

NATIONAL JUDICIAL ACADEMY



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WORK-SHOP ON THE USE OF ADR SYSTEM: 21– 23, SEPTEMBER 2015

Programme Report

Submitted By

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Session 1

Challenges in Implementation of ADR system in Subordinate Courts- A Critical Analysis

Speaker and Chair: Justice A.M. Ahmadi

Dr. Geeta Oberoi introduced Hon'ble Justice A. M. Ahmadi to the participants and gave a brief introduction about the Workshop and also asked the participants to introduce themselves, their background and share their experience in the area of ADR. Session went on sharing experience, challenges faced in the ADR by the participants in their respective districts and response by the Hon'ble Justice A M Ahmadi.

Participants highlighted the following challenges and practical experience

- ADR building has not been constructed, the payment has not been provided, it exists in the old court building in a room, the advocates are always creating hue and cry, and they are not cooperative even though we are trying our level best to get our achievement.
- We are having full fledged ADR center, and 18 referral courts.
- We have good facility as far as ADR infrastructure is concerned.
- We have separate arbitration and mediation center, we have excellent infrastructure in the HC premises only.
- ADR center is under construction.
- ADR building is going to be completed in October or November 2016.
- There are other 14 ADR center and all other activities are going on smoothly.
- We have mediation center already at Distt. headquarter but I feel that in every court complex there needs to be a mediation center building otherwise parties and the advocates from rural corner cannot reach for every case and they can't give immediate response many times.
- In state of Maharashtra, the Bombay High Court had framed the rules for ADR and mediation rules in 2006 and in all 82 Judicial officers have taken the training of 40 hours

training in our state, ADRs system is very successful and in each distt at least 15-20 % case are settled under the ADR scheme.

- We are running ADR center in our Districtcourt building we have 38 judges as trained mediator and all the judges as referral judge and we have also 9 advocates as mediators thank you.
- In my States challenges are there, first we have only advocates as mediators we are found that there is lacking sincerity and the spirit sir, which we expect from them so we need to sensitize advocates who are working as mediators, secondly sir in Matrimonial cases we are finding mediation is failing because of the, non-cooperation of the parties either on the part of the husband or on the part of the wife also we need to reach the interior areas, in this regard.
- The quality of the mediators are very poor, so far in my district is concerned and we are finding the lawyers who are to be trained as mediator they are also not of that quality, they don't have the skill to do, because I have the training myself so that I find out the people, but it is very difficult to find out a suitable person.
- In punjab and haryana all the judges are trained mediators but recently there is one communication ffrom National Conciliation and mediation project committee of the supreme court which says that you should have advocates to do mediator now following that judicial officers are not being assigned the work of mediator but otherwise all judicial officers are trained mediators they can take mediation also but now they have stopped.

In response to the challenges and practical difficulty raised by the particicpants, Justice A.M. Ahmadi replied and gave many examples by which the ADR system can be improved and opined that.

- Our system is highly professional nothing moves out without lawyers so that is one of the major handicapped of the system because if they have become totally in the hands of lawyers somebody is available somebody is not available. I know that you go on adding judges it will not solve any problem don't expect higher disposals because availability of lawyers will not be there the judges, will be sitting down the dais biting their nails

waiting for the lawyer to come so it's a highly professional system you have to find some way within the system how you do it is another matter, you see it all depends upon the local conditions.

- I see the point of view and the handicapped that you suffer on that account but it is a common feature everywhere that happen, even form my dist. 4 or 5 mediators are selected for training they are not sufficient in each court complex there must be a number of mediators because party advocate from another remote corner cannot come to the place so there has to be 4 or 5 mediator.

Session 2

Reducing differences between the parties: Role of Mediator

Speakers- Dr. S. K. Jain and Mr. Prathmesh D. Popat

Session 2 was based on Role play exercise. Mr. Prathmesh D. Popat and Dr. Sudhir Kumar Jain explained briefly about the methodology use in role play and divided the participants in to group of 6 and thereafter distributed the general information to the mediator and confidential information to the parties in each group in Damage role play.

