

P-944

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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

Introduction by Prof. Geeta Oberoi

Very good morning so today we have our first speaker Hon'ble Justice A M Ahmadi, of course he needs no introduction, he is former chief justice of India, chairperson of NJA , one thing I really want to tell all of you because hardly people know this fact that this whole academy from gate 1 to gate 2 that you see such a beautiful place it s all thanks to justice ahmadi, when he was chairperson and he took this whole onus upon himself of building such a beautiful academy as you one can see he laid the foundation found the architecture, found the right kind of engineer to construct this academy so sir we really grateful we are sitting in such a beautiful place, thanks to you also he has huge experience in settling so many cases in lok adalat and another ADR mechanism so he I will give this now to sir, I will pass it over to you now to take all this deliberation for session 1. I was thinking that it would be good all of you introduced yourself to justice ahmadi, yourself, your little bit background, from which state you are coming, how many experience you have and what kind of ADR infrastructure you have. Please sit.

Participants

I have joined judicial service, 5th of august 1985. I have completed my 31 years I am PDJ since last 2 years. I joined in HJ soon 16 of may 2001, presently I am in meruth, infrastructure facility at merut is not conducive to having the achievements which are the challenges of ADR where it is a vey big city having 62 court sanctioned 62 courts, 43 are running courts all parent courts they are referring the matter U/S 89 for mediation but the infrastructure facility there...ADR building has not been constructed, the payment has not been provided It is existing in the old court building in a room, the advocate s are always creating hue and cry they are not cooperative even than we are trying our level best to get our achievement.

I am venkataramana principle CBI judge, Hyderabad, earlier worked as waragal PDJ..recently transfer to Hyderabad, we had certain facility and so far as ADR facility is concerned, Hon'ble HC is taking lot of interest in providing infrastructure In district Menor. My lord rajesh gupta, District Judge, neemuch M.P., we are having full fledge ADR center, and 18 referral courts in my district 18 referral court means 18 courts are working in neemuch, every court can do section 89, every court is referral court,no.ok.ok.

I am yasvender pal singh from, posted as ADJ in Gurgaon. we have good facility As far as ADR are concerned even in all Haryana ADR centers are, even lok adalat, mediation they have separate rooms, cabin, we have good facility.

Good morning I am puneesh jendia, I am ADJ, presently posted as Registrar (Rules) in Punjab and Haryana. i am looking after HC legal services committee Arbitration. we have separate arbitration center I am looking after that also I am looking after mediation also as far as Punjab and Haryana HC is concerned we are like have excellent infrastructure...for mediation, arbitration, lok adalat all these components are there in the HC premises only.

My lord...I am posted as PDJ in Ludhiyana and as far as conditions are concerned..my colleague has already explained...we have excellent facility, rooms are available and lawyers are also cooperative in disposal of the cases.

Good morning, Upesh Sharma, I am District and Session Judge...kinnore at rampur in state of so far as ADR center is concerned that is under construction..we are having new building coming up kinnore which is tribal headquarter of kinnore distt. since I am base at rampur we have a mediation center at Rampur plus we have another 3-4 courts which are functioning under me and we have independent mediation center to carry out mediation activity.

Good morning, my lord, rattan singh, member secretary, Manipur legal service authority, regarding ADR center in Manipur is not proper infrastructure, actually our state is under the main HC of Manipur. We are under the Guwahati HC ever tying is under process for development. Thank you.

Good morning to all of you. I am mohammad jafar from sasaramm., bihar. I am there as family court judge, prior to joining here one month back i was presiding officer of bihar tribunal.in the month of august 2015 I joined here as family court judge, ADR building is there in sasaram..it is

sponsored by the legal service authority and its work is quite satisfactory there. It is considered.
Thank you lordship

Good morning to all. Myself arvind kuma District and session Judge, purnia, biharr, I joined bihar judicial services in 1982 as Munsif, ADR building is going to be completed in October or November 2016 work is in progress thank you

Good morning lordship, District and session judge, assam , in my distt ADR building is under construction, more than 90 % work has been completed. Thank you

Gud morning..myself B. N. mohanty from Orissa now I am PDJ...distt Baleshwar..in our Distt there is ADR center in last 2 year amnd its working properly and ...there are other 14 ADR center..and ADR and all other activities are going on smoothly

Myself udit choudhary I am presently in the state of tripura I joined in the services in the year 1988 I have completed 27 years of my services..i was promoted in grade 1 judicial services in 2010..in our state as far as ADR facility is concerned..it is very limited bcz we were in under guwahati HC now we have our own HC. So far as traditional Lok adalat is concened our state is doing goodbut mediation centers is concern it is very limited but recently steps are being taken by the HC and and we are gradually developing in the state

Good morning sir and mam..i am anu malhorat I am District and Session Judge, saket delhi..we have our mediation centers, well developed in all the 6 complexes of delhi nevertheless we can do with some space and improvement because we influx of referral and the no. of mediators that have been trained as regards the ADR center we do not have...that is in arbitration, conciliation center in the Hoble HC of Delhi but we do not have any ADRs center in our complexes and the aspect of implementation of referral to arbitration is yet to far try and I would also submit the aspect of judicial settlement though on the board of the CPC with effect from 1-7-2002 perhaps not being considered by the any of the Hon'ble HC of the country because where mediation failed and that generate from the judicial offices can return in to judicial settlement may be this august house can work upon the deliberation in relation thereto.

Yes my suggestion on this are that since JS are is already on the statute books where a there needs to be rule needs to framed for judicial settlement which none of the Honble HC have done it..it is

there on the statute from 1-7-2002 we are obligate to this if we do that where mediation fails I think JS will help so may be this august house can help

Good mornind my lords I am yogesh khanna, district and session judge, north west delhi, we have got mediation center in district complex and it is run by run in change as well lawyer who are running as mediators thank you. Mai arun gupta. District and session judge, barah, rajasthan maine ADR center alag se hai our safalta purvak kaam kar raha hai

Good morning my lords I am BS bhanumati DNSJ, East Godavari, AP I joined in serviced in 2002 I have been working as PDJ for the last 5 years and we have mediation center already at Distt. headquarter but I feel that in every court complex that needs to be a mediation center building otherwise parties and the advocates from rural corner cannot reach for every case the distt headquarters its impossible and they can't give immediate response in many times If we send a matter for reference they cant just wait for few hours because parties think that they need assistance their counsel and without a whose response many times they don't even speak and second is the advocate is engaged in his own work in before the courts so there is always a clash.. to accommodate them in writing of their choice and judges are not enough and trained mediators are not able to cope up with the situation because though they are trained but skill is required to handle a mediation skill is required the training would only add to that and they are trained but are not able to handle every case second thing the no, of mediator is comparatively less and then the no. of cases we have if every case which prefer for mediation need to be send to a mediator because mediation is also a long process of discretion sometimes very complicated so the time for each week one mediator may be able to handle few cases even if a single case from each court is refer to him and the no. is more than what he can spare for a case so it is disproportionate and this way we need to counsel the skilled mediator are more important than no of trained mediators identification of persons with skill and it is task fo the DJ ti send mails to the HC for training it's a practical problem my lord

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 have been of the knew 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

that is 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 appreciate the point of view and the handicapped that you suffer on that account but it is a common feature everywhere that happen, even if from my distt. 4 or 5 mediators are selected for training they are not sufficient from each court complex there must be a no. of mediators because party advocate from another remote corner cannot come to the place so there has to be 4 or 5 mediator This is very peculiar to your state.

Good morning sir I am narayana from Kerala...in kerala in almost all the district mediation centers in my distt also there Is a mediation center and mediation is a ...in kerala even ...parties reaches HC.

Good Morning sir...myself rakendra singh DNSJ. Uttrakashi in state of Uttrakhand I have joined the JS in 1992 in UP JS after creation of uttrakhand I have jined higher judicial servces in January 2010 so far the ADR center concerned ADR center building is under construction..presently ADR center is running in under DISTT court building

GM to all myself virendra Bist I have recently joined as PNDJ in buldama, Maharashtra..and building ADR building is most completed ..fully will be discharging soon...otherwise we are doing...thanks mylord

My Lord I am sruryakant shinde: I joined Judicial Services in the year 1999 I am PDJ at Gadchiroli District ...recently join in july 2015 in our District there is big building of constructed by the end of November it will be completedmy lord in our in state of Maharashtra the Bombay had framed the rules for ADR and mediation rules 2006 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 almost all the at least 15-20 % case are settled under the ADR scheme under the mediation scheme thank you

I am Deepak Tiwari DNSJ, chattisgarh, whenever we find that there is chance of settlement, we work in the letter and spirit of the section 89 mandate given by CPC regarding infrastructure that is still in the progress ADR construction is under construction. We are persuading the judges to settle the matter in the light of Section 89 thank you my lord PNSJ, durge. chattisgarh. we have no separate building for ADR but we have provided a room in distt. court building for ADR we are working now a days well thanks

Sir, myself Anil verma, PDJ at Sagar, M.P. I have appointed as judicial officer in 1987 in our DistrictADR service building is under construction but 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.

Myself Sandeep Kumar District Judge Rajganj, Calcutta I have joined District Judge in July 2000. There is ADR building in my district. There are also some trained mediators and myself and my other officers are recording the Records for mediation but for success is not achieved

Why? The Lawyers are not co-operative, what about the parties? Parties are interested. Thank You. Good Moring My Lordship my name is working as district and session Judge Tamil Nadu in our district we have a ADR center and mediation center and it is slowly developing my lord.

Good Morning My Lord, kumar from I entered Judicial Service in the year of the higher Judicial Service in tanjore District, there is exclusive building for ADR under constructed is will be completed in a month or couple of months also and so far a parties are concerned we are getting co-operation from all the corners, thank You My lord

S. N. Mishra Principal and District Judge Cuttak, sir I joined service, Judicial Service 2010 as directly recruited from the Bar. Sir in my place we have one ADR Center, which houses mediation center also conciliation center also. 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, thenon-cooperation of the parties either on the part of the husband or on the part of the wife also....my Lord we need to reach the interior areas, in this regard we are taking steps for opening mediation center at each court complex, so that in interior areas also we can take off all these ADR activities. Thank You.

Good Morining My Lord I am Manoranjan.Kavi I am Principal District and session Judge in the District of Jamtada at Jharkhand. I joined higher Judicial Service in the year 2001 and since then I am principal and district judge here...in my district there is no separate ADR building as yet we are in the process of construction. Process of mediation is going there but it is not satisfactory in my District I am also a trained mediator or 40 hours, I took the training earlier in 2008 but after 2008, 2009 I used to sit the mediation, but after that I am not sitting in mediation because, there is

certain direction from the Hon'ble High Court that only advocate mediators will do, the Judges are not allowed to sit in the mediation. So I am finding 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. Thank You.

Good Morning sir I am P.P. Mehta Waisada District from Gujrat I am PDJ since last...first July 2015, I have in my District one ADR separate building is available and inogration of that building is before three months, we have so trained advocate mediators and it is running....mediation center is running fully thank you.

What is the result ratio? In waisada district mediation ratio is not proper. Why?

Your Honor from Gujarat and it is the Waisada District in which people are very known for fighting, they are not compromise. Thank you for your frank reply.

I have a question how many District this rule exists what Honorable Judge told about that Judge cannot act as mediator and only Advocate will act as a Mediator? All

Earlier we used to do mediation once in a week on that particular date no cases in Court and we and we handle the Mediation, but now it's not, now we can sit after four after the conclusion of court work, there is a different type of mediation. But in Delhi, a judge can do mediation, they can but the difference has been drawn when we use to spent the whole day now we do after completing our judicial work which may be 3, 4 , 5, 6 makes a difference in the impact anywhere else where mediation is not allowed, like in punjab and haryana all the judges are trained mediators but recently there is one communication for National Conciliation and mediation project committee of the supreme court which says that you should advocates to do mediator now following that now judicial officers are not being assigned the work of mediator otherwise all judicial officers are trained mediators they can they can take uo mediation also but now they have stopped. so this is recent development that judges can not take up mediation. Madam you want to say something, in lok adalat also there is judgment of Andhra Pradesh High Court, the secretary is not able to participate in lok adalat he can not preside over ok all the judges need to look at lok adalat but judges are otherwise engaged till evening and parties can not wait till judges are free to hear them, the lok adalat if a full fledged secretary is allowed to hold the lok adalat that would be fine,

otherwise it is really causing practical problem so lot of changes are happening, now my third question comes what you have informed me that now even this circular has come from the mediation and conciliation committee that you should encourage the advocates as a mediator in that regard the question who will pay for that advocate mediator, parties, court or the state. fund is created in every place, fund is given by NALSA, NALSA pays NALSA pays. but only for successful mediation, in relation to what madam Bhanumati mentioned that in cases of MECT, the cases of that level only district judge can handle, in delhi in situation like that we are referring to the level of ADJ even on daily lok adalat. but they are busy if a secretary handles then there is no problem, you should hold only lok adalat on no working Saturday, but parties don't want to come on any other day, that is alright, parties are anxious to settle but you see the validity of sufficient no. of penal is important, that is done i think cases will, if the secretary is allowed to do the same thing, i think the problem will be solved, because secretary is also a judicial officer. They can pass the award, previously they use to do but now most of them are not doing, somewhere some of them are doing now i see your point but all this means is we have to find how we can work comfortable and at the same time result orientated mechanism, in Bihar 500 rupees has to be deposited by both the parties then the case can be referred for mediation, really in the court, no then the matter will be referred for mediation, where will the money be deposited, in lok adalat. No i can't understand you when you say lok adalat, mediation but money will be deposited by parties and to which fund it will go, it will be given to advocates, penal advocates, penal advocates, otherwise court has to pass a order in this case that money has not to be deposited. Its like order of the High Court, yes the letter, the letter of the high court, ok, i can send you when i reach purnia, yes yes, section 89 if you remember it was drafted if the settlement, even the court fee that is deposited will be return back but i think the letter from bihar state legal services authorities, i have to obey the, yes yes. to the contrary what my friend has said, i have one important information to share, i am from Chandigarh. so like it appears the case of with bihar government but like in chandigarh we have increased the fee of mediator from 3000 to 10000 rupees but who pays for it we have separate fund for that and that apart for unsuccessful mediation also we are paying 3000 per case though for that we have certain parameters as much time the mediator has spent on that. you have to pay for unsuccessful also because otherwise you are coercing mediator to settle and almost antithesis of mediation the whole concept if we say no we will be saying that person will be coming and what is the task of mediator, just sitting there, he is not going to do anything, if you have studied about

the theory of mediation or the concept it is, it is just what you are suppose to sit and let party went down their anger and cool down, mediator is not a adjudicator or conciliator or a arbitrator, arbitrator has to decide, he has to take position, mediator can't do anything except that giving physiological forum to people but the mediator can certainly come to a some sort of settlement, make suggestions, why can't you do something like this, something like that, i can now make confession on that what i use to call 3 C formula so that may be my formula and i found to be working really well. That comes a time when you have to keep your finger down.

when you do mediation look closely that the times comes when we do reality check, reality options for whatever options that may have been generated, one or the other option on the bases of a reality test where we as a mediator put our foot in, not put it down, we just put in and some mediators do have this style and i was asking my colleague in Australia, he said mediators are of different nature and some day they are good for some type of matters and when you have this in mind that they are bit coercive, now if a judge is sitting, if he is doing the same thing it looks certainly look like he is being authoritative but if a mediator coming from the bar when do the same thing to her colleague was also at the bar and coming before me as an advocate for the party, he know i am only a advocate, i have no nails, i cannot bite, i cannot do anything so whatever it is putting as a reality test. we have learned all those words BATNA, WATNA, MALATNA, that is what you strike at and that is the way you put the reality check in. it is amounting to bit coercive approach but it definitely is not and would still look like if there was a judge doing mediation so that is the way you have to be careful, a judge if he is little soft and if you are a lawyer go ahead so coercive is something we look at it with different angel but reality check is what it is, you need to get them to see sir.

