to rule on its own jurisdiction is a mandatory³ and an 'inherent' power⁴ of the tribunal. The very essence of this doctrine lies in the fact that the Tribunal draws its jurisdictional eminence from the agreement between the parties. Therefore, the Tribunal is limited from acting beyond the purview of the arbitration agreement. Herein, a distinction needs to be drawn between jurisdiction and power of a Tribunal. If the Tribunal lacks the competence or jurisdiction (*simpliciter*), it cannot determine the dispute at all. While if it has the jurisdiction, it has the necessary competence to conduct the reference but should consider the extent of its powers when determining how it should conduct the reference.⁵ In this regard, Article 16 of the Model Arbitration Law provides that the arbitral tribunal may rule on its own jurisdiction including objections with respect to the existence and the validity of the arbitration agreement. For the purpose of ruling on its own jurisdiction, Tribunal's decision of invalidity of the contract wouldn't render the arbitration *ipso jure* void.⁶ As held in *Vee Networks Ltd v. Econet Wireless International Ltd*⁷, with reference to the English Arbitration Act 1996 that the provisions on separability and competence-competence when read together would imply that the arbitration agreement is left intact from the underlying contract while also insulating the requirement that the arbitration agreement should be valid and binding.⁸

In view of the aforementioned discussion on the competence of the arbitral tribunal to rule on its own jurisdiction, it would be interesting to inquire whether the Tribunal had the power to effect the joinder of the three respondents who were not party to the arbitration agreement.

ON THE ISSUE OF JOINDER OF NON-PARTIES TO THE ARBITRATION

While the issue of joinder ordered by national courts, besides allowing voluntary joining, of third parties to assert their own rights or to support the reasons of one of the parties is considered a possibility, this scenario is non-existent in a contractual relationship which exists only between the parties to the contract and their successors. Intervention by third parties may then take place only with

(Footnotes)

³ O.P Malhotra, *LAW AND PRACTICE OF ARBITRATION* 503 (2nd ed. LexisNexis 2006)

⁴ Alan Redfern and Martin Hunter, *INTERNATIONAL ARBITRATION* 347 (OUP 2009)

⁵ Russell on Arb, 22nd ed 2003, p 130 para 4-114

⁶ *Sojuznefteexport (SNE) v. Joc Oil Ltd* wherein the Bermudan Court of Appeal held that 'the existence of a main contract, although a legal nullity, constitutes a juridical platform upon which arbitral tribunal may stand to judge the validity of the main body of the contract.'

⁷ [2004] E.W.H.C. 2909 (Q.B.D)

⁸ *Ibid*, para 20

the consent of the parties to the original arbitration agreement.⁹ Conceiving the arbitration proceeding separately from the agreement the Tribunal, rather cleverly, utilized the seldom applied the seldom applied “doctrine of double severability” which discerns between a ‘continuous arbitration agreement’ and an individual ‘reference’ to arbitration. In the rationale of the Tribunal, the SSA between the 1st to the 5th Respondents and the Appellants constituted a separate agreement while the arbitration proceeding constituted another. In the latter agreement the Tribunal justified the inclusion of the three respondents by drawing an explanation from Rule 25.2 of SIAC 2007 considering that the true construction of the word ‘party’ who challenges the jurisdiction of arbitration agreement would imply a party to the arbitration proceedings. Therefore by ‘extrapolation’ the Tribunal construed the ‘other parties’ per Rule 24(1)(b) to actually refer to those “ ‘that are not already parties to the agreement to refer the dispute which is the subject of the reference’ and not ‘other parties to the agreement to refer future disputes.’ “

CONCLUSION

The Court of Appeal had aptly interpreted the impugned rule with regard to joinder of only those parties that were a party to the arbitration agreement to the exclusion of all others. To this extent the SIAC Rules have been amended to conform to the rationale of the judgment.¹⁰ With respect to the availability of a ‘menu of choices’ the Court of Appeal applied pragmatism by making the jurisdictional challenge available even at the enforcement stage which the parties could avail during the preliminary award to the chagrin of the Tribunal.¹¹ With such an important decision on the issue of joinder of parties, Singapore eases up yet another avenue for parties (against whom an award is to be enforced) to effectively raise an objection, at the enforcement stage, on the basis of a jurisdictional challenge to the Tribunal.