Damages Role Play

Ram v. Sunil

General Information

Ram and Sunil had been next door neighbour for ten years. Both have children. The families had a friendly relationship in the past. However, things have deteriorated from past six months, ever since Sunil bought a black Labrador and kept in his courtyard. The dog was large and aggressive. The dog used to bark frequently when people approached either Sunil's home or the neighbouring home. Ram complained to Sunil many times. Two months ago, the dog dug a hole underneath the wooden fence that separated Sunil and Ram backyard. Dog also crawled through the hole into Ram backyard and damaged some of the flowers. Ram called Sunil and complained. Ram was very much concerned about the prize winning roses in the far corner of the yard which the dog damaged. Sunil filled the hole under the fence. A week later dog once again got into Ram's yard and tore up two of the rose bushes. Ram became hysterical, chased the dog with a broom and hit it. The startled dog barked and bit Ram on his hand. Sunil went to rescue and calm down both the dog and Ram. Then Sunil took the dog back home. Ram claimed damages from sunil and demanded Rs.4000/- for doctors' bill for four stitches from the dog bite, Rs. 10,000/- for the two rose bushes, which Ram valued at Rs. 5,000/- each, Rs. 6,000/- for nuisance and deprivation of sleep and Rs. 30,000/- for shock and pain due to dog bite, however Sunil refused to pay the said amount. Ram then filed a suit for recovery of Rs.50.000/-.

Referral Judge referred the case to mediation.

Confidential Facts for Sunil

- Sunil was sick of being lectured by Ram on dog issue, and felt that Ram was completely unreasonable on this point.
- Sunil went to the suburbs to get a dog for his kids.
- Sunil wanted to have a dog to feel safe at home.
- The dog is a good watchdog and barks only when a stranger comes to front porch.
- The dog does not bark at anyone passing the house or when a person is at the neighbouring house.
- The dog bite was entirely due to Ram's own fault. He should not have hit the dog with a broom. Sunil is sorry that the dog got into Ram's yard again, but instead of attacking dog, he should have called Sunil.
- Sunil will not pay for the doctor bill as the dog bit Ram only after being hit with a broom.
- Sunil may buy new rose seeds for Ram to replant the rose bushes. There is no way to pay Rs. 5,000/- for each bush to Ram. Sunil has seen rose bushes at the nursery for less than Rs. 200/-.
- Privately, Sunil is willing to tell the mediator that he feels bad that the dog has got into Ram's yard two times and damaged the roses. Ram seemed to be really upset about the roses. Sunil is willing to do something to avoid having the dog get into Ram's yard again and may put up a higher fence.
- Sunil will consider paying all or part of Ram's medical bills, if the mediator asks Sunil to reconsider that issue.

Confidential Facts for Ram

- Ram is very upset about dog nuisance. Over the last six months, he requested Sunil to quiet the dog down on numerous occasions, but to no avail.
- The dog's loud bark is terrifying which scared the two young children of Ram.
- The dog goes ballistic every time someone approaches Ram's house and scares the guests.

- The dog barks intermittently at night which causes disturbance and hindrance to his sleep.
- Ram is furious about the damage caused to the prize-winning rose bushes. Ram has already won blue ribbons for first place in the country rose competition for the last two years in a row. Ram desired to be paid back for the damage to the two rose bushes (although no amount of money can repay for the expert care and attention which Ram has given to the rose bushes).
- Ram is also very fearful that the dog will re-enter his yard and damage the four remaining rose bushes.
- Ram is also terrified of the dog, since he brutally attacked and bit him. Ram cannot tolerate this dangerous animal around him and his children.
- Ram has asked Sunil to get rid of the dog and pay Rs.50,000/- which includes medical bills (Rs.4,000/-) two rose bushes (Rs.10,000/-) nuisance and deprivation of sleep (Rs.6,000/-) pain and suffering from the dog bite (Rs.30,000/-).