Its not that one should be coercive or not, at least can they suggest one solution. i have very different question now, its a 3 day conference i have one important question, actually the news paper they give like about mega lok adalat, national lok adalat, we see a heading, 21 lakh cases settled, 16 lakh cases settled so actually it comes to mind of any common leader ok even a academician who is studying the system. ok. in one day 21 lakh cases settled so they say they have pendency of 2.5 crore, you just have to sit for 10 days, and the institution will be arrears and pendency free. i need your submission on that. you all organise mega lok adalat, national lok adalat. Now the statics are being collected separately, for the last 2 mega lok adalat why what are the

number of prelitigation cases and what are the number of pending litigation cases, we are furnishing separate from the past 2 mega lok adalt, the second thing is that while reporting there should be clarity, of course. the numbers are high because of the disposal of the criminal cases, there are two kinds of lok adalat, lok adalat for criminal cases and lok adalat for civil cases, recently large number of all these cases lying in the doormen t and disposed off, thats why the large number of cases are disposed of in last national lok adalat and not necessary all these involve the mediation.

Let me tell you something, you see this high figure of disposal, i remember one day, one judge of the rajasthan High Court use to do this so when we meet in the flight, maine kaha tumhare paas koi jaadu ki chadi hai, 2-4 deen ke liye borrow kar loo, dedou, nahi batau kaise karte hoe, then i realize those are small traffic offences which does not require any, that is what i am telling you but i will tell you another story where, i know that, i know that, in fact i have said don't count this in performance of the judge, but i tell you once that i have been responsible for disposing 90000 cases in one day, i use to keep an eye on disposal of various High Courts and i realize in Andhra Pradesh High Court there is large number of pending land acquisition cases so i set up a team with one of the retired judges of the court, i worked on 2 years for that. There was two truck load of paper work that was done then i reach one conclusion that these are the mass cases like in land cases i fixed the price. i u;ltimately found that the total amount was more then 257 crores, i came and talk to the chief minister and told him, this is where coercion comes in, i told him if you do not settle these cases he said no no no i will set up a committee with finance secretary revenue secretary all of them, i was going to kareem nagar that time so he said do not go its a naxalite area, i said i don't want your security so please do not provide one, i will go because there are 30000 cases pending there we dealt with all these and then i said 87 crores that i want, i dont that first 18 crores then rest in 2 installment, finace secretary says we dont have that much of money then i told mr. finace secretary if you do not know where is your money lying i can tell you where it is, you better come to a figure. we settled 98000 cases in all and lok adalat was held, what we did is, we disposed them in a lok adalat therefore, that is how we worked it out so i can claim it that in one day i dispose it that is one way on looking at it but there are ways and ways where you have to find out the mechanism for settling, suppose mass cases, you have to do in a certain way.

My lord my humble submission is exclude those traffic cases, once we remove those traffic cases then real picture will emerge we can consider, secondly another issue is also involved in this, what really happens in the ground level is, the PDJ expect the magistrate to ensure that low number of traffic chalan cases included in the main cases so what happens is magistrate interact with the police officials in his jurisdiction. in this regard our judiciary will do good if we completely exclude this traffic challan cases. Another area BSNL, challan cases, in whose jurisdiction, no her submission is that, it should be excluded for calculating purposes, ok calculation purposes, other area is public services utility like BSNL, after issuing the notice through legal services authority at there concern party can pay at there house or by other means like online whatever amount is due but purpose of recovering amount, they need to come all the way to places of lok adalat this is also a very difficult thing for use of small amount also they need to come to lok adalat to sign the award, it is becoming very big problem, otherwise BSNL is receiving huge amount because of lok adalat system, but it is really difficult for all the parties to come and sign and also when you sit as a lok adalat charge when you pass the award, do you get some unit system, yes, no for pre litigation case but for pending cases, the referring judge will get not the lok adalta member, lok adalat member does not get, it is the referal judge who gets so referral judge will get, member of class 3 and 4, they are paid for lok adalat, yes no but we are taking about performing unit system for judges, judges who go as a mediator who sitting as a mediator, for example in delhi you can still do even after the circular, when you are sitting as a judge, as a judge do you get, as a lok adalat judge, do you get, no no no. we have unit system, unit system. actually should we break for a tea. So we will come at 10.30, it was nice discussion and we must thank our Hon'ble Mr. justice A.M. Ahmadi for chairing this whole session and giving his Andhra Pradesh lok adalat experience to us, sir thank you so much and we will come at 10.30 after tea, coffee break yeh.

Session 2

Reducing differences between the parties: Role of Mediator

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

So now we start the real storming sessions. I have Mr. Popat and Mr. Aman Higorani..No no sir actually Dr. S.K. Jain and Dr. Popat will now conduct one exercise. You will be divided in 6 groups and Dr. S.K. Jai will tell you how what is the methodology how to go about it

Thank you my lords Justice Ahmandi and madam Geeta in the morning the I try to understand the challenges we are facing in our jurisdiction in implementation of ADR mechanism now this is the time to understand ki what is ADR mechanism how the mediation ...ADR mechanism including mediation is working actually working in the settlement if the dispute resolution of dispute between the parties is very important topic to understand ki what is the role of mediator in the entire mediation process the methodology which we have adopted we will be dividing all Hon'ble members of this in to groups in to 5 to 6 group each group will be comprising 5 members 5 participants out of which one will be the mediator and 1 will be the plaintiff and another will be the defendant and two members will be there respective counsel, there are 3 types of information one is general information it is common to all the parties and the confidential information that is particular to the one particular party this is a dispute between two neighbors namely Ram and Sunil the ram has filed a suit for damages claiming medical expenses and other loses against Sunil and this case is pending in the court and is refer to the mediator to effect the mediation for this problem we will be giving you around 20-25 minutes and then we will discuss what you have leaned as mediator and on the basis of the of your feedback the feedback and other inputs given by all of you as mediator then we will try to understand how the mediation process is different from judicial process and how the role of mediator is different from the role of an adjudicator ki whether in the morning the madam Geeta also guided us on the issue the mediator is not a judge and not judgmental but this practical difficulty of the mediator is not judge not judgmental then what type of role he is suppose to play in the mediation..in the mediation we also talk about the in the morning what is the role of mediator so in this session we will try to understand the role of mediator actual and real role of mediator in mediation process

In the I think Mr. Yogesh has made wonderful sitting arrangement every group again repeating just remaining will comprise only 5 parties so let's start

Lordships I am just trying to finish this role play within 20 minutes. Thank you thank you

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/-).

Welcome back everybody We will now start new briefing session so may I request all of you to come to their original seats but of course do remain with your team...answer we will be asking from the participants who acted as a mediator how we visualize how we consider the roll of mediator in mediation Sir, would you please tell us in 1 minute what did you experience as a mediator mediators see and how different you find it when you usually your do your duty as a judge The matter was completely..parties one party was given an offer which was taken to the other party and the other party was left its own to understand and to whether said party is agreeing for that proposal or not or if any other more point put before me they were been taken to the other party.

One question you may not have physically done it but in your session even just be answering it. Did you have personal session or it was all joint session. It was all joint session because parties agreed for that ok very good. and what did you see as emerging from the parties because of this joint sessions and did you at any point feel that had it been a private session may I could have done things differently or I would have got more or less information. Sir because while interacting individually with a party nothing except of the fact you put on record brought to the notice of the mediator so I was not considering necessary that private session should be taken so that way if both the parties have agreed for the joint session so the matter was taken accordingly

Perfectly alright, how the dispute can be resolved between the parties so how you find it that your function as a mediator is different from your function as a adjudicator during the judicial process Sir I have already said that the matter was in parties so parties more independence was given to the parties arrive at a conclusion and whether the plea taken by the one party is acceptable to the other a party as a judge you can always impose or you can disclose your mind you do like this or it will happen like this so that aspect was completely missing

You rightly understand in the morning madam malhotra said ki right of self determination is the basis component of the mediation it means you allow the parties to solve their dispute in there own way, You only restore the communication between the parties.

You allow the information between the parties that you also motivate to develop various options to develop the settlement of dispute it means in a judicial process the gatherer information from the pleadings are evidence, the parties coupled with the document and then we form our judicial opinion and deliver a judgement but in case of mediation it is not the mediator who is going to deliver a judgement or tell the parties what should be mode and modalities of settlement it is the parties which are or parties themselves responsible for the settlement that you could understand during your role play in this exercise tou one thing is that in mediation we identify we recognize the right of self determination of the parties because the dispute or counseling belongs to the partie and as per the mediation jurisprudence ki if the dispute or conflict belongs to the parties then the settlement must be of the parties tou sir one gesture one intervention from the parties kabhi aapko e sha laga you feel at any time ki mediators imposing the settlement on the parties ram and sunil no mediator allow you to develop many options for the settlement you intersected with each other whether settle or not. Settle. So it is settlement of the parties . it is entirely different in mediation process is entirely different from the judicial process

Next khanna sahib sir 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 pros with regard to the parties they are neighbors and they both wanted to maintain future relation this was their but I tried my best to give them options, various alternatives and making them to come to a particular settlement but ultimately what I found in this very case is the counsel was not agreeing though the parties they were one of the counsel from Mr Ram he was basically little adamant so far as ram is concerned what I felt he was basically inclined to maintain future relation but you see monetary aspect was not left out by the learned counsel so this is my submission on this and as I mean as you put the query as to how what is the difference between when we deal a particular situation as a mediator and as a judge I would say that I mean had I been a judge in that case I would have resorted to the documents on record I would not have taken into consideration their future relations and what they use to what they I mean since they are neighbors but as a judge you see I would have only decided that yes disputant facts are their. Dog is their and it was the duty of the I mean who is owner of the dog to keep that dog on its place irrespective of the fact that dog biting was due to action of the other person but you see as a mediator I was more concern not only

with the past conduct of the parties but also whether as to if they can maintain future relations as neighbors

Right Considering that you deploy a process quite different from this group you did have physical private session not that its required but you did have it I have specific question to you in this session did you see this taking forward your agenda as mediator to underline the concern of the parties Yes I try my best and I mean if I am sorry to say but if counsel was would not have been their I would have..put his name in the paper tomorrow...hahahah...but you saw holding a cocus as taking your agenda forward and getting more to the underlying concern of the parties

You could use the mike so that every can listen I mean I I I saw this party was reducing I mean increasing the the compensation intent to pay to the other party but they were also coming down I think counsel I mean this is my my my submission on this ... he was more little adamant on than party so if the counsel is not their I would have convinced the parties I would have given more options and I think he would have come to the terms, So sir I could understand khanna sahib from your role play the way you conducted your play is the classic example to differentiate between mediation process and judicial process and second very important issue that is the positive role of the lawyer to be played in the entire mediation. You gather the information by conduction joint session and single session. You gather the information for two purposes ki 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 pof the dispute and underlying interest of the parties you develop various option you allow the parties to develop the options and ultimately it was about the parties but because of the negative intervention of the counsel this dispute could not be resolved and you also said had you been the judge in his case then only remedy ki not to interact with the parties s you were require to form your opinion judicial opinion on th documents, leafing evidence ki whether ram is entitled for the compensation or not but not talk about underlying interest of the parties Ram underlying interest to Roses good Roses and he wanted to maintain still he wanted to maintain good relation with Ram as a good nahi thank you Sir thank you. I am I am plaintiff to the that proceeding it prevailed in the way that well enter into compromise what I will also from the then I said that I am ready to reduce the claim he did not perform like mediator..Remain in his position..if please enter into compromise

Another aspect of looking this ki he was facilitating bargaining he was facilitating bargaining a negotiation between you and opposite party by finding the area of flexibility in your approach because of his facilitation you could lower down your demand your option for the settlement means he was not adjudicator rather he was facilitating the communication, trying to develop various options and try to find out area of flexibility in your approach so that acceptable point the dispute could be settled that is way there is other way to look at is way of but your view sir that compensation is very genuine claim is very genuine in adjudication matter it will be rewarded you are sure.. I would like to answer this you see as a mediator...sir sir one minute in the morning sir talk about the reality chek matla batla ki she was trying what I could understand yes just just half minute ki she was trying to compare what could be the possible out come from that trial and with what could be the better option for the settlement that's all

Sir we can move to the next...joint session and individual session we could not come to the conclusion because ...it is such a problem that plaintiff wants to give up his plants for damages also provided that defendant do some undertaking that he keeps his dog under control and he doesn't cause any harm in the future..the defendant also promises that he will keep his dog under control and he also ready to give provide the damages for medical expenses but he is not willing to give any future promise that his dog would be under control because the nature of the dog cant be anticipated so the subject matter is such that though they agree to the present dispute but unable to come to a conclusion regarding future...It so happen in matrimonial matters both wife and husband come to settlement regarding the past conducted wife demands that her husband should be or husband demands that his wife should be not liking the past and both should be cordial in future which cant be assure so also in the present case that there could not be settlement on the future aspect though the present dispute could be solved

What would be the experience of the parties in the mediation. I was the defendant and the mediation she acted really well to understand what are what and how much I am going to suffer if I continue with the fighting so ultimately i agree to the terms to pay the medical expences as a human being and as a good neighbor I am ready to pay what I said to her and because he place certain condition that for future you give such undertaking that could not be materialize that is a different thing but what I have nothing against the mediator and the mediation process.