(Footnotes)

⁹ Mauro Rubino-Sammartano, *INTERNATIONAL ARBITRATION LAW AND PRACTICE* 295 (2nd ed., Kluwer Law International); see also *Bay Hotel and Resort Ltd v. Cavalier Construction Company Ltd* [2001] U.K.P.C. 34

¹⁰ Rule 24(1)(b) SIAC Rules 2013: In addition to the powers specified in these Rules and not in derogation of the mandatory rules of law applicable to the arbitration, the Tribunal shall have the power to: (b) upon the application of a party, allow one or more third parties to be joined in the arbitration, provided that such person is a party to the arbitration agreement, with the written consent of such third party, and thereafter make a single final award or separate awards in respect of all parties.

¹¹ <http://www.lawgazette.com.sg/2014-01/> last visited on February 9, 2014

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OUT OF THE BOX



Growing Old & Growing Up

Rose was eighty-seven years old, when I met her in the college. “Why are you in college at such a young, innocent age?” I asked. She jokingly replied, “I’m here to meet a rich husband, get married, and have a couple of kids...”. “No seriously,” I asked. I was curious what may have motivated her to be taking on this challenge at her age. “I always dreamed of having a college education and now I’m getting one!” she told me.

We became instant friends. Every day for the next three months, we would leave class together and talk non-stop. I was always mesmerized listening to this “time machine” as she shared her wisdom and experience with me. Over the course of the year, Rose became a campus icon and she easily made friends wherever she went. She loved to dress up and she revelled in the attention bestowed upon her from the other students. She was living it up. At the end of the semester we invited Rose to speak at our football banquet. I’ll never forget what she taught us. She was introduced and stepped up to the podium.

As she began to deliver her prepared speech, she dropped her three by five cards on the floor. Frustrated and a little embarrassed she leaned into the microphone and simply said, “I’m sorry I’m so jittery. I gave up beer for Lent and this whiskey is killing me! I’ll never get my speech back in order so let me just tell you what I know.”

As we laughed she cleared her throat and began, “We do not stop playing because we are old; we grow old because we stop playing. There are only four secrets to staying young, being happy and achieving success. You have to laugh and find humor every day. You’ve got to have a dream. When you lose your dreams, you die. We have so many people walking around who are dead and don’t even know it! There is a huge difference between growing older and growing up. If you are nineteen years old and lie in bed for one full year and don’t do one productive thing, you will turn twenty years old. If I am eighty-seven years old and stay in bed for a year and never do anything I will turn eighty-eight. Anybody can grow older. That doesn’t take any talent or ability. The idea is to grow up by always finding opportunity in change. Have no regrets. The elderly usually don’t have regrets for what we did, but rather for things we did not do. The only people who fear death are those with regrets.”

She concluded her speech by courageously singing “The Rose.” She challenged each of us to study the lyrics and live them out in our daily lives.

At the year’s end Rose finished the college degree she had begun all those years ago. One week after graduation Rose died peacefully in her sleep. Over two thousand college students attended her funeral in tribute to the wonderful woman who taught by example that it’s never too late to be all you can possibly be.

Remember, growing older is mandatory. Growing up is optional!



A traveler comes to a fork in the road which leads to two villages. In one village the people always tell lies, and in the other village the people always tell the truth. The traveler needs to conduct business in the village where everyone tells the truth. A man from one of the villages is standing in the middle of the fork, but there is no indication of which village he is from. The traveler approaches the man and asks him one question. From the villager's answer, he knows which road to follow. What did the traveler ask?

[Answer at Page 15]



An English woman was planning a trip to India for the first time. In one of the towns that she was to visit, she was booked to stay in a small guest house owned by the local schoolmaster. She was concerned as to whether the guest house had a suitable toilet. She wrote to the schoolmaster inquiring about the facilities like Western Closet... 'WC'.