After 20 minutes role play exercise by the participants Dr. Jain and Mr. Popat asked the participants to share their experience and then he explained the difference between the mediation and judicial process and gave feedback to participants on role play and suggested that

- Mediation as you all know is a structured process so first I explained the process to the parties as well as counsel present before me and then you see in the joint session to know about the case of the parties and then in the private session what is the underline process with regard to the parties.
- In Mediation you gather the information by conduction joint session and single session. You gather the information for two purposes to understand the factual background of the dispute and you have mentioned the underline interest of the parties and after understanding the basic dispute the background of the dispute and underlying interest of the parties you develop various option you allow the parties to develop the options.
- Parties can come up with the solution that dog cannot give and whatever solution coming from the parties is always acceptable to parties rather coming from the court.

Session 3

Understanding Conflict: Their bases and Groundings

Speakers: Dr. Aman M. Hingorani and Dr. Parul Rishi

Topic of discussion in this session was to understanding conflict; their bases and groundings. Dr. Aman Hingorani explained the process of conflict, why conflict and how it can be resolved. He explained the followings.

- The basis grounding of conflict and as we all know the source of every conflict is some defect in understanding some error in the reasoning or some of sudden passion, the whole purpose of mediation is basically to identify that source, unless you correct that we can not transform the conflict
- How to identify the source, in order to appreciate that you must keep in mind that conflict is the process it doesn't happen over night, it starts with some kind of dissatisfaction about the person not able to achieve target or goal and that leads to analysis about the failure not being able to do so, analysis can be done first we analyse our own self or the circumstances, others can analyze for you, so regardless of the source of the analysis, analysis is normally directed at the nature of the problem, to decide how that person wants to resolve and what are the gateway, strategy he can get solution, it is the very critical stage, a correct analysis would preclude the conflict but wrong analysis will create the problem in conceptualizing the conflict. if you really want to get bottom of it, you need to be able to see the way that analysis is going wrong thats not the role of a judge, a judge simply see the facts, the law, applies those law to the facts and gives a decision, but if you want parties to step back get the conditioned, shake hands, win win situation, go back then we need to not only your self but they have to rely themselves the way they have gone wrong in their own analysis, this is some thing we do not do in country in mediation, we do at some part in **BATNA WATNA as a reality check.**
- There are two models which a mediator can use in a practical way for the mediator to be able to understand the conflict and ensure that the parties has also understood the conflict so there are **two models one in ranking model and other is list model.**

- In ranking model what we have done is asking the parties what is your underlying interest, do it from the other side also what is his underlying interest whats more important for that person in his order priority so each disputant is giving the list of two ranking. Party A will give two list one form his side and party B will do the same but with the results as a result of this exercise you have before you the way the parties wants to see the dispute resolved, its a practical way doing it as opposed to getting in to session and discussions many times, relying on memories so he cant really put in to writing, it takes the way from the process if you do that so this is the one way in which you are not analyzing the merits of the case, its not a case analysis, the underlying interest of the parties so which is ranked in the priority and sequence, which is most important for the parties and thats why it is called ranking model,
- Another model is the list model which is similar to BATNA but the disputant is guided through BATNA and WATNA, it requires the vital list of issues, when we use these models, these models can be used depending on the nature of the dispute, depending on the kind of parties before you, but in this particular model you asked the each party to write a list of issues which are most important, most important to his case, right the strongest point of his case so this is very important to at least right it down. He has to be aware of his rights so you need to adapt these kinds of list and models depending on the nature of the party; each disputant has to repeat this exercise.

The second speaker, Dr. Parul Rishi explained the physiological perspective in mediation. She came up with an exercise and asked the participants to do that and thereafter explained what kind of conflict management question countered in mediation, cases of different of interest so what exactly the conflict is.

She explaine the north american model of conflict which says that conflict is bad, its not good if there is conflict, its adversarial, means all the time talking about something adverse which we don't like one party win and another party lose and its focus is on the opponent, we always want our opponent to be suppressed and we be the winner, this is considered basically a scenario, kind of tradition view we are taking about and it cost by trouble maker, that it should be avoided, that it must be suppressed, right now the modern view what we talk about in conflict management is

that conflict is inevitable, it's like part of our life, we can't live without it, similarly it's the conflict which is the part of the life and it is inevitable between human beings and it will happen, you can't do anything to avoid conflict in any way.