I am plaintiff's counsel initially mediator came to settle at 23,000/ I just try to convince him that from the beginning ram has been considering never good and all that when I decided that you have been get over he just change his stand and came to 35000/ hahahah...no no there is a confusion because for that group he was not the plaintiff so it's a group mismatch..yes I get the point, The active role to be played by the parties is very important what I could understand from the intervention made by the participants that in the mediation process the parties are very active and positive and in participation and putting forward their plaint before the mediator but in the judicial process you release the parties are not so much active they get activated at the time of evidence and and they are having the direct interaction with the presiding officer otherwise the mode of communication between the presiding officer and parties are pleading and their written application whatever may be but they do come to the court the parties but in mediation the parties have more active role but you call parties in mediation or just counsel Can you?

Parties not only parties that is what law is but you consider parties like when I see judicial process also courts also if you see daily parties do come to the courts the but Rights their role is more active in mediation but active means what what do you mean by active because it's a .not Sir I have a query...they want to talk but then counsel does not allow them to talk the reality check if you say the reality check the council will shout at you..madam I have a queryyes one ting I have noticed madam ji she made the parties aware about the consequences of and adjudication if the case is tried and adjudication is rendered she made this should be the possible consequences so it is proper for the mediator to make the parties also aware what would be the consequences generate? Will it be proper always? In mediation...right absolutely right...in mediation...the parties are able to interact with the mediator, Sir next group the time is less Tiwari Ji Joe Dispute tha uspe plaintiff koe puralekin not a single ...tou iss barrier koe break karne ke liye humne focus kiya sigle session jisme joe plaintiff the who 7 to 8 thousand per agree kiya ...dog koe removal kaa unhone ek option diya or yeh bhi option diya ki uski jagah koi achha trained dog laya jaa sakta hai..defendent bhi ...mai 5 to 10 thousand mai settlement ke liye agree hue then we gain hold the joint session in joint session isme parties agree hue train dog pe ...train dog per humane kaha about the claim tou inhone waive kiya apne saare claim per and keval medical bill per sahmata hoe gai.

One question that you all are judges who amongst you can say that yes in my court I would have ordered that the Mr. defendant will have to change his dog. Can anybody...is it possible? It's not possible. Exactly..its not legal no its not...that's the charm of mediation. New idea means you can do something not legal no no its is legal no no what he is saying is change the dog no no that's what he is saying that in mediation parties can come for and make that suggestion...that I am willing to do that but a judge cannot say that I am willing to do that Sir Sir, exactly exactly, because can be done through mediation

Two thing one thing is that parties can come up with the solution that dog cannot give and two whatever solution coming from the parties is always acceptable to parties rather coming from the court just look at us today none of us wearing a T-shirt because ...but still some are with courts ..no ties some are with tie no coat most of the people with tie and court ladies are with lovely saris..we all are dress differently and we are fine with what we dress why we because we chooses to wear that..this is the charm of the mediation that parties make their own decision and once they make their own decision they will stick to it not only they can defend it so no lawyer make them turn around and say hey you got cheated they are making their own decision and this is what we must aware of as a mediator even if we are judges we do mediation we need to give that control to the parties, sir. we have three minutes only so in these three minutes who wants to give presentation Sir..may be this group has not made presentation...they have ...they have. Aright.. I am defendant...joe train mediator mai isme sabse acchhi chij joe lagi jiskoe unhone hamara settle kiya unhone pehla sentence joe use kiya...ki kya aap apna relation maintain karna chahte hai ..exactly yeh who chiz thi jiski wajah se who settle hua sie yehi mai or dusra joe mediation mai sabse achhi chij hai...ki hum joe dispute joe hai ADR mai jitney macanism hai usme sabse acchi chij hai ...use pare jakar dispute settle kar sakte hai ...isliye iska joe benefit joe society mai hoe raha hai or iska joe progress dhikhai de raha hai yahi ek reason hai....next group please tell us something more...our both the parties prefer to presented with their counsels at the mediation..suggestion was given to both the parties ...that if they prefer they can parties also can be at the mediation or else if they prefer to be with the counsel then they are entitle to do so so both the parties prefer to have their counsel at the mediation secondly as interaction was going on the mediator suggested to parties that if they prefer they can have the coucus the coucus was suggestion given by the mediator can not because there was necessity but just to want to explore whether anything will

emerge out of that cocoon and both the parties say that they want to go mediation and they don't want any private session so that's how things,

Thanks...stage..the plaintiff was little bit adamant and counsel for the plaintiff was little bit lenient the case of the defendant the defendant counsel was little bit stiff and defendant was keeping quite in the case of the plaintiff he was articulate and in case of defendant he was little mum and that is how the mediation process went at some stage solution was arrived at, You want to take the advantage of single session more so bring the parties to the settlement yes ...sir ...the last group tell us in 1 minute.

I have taken the private session among the parties and suggested defendant that not only your act amount the claim for the damages to the plaintiff but your act will amount to a criminal offence for which a punishment can be provided because the dog has bite the plaintiff and for that he can be criminally prosecuted and on for the plaintiff I suggested told him that future consequences of the litigation about the span of litigation for to which he has to fight for that that claim around 15 to 20 years and if he got the money right now it would be fruitful to him at the presence of both the parties and their advocates I have put stress on the future cordial relation between the parties and I suggested them that the amount of suffering and mental shock in amount to have good relations between the parties that amount can be adjusted and actual after the actual loss incurred amount of actual loss incurred their there should not be any in minimum price and I suggested them to that proposal to reduce the amount at least the half of the 360000/ party were claiming for mental shock and agony because to have future good relations it was not a case for to teach a lesson because how to live in future and cordially relations as as neighbor so parties agreed for 25000 as their settlement final amount.

So with this we end session Geeta Ji ...I just want to have one question in the end before we go for tea break and that question is suppose the same question as a judicial officer comes to you same problem, Would you have acted differently and how differently? But when parties come to you and you feel like its not so bigger case its not such a big issue....but you cant tell the parties as a judge?

People who are in to mediation can suggest parties to compromise the matter..is compromise is allowed in law? It is allowed, no no this is one of the method but order 23 compromise is

allowed..yes order 23...no but when you are judge I am not saying adjudicator when you are judge and same problem comes before you that depends upon the case...the judge pointed out the order 23 ..no that is section 89 but if you don't apply section 89 and without section 89 you cant tell parties. We can do..many judges do but that depends upon the case and that depends upon the counsel also representing in his court so yes so so many factors comes in the minds of judge before he gives such suggestions and many judges do ...do you get some marks that the whole question that we been interacting with the judges and what judges have been complaining to us that we do that settlement in many cases we our self settle but we don't get units for thatthat is a issue actually..is it true?

There is always scope for an allegation of bias if we enter into these kind when we have ADR mechanism There is no reason why....my submission is that as just pointed out ..allegation as I said in the beginning it depends upon the case and depends upon the advocate who represent in our court certain advocates take liberty and they report one and secondly with regard to the points we have revised the norms points whereby judges are given the points for matters settle in their court with their suggestion so that encourage us so the HC has reposed a faith in us and we also get encouraged to do that, Thank you so much we break for tea thank you

Just one information in this regard like in our state like Punjab and Haryana HC for referring the matter to mediation...referral judges are getting 2 points its no t that all settlement they will get for referral they will get the points..idea is to encourage the mediation to encourage the references so referral judges now they are getting ...suppose if you do settlement in your judicial position because section 89 if you read it is also judicial settlement also they also they say if you want ke points it was there till recent past but yes since the mediation is now looked after by the advocate mediators so the HC has changed the strategy earlier judicial officer were getting the points now they are referring so they are getting the points

We will come back at 12.00 thank you so much.Thank you very much.

Session 3

Understanding Conflict: Their bases and Groundings

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

Topic of discussion in this session is understanding conflict, now I am sure at some stage when all of you had gone for the mediation training, you have discussed the development of conflict, understanding conflict, the process of conflict and most importantly transformation of conflict because as a judge you will be deciding conflict as a mediator you are transforming conflict, so you would have some stage where you will go through this, now what i intend to do today is after very brief introduction about what is conflict we have expert, psychologist with us to tell us more about the process of conflict so i devote more time on that after speaking about 10-15 minutes, may be 15 simply offering different models in which as mediator in a practical way you can understand conflict and then i actually invite feedback about the discussion on the floor whether these system are viable in our context, so let us quickly start by understanding 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 so takes us 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, all of us analyse and think about something and then we modulate our behavior to be in tune with that particular analysis and so wrong analysis will result in once moderating or adapting the behavior, changing the behavior in order to be in that particular analysis, so this eventually starts the conflict cycle, parties may dissatisfy but resolution of problem in starting of conflict leading to further in to deeper dissatisfaction, even more wrong analysis, further wrong behavior, so the way it works is that how we have perceived the particular situation, dictates our behavior, that will cause a reaction to the other side and so 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 but there is no structure model for that what i am going to offer today 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 and lets quickly move to the what is the ranking model. basically 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, the other model which is commonly used and used in all model mediation. 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, this is very easy to say this is my strongest point and this is my weaker point but ask them to write on a blank paper, write a list of his weakest point, write a list of evidence he has to use to support his issue, identify the issue not supported by evidence, just like the reality check, write down the best legal argument to the best of their ability of course 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

so basically in the ranking model you are analyzing the dispute and trying to see the underlying interest of the parties in different, in different factual situation, you might find more effective to do BATNA WATNA with the parties rather then getting in to private sessions and doing BATNA WATNA with one party, ask that party to do BATNA WATNA to his side as well as the other

side and similarly ask the other side to do the exercise again, then party will realize that we do not have strong case we thought we have, we do not have strong evidence we thought we have, there are chances that court may not accept this that makes it more conducive to an option which is on the table, flexible in their approach in dealing with the other side so these are basically two models which are, which have been evolved to basically get the mediator and the parties to know what is the conflict and what is the source of conflict so stage of these models is very important, normally we use it as far as India is concerned they have been used interest in understanding the dispute,

the point what i am trying to make out is that if a premediation case, pre mediation summary it need not prejudice to the mediator, the mediator better himself equipped to deal with that issue and there is already a legal framework for that this is not something which is out of the court, if you see civil procedure that followed in Salem Bar case, the procedure of mediation, if you just need, each party shall tender before the session provide to the mediator a brief memorandum setting for the issue, such memorandum should also be exchanged mutually between the parties, the last line is very important because the two model i am talking about is confidential information, each party shall furnish to the mediator the copies of the pleadings or documents or such information required by to resolve the issue, no requirement to share with the other party so we have the legal framework in the forms of the rules, formulated by the supreme court entitles the mediator to ask information in confidential and this could be even before getting into mediation even if you see the 1996 Act the consent to the conciliator again clause talks about the conciliator to quest each party to submit a brief written statement of his position, the facts in his support there of, supplement by some document.

but these provision were never been used, i want the feedback from you, you have been doing your training in mediation whether you went to be trained or you were conducting training, how many of you actually ever emphasized on the fact that before you jump in to mediation, equip yourself with the underlying interest or strength and weakness of the case, not to give judicial settlement but to know from where they are coming from so i do not want to take more time, its already 10.20, i would like to leave floor open, i would your input that this is not something we are doing in the institutions mediation we are not doing the court annexed mediation and i push this forward when i drafted the meditation manual for like FICCI or other institutions they insist that, these kinds of provisions be complied with, at least be utilized but the court annexed mediation is simply do not

do it, do you think we should, we do not have pre mediation in our court but law is there, how many high court permits pre mediation i am sure they all have but how many are actually implementing it, Punjab and Haryana High court, any other High Court, chattisgarh high Court, there is also require the facility to mediator to get the pre mediation brief, like now in the supreme court when i do mediation i get the copy of the paper book, in the supreme court mediation center we apply, we are given the copy of paper book, the pleadings and it is left to us to get the pleadings but if you see the practice, there should be uniformity in the practice, there is a statutory provision, there is a legal framework but what i understand from you is that some High Courts do contemplate teh pre mediation stage application require by the mediator but in other High Courts, mediator get in to mediation without any knowledge of the case, is that a correct assessment, once there is pre mediation process begins then there is obviously the mediation process itself begins no no mediation process begins when parties appearing for the mediator and mediator giving opening statement, we are talking about the situation where matter marked to the mediator and the before the meeting when a mediator gives his opening remark, opening statement should the mediator call upon the parties the law says the 10 days parties are suppose to give to get those statements, should the mediator have the benefits of a brief from the parties regarding either the underlying interest or as per the list model, so that when the mediator goes in to mediation, he is giving opening information, he does not want to divulge a information is confidential, but when he gets in to mediation his opening statement at least he knows from where the parties coming from, sir sometimes pleadings are not what the actually cause, of course at least what we learnt we learn from our trainers, yes that the record should not be going we as a judge insist that the records should come but we were with the process of time we realize the correctness of pint of view that the pleading should not come so that it would keep us unbiased because at times pleadings are something the cause is some thing else and if you if we go by the Afcon verdict also, if we go by the Salem verdict also the particulars provisions of section 89 has held to be not properly framed by the legislature and therefore, we are not giving across the formulation or reformulations of the issues, i am taking in the context what you good self is putting forth that it may take away from the actual cause or conflict, i completely agree with you that many times the pleadings do not reflect the actual dispute many times lawyers are the part of the problem where they simply type out something on the standardized format, i take the point that yes it is a reality but isn't that all the more reasons for insisting what the stand taken by parties the end of the end the mediation is