The school master, not having heard the term, asked the local priest if he knew the meaning of "WC". Together they pondered possible meanings of the letters. The priest, naturally biased in favour of matters related to religion, convinced the schoolmaster that the lady wanted to know about the local church, which they called Western Chapel. So the schoolmaster wrote the following reply:

Dear Madam,
I take great pleasure in informing you that the WC is located 9 miles from the house in the middle of a grove of pine trees, surrounded by lovely grounds. It is capable of holding 229 people and is open on Sundays and Thursdays. This is an unfortunate situation especially if you are in the habit of going daily. As many people are expected on each of these two days, I suggest you arrive early. Those who do not often have to remain standing throughout. It may be of some interest to you that my friend's daughter was married in the WC as it was there that she met her husband. It was a wonderful event. There were 10 people in every seat.
It was wonderful to see the expressions on their faces. My friend's wife, sadly, has been ill and unable to go recently. It has been almost a year since she went last and this pains her greatly.
You will be pleased to know that many people carry their lunch and make a day of it. Others prefer to wait till the last minute and arrive just in time. I would recommend your ladyship plan to go on a Thursday as there is an organ accompaniment. The acoustics are excellent and even the most delicate sounds can be heard everywhere.
The newest addition is a bell which rings every time a person enters. Funds are being collected to provide plush seats for all since many feel it is long needed. I look forward to escorting you there myself and seating you in a place where you can be seen by all.
With deepest regards,
The Schoolmaster.

The woman fainted reading the reply.....



MOU BETWEEN SIMC AND IIAM

The Singapore International Mediation Centre and the Indian Institute of Arbitration & Mediation has decided to sign an MOU to promote mediation facilities to the international business community in India and Singapore. There is a growing demand in the international business community for mediation as an efficient, effective and confidential means of dispute resolution. The association of SIMC and IIAM is intended to provide professional mediation services in their respective jurisdictions. The formal signing of the MOU is scheduled in September in India.

TWINNING AGREEMENT BETWEEN IIAM AND ACDR

A Twinning Agreement is agreed to be signed between the Afghanistan Centre for Dispute Resolution and Indian Institute of Arbitration & Mediation. Both the Centers will cooperate and coordinate with each other to provide their respective clients with the best services for dispute resolution when disputes may arise within their respective countries, including disputes between or among members residing or located in each of the Centers' countries. ACDR is newly set up in at Kabul as a body within Afghanistan Chamber of Commerce and Industry (ACCI).

AMENDMENT OF THE INDIAN ARBITRATION & CONCILIATION ACT

With many retired judges, including Law Commission Chairperson Justice (Retd) A P Shah, taking strong exception to the Indian government's move to amend the Arbitration and Conciliation Act, 1996, the government is all set to revisit the clauses. It is also likely to hold consultations with Justice Shah and some other eminent jurists.

The Ordinance amending the Arbitration Act was not cleared by the President of India last December. The Ordinance was loosely drafted and the Law Commission was also not happy as many of the recommendations they had given were either been ignored or twisted. It is now understood that the government would hold "wider consultations" with the Law Commission before moving the amendment.

GOVERNMENT APPROVES BILL FOR SETTING UP COURTS FOR COMMERCIAL DISPUTES IN INDIA

The Indian government has approved the introduction of a new law to set up courts that will deal exclusively with commercial disputes, ensuring their speedy disposal and making it easier to do business in India. The Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill, 2015, will be introduced in the Indian Parliament shortly.

The proposal for setting up such courts for the quick resolution of commercial disputes is based on the recommendations of the 253rd report of the Law Commission of India. The commission had sought to revamp the commercial dispute resolution mechanism system by separating it from other civil disputes. The establishment of commercial courts in India is a stepping stone to bring about reform in the civil justice system.

THE 2016 GLOBAL POUND CONFERENCE SERIES! "SHAPING THE FUTURE OF DISPUTE RESOLUTION & IMPROVING ACCESS TO APPROPRIATE JUSTICE"

The GPC Series is being organized by the International Mediation Institute (IMI) with the active support of many international groups involved in ADR. It will be a series of meetings, focus groups and conferences using a global information technology platform that will be available via the Internet, which will enable all stakeholders involved in dispute resolution to express themselves on the future of dispute resolution and how ADR processes – negotiation, mediation and arbitration – can be more accessible and better used in all cases.