You as a judge you have to balance the whole situation, balance the whole process this becomes the crucial issue to find out the person who is blaming the other person, blaming the other party is just blaming for the sake of blaming or its actual reason. Parties may change their attitude, that is the main purpose for which you had initiated the mediation process that one of the parties may just realize that whatever the best possible option is and then they change their attitude towards the other party and then only the mediation process can only be successful.

Session 4

Resolution of Property Conflict: Role play by participants

Speakers- Dr. Aman M. Hingorani and Mr. Prathmesh D. Popat

This session was also based on role play by participants on property conflict. Dr. Aman Hingorani explained the various steps of mediation such as opening statement, general information, and confidential information and thereafter distributed the property role play exercise in group of 5 consisting of 5 members in each group, two mediators and 3 parties.

The format of Role Play exercise:-

Mediation Exercise
In the matter of : C Versus B, D, E

General Information

1. In a prior litigation, the High Court held that Property X belongs equally to A and his daughter, B. A died leaving a will bequeathing his 50 % share in the undivided property to his wife and after her death, to C (to the exclusion of B).
2. During the lifetime of the wife of A (that is, the mother of B), B entered into an unregistered agreement with the building contractor, D, for the specific purpose of construction of a multi-storeyed residential building on the property. As per the agreement, D (the contractor) was not to be given any title in the property but 50% of the sale proceeds of the flats which were to be constructed upon the entire property within a period of 20 months of the date of the sanction of the building plans. B executed the registered power of attorney in favour of D (the contractor) to raise the construction, to accept bookings for the proposed flats, to sell the said flats and receive the sale consideration. The wife of A was, at that time, aged 80 years and bedridden with illness.
3. Under the agreement with B, D (the contractor) entered into physical possession of the entire undivided property, including 50 % share of the late A.

4. D (the contractor), however, started violating the building bye laws by raising construction in excess of the sanctioned 60 % covered area. Due to breach of contract, the agreement with D (the contractor) was terminated by B and the power of attorney revoked before D (the contractor) could sell any part of the building it had by then constructed. D (the contractor) filed a suit in the High Court against B challenging the termination of its agreement and revocation of power of attorney, which was eventually dismissed in default. Before such dismissal, the High Court had ordered status quo of title and possession.

5. D (the contractor) owed Rs 5 crores to a private bank, E, for many of its projects not connected to this property. During the operation of the status quo order, D (the contractor) inducted E (the bank) through an unregistered perpetual licence deed, into the entire residential property to operate a bank branch there. D (the contractor) also executed the registered power of attorney in favour of E (the bank) to deal with the property in any manner it wishes to. D (the contractor) thus sought to service its debt to E (the bank) through the property.

6. That throughout this period, the wife of A was alive, though bedridden.

7. The wife of A died, and the legacy which had vested in C on the death of A now devolved upon him. Thereafter, the management of D (the contractor) changed.

8. C wants to develop atleast his 50 % share of the property after demolishing the existing superstructure since the current building bye-laws permit enhanced covered area. C filed a suit for delivery of legacy of his 50 % share in the property, partition and rendition of accounts against B, D (the contractor) and E (the bank).

9. In the suit,

(i) B pleaded that she herself was divested of the entire property by D (the contractor) who, instead of restoring the physical possession of the property to her after dismissal of the suit of D (the contractor) by the High Court, inducted E (the bank) in possession of the property in violation of the status quo order. B supported C and was treated as a formal defendant.

(ii) The present management of D (the contractor) pleaded that it had entered into the suit property under a valid agreement between its previous management and B, and

had, prior to the termination of the contract, invested huge sums of money in raising the construction and received booking amounts from prospective buyers of the flats. D (the contractor) pleaded that it had interest in the property and could not be asked to deliver any part of it to C. In any case, D (the contractor) has no privity of contract with A or with his successor in title, C.

(iii) E (the bank) pleaded that it had received the property from D (the contractor) through registered power of attorney against consideration, though ostensibly termed as licence fee. Hence, E (the bank) too had an irrevocable interest in the property, and asserted title to the entire property through a power of attorney sale. In any case, E (the bank) also has no privity of contract with A or with his successor in title, C.