all about winning over the parties, understanding where they are coming from, gathering information from them, trying to see what the underlying interest is, the reality check to tell them that this is not your actual case, i am challenging this very proposal that mediator will get biased while going through the pleadings, the fist statement when you invite the parties is always a positions, the positions they have taken the shift from there position to know the underlying interest so whether pleadings are with you or not, positions statement is there anyways in the first session but if you had the benefit of pleadings not only pleadings, pleadings as per the list models which can be use in very limited cases where it is more then a party dispute, more interpretation of clause in some contract etc, its not a case in hand in which have a emotional component so there are very few cases you can use less models because there is case anlalysis on the merits where one party feels its a very good case but thats why we use the ranking model, interest based models, and thats why i am deliberately raising this issue before this forum that since you all are mediator and you all are experience holders, you all have death with people, how many of use feel handicapped of not having any prior information about the dispute, does any body feel handicapped in various mediation you have done in the past. I would like to share one example that is all i can put forth, i happened to be trained mediator, i have been conducting mediation, presently not for the last 5 or 6 years may be because of the jurisdictions that i hold, a particular case was referred by the guardian judge of delhi to the mediation center, it was related to the custody of the child filed by a father against the maternal grant parents and maternal uncle of the minors child, seeking custody, the father was alive the mother was dead, the child was two year old, the father in the eyes on law in terms of section 6 A of hindu guardianship and minorities Act was the lawful guardian of course learned guardian judge what is the paramount welfare, it is in that process, mediation continued, during the course of the of course we do not have the records apart from the single sentence that this is the case for custody in guardianship , during the course of this what comes forth was that this gentlemen the father was the goldsmith and at the time when his wife funeral taking place the brother in law that is the mamma of the child had removed the 5 tola gold chain from the neck of the mother, it is in relation to that he had filed a case under section 379 of IPC for theft, on further deliberations as to whether if he got back the chain what would be his case, he said i don't want the custody of the child, i don't want to declare as guardian, keep the child where you want, i want my chain back , this is just a submission to bring across that the pleadings are very different cases and are different interest of the parties. so in pre mediation brief you had put across what the parties

have been asked to spell out in confidential manner without prejudice, something which can not be quoted in any court of law, that what it is that you are looking for and if the chances are that well very good, you have custody but i dont want custody but of that come lower down in the priority in the rank if that would have been, the bad family, indulge in theft etc, whatever may be the whole situation, if those underlying interest came out then you would have effectively, i am sure you could have finished it earlier, but if you had the information so rather getting into whole debate with either party in private session, instead of getting in to all these you could have the end the mediation process, the only point i am making is that the mediator does not to be put on trial does not need to be tested of his case all the time, there is no harm if the mediator is facilitated in the process by advanced information of the parties, by the parties for what is important for them, the sincerity of the statement will be tested eventually. so the sincerity of what they have said but there are cases which are straight forward so instead of taking mediation session after session you might be finishing off in the first session, you just paid to the process, why are putting obstacle in the way of the mediator ki no that you are on the test, you have to collect i mean gather all the information drags it out of the parties, why cant be there a mechanism and more so not because i am saying so because the salem bar which you just referred itself constrain to this rule and that say so.

Well now I request the Dr. to take over..so good afternoon from the very serious session on very serious topic on conflict, we are now coming to lighter mode from the physiological perspective what is the conflict all about and what is our style of managing the conflict through a very brief exercise that will be doing into and will try to look in to what goes in the minds of people when they are in to mediation, when they are in to this conflict management process so in the next 45 minutes we are going to talk about it, i request the exercises to be distributed right now, so by the time exercise is being distributed, it would be very, where is the pointer for this, so you must be curious to see the different types of animal over here, starting with the turtle to teddy bear to fox and the owl and sharks and what kind of these animals relations have with the way we mange our conflict that we are going to talk about along with the exercise, so i just request all of you the sheet is already with all of you, just look at these sheet and try to fill it as per instruction given over there, it will take 4-5 minutes before i take further, its a conflict management exercise,

Presuming that most of us are done with it we are proceeding further and we will come back to all these styles of conflict management so let us start with some of the questions which are front of us, please leave the scoring right now, we can do it later, after having some understanding about what we are taking about, so some of the questions that we are going to discuss what kind of conflict management question countered in mediation, cases of different of interest so what exactly the conflict is, probably it has already been discussed, what are the typical method of conflict resolution, use by handling such cases and again i focus on physiological perspective only as legal perspective has already discussed with you why it does not work the way we want because the psychology of people who are involved in the whole process, things are not moving in the way as we like as per the rules and regulations and as per the procedures whatever may be the we have they are just taken another side so why it all happens, so i take you back to 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 in inevitable, its like part of our life, we can't live without it, similarly its the conflict which is the part of the life and it is inevitable between human being and it will happen, you cant do anything to avoid conflict in any way, it will always be there so what we can do is we can manage, we can not control it we can not avoid it, we can just mange it, many times conflict is beneficial also and gives energy to the process you are able to find out different point of views, wherever there is difference in opinion, conflict will arise, so these are the differential view now what is the self talk that we get engage, whenever we come for mediation or whenever they are aggrieved and they want to settle down the issue, different type of self talk you must have heard and talks many be like that there is nothing i can do about it, so all the situations, its all the other person, i cannot do anything i am simply helpless, i feel so stupid getting in to this another self talk, i feel guilty allowing to happen, so these are the emotional statement so when you are doing mediation emotional is the major issue that you all have to come across. Perception of problem is one of the reason they try to blame other, they do not to accept that they are responsible for it, natural blaming human tendency, that is very much there that we are correct, other party is not correct and we must be heard our use is more important

and when 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 party 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 so your attempt are actually targeted to one of the party whom you consider is to be changed and change your behavior, one of the party should change their behavior, the way they are talking, the way they are reacting, the way they are becoming emotional so that kind of behavioral change, the attitude change you are basically promoting to the mediation process, change in their behavior is not actually, you can just make attempt for that but its really difficult you cant just change their behavior. this is the psychology of difficult people. when you are dealing with such people you will find such people are more difficult to handle then other people, so the real difficulty with difficult people is they know how to, they will try to present their cases in such a manner that you will lose your temper, you will lose your emotional balance, whether you are dealing with advocates or you are dealing with parties they just try to complicate the situation so much that you are get irritated that no i can not handle it so that is the one of the phycology of difficult people so the keys for you if you are in such a situation is to remember that only person you can change is you, you have to keep yourself under control, your reaction under control, no matter how much effort they are making for it. the most important thing is act rather than react, to understand the difference between acting and reacting. so for the purpose of building skills within us for this whole process we have to know our limits and boundaries what we can do within the rule of the law and what we can not do, learn to defuse another anger. that is one of the skill you have to develop within us and develop various communications skills, many times it all depends upon the way you present the case, the way you communicate with the party, the way you deal with the party rather then the actual scenario, actual scenario is for everyone but one person is very good mediator, just because of good communicator so communication is another way by which are just going to talk about it. so in regard to knowing the limit and boundaries, what actions you are authorized to take as per law, it has already been discussed by my co-session professor, what promises you are authorized to make in the mediation process. so this is regarding defusing of anger when people are trying to make you angry by different kind of scenario. There is something

called cultural incompetence in which you have to bring them out from that blockage which they are living that can be always different perspective to whatever they are having in their mind then they lack many information about others value, interest, practices and they are unable to dialogue, no i just can't talk with this fellow, what are you talking about to mediate, i can't just handle that so that kind of scenario may be there that they are not absolutely denying the dialogue process that you are trying to initiate the mediation process, it makes positive cooperation difficult and sometimes even impossible if such kind of attitude is there, so this culture incompetence in the people, incompetence is always perceived as disrespect by the other and anger may be triggered in various situations so this is something i shared with you from anger institute of Chicago by Ebrahem, in 1998. There are three ways of behaving, one is passive way of behaving, other is assertive way of behaving and other is aggressive way of behaving, when we are behaving passively, we are allowing other party to do as much as possible say they feel like and we just tolerate them as much as possible and we don't speak up, another way is aggressive that whatever they are saying in a very beginning of the mediation process that all nonsense you are taking about, i just can't tolerate this kind of way, and there is the third one which is assertive way of process in which we strongly communicate whatever we can accept, whatever we can not accept, we are clear in understanding them, whatever is possible and whatever is not possible, and there is a difference in our body language also when we are using these different kinds of scenario and there should be kind of connection between our body language and our communication, passive people when they are talking you must have observed or if not please do it further that they will never make any eye contact what they are talking about, so they are always looking down and there body language, they are very irrelevant and they will just make the other person understand that they are not the part of the process and kind of indifference also can be observed, people who are very aggressive, they will use very high loud voice when they are talking to, and they have very particular gesture of finger pointing, this is the person who use to do like that all the time so looking at the parties their reaction , you can do some strategy to them if they are aggressive, you have to use different kind of strategy, if they passive you can boost them up, many times parties are not able to express themselves in the mediation process in the way it is expected so you have to boost them to speak their view so that genuine things are coming in your information. Now we were as we have already taken small test to indicate various ways of managing the conflict, these are the 5 ways of managing the conflict, which we are going to talk about, avoidance, competence, competition,

accommodation, compromise and collaboration, please turn back the sheet that was given to you and you will find 15 statements on the basis of which you have responded and in front of the each one of A, E for the first one D, I, N, L for the second one F, G, J, O for the third one, its already written, please note down your score and total it. Find out your score from A to O and total it. then in whatever category you get the highest score, and whatever category you get the lowest score, write down the first lowest and second lowest score you right down in the next two lines, first lowest and second lowest, not the highest. If you the same scores for two of the tiles please write both the score over there, not scores both the styles over there, no need to write the score, you have to write the style, you have 5 styles which are given in the front of you, you have to note down the style, not the score. we are not in to some deep research, we are just going to find something, the first is turtle style, you all now the characteristics of a turtle, tries to avoid the conflict, try to get in to shell whenever there is some trouble comes so the turtle style is denial and avoid, the turtle deny that there exist any conflict, please don't take it as the way you are doing like that, it just to make you understand, basically you have been using all these to find out when you are in the mediation process, how people are reacting, what kind of style they are using and you have to facilitate according to your way of dealing with so denial is the key characteristics of it. you must have encountered these kind of people in your court, avoiding is the style if they are winner or loser but the drawbacks is that they many times try to postpone the matter and that postpone may also have the negative out come on both the parties so it is not very functional strategy but sometime the relationships are at stake, these strategy is used, next is the shark, aggression, what we are talking about, the aggressive way of communication, shark eats out others so this is what competition they are forcing the other party to listen to them through their force, forcing that whatever they are saying is correct and other person is absolutely wrong, the other party is absolutely wrong and they want to win at all the cost, they say it is my way or no way, forget about the mediation process, so these kind of attitude is there when people are of shark style of behaving. Mediation are rarely successful when people are at shark way of conflict, resolution. They are very authoritarian, they want to maintain there status quo, i am high in authority, i have more money, i have more power so i must be heard so these are the way in which shark behaves. when a strong personality is there and you don't want to take advantage of that, and other party is weak and you find that in that situation you have to be like shark to enforce on one particular party, that by just loud voice you cannot avoid the problem and so shark style is also

required. Now we are in teddy bear style, teddy bear style is given to accommodate, nothing wrong should happen, everything should be peaceful that is more important, and whatever you say i am ok with that but please don't disturb the scenario i cannot afford the disturbance in the peace of my mind, for the sake of it i am ready to take the disadvantage but i don't want to disturb my peace so it is your responsibility to protect such people who are just giving away for the sake of their peace of mind, they are not the people who get proper judgement, just because they are not strong to expressing themselves so entrusted with other approval i would rather insist on their on way they agree so this kind of behavior you will find but they do not have solid opinion and they can't put forth their opinion so they just back off, whatever problem you have, its fine with me, so from psychological perspective these kind of people have low self esteem and they low self concept they feel that they are not competent enough to handle the scenario so let it be in the other side, at least conflict should be resolved, at least i should have the peace of mind so i lose you win, they allow the parties to win for maintain g their peace of mind. now the fox, we all know the clever fox story so fox tolerates not to get disadvantage out of it but to compromise, ok this much i should get so they try to compromise, give each other victory, ok half way i come, half way you come, let us settle in between this is the way in mediation we just try to do in most of the cases that we try to bring both of the parties to some center point. everybody should get something, this is the favorite statement of the fox so they tolerate the exchange of ideas, they exchange the expectation, you had this much expectation, i had this much expectation, lets divide our expectation to the half and split the difference so this is what negotiation is all about which we do in the mediation process, and we have to be open but cautious in the whole process or just everyone to speak out but not too much so the others don't down played. when we see parties are at equal position then we go for the mediation then only mediation is possible so both are equally committed to the goals so that you can save the time by immediate settlement before entering into complex judicial process so you have to see whether both the parties actually at the equal level where we can enter into the mediation process. Now the owl, owl is style of cooperation and collaboration, why is all, not to make person fool, ullu banana, jiskoe kaha jata hai, its not that way, its wise owl we talk about, why owl cooperate, collaborate between the different parties, it is an extension of fox style we can say, better then that when parties collaborate, my preference is this what about yours so both parties are open to dialogue, this is an ideal situation, hardly happens in mediation process but we as a judge can make some effort to bring the parties at this level. Focus will be on the information

gathering as has already been indicated to you that having as much as information as possible in the pre mediation stage, prefer collaboration over compromise we have to collaborate not just compromise to see who is the best, it is whomsoever is the best, whomsoever is stake in the judgmental process that person should be given more importance, gathering information , dialogue in openly, focus on the process, open to change, that is all about the owl style. it is talking about trust, ownership , its not about the hard feelings its about the kind of collaboration with both the parties many times it takes a lot of time and energy which you may not have but still it is a drawback of it, some people may take advantage of it so there are two ends one is the low concerns for personal goals and another is very high concerns for the personal goals, another side there is high concerns for the relationships and low concerns for the relationship so the turtle style is a loose loose, shark style is win lose, teddy bear style is lose win, fox style is win some, lose some and owl style is win win, values both goals and relationships so with that i am just going to end the session with the last style that is attitude towards self and others i am ok you are ok, adict berny transaction analysis feature and the management of conflict style you can find when there is low concern for others and low concern for self, this is avoiding, low concern for others and high concerns for self is accommodating, high concern for self and low concern for other is forcing, here its collaborating when you are concern with yourself as well as others and this is the compromising the fox style of behavior so the managing conflict, building good relationships before the conflict occurs, do not problem escalate, deal them when they are lies, respecting the differences, listening to others, acknowledging the feelings so all these are some of the tips for managing the conflict, i am sorry i exceeded the time a bit. Thank you. Dear dignitaries there is a small photograph session at the enter of NJA, i request all of you to please gather there before lunch. Thank you

Session 4

Resolution of Property Conflict: Role play by participants

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

Now we get in to role play as you see from the programme schedule, the sessions have been there are so many role plays in couple of days and on different fields of law and role play in session is

suppose to be on property conflict. We already had a role play in the morning I think you have already loosened up about the opening statement, getting into sessions etc. As far as this role play is concerned, we have the material, we read the general information; let us assume you make your opening statement that it is mandatory in each and every mediation. We will just indicate what things ought to be in the opening statement on a sheet attach to the problem but let us assume you made your opening statement, you had in your session, parties know what the case is, know each other case is, the mediator knows what the case is, so the focus you want in this particular session is how does a mediator use communication skills, facilitate to gather information from the parties, perhaps your private session evaluate those information to virtually work on those conflicting style you talked about like if there is collaborative methods to come to a conclusion, if they settle nothing like it and if they not does not matter. It is about the process of mediation. So we will start.