The goal of the Global Pound Conference ("GPC") Series is to improve access to justice around the world by generating actionable data from stakeholders in the dispute prevention and resolution fields to facilitate greater access to appropriate dispute resolution ("ADR") processes worldwide.

It will allow the global ADR community to better understand what obstacles may exist to accessing appropriate justice, and how to facilitate greater access to all forms of ADR in accordance with what is needed in each case. The results will further stimulate research, knowledge, creativity, innovation and growth in the use of ADR in the 21st Century both domestically, regionally and internationally.

The GPC Series will take place in at least 15 locations worldwide between September 1, 2015 and December 31, 2016 to enable all stakeholders involved in dispute resolution to discuss and respond to a series of precise questions and propositions focusing on user needs and wants and access to affordable and suitable justice systems.

If you would like to participate in the GPC in India, please mail to adm@arbitrationindia.com

IIADRA OFFERS MEMBERSHIP

iiadra

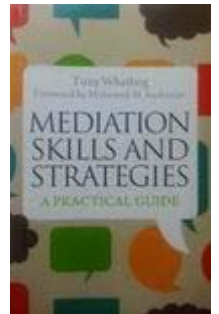
The India International ADR Association (IIADRA) offers membership to ADR Lawyers and Professionals, Arbitrators, Mediators and Business groups, from India and abroad.

The purpose of IIADRA is to represent the common interests of Arbitrators, Mediators, ADR Practitioners and ADR Users in promoting the standard, professionalism and quality of ADR in the domestic and international arena. IIADRA will serve as a platform for the growth and network of ADR practices jointly with global leaders, so as to help you lead in the field. The membership will secure information; facilitate alliances with partners in the ADR world engaged in preventing and resolving conflicts and invitation to exclusive international and national conferences and discussions on the subject.

For details see www.adrassociation.org

BOOK REVIEW

Mediation Skills and Strategies – A Practical Guide By Tony Whatling



A straightforward, comprehensive collection of mediator skills and strategies. It is useful for not only mediators, but also a wider range of professionals including counsellors, managers, human resource professionals, social care and health care practitioners. Tony Whatling, who has over 25 years' experience of mediation practice and mediation training experience in the UK, USA, Canada, India, Pakistan, Kenya, Uganda, Tanzania, Portugal, Syria and Afghanistan, has put in all his experience to explain the range of skills and strategies that are commonly used, as well as why you would use different skills and when they are best employed. The author shows how, by adopting these techniques, a mediator can manage challenging conflicts.

The book is published by Jessica Kingsley Publishers, London (www.jkp.com)
ISBN: 978-1-84905-299-3

Brain Teaser: The traveler asked "Which road would take me to your village?" He would then take the road the truthful person pointed to because the truthful person would point the truthful village. The liar would also point to the truthful village because he is a liar and would not point to his own village.

Upcoming Training Programs from

INDIAN INSTITUTE OF ARBITRATION & MEDIATION
institution for dispute resolution & management

CERTIFICATE IN ARBITRATION LAW

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

The program will be for 15 hours conducted in 2 days, during July 2015 at Cochin, Kerala, India.

COMMERCIAL MEDIATION TRAINING PROGRAM

Are you interested to become a Commercial Mediator or a specialist Dispute Resolution Practitioner or Advocate? Effective conflict resolution skills is the key to prevent destructive conflict, enabling lawyers and consultants to better assist their clients in business deals and disputes. Mediation has become a truly global profession, earning international recognition.

The training program combines the theory of ADR through highly interactive, skill-based courses in negotiation and mediation. The program will enhance the understanding and ability to negotiate and resolve conflicts, as well as provide a solid foundation in ADR processes and to serve as ADR practitioners and neutrals. The training offers the opportunity to become an effective negotiator, skillful mediator and a talented mediation representative. As per IIAM Mediator Accreditation System, a candidate having successfully completed Mediation Training Program is categorised as Grade B Mediator.

The program will be for 40 hours conducted in 5 days, during September, 2015 at Cochin, Kerala, India.

CERTIFICATE IN DISPUTE MANAGEMENT (CDM)

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

For more details see <http://www.arbitrationindia.org/htm/events.html> or mail to training@arbitrationindia.com