10. Upon completion of pleadings, the Court has referred the parties to mediation. B is a formal defendant and agrees to be bound by the settlement, if any, C arrives at with D and E with respect to the entire property.

MEDIATION EXERCISE

In the matter of : C Versus B, D, E

Confidential Information of C

1. C is confident of his title to 50 % of the property in question; it being based on the decree of the High Court in previous litigation.
2. C is of the view that since D (the contractor) had no title, it could transfer no title to E (the bank). Further, as the building is still incomplete and the agreement between B and D (the contractor) being duly terminated, the question of sale of the flats does not arise. The rights of D (the contractor) under its agreement with B therefore do not mature
3. C, in any case, has no privity of contract with D (the contractor) or with E (the bank) who is, however, in possession of even his 50 % share of the property.

4. C is, however, aware that since D (the contractor) did raise the superstructure in the entire property after investing money and accepting booking amounts from prospective buyers, and as E (the bank) has entered possession after paying consideration, the matter will require adjudication of rights or interest, if any, of the respective parties in the property which will take time.

5. C has just learnt that the land authority has cancelled, without notice to C, the perpetual lease of the property which was in the name of A on ground of misuse of residential premises for commercial purpose of having bank branch operating in the premises. C would need to get the lease restored after paying heavy charges to the land authority, and does not want to incur that expense unless he is certain to recover the possession of his 50 % share in the property.

6. C is also suddenly faced with urgent need of money. C had invested in the purchase of a farmhouse project and had agreed to make substantial construction-linked payments as per schedule. C's friend, who had promised to give him an interest-free loan to make such payments, has now suddenly resiled from his promise. If C fails to make the payments as per schedule, he would not only have to pay penal interest but risk the prospects of his booking in that project being cancelled at considerable financial loss.

7. C wants to settle this matter at the earliest on terms which would address these issues.

MEDIATION EXERCISE

In the matter of : C Versus B, D, E

Confidential Information of D (the contractor)

1. D is of the view that it had entered into the suit property under a valid agreement between its previous management and B, and had, prior to the termination of the contract, invested huge sums of money in raising the construction and received booking amounts from prospective buyers of the flats.

2. D believes it has interest in the property and could not be asked to deliver any part of it to C. In any case, D has no privity of contract with A or with his successor in title, C, and is not a necessary party to the suit.

3. The present management of D, however, has no idea as to why its previous management C took possession of the entire property when its contract with B necessarily had to be confined to 50 % share of B in the property. Similarly, the present management of D has no idea why monies were spent in raising the superstructure in the entire property.

4. D was at the verge of being declared sick. The present management has just taken over and simply has no funds at its disposal. D cannot even take the risk of the Court finding it, or E, to be liable to deliver to C the legacy and pay C for use of his 50 % share of the property over the years, and hence wants to delay the trial so as to get time to find it feet.

5. D prefers to settle the matter only with a view to limit its financial liability to the minimum.

MEDIATION EXERCISE

In the matter of : C Versus B, D, E

Confidential Information of E (the bank)

1. E is aware that as D (the contractor) had no title, it could convey not title to E. However, E has been using the entire property to service the debt of D due to E. If the Court now finds C to be the true owner of 50 % of the property, E will have to pay occupation and use charges to C as well. That could run into lakhs, if not crores, of rupees. As a result, several senior officers of E who had finalised the transaction between E and D years ago would be subject to inquiry and possible disciplinary proceedings. The banking supervision and licencing division of the RBI may also step in.

2. E is not only running a bank branch in the property but is also using the basement for its lockers. E is apprehensive that should E not claim title to the property through a power of attorney sale, it will result in a scare amongst the customers of E that their valuables are in lockers situated illegally on someone else's property. This will adversely affect E's reputation and credibility.

3. However, the footfall in E's branch in the property is substantial and E intends to stay put in the property to exploit it for its commercial purpose.