We have 20-25 minutes for the mediator using his or her skill for underlying the interest of the parties and we can have interactive session as to how one proceeds the way we prefer this to be done is after what mediator did, what questions he raise, what things he was imposing and feedback from the parties but that not the feedback I want in this, the feedback I want in this is that once a mediator does his work of underlying the information, I want parties top give the sheet of paper to mediator the confidential information and then let the mediator decide the evaluative value whether they have managed to get all the information and facts? Would their approach is different. Would he have handled the situation differently? So the test is of the mediator of gathering the information because without information we cant even think of try to balance the underlying interest of the parties so there is thrust to this particular mediation problem, it is not standardized joint session, opening statement, shifting gears and hopefully a settlement.

Any question on this, this is reasonably clear, just to repeat once again, we are not looking for any resolution, not looking for going all the way across the board, it is for this segment only, opening statement, joint session or private session but what we call mining, mining for underlying concern, interest, what actions can be generated, all those things, what mediator has to get from the parties, that's what we want to focus on, and of course mediator will evaluate on the basis of events occurs, but we will also have discussion on what are the barriers so we try to stick only on this part.

Any question, can we request the participants to divide in to group of four, you know so there will be one mediator and one party, one mediator, plaintiff and defendant so we will have 3 parties in groups of four, so we will just distribute the confidential information.

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National Judicial Academy, Bhopal
Workshop on the Use of Alternative Dispute Resolution
Session 4 : Resolution of property conflict
21 September 2015
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.

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Attention please while parties are still negotiating, may I request, may I request the parties to hand over the confidential information to the respective mediator so that mediator having the underlying interest which now can see through the sheets, what is their approach, we will give the observation later on, in the mean time, could the mediator only can go through all the information while the parties can still negotiating

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May I have attention please, lets hold this exercise now, may I have attention please, now I and Mr. Popat being in the room and we saw different tables, different stages of negotiations going on, some are based on right based bargaining and some are based on the position, some are based on the property so we both noticed that had we go for private sessions in the presence of others, not really asking a person to stay aside, actually no private purpose, this whole exercise was for the mediator to dig into underlying interest of each party and take it out, this case is based on, deliberately we put this general information, basically to see whether you move away from the law and rights and the positions in the underlying interest and actually it is based on rare mediation which I have done and get the solution in any case you come to the amicable solution depending upon what keeps a party happy but the solution on the basis of interest based bargaining was simply

was that the all the parties according to MOU, the contract was to demolish existing infrastructure, now you have increased FCI, increased area, finance are going to come into bank, the property was, the owner of the cable, the market value of property were today bank review working in the premises of that particular place, you see that satisfy the interest of that particular party, the contractor need not to put any money but the bank where you are staying so everybody back happy so what so what is the compellability of legal issue can be resolved taking in to account the underlying interest of the parties, with that we would have been able to settle, settlement that come in to force, had we taken out the underlying interest of each and every party, now we are moving towards request the mediator show with us not the parties, in this particular case it is mediator who is responsible not the parties, parties are only sustaining that particular hypothetical so I will request the mediators of 8 groups to share with us kindly what was the approach the mediator was taking or different it could have been at all, whether mediator underlie the underlying interest. We would start with this group..ok ..please

I am the mediator of this group, I started with the opening statement then we straight away go into the private session in order to know the case of each and every stakeholder in each particular case, D is our effective holder he decided to go with C so mainly we have to concentrate on E. C, D and E, now my talk with C, C told that she has 50% interest in the property and she will be happy if her 50% interest is protected then banker E says that we have invested with the tune of Rs. % crore then we are doing our business there, lockers are there, our credibility will be lost so all these factors is considered together, bank is of the view that they in the last if they have to...then after talking to D I come to know that he understand that he enter in to agreement with B and which he was not suppose to do but he was pleased to minimize the lose because he is already on the verge of declare bankrupt so we want some delay so that try as much as possible then I took the charge and ask all of them and come to conclusion what they think is the solution, then a proposal came from C that she will be happy if 50% share given back and forgo her claim with regard to the interest for the part tears and all these years and when I conveyed this to... he said they have hardly 50% of share is given that to the C and D owner with regard to 50% share as a owner they will be happy then the dispute is now between D and E so I asked both of them to propose then E says that ok I will sell this property whereby from the money of this property I will satisfy the need of D and that's why all three agreed for these proposals and finally the award.

I will thank both of my litigant, they are very fast settlement they agreed for giving and taking, they said, everybody was aware of their rights because there was no any registered deed, creating any right in the property, it was merely a power of attorney, license was given to him which was terminated, the other one was there was no privities of contract, the right was only on the basis of possession in which he entered, that's why everybody was aware of their case, when they were given their facts everybody was trying that the matter be got settled and for that they said now, more land area may be covered and after construction of it in other area the present cost will suffice our purpose and we will be in a position to get compensated and other said that whatever loan I have taken It was under my agreement, I have given him property now bank has not abrogate to me only then he had to watch the formal nature and the real issue was between bank and C, C agreed that my entire additional area may be covered and at present cost it can be sold and bank was ready and my bank consent would be there, I will develop the entire land, I will sell the flats and rights granted to D for selling the flats to prospective buyer and then I will give you, your share of land 50% and you will be presented now they recognize 50% interest now the additional area has been developed and 50% of the profit of the development, bank is there.

So there is interest based bargaining, the approach is basically is to identify absence of legal rights in the presence of the legal rights, the interest of the parties and amicable settlement.....

After reading the confidential information from the parties, admittedly D and C are the owner of the property, in fact D had no authority to give possession of entire property, but did you think differently before reading the confidential information, nahi nahi nahi after reading it after reading the confidential information, the facts he had no authority to give full possession of the property, only person in this case is C is the innocent person because he got the share after the death of that old lady, now as per the confidential information received from C, C is only interested in getting the money which he has to pay and in fact C doesn't want the possession of the property he wants only money, so the best solution which can come in the present case and D is ready for avoid anything because B and C are the only owner of the property, now each and every property, D has committed most of the wrong, the only solution suits to the party after the sell of the property, C being innocent, he should get his 50 % of share because he had not played anything, now the remaining aspect all the parties that is B, D and bank they should be penalized for their respective share and ask the party to come with their respective solutions but that underscores the importance

of being able to get the facts from the parties, most of us, when we are in mediation we tend to simply go by what people are saying we need to actually get identifying communication in a better, overcome them, try to get full information from the parties what they really want what are their most important concerns and that can facilitate in settlement.

Sir, I performed the role of mediator in my group, after the opening statement we never had a private session and underlying interest is also not discussed.. ok.. the stakeholder in the discussion, all the stakeholder admitted their respective position in the case, C began the initiative and give suggestion for solving the dispute, for discussing the underlying interest, he directly took stand and said has 40% interest and debt is secured and he started giving suggestion how it can be gone about, B admitted on behalf of C that he has 40% share and he also said that bank has brought into picture and he admitted , in fact he agreed on suggestion given by C that his 40% should be taken case of and with regard to the excessive land area occupied by constructing a building that aspect has to be compensated that stand has been taken by C then E took a stand that let bank interest be protected by having that premises along with lock up building, it should be there, it should not be removed, additional value should be given to that building and for that building let it be that on one side, about 100%, whatever profit they get after selling that superstructure it should be shared between D and E, 40% for D and 50% for E and even in that 50% the value of the building can be taken in to consideration and can be deducted and with regard to the land area that has been occupied by D, C for that area whatever has been occupied and constructed, whatever profit occurs that will be share between D and C and to achieve that a tri party agreement can be enter into that suggestion also advanced by C and almost everybody agrees for the same. So you are very cooperative..haha..too cooperative but again which parties are aware about their legal rights, they would facilitate the things which would be entirely different which you decide as a judges, you may be deciding on the rights only as opposed to what parties as parties would decide, the other group, the last group,

I started with the note to all the parties that how their interest can be watched, C have a proposal that he may be given 50% share, Bank only concern was that his interest, his position should be protected for 5 years and the matter should not be highlighted in the newspaper so that his reputation can be protected and after 5 years they will make arrangement for another premises, B only concerned with regard to that he has spent huge amount of money for construction and in case

building is demolished, what would be his interest with regard to the money he has already spent for the construction thereafter, other 3 parties heard together, I would also started, when all the parties being heard, while I was asking how interest can be watched, they given the negative reflection of their cases how, just a brief so that they don't.....thereafter, all the three parties heard together and reconciliation was reached between the parties and it was decided that E would retain the possession of property as it is from today for 5 years and would pay the license fee to C for 5 years, whatever be the license fee decided between B and E that would be paid to C and C would get the 50% of the share of the flats already constructed, construction fee, D has received booking amount only, D has not received the whole consideration of the flats, C would get 50% of the flats and balance sell consideration and would pay the actual construction cost, because it is suits for ignition of account also, would pay the construction cost also to D and rest of the 50% part whatever has been agreed between B and D that, the whole of the part that 50% would be decided, that means for the rest of the part B and D will share, that was the settlement.

Ok so yet another way of looking at settlement, what would get in court? Would you like to add something? What did you people decide about the lease which is now to be renewed, lease of that particular property that government property, which was cancelled because of misuse of property, that lease he is talking about, that lease, if it lapses all these problems erupts and they have to re back so lease of the actual property because now they have changed the user to commercial from residential.

No the point is that the government has cancelled that lease of that particular property which need to be restored so firstly if the bank is going to continue, on what basis the government if going to allow the lease that now we renewed and continued, if it is to be.....but if state is not satisfy that it will continue as a residential then on that basis state decides to stop the lease and not renew it..yes..yes but in your settlement what have you reached, you have to take care of that no but state is not the party, correct but who has taken onus among the settlers of this agreement to look at the lease whether it is going to renewed, No. 1 and No. 2 a fact remains whatever be a settlement, if the lease on the basis of residence, residential use then it entitled the government cancel the lease in that event it put a big shadow on your agreement and everything is false flat, that was the whole purpose of mediator sitting with the parties getting underlying concerns and the ground reality,

whatever agreement we have reached it all false flat if we do not take in consideration even small aspect which could be like a killer for whole agreement.

Sir, the very pleading starts that High Court has held that X belongs to equally, it is not written that it is a lease of any development authority, the confidential information you see that is one of the underlying concern, that's what we wanted from the mediator.

This exercise... and more so this matter is not amongst the present parties, Mr. Hingorani purpose is to left out from the general information and wanting the mediator to collect out from the parties that this is a vital information.

Generally speaking the point of this exercise was, thrust of this exercise was to get out from the contradistinction with the legal element of the case, the heavily legally loaded case, distinct from that the underlying interest if 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 yes you are right from the point of view this is not there in the main information which was deliberately not there in the main information.

The point is that that person does not to invest money in paying penalty, compounding charges, applying for change of user etc without knowing that he is going to get something so that is the real concern for the party who has no money, so that was underlying interest which the parties, mediator picked up so as to persuade the parties let go off in some other financial don't let go the rent as I put it or more flexible in recovering areas because this way you get at least 50% of the property back. So you need to picked interest against each other and for that you need to get that interest out which needs communication skills but the emphasize of this exercise was to make your head go round a bit for the legal part but then to distract you from the underlying interest and to see whether can you come back to the exercise and get out the underlying interest, so I think with that we have covered the time or you would like to conclude...was that none of you broke into private session, I blame on that lunch, the superb lunch that we had so I didn't feel like getting up but that's normal observation we need to keep in mind. Should you break into private session in mediation then you can cull out more easily and more lucidly because party in private can tell you much more than anybody else to here. Thank you. With this we come to an end for session 4, now

you have library reading, you can spent your 1 hour in library reading, anything you want to read, from newspaper to magazines, from serious book to non-serious books and then you can spent your time in the library itself where there is a computer lab, any one here master trainer here by e-committee, e-committee so will it be possible for you show the national judicial data grade to everyone so please do that for us and may be you can go through this, ya ya it is there it is there everything is there, this is something new development has come like all our judgments are there, we are suppose to upload and see how many, state wise positions becomes much clear, I think two states delhi and Madhya Pradesh data is not there but rest 1 crore 20 lakh cases are there and what stage in their life they are pending so you can see the development state wise and talk about this project and then of course then you can go back to your room whenever you want. Thank you so much, see you tomorrow then. Thank you.