4. E, therefore, prefers a settlement only if these issues are somehow addressed to its satisfaction.

After 20-25 minutes of role play Speakers asked the participants to share their experience as a mediator and as parties and then gave feedback on various points which can be used in mediation. The point of this exercise was, thrust of this exercise was to get out from the contradiction with the legal element of the case, the heavily legally loaded case, distinct from that the underlying interest of the parties, to compel that, there can be a solution easily found the underlying interest of the parties and this particular exercise was basically for the mediator to take out those underlying interest from the parties, it is only to that extent these things are relevant.

Session 5

Role and Responsibility of Referral Judge under Section 89 of C.P.C. and Justice Issues in mediation

Speakers: Justice Manmohan Sarin, Justice Manju Goel and Dr. Sudhir Kumar Jain

Hon'ble Justice Manmohan Sarin asked participants to introduce themselves and share their experience as a Judge in developing ADR system in their respective district, thereafter, he explained the concept of Justice Issues in mediation by citing various examples.

He touched on the various aspect of judicial delay as a hurdle to reach Justice for a common man with the help of various day to day examples and then explained why mediation and ADR system as whole is important to get justice within reasonable time and in cost effective manner. Thereafter, he discussed in detail two landmark cases; one is Salem Bar case and second is Afcon case to explore the scope, limits and drawbacks of section 89. He highlighted the various provisions of section 89 in light of Supreme Court judgement in Salem Bar and Afcon infrastructure case in order to explain the role of referral judge.

Justice Sarin also explained the difference between the conciliation and mediation. He said theoretical difference is very clear, a conciliator can himself make suggestions, he says that these are the merits of your case and in abroad you have this earlier evaluation, there are evaluator where suit is there, they do the evaluation at the bidding of the party and tell the respective parties, these are the merits of your case so bring them around, otherwise there is no big difference but conciliation like arbitration requires the consent, coming to reference on mediation and lok adalat, answer is very simple, mediation itself has to have a consent, settlement come to an agreement is voluntary in nature.

Second speaker Justice Manju Goel discussed on the point that why this justice issue is so important in one particular programe I asked trainee are you concerned about the fairness of the outcome. you know the justice has two part that is process and outcome, when I say process, the procedural law and outcome is the result, the process has to be very judicious I mean fair, just you have enough opportunity of being heard and outcome is justice has been rendered then we have look at the outcome. She came with the list of questions related to legal issues in order to explain the concept of justice issue in mediation.

Third Speaker, Dr. Sudhir Kumar Jain explained the role of referral judge in various types of conflict in mediation and in other ADR processes.

Session 6

Application of Mediation Techniques to resolve family and Matrimonial Disputes

Speakers: Justice Manmohan Sarin, Justice Manju Goel and Dr. Sudhir Kumar Jain

This session was on discussion on various techniques to resolve the family and matrimonial disputes. Justice Sarin cited various examples of family and matrimonial dispute and explained how it got resolved. He discussed the followings.

- If a labour removed in unjust manner or illegal manner the mediator can tell what are the legal provisions in his favor what amount of compensation he can get how long the litigation may take how long the mediation may take what are the advantages of The outcome that may be there if it is women for example in matrimonial dispute the women may be told that even if there is divorce which you do not want then you might get maintenance how much maintenance what are the modes of recovery. If she has to stand alone what are the social support system available in the town if there are women organization so that she gets some confidence in bargaining. This is how power imbalance can be balanced.
- Matrimonial disputes and family disputes are the one to my mind is ideally suited for the mediation and the reasons for this are not far to seek, this is the process where you know whenever there is a strange couple you know you want something in a atmosphere where you have your open sake where people can openly and candidly can say and express them which is the function of mediation otherwise.
- In matrimonial matters where wife would like to share with the mediator the problem she is having what has the torture she is going through if she feels that is the case or what are her difficulties what are her requirement. so you need to the first requirement in matrimonial dispute to my mind is understanding the grievance and determining for your self what is often call as the underline cause.

Second speaker Justice Manju Goel explained that there are difference between commercial matters, property matters and matrimonial matters, first of all we need to realize that matrimonial matters deals with the life of a person, in other mediation we know what the parties are looking

for but in matrimonial disputes emotions play very important role because happiness is not about getting more happiness, more money so it is a emotions, emotion are different types but don't discard emotions, emotions are fact and factors, secondly parties don't know what they do want, they are not sure, you have to be very patience to understand the parties and let the parties understand themselves, what are they looking for, many of them say they are looking for revenge but they are not looking for revenge, that is just immediate reaction whatever has happened, the peculiarity is that there are other parties involved, third party, who are the third party involve, family members, in laws and the most important is mother in law.

Third speaker, Dr. Sudhir Kumar jain discussed the practicalities of matrimonial and family disputes and its resolution through mediation, he said the matrimonial dispute for the peace and harmony in the society, they must be resolved by the mutual agreement, how you visualize the causes of the matrimonial dispute, why the matrimonial disputes are there in the society or in the family. He also cited various case laws and examples related to matrimonial disputes.

He said the perception is one of the major factors in matrimonial dispute. Most of the conflict they are because of the different perception of the husband and wife, sometime misuse of the section 498A IPC, to resolve the matrimonial dispute we have family court, the functioning of the family court is based on the jurisprudence of the family court is not the mediation but the conciliation, conciliation is the basic formula for the settlement of dispute but this leads to one question if the conciliation fails can we resort to the mediation.

He further added that in matrimonial matters we need to understand that what is the role of mediator, there is a zero communication between the parties, if they are having little bit communication, it is very hostile and negative communication, now what should be the good attribute of a good mediator, first is he should be a good listener, second is effective communicator, third is ability to ask the right question, why you asked that question to gather further information for relevant information, the way you are asking the question is very important. You need to understand the facts, in matrimonial matters we need to counter the negative aspect also, in matrimonial dispute you know we have tendency to rush to the solution but in matrimonial matters there should not be any pre mature solutions, a mediator can not be judgmental in matrimonial dispute and control your emotions.

Session 7

Practical Demonstration: Role Play in Mediation

Speakers: - Justice Manju Goel and Dr. Sudhir Kumar Jain

Session 7 was on practical demonstration of role play by the participants themselves on a damage related dispute. One group consisting of 3 members was formed in which one participant was assigned the role of a mediator and other two selected as parties. The session went on role play exercise, each participant involved in the exercise acted his role and demonstrate to others who a real mediation proceeding goes on and in the end of the role play Justice Manju Goel and Dr. Sudhir Kumar Jain gave feedback on the whole exercise.

Session 8

Use of Mediation in Specific Performance Suits

Speakers: Justice Manju Goel and Mr. Prathmesh D. Papat

In this session one hypothetical situation on specific performance was discussed. The participants were asked to form groups in order to discuss the case, thereafter, Justice Manju Goel stated the facts of hypothetical case to the participants as follows-

There is a small town and town is abuzz with news that a famous singer Kiran Kumar is coming to the town for a musical evening, the tickets are sold, all advertisement put up and people are eagerly waiting for the evening. Kiran kumar about 7 days before the performance informed the organizers that I will come to your programme provided you raise my remuneration by 1 lakh, now the organizers have already sold out the tickets so all funds already raised for that remuneration and there is no scope for another 1 lakh rupees for this singer just one week is left now apart from this, if the programme is cancelled there is this issue of children, young boys and girls who are supposed to play along with the singer, they have been trained and they have been rehearsing and they are excited about this programme and they look at this as life time opportunity to be at stage with the singer. Why suddenly singer has raised this remuneration issue is not known to me, it is only known to the singer, only singer knows and what are the limitations of organizer, only organizers know so one is the organizer and other is the singer, thereafter, she requested the participants to negotiate on the issue and gave you 10 minutes to negotiate and asked to conclude whether problem is solved or not and music night is on or it is called off.

After 10 minutes, discussion took place; every participant shared his point of view on the case and cited various provisions of law.