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

Thank you sir, Right

Sir, Arun Gupta, District and Session Judge, Barah, rajasthan

Namaste My lord, I am B.S. Bhanumati, District and Session Judge, East Godavari, Andhra Pradesh

I have a small request, the gentlemen in the last seat, we have three seat vacant why can't you move out, it's always good to move further in life, what push you back..no .. I think I can see the rare thing, enough of yesterday so you want to be on the back seat so that you can sleep quietly when you want..haha...ok...that's....right...who else

Good morning Sir, I am narayana prasardi, district Judge talseri, kerala

Good morning Sir, Rajendra Singh, District and session judge, uttarkashi, state of uttrakhand, very good

Good morning Sir, my name is virendra Bist, I am principal district judge, Maharashtra

Good morning Sir, I am suryakant shide, PDJ, Maharashtra

Good morning Mylord, I am gotam baroha, District and Session Judge, Assam

Good morning, I am manoranjan kavi, district and session judge, jantada, Jharkhand

P.P. mekhiya, PDJ, Gujarat

P. S. nandkumar, Principal and district judge, tamilnadu

In the last 10-15 introductions, I had requested you each and every one you have any experience in ADR please mention it, I think its purely coincidental that people are not mentioning or had no ADR exposer.

While I was an advocate, please say so then, while I was an advocate I was trained as mediator by hon'ble high court of madras, right, this happened in way back in 2005, all the time when sri ram panchu was there, yes my lord. Thank you mylord

Anyone left, yes yes we are here introduce our self, well you know geeta and geets knows you, geeta do you need to introduce yourself, no, ok ...give me that pleasure, as all you have introduce yourself, I shall introduce myself. I am manju goel, sometime I have to be in the High Court of Delhi, that's a very minimal part of my introduction, I have been trial court judge all my life and

got elevated to the High Court at the end of my career so take me as one of you, I was not privilege to be high court judge from day 1 of my judgeship like my here my brother here is and so far mediation is concerned, I get involved in it, matrimonial matters I have done continuously for 6 years in different capacities and other mediation I have been doing till date so that's what bring me here. Thank you, geets ji would you like to start, or shall we start, aapne apna bata diya naam or patta, mai bata deta hu, don't worry about mine,

Good morning I would have normally taken the privilege of introducing manju goel but I don't know she has been my bench partner in the high court for long she wanted to introduce herself, may be she doesn't trust my introduction, let me say that she is extremely industrious person who takes everything that comes her way very strongly and on a very lighter mode in the high court you know our bench came to be known as valentine bench not because of the characteristics of the individual judges but what had happened was there was large no. of cases those run away marriages in our time, you had cases of young couples eloping and FIR being filed and girl was 16 and above and so both of us had granted the relief to the young couples, that was by and ultimately our judgements went to the supreme court, they were upheld they started the national debate ultimately leading to you know under the hindu marriage act, marriages were voidable only so debates started on that and you had still going on that what should be the appropriate age of marriage that was beside the point apart from this manju has been, I was involved in chairmanship of oversees committee in setting up of the high court mediation center and she was member with us and she did commendable work and she is called the trainers of trainers and she had 40 hours of training and that is justice manju goel and her specialty is role play she does that from her heart apart from being involved in it, Sudhir kumar, sitting on my left is icon in mediation. He is the in charge of delhi mediation center, tis hazari and what is there in his credit I must say here is an expert who himself handles around 5,800 mediation cases which is not a small no. for anyone and I think sudhir deserves a applause for that and he is spending over more than two terms. As far as I am concerned, I was a practicing lawyers, who was elevated I had corporate experience, counsel of world trade IBM corporation after that I was elevated, practiced for 16 years got elevated, remain on the bench, became the chief justice then again I had good inning of lokayukta of delhi but mediation remain close to my heart after we established the mediation center, this cares of the introduction and todays subject the role and responsibility of a referral judge under section 89 of C.P.C. and justice issues in mediation now I don't first part is quite clear it speaks for itself but the

second part justice issues in mediation, this part I might not thought about it and should be discussed first, gentlemen you have missed the introduction at preliminary just to tell you, justice manju goel on my right and sudhir jain on my left and we will also take your introduction as we go on. Sir, I am neelam singh shankhla, PDJ, Durg, chattisgarh.

Now what do we mean really when we say justice issues in ADR I would not rather confine to mediation but say ADR, justice issues in ADR what are the terms mean to you, what are the justice issues, what is the justice issues, empower imbalance ok that is one part, I am looking at broader perspective, I would say one of the thing which is, something which you have all along are the arrears that we have in our system, that itself is a justice issue if majority of consumers of justice do not get easy access to justice, do not have remedy available in law which provides them easy access to justice and a solution with in a reasonable time, this is where I mean the current figure would have gone up but you can recall it was 3.3 crore, come to 3 lakhs in high court, judge ratio in india is 52 to a million. You have legal awareness, each individual becomes the conscious of individual rights, its litigation will go on, legislative and legal reform in procedure, augmentation of infrastructure and judicial capacity can only contain the growth of arrears, is that a solution you see you bring about legislative change, you bring about reform that only can contain it, now there are various methods of ADR, arbitration , mediation , conciliation and judicial settlement in lok adalat, I need not to trace on arbitration which can be trace the origin to panchayat and even under the arbitration act, 1996, it has failed to achieve its objectives, all dealt in the 1996 act, in section 89 that was amended in 2002 enabling the court to find that there is an element to refer the parties to alternate modes of resolution that is mediation, conciliation and judicial settlement lok adalat, no success of any ADR system depends upon the contribution of various stake holders, in any litigation who are the stakeholders, the parties, the judicial officers, the lawyers unless you have total cooperation from the total stakeholders, it is not likely to succeed.

Let me now come to another factor which to my mind is becoming one of the concerns apart from judicial delays, litigation, it is a cost element, litigation cost has, it has become beyond reach of a common consumer of justice, it is here where ADR has to be taken as inexpensive body, I was telling my brother few minutes back, thinking back how in country system works, there was director of horticulture, his pension was wrongly computed and he deserve better pension even to CAT, CAT said it is bar by limitation but at the same time they commented on merit to say they

touched down on merit, this was our post retirement thing, he was looking for our post horticulture thing so we guided him to cut him short we filed the petition in the high court after that four and a half year of struggle, went in to the supreme court, it took one and half year in the supreme court, ultimately he was with me the other day, he was very happy, he said he won the case, the supreme court, the total pension he got was about sixteen and half lakhs so I said that's the bounty you have received he said no sir, he said seven and half lakhs has been spent on my litigation cost so we need for alternative dispute resolution system whereof you need a system even it is inexpensive, it is expeditious and this is now I am building up on this, the process that we have specially mediation, in mediation we all know that it is the parties who find the solution added by neutral so the parties have to cut the call, he does not himself take a decision for them, we leads them on, we find the nuance, how it is done will be aptly stated by manju ji when she takes you to the goal and I will briefly deal with the quality of a good mediator and it is inexpensive, suppose your mediation is done by member of your family in some family disputes, there is no cost, what we need to do is, in mediation when settlement comes, it has come to the court, the court passes decree in terms of the settlement, till the court passes the decree, the agreement in mediation is not possible, why it is referring this, take the case of private mediation, which is not through court, parties have themselves agreed, meet the mediator and reach the conclusion, in those cases there is a difficulty that how will you enforce those cases, because in order to enforce the agreement you need to go the court and ask for specific performance of the agreement, in those cases the good solution would be, what I wish to say is that suppose there is a debt which is to be repaid, we said alright, if you pay so much, the amount shall settled, you provide also as you many times in decree that if he fails to pay other amount, he will be liable to pay interest with all other cost so that is to make private mediation workable, now this exercise won't be complete if we don't see what has happened and take you through section 89 of code of civil procedure, now has each of you done through section 89 of CPC or not, let me put opposite to you it says whenever it appears to the court that there is a element which may be acceptable to the parties, the court shall formulate the terms of settlement, what does this term of settlement mean to you and then reformulate the term of the agreement, settlement has not come about that stage, can anybody tell me what this terms of agreement mean, no are you suppose to doubt the terms of settlement at this stage, the terms of settlement conveys the settlement, let me tell you friends, let me not out suspense over it, this has been the subject matter of couple of decisions which are all there in the case material given to you, first is salem

bar association case (first case) AIR 2003 SC 189, there was challenge made to the constitutional validity of amendment made by the section 89, the supreme court repel the challenge but said that modality has to be made for the working of section 89, the way it was violate, it could not be work out and there is a apparent conflict as you see in 89 (a) and (d), section 89 (2) (a) and 89 (2) (d), a committee was formed, Justice M.K. Rao committee was formed for amendments, reports then submitted and what is known as salem bas association (case 2) 2005 (6) SCC page 434, second page is on 80-81, what I would recommend to you out of second judgment, you read para 58, 60 and 64, that would be sufficient for you, let me tell you what the controversy is, section 89 is unworkable unless it is read judiciously in the manner, which is done and which has been done by the supreme court in Afcon infrastructure limited, this is the case at 2010 (8) SCC page 24, now it would like to point out certain things which are important for you to know, it is in this judgement, I think it is beautifully written judgement by justice Ravindran, with due respect to first two judgments, the first judgment really did was refer the case, for this is the case in which a committee need to go in to formulate the rules etc, the second time rules were considered, and they said yes we have noted the rules and let them circulate to the respective High Courts, invites their comments and they left it there, the answer were really been provided in the third judgement by justice Ravindran and these are at please turn to page 271, each one has got this paper book in hand, kindly take it out, manju ji I will take 5 minutes, that is important.

I have cult out what is important for you, I took 2-3 hours last night but it is worth it first is under heading what is wrong with section 89 of the code, this is at para 8 and I tell you each one that you does judgment writing, today subject is not judgement writing but this is the method I always prefer and this is I picked up that whenever you want to write a good judgement make in to various headings on the issues which you wish to try so that everyone can look for rather than going for 200 and 300 pages for what you are saying, here is the heading what is wrong with the section 89 of Crpc, the first is the mixing up the definition of mediation and judicial settlement under clause (c) and (d) of sub section this, clause says that for judicial settlement the court shall refer the same to person or institution which is lok adalat, this is 2 (d) that where there is reference to mediation the court shall effect a compromise between the parties by following such procedure as may be prescribe than the judge say no sense to call a compromise affected by mediation. Arre baba you are going against the very basis of mediation, parties have reached a settlement, parties have compromised, it is not compromise affected by court, court is putting in to affect what parties have

agreed in mediation so the judge go on to say look this is draftsman error, C and D should have interchanged, right and then again you please read para 13 which is the basis for the statutory interpretation, ok then now also you should read para 17, this answers the question whether when you consider under section 89 whether refer or not whether it is mandatory for you to refer, yes, rights that's right so that answer that there are cases which are suitable for referral and there are cases which are not suited for referral and para 18 please note of it this will give you a list of whole number of cases which are not suitable for proceeding with regard to the nature, each one of you get para 18, each one of you, now please make note of it, this will give you complete list of cases which are not suitable for mediation and rest are the cases I just comment on that, now once you have decided that one case has a element of settlement, it should be referred, the next question to be decided is which is the process, now you can go for arbitration, the requirement is there should be pre-existing agreement, there could be pre-existing agreement then you can go for arbitration or there is an agreement arrived in court you can go for the arbitration, these two are the requirements.

Similarly is the requirement in the conciliation if conciliation has to be done it has to be done under arbitration and conciliation act provisions, section 64 and others, I am just giving you because you have reading material and you know where to look for which is the stage at which you refer, no you may refer at any stage but which is the appropriate stage to refer, prior to framing of issues, in matrimonial cases you do not have to wait for completion of pleadings because what happens there feeling harden further, you see the words of lord chancellor Began he said when you tell the truth it is generally not accepted, you say blatant lie, it see through it but when you mix truth and lies a little bit, it is known as master of corruption known in the British time , little bit mix of truth and lies makes delectable mixture or as cocktail as he put it so that is the time when parties move in together, some truth and some blatant lies, in the matrimonial matters you do it at the stage of notice itself, that's the distinction you can make note of, apart from this each one of you have lot of experience and you all are 20 years and above, there is a inner sense, a sense of judgement where you know whether this is a case fit for reference or not, I can remind one case during my practice day, there was one sindhi father and sindhi son, nothing to do with the community step i mentioned it, the son has set up a great export unit and manufacturing garments, father settled it here and he is the only son whose disputes arose between them and we call them in our chamber and asked them both father and son, what are you fighting for, there was nothing you know at

times the ego issue comes, I still recollect, it is still rankling in my mind, the father answer was this brighter does not realize that when his mother brought him in to this world he was without piece of cloth and everything he got, he got from me, this is the father approach, the son said looked after him all the time, this fellow was retired government employee now I earn millions that is my labour but this man doesn't recognize that now at that point of time, I am giving this example but there is a principle behind this, what you do, this is challenge to good mediator, good judge to see, a referral judge what is your responsibility. Should we refer the matter at this stage? If we refer the matter without ground work is going to be a failure so either the option is do your ground work, have sessions with them, bring about sanity in their approach then you can refer it, alternatively what is the most effective medicine is to let litigation fatigue settled, there is no better teacher to litigate fatigue to such chronic cases.