After discussen the speakers concluded on following notes.

that the purpose of adding this in this segment today is to get this message across that wherever the specific performance is required as one single judge said in the appeal in the High Court that it after looking at the record that it is better you say something rather two of us say something and this aptly apply in few cases like this where specific performance cases giving relief or not

giving relief because of hardship by one or the other party. and if you go section 14 carefully you will find several reasons that you want mediation very actively and very seriously.

That when we are doing mediation particularly in the cases of specific relief, specific performance of contract in agreement when such cases are referred in mediation then apart from other techniques we need to concentrate on negotiation and other parts also as most of you settle by negotiation the singer and organizers negotiated. The cases in which you settle are very cooperative negotiators.

The difference between mediation and conciliation was also discussed. Dr. Sudhir explained that there are three ways of looking at the difference between mediation and conciliation, one way over here is this that if the conciliation, conciliator focuses on the issues between the parties so he would be more focused about the issue and not concerned about the relations and in the mediation mediator is focusing on the parties and therefore, issues would be taken care down the line but primarily his focus is on the parties, as we were talking about the underlying concerns, emotions etc that is why it is a slow process but in conciliation because he is focusing on the issue you can settle on these terms that is why we use the word pro-active for conciliator because he can make the decision right away, he is not concerned about the parties, he is concerned about the issue and therefore, he is concerned about the settlement of issues, in mediation it is a little bit different.

Session 9

Use of Mediation in Intellectual Property Rights

Speakers: - Justice Manmohan Sarin and Mr. Prathamesh D. Popat

Justice Manmohan Sarin briefly discussed the issues and use of mediation in Intellectual property rights related matters, thereafter Mr. Prathamesh D. Popat explained and discussed in details on some important question related to IPR and its use in mediation.

What is the 'Property' to be protected?

Who has the right to exploit?

Is the IP right implied by law or created by contract?

How do the consequences pan out in different jurisdictions of: (1) an order; (2) a settlement?

How best can who CREATE Value & CLAIM it?

After discussion on the above mentioned question, Justice Sarin asked participants to go through the Sections 89 and various case laws provided in the reading material. Justice Sarin also highlighted few IP related case laws, one is *Shree Vardhman Rice & Gen Mills v. Amar Singh Chawalwala* and other one is *Bajaj Auto Ltd. v. TVS Motor Company Ltd* in which the court held and emphasis on need of desirability of final decision instead of battle in the injunction application, it was held that you see in the reading material without going into the merits of the controversy, we are of the opinion that the matters relating to trademarks, copyrights and patents should be finally decided expeditiously by the Trial Court instead of merely granting or refusing to grant injunction. In the matters of trademarks, copyrights and patents, litigation is mainly

fought between the parties about the temporary injunction and that goes on for years and years and the result is that the suit is hardly decided finally. He further added that in our country, suits relating to the matters of patents, trademarks and copyrights are pending for many years and litigation is mainly fought between the parties over temporary injunction. It is evident that due to unwarranted delay in the disposal of cases and the costly litigation which could prolong the protection accorded to the work, rather than promoting the progress of intellectually protected work, the aggrieved parties are opting for alternate dispute resolution mechanisms for the advancement of intellectual property rights in India.

Session 10

Mediation Rules of High Courts: Discussion on Similarities and differences

Speakers: Justice Manmohan Sarin and Mr. Prathamesh D. Popat

Initially, Justice Sarin discussed the case of Bawa masala Co. v. Bawa Masala Co. Pvt Ltd and another, reported 2006 Del 284 in order to explain the concept of early evaluation (ENE) to examine the scope of judicial settlement in Alternative dispute resolution. Justice Sarin also discussed one case of Cipla v. Rosh, to explain as to how the process of mediation and judicial settlement process can be used in resolving IP related matters.

Therafter, in the last session the major point of discussion was on Mediation rules framed by the different High Court across the country and its uniformity and effectiveness. The Programe Coordinator, Yogesh came out with a draft on differences and similarities in mediation rules of the High Court and explained it to all the participants. The Session on went on experiences sharing by the participants, the status of mediation rules in their respective states, the role of NALSA with respect to the fee of mediator.

In the end Jusice Sarin asked the participants to share their point of view on alternative dispute resolution as a whole and their feed back and learning on this programe.