Coming back to the judgement, let me finish this part by telling you, please also read in conciliation, does anybody know what the basic difference between mediation and conciliation is? Conciliation is also a voluntary process, someone will left out, right in salem bar they have said so but you will learn when you do role play especially in matrimonial and other matters, the distinction is between mediator and conciliator, theoretical difference is very clear, a conciliator can his own make suggestions say this is my solution please go for it, consider it, 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, you do not require consent of the parties why is that, tell me what is the rational for that, though the answer is very simple, mediation itself has to have a consent, settlement come to an agreement is voluntary in nature. No no my question was when you have requirement of consent for arbitration and conciliation why you have not this requirement for mediation and lok adalat, the answer to that is this in any case, the ultimate consent is required, they only agree, consent is inbuilt in mediation as well as in lok adalta, in lok adalat the parties have to agree, that is the difference, you please read in this para 29 and 30 and then 34 is the conclusion I think this the judgment which

must read and kindly go through the paras that I have told and tomorrow also I am here, I am going to be here, if you have any doubt with regard to this we shall be happy to take them up. Now what are requisites in mediator and conciliation what do you think apart from the many nuances of the process which both of us will tell you the requirements what are essential for the good mediator and conciliator, I have coined three I's and three P's. first is integrity to inspire confidence, built trust, built credibility that is why integrity is important in mediation because otherwise if there is no faith in the mediator, parties will suspect you. Impartiality, fairness in the conduct of the mode of ADR in genuine, finding genuine solutions, when you conduct the arbitration, you have to be fair. Ingenuity, in finding out the genuine solution I don't know whether each one of you recall the old example, I am still really fond of it, you see there was this, the essential difference in adjudication, arbitration and in mediation is, in arbitration you determine the merits, legal merits you know about it, while in mediation it lies in finding the solution. I am reminded of the old example a man having 17 camels I don't know each one of you whether it has been quoted or not as please let other answer it, a man had 17 camels and he died, he got the will by which half the camel to the eldest one, one third to the middle one and one ninth to the youngest you please note down half one third and one ninth, now there are 17 camels how to divide and he also prescribed that my camel shall not be sold, so how will you distribute among them. Can somebody think of the answer ok fine then let the other try it, you see the creative solution, let me end the suspense, now they can't sell it, they can't part with it that was the old man's desire, they went to one friend they gave the solution they said look I have a camel do you have any problem if I add in your kitty of camels they said no uncle so seventeen plus one is eighteen so the moment they became eighteen, please see your answer is there, so that is thinking out of the box and in mediation this is what one of the essential elements to find a solution, you can go to any other aspect to find a solution, you can go to underlying causes, friends I have over short, my apology, I will give this floor to Manju ji and Sudhir, thank you brother, we have so many minutes more to go, we will divide equally between me and Sudhir, no can take, compensate, it's ok so my brother has said, 10 minutes of tea they will sacrifice for myself, ok so you have 15 minutes each, ok my brother has given you a micro view but I want to take the micro view, well why is this justice issue so important in one particular programme I asked trainee are you concerned about the fairness of the outcome? I have written like this can I show it here, I don't know how to show it there but it is very fed, you know the justice has to part you know process and outcome, ok 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, I remember a case in which judgment was announced in the absence of the parties, the lawyer telephoned the parties, Clint asked what is the result, lawyer said justice has been done and reply comes immediately file the appeal, you didn't get the point, justice has been done means truth has been found but when we say justice is done in which case we say justice is being done, what is your view of justice, what is justice, can we get from you, what is justice according to you, because justice has different meanings for different persons, justice means different things for different persons, if I get the head of opponent justice has been done, isn't it but I don't want to go into that let us limit our self with justice means fairness ok so what is just and fair, when i asked this question. Is mediator concerned about justice or the outcome? Is the mediator concerned about justice outcome, I was not given any answer I was told that I will get the answer, sometime later, when the training gets over in the 3rd day in last hour I was told, the mediator is concerns with the process, he doesn't concern with the outcome, he concerns with the process that means mediator is not concerned as to what happened in the end whether just or fair, well what is your view whether mediator should have any ownership out ship, is he concerned with fair and just outcome? Well I said for once no, I am an Indian, I cannot give up this concept of justice, and you see justice, equality the French revolution say liberty, equality, fraternity and our constitution say justice before equality, liberty and fraternity, these two from French revolution but we added justice on the top, see if you don't give justice, I am not concerned with mediation but justice has to be done, some people say what is justice, justice means decision according to law but our law just and fair. Do we get fairness in process always? Are we getting enough opportunity of being heard? Parties don't get the opportunity, it is the lawyer, sometimes get opportunity to heard, sometimes don't, sometimes lawyers are able to put the case of client before the court and sometimes not, so how do you compare court process is not always just and fair, the outcome is not always just and fair, in mediation we say we must own the outcome, the mediator must own the outcome, must give us the just outcome, although it is the parties who have to bring about that outcome and then there are fears as anu malhotra just said, power imbalance, there is an element of bargain, who will get what and how much and in that process, the person who has better bargaining power one way or the other will have edge over the other, in that case whether mediation will produce just and fair process, I have the solution for that too but what I want to impress upon you is when we refer a

matter to the mediator, we should know we are not sacrificing the justice, so what extent court process can give justice and what extent court process cannot give justice, yogesh quickly distribute this exercise, I set a situation I found that if you want justice, you cannot depend on court, if you want justice in certain situation you have. While you get this paper let me tell you the first case I will bring it out for you.

Kamala cannot bear child. She consents to her husband, a government servant, taking another wife. She is a witness to the husband's second marriage. She realizes her mistake when she saw the new wife seated next to her husband, both decked up as bridegroom and bride. She wants justice. Now the second wife is pregnant. Kamala seeks legal advice. What will you advise her? What kind of suit/complaint/proceedings should she file?

Give me quickly the answers please, pardon, no no now she wants to go to the court, she has come to a lawyer, what is the legal remedy, I can't do without writing I don't know how to use this, no government servant, no what are the legal remedies available to her, what law can give her, it's totally illegal but she has not been deserted, suit for declaration, yogesh can you help me with this? Suit for declaration second marriage void, number one, second suit for injunction against the second wife, don't come to my house because you are not the wife of my husband, pardon pardon, criminal complaint against the husband, suit for maintenance that she is being maintained yes any other relief, complaint to the government for punishment what else suit for divorce, absolutely, suit for damages, tort then I gave her all these options 1, 2, 3, 4, 5, 6. But the wife said no to all these options. Then I asked what you want so in this case what is just for her, there are various sense of justices, tremendous injustice has been done to her, so through session, session and sessions we realize that what we need and what she wants is security, what is troubling her is sense of insecurity so once you know the cause you can get the remedy but court can't give us security, all these pollutions do not have in them the element of security which she wants and solutions becomes easy when husband has been told that she wants security and of course then family worked out, the family support so all these so she had her security and she has been given justice, well the second situation, sorry sudhir kya karu...you can continue..ok

A partnership firm is in the business of catering and supplying food to passengers of Indian Railway. The partners are falling apart due to mutual distrust. One of them seeks your advice. What will you advise? What can the court give tell me? What relief they will seek from the court?

Will compensate the other side, what is the, what is the claim of the suit? Dissolution of partnership, this is the only solution in the civil procedure that you can seek, tell the partners to give me my share but there is a problem, read the last paragraph on this page,

However, there is a problem. The Railway has taken a deposit of Rs. 3 crores as security for performance. The contract is non-transferable. In case, the firm is dissolved, the deposit will be forfeited. What relief is just and fair for the partners?

Go to the court if justice is there, you know we have a set of frames, you asked for this, this is the rule and if you ask for this, this is the rule and when the partners fell apart, the only relief is to give solution for the partnership, and if they dissolved those 3 crores I will lost and if the 3 crores I will lost nobody is going to get the solution for the partnership.

Problem 3-Two brothers inherited a small house from their father. The younger one lives in the house. The elder brother sues the younger brother for partition. What decree will the court pass? What court is going to do? The suit for partition, money compensation so they sell the house, well what I am saying, courts may be just and fair so far as the process is concerned, a very efficient judge will pass an order and decree according to law, but there is a difference between correct judgement according to law and justice so let us not have this ego and confidence with us that court will definitely will give you justice, there would be a case where the decree of the court will not reach up to justice and these are the cases, perhaps can be resolved through mediator those 3 I's and 3 P's in just and fair settlement, justice I mean, ok there much more to say, I am sorry sudhir, please take, no no I want to heard sudhir, I have not heard it, no no please continue, mam please continue, thank you may lord justice sarin and justice manju goel, yesterday we conducted a role play and tried to differentiate how the role of mediator is different from the role of adjudicator and how the mediation process is different from the mediation process, today we are talking about the role and responsibility of a referral judge under section 89 as we all know that section 89 was introduced in the code of civil procedure in the year 2002, you must be thinking why this topic has been included the role and responsibility of a referral judge, we all as a judicial officer sitting on the dais discharge our duty with utmost care and utmost dedication but when it comes to the referral judge, when we talk about the ADR, when madam justice manju goel talked about justice issues in ADR and is the definition of justice and my lord justice Sarin has taken us to entire judgements delivered by hon'ble supreme court in Afcon case by Hon'ble justice R.V.

Ravindran, you know we need to understand today how our work is important as a referral judge, we need to understand our role as a referral judge, it should be taken as part of dispensation of our judicial work, after challenge of section 89 and its constitutionality was challenged in Salem bar case, now we cannot say that section 89 is alien to the judicial work, it is very much part of the judicial work, we need to make effective referral, my lord justice has talked about that as per the mandate of section 89, now it is the duty of every judicial officer to see whether particular matter can be referred for ADR mechanism including mediation and if it is not, then it is not necessary to send it for mediation but if it is suitable then it is bound duty to refer for mediation but very important question has arises how to make suitable case, adequate no. of cases for mediation for that we need to make positive assessment of the case for that we need to read the entire pleadings, documents or the record, summary of the dispute, this we need to understand before the referral and send the cases for mediation and then there should be adequate referral of cases for the mediation otherwise mediation center will reduce non functional and non operative, yesterday you talked about the status of ADR system and infrastructure in your respective jurisdiction and what I could gather from you ki in most of the places still ADR centers are not there

Another thing which I would like to say is the category of cases sir has talked about but besides the category of cases which are mentioned in Afcon case which are in delhi are very very successful, the first is the matrimonial matters, when litigation is at thresh hold, about to begin and about to take serious shape then the case can be refereed for mediation, many times when question is asked how the bail matter can be referred, you know when the bail matter placed before you, when the arguments, the complainant is also present and particularly 406 and 498A cases can be referred for mediation, in another category of cases where we try the mediation, Motor vehicle cases particularly when vehicle is not ensured. Those cases fit for lok adalat where compensation has to be paid by driver or owner of the vehicle, I found 80% success rate in MVCT case and in the morning I was seeking the guidance of my lord Justice manmohan sarin in criminal compoundable cases, section 89 is the part of mediation, section 89 as we are developing in india is not confined to section 89, I still remember last year, we organize a function because we in our mediation function in delhi we have received more than 1 lakh cases for mediation and in that function hon'ble judges of the supermen court and high court came and some of the speaker talked about mediation in criminal compoundable offence, sir you can ask judicial officers working under you, at least the cases under your jurisdiction section 336, 337, 323, 325 IPC cases, what I have

noticed in these type of cases that only the poor persons, the litigants who belongs to the lower strata of the society, they are involved and earlier resolution of dispute in the same locality and in the same area will bring the harmony to self also and one thing is that which we need to ask which we need to answer why we refer a case for mediation and what are the factors we need to understand at that time, you know many many advantages attached to the mediation process, one example lordship gave of 17 camels, in mediation creative solutions are possible, I still remember one case, it was a management and labour dispute ultimately the management which was very reputed school in delhi, they need to provide free education to the daughter of the workman, she was intelligent in studies but poor in finance, his family was not able to provide education, you know very creative solution and you know yesterday, the role you conducted ram and sunil, I noticed that most of the group they have found different solutions on how to resolve a dispute between two neighbors and another thing which we need to take care that you know in judicial process we hardly notice, hardly prepare the parties to go for further litigation or further trial but sir remember when you are referring a case then prepare the parties, motivate the parties, spending 2-3 minutes over them, tell them what is mediation process, you know why we regular organize programe for the referral judges to make aware what is mediation and what is mediation process how to make effective reference and how to prepare yourself for mediation and mediation as a challenge.

From the bench is it advisable to interact with the parties, yes yes ma'am if you if you, referring the benefits of mediation? If you read the training manual prepared by the training manual of India, there is one chapter role and responsibility of a referral judge, if you read that you will find that how to motivate the parties to go for the mediation, it is well excepted practice for court and in the last I would like to say ki when you are referring for mediation pass the appropriate referral order, this is not a referral order that a case has been referred for mediation and the report is awaited

In last, for your kind consideration I would like to share to improve the quality and quantity of referral in our mediation center that we are using regular circulars see every time required to be given, see as a principal district Judge, some of you may be in charge of mediation center in your district, we are holding regular meeting, we are conducting regular sensitization program for referral judges, newly recruited judges and in services judges so that the referral can be made it can be increased and as a judge in charge in the mediation center I also monitor the cases referred

by the judicial officer, if a judicial officer is referring less number of cases, immediately I contacted him or her, I use to make a very humble request that sir please make more and more request for mediation and in the last 5 years I would like to say that in our mediation center, I have received more than 1 lakh 40000 cases for mediation and out of this we have settled the matter in more than 1 lakh 14000 cases so sir you can be the maker or breaker of the cases in mediation in your jurisdiction, its your motivation, your interaction with the judicial officers, the advocates, litigants and other stake holders in mediation and in justice delivery system in large in which you can make mediation as successful institutional, institution in your jurisdiction, thank you, thank you very much, one last line sudheer why don't you quickly tell us the settlement in 25 yards in 7 brothers, yes, haha you know it was a one person died, he left behind one wife, three daughters and three sons and in delhi there is one commercial area known as in karol bag area, it's a slum area, that case the suit was pending in the high court of delhi, in the original suit the case was referred for mediation, apparently parties were never appeared with tight position, they were not ready to buzz, they were very, there were so much of hostility between the parties, but gradually I interacted with the parties, I gathered more information, I noticed there are three heads of the parties, first side there was mother, another was three sisters they were already married in good family having the good life and three brothers who were residing in the said property, first floor, second floor and the third floor and they were not ready to vacate the property, they were not ready to sell they said hum mar jayenge lekin property se nahi jayenge, first I interacted with the mother, I tried to understand the underlying interest of the mother, the mother directly and directly try to convey that she wants financial autonomy, she wants financial security she doesn't want to depend upon her daughters or son and daughter I noticed after much interaction ki they were not interested in the share of the property they were interested in the financial autonomy for murder and son they were not ready to vacate the property, to reside in the property they were living along with their family, to ultimate what we have settled the ground floor of the property can be divided into two portions and one of the portion can be given on rent, because it was a commercial area and can fatch high amount and that monthly rent can be given to the mother so that she can meet out her monthly expenses, usne kaha ki mujhe apni ladkiyou koe bhi paise dena hai tou, unkoe tyohar pe gift dena hai tou so they have social responsibility also and in the remaining portion the mother can live independent of her three son when the financial security of the mother and sisters be walk out from their claim before and the remaining three floors divided among three brothers to

consume 6 months, parties were so hard in their interest and take the parties from their interest, underlying interest, amicable settlement, khala ji kaa kaam tha, very hard job for me but I still remember that case was settled by me 10 days back, thank you, we can have tea now.

Session 6

Application of Mediation Techniques to resolve family and Matrimonial Disputes

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

Good morning, welcome back

The next session that we have is application of mediation techniques to resolve family and matrimonial dispute. Before we go into this if any one of you have any questions relating to the first one, first session, we can accommodate in next 5 minutes. Yes. Anything left out or you would like to clarified, any doubt. There is none.

Yes, ma'am mentioned that there was the solution to the balancing of empower so I would like to know

Its not a fit case for mediation but very often it is the weaker party who look for mediation and we can say that you are too weak then don't go for the mediation. It is the mediator who empower the party

How the mediator does empowered the weaker party and raise the power of that weaker party and put some kind of balance the first face is to inform the weaker party of all the legal provisions that go in his favor

Like if it labour who is I removed in unjust manner or illegal manner the mediator can tell how 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 , of course when you mediating there will be more ways of empowering the weaker party and just shows the weaker party that you are not inclined to the stronger party merely because stronger party strong Sometimes parties are there counsel blame that Mediator is teaching that Clint want does not know know no even legal provisions is not teaching. Generally there is provision and even information supply information is not teaching That unnecessary blame, blame we can afraid of blames, you have to do your rightful duty Courts are always be blamed, should we discard the court? We have go on doing our rightful duty..There is nothing illegal in that let me add to this .while various option sister pointed out In essence it really become an issue of your persuasive abilities of your being able to the conflicting parties that the position you are taking like for instance you have powerful party but it tends to dominate..right so you have to convince that party about unreasonableness and that is where skill of a mediator comes in to bring home the point that look there is a weaker side there is case of deprivation You cannot have this. You have to be reasonable and while leaving tell them look somebody with your credentials is expected to be reasonable...right and let me take the case in point I am reminded of it. In a reputed industrial house of U.P. where aircrafts and sugar mills and other things I wont take to place it, matter was transferred from Allahabad High Court to Delhi High Court. He had come for the revision and it was a case for maintenance, the man was billionaire but when it came to give maintenance to daughter in law man came up with the answer that his income is barely not even exceeding Rs. 1lakh, now it was absurd..right so that is the time when a judge also takes a pro active role so he asked him so he said alright he came up with income tax return that this is my income tax return

So the short answer to that was similarly the mediator when judge has the power to do it, mediator can also ask certain questions and make him realize that I ask him simple question

he had given everything to the charitable trust he had no personal income I said how many cars you are having in your name or in your families names..how many membership of clubs do you have..the ultimate idea was to make that man convince that who had income more than 1 lakh while it is not declared so make him realize that this is unreasonable.

Judiciously one can do it and then send it for the mediation, it worked out because men realize that ultimately it can not be said that...he is willing to settle, from pittance of Rs. 4000/ fought in the Allahabad High Court I think ultimate settlement was about 35000/ or so which was also no less but quite avail so it is always role has to be played intelligently, diligently, making persuasion, making person see the reasonableness. Thank you

Without this role of the mediator the lady would have agreed for 9000/ she would have been really happy but now the mediator has played a very important role if he is concerned about the justice in the Indian way he can raise this figure to 30 even 30 today is not a enormous amount. Yes. I am taking of something about which is 15 years back. Ok. Lets come to the subject that we have now. 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.

But this is more so 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. That is the must, in a example manju ji had also given that whether it is financial security the women is looking for tough it may not surface what is she talking about, now a mediator also ends up working as a marriage or family counselor, you know while in this case you are, purely if you go by strict fundamentals of mediations you are not supposed to be giving advises or giving solution but this is the area which I mentioned in my morning session also, this is the grey area when you end up playing the role of a counselor also, you keep on telling this is not reasonable, don't you think you could do better, don't you think what is in the benefit of your children....now at times

mediation can be done by an elder in the family, then there is personal mediation and there are statutory legislations, order 32A, section 23 of Hindu Marriage Act, section 9 of the family courts Act where there is an application for crime reconciliation prior to embarking on adjunction. Now essentially matrimonial disputes, you all will..there can't be a disagreement on this part that there are sentiments involved, because of grievances can be something which hurts a person and then goes deep into it..I remember a case which I rendered as a lawyer the wife wanted divorce from the husband, the reason she said, this son was the only son of this parents and there was his mother alive father was dead, he wanted the mother to be with him, when they got engaged he told her that we will live independently, that was the promise made to the wife, now this lady, well educated lady, a professional and when they start looking for houses one by one and every week he would see the advertisement and end up rejecting it. One day she heard him speaking to his mother, the mother said look you are finding a house and I will be left alone, he said don't worry I won't find a house, the wife overheard it, that was the end of the relationship, wife's reason was here is a man who breached my confidence, who told me initially that we will live separately and now he is breaching it, all efforts to convince her that be reasonable, he has a mother, it would be of no ill if you accommodate the mother. They say....no gender biasness...the fury of a woman know no ends in such a case, she remained steadfast on it, this man I have lost confidence and I will not reunite with him. Ultimately the efforts on mediation failed and they separated, they are happily remarried again, that is a separate issue. Another which I have, when at times the break comes in, when you find the underlying cases I can recall from my experience so I am illustrating it in terms of emotive factor and underlying fact, that is the principle we are illustrating. This was a German, he married an Indian. This lady wanted an assurance that he would not meet his children from previous marriages. he had two German wives and a number of children, so I said it is unreasonable, there were number of sessions on it that you can't put an unreasonable restriction that a man would not meet his children. But she said no...ultimately she opened up and the reason was that she had married this German for money and she wanted good security, a lump sum amount and ultimately she settled for some 70 lakhs or so, that is finding out the underlying cause. Initially she would say breach of promise, he is not being loyal to me, he had two wives and so on but that was not so, so this finding out of underlying causes. The next stage, you have to deal

with this as a person who has respect for human emotions, this is not the case where you have clear cut objective and reason. This is case where you balance out reasons vis a vis emotions... reasons vis a vis sentiments, that is your struggle as a mediator, bridging gaps to arrive at consensus, now cooling of period, you must give time to parties for cooling off, at the time of first approach there is lot of antagonism, they are not willing to listen , you will have to give them time to cool off where they are able to reconcile with things and coming off with it, now in some cases, the futility and I am throwing it before the house for discussion, which we can do later on, in Delhi you would have been reading, we have the case of former law minister of Delhi, it is in public domain and we can talk about it, Somnath Bharti, right? He is being accused of attempt to murder, an FIR has been lodged and there are matrimonial disputes, the women says he assaults her and one of the allegations is that he led the dog on to her, the dog called don, the other day there was pictures on the papers, that don was let loose to bite her, so this man he was granted an anticipatory bail, later he takes the dog to the police station, saying that my dog was not granted anticipatory bail, now in a case like this do you think it is a fit case for mediation? there will be different views on it, when we go for role play we can take this up for discussion, because for discussion, because you see the underlying causes are entirely different, may be there are political links to it, the man is seeking publicity, she may be set up by others, when in cases where the underlying cause is not matrimonial stifes, would there be solutions? the obvious answer to this is no. There is no end to such cases, you will have to find the latent grievances and then, mediation attached through court, mediator must be well acquaint with the circumstances of the parties, he should be aware of the local customs which vary from state to state, you must understand the background of the parties and one of the things which a mediator needs to emphasize is willingness to sacrifice and adjust this is what you have to convince the parties on, in such cases there will be exaggerated allegations, the wife is going to say he beats me black and blue or he is extremely cruel because mental cruelty has no bounds. Then you have 498, 406 cases where you must distinguish, the are not criminals, they must not be treated as criminals, the background is there of matrimonial disputes and what is the exact function of a counselor or a mediator? It is to restore the equilibrium between the parties which gets disturbed and there are cases where parties find that it is desirable for us to settle, there are cases where wife feels suspicion or a man is suspicious

when he finds his wife talking smilingly with somebody, he thinks she is not observing fidelity to him, then there can be problem of spend thrift wife, I don't know if you also have cases of spendthrift husbands, so these are the whole verity of issues which come up and my idea was to give the general over view on this so this is going to be the session of Sudhir and Manju, they are going to have as much as time they want and we will also have role plays, thank you.

My brother has set the right tone for the discussion, yesterday you had lots of sessions of role play and when you did the role play, it must have suggested to you the basics of mediation, we will do a demonstration role play, we will tell you the stages, in matrimonial matters we follow the same stages but there are certain difference, first I would like to bring out the 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..hahahahah....and other most important party is children so they are very important, many many mother in laws sacrifice their life to see their children settled and there are other factors like suspicion, sometimes it is absolutely founded suspicion and sometimes it is imaginary suspicion so these are some important factors in matrimonial which a mediator must know, now the most important factor of mediation is because of all these factors, other important factor in matrimonial matter is allow the parties to speak, mediator hear it's a kind of relief that somebody is listening and he knows how much he is saying can be taken reasonably by others, how much he and she is speaking totally unreasonable and when you are doing this time is a important factor but don't cut him short and it should come from inside and if you stop and ask tell me quickly then they will think nobody understands me so how will you bring out the understanding of

other person when catharsis is going on. I will give one small example from my experience one lady who wants reconciliation left the matrimonial home with the allegation that husband wanted to kill her then I asked her if he wants to kill you why do you want to go back and she said I love him, in second session also she said I love him so I said what is love she said trust and I asked her a person who wants to kill you, can you have a trust? She is mum, she realized that there is great controversy in the story what she is saying so she moves towards reconciliation what I am trying to bring out that is that allow them to speak to understand their own mind so what is the underlying cause.

Generally in mediation we say focus on the future, show them this is your future what will happen from present to the future what lies ahead, now this who said I love my husband, I asked her to do a exercise, what you want to do with yourself, you are living with your brother, how long this will continue, no no you know my son likely to enter in to college, he will finish his education, he will start earning, I said what you want to do with yourself , you son will settle down in next 10 years, I said you please write down one page, you know what she has written he did this he did that he wanted to kill me, I said this is what he did, what do you want to do with yourself, I am trying to focus at the future, this is not what you want to do in the future, they always live in the past so second day she writes the same thing then I told that you said you are good at studies, you are good at computers and so many other thing then she realize that if she has to live alone she has to what will happen, if she has to live with her husband what will happen, sometimes you have to make them look at the past, there was one case of divorce, section 13, you know in all these cases emotions are overt, I asked her how they got married after she said so many things about this man then I asked man tell me 2-3 good quality of this lady. He said she is very sincerer person and I said will you take adjournment today, I don't want to pass any order, please take one month adjustments and he wants two months and believe me they never came back for divorce so you know sometimes putting at the past, telling good things about the other person may revive the lost love for each other then children can be bridges, children are very important parties..kitna time hoe gaya..ok so 2 minutes for me, so children's needs bridges, they need parents and in such matters don't go by the pleadings, pleadings hide so many things, it is better you mediate don't look at the pleadings of the matrimonial suit, I give one example, you have seen this movie abhiman, how many of you have seen it, that is of their generation,

kya keh rahi hai manju ji abhi bhi amitab ki movie hai Buddha hoga tera baap.....hahahaha...but please see this movie if you have not seen it, now suppose wife comes to you to file a case for divorce, can you draft a suit for divorce for her after they separate and before they reconcile? Can you draft a case? You know I have tried you can make a full proof case, the wife may say he has stopped going the work, act of cruelty and he going for another girl, another act of cruelty, he has taken for drink, another act of cruelty, he did not come to see the child, when child was about to born, another act of cruelty, for the husband side she left the house of her own without informing, not informed that she is pregnant, not informed the husband that a child was born, she is seeking more interest in secretary then him, there could be so many allegation, they can create a full proof case but eventually you are the judge, what realization happen that when husband has this high ego that is abhiman, the wife is suffering some sense of guilt that is because of her, husband has given up his carrier so when she over comes the guilt and when she realizes that she is a victim of ego that conciliation takes place so please don't look at the pleading, directly go ahead with the parties and mai sudhir sai umeed karungi, what is the role after the reconciliation and after the divorce, what is the role of mediator and of course what sudhir has to say, thank you ms justice manju goel for giving me this opportunity and equally thank you Justice Manmohan Sarin, today we are discussing very important topic that is how we proceed, how the technique in mediation what we use in the family dispute, you know the disputes and conflict they are part of our life, the disputes and conflicts in the society, we can never run away from the dispute, we need to face the dispute or conflict, if we are addressing the dispute in proper perspective they can be resolved they can be diverted they can be minimize but if we fail to do that there will be gap in the relationships but if are addressing the conflict then many many creative solutions are possible and it is equally possible in matrimonial dispute, if you find in the society why the marriages are performed, if they allowed the couple to settle in life peacefully, it is for the continuity of the society, marriage is must but in the recent time there is a outburst in the matrimonial dispute, in your jurisdiction you must be experiencing that little quarrel between the parties leading in serious matrimonial dispute when we are conducting the mediation in matrimonial dispute sometime it is really difficult for me ki what is the real cause of matrimonial dispute why they came in the court for further litigation, you see as my lord justice sarin has guided us there are various

factors, various reasons ki why there is outbreak of matrimonial dispute in the society, they are not arising because of difference in the ideology, sometime because of economic compatibility, economic resources, they are the main cause but when we take the mediation in matrimonial dispute as madam maju goel was telling that matrimonial disputes are completely different from economic disputes any other dispute, property dispute because in matrimonial disputes it involves emotions, ego, social compulsion, personal responsibility of the parties. 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, sir mentioned, kya lagta hai ki why the matrimonial disputes are there in the society or in the family, ego, ego is the only one, tolerance, the major one and sometimes what I have noticed the perception is one of the major factor in matrimonial dispute. Most of the conflict, sorry sir, 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, I will be taking on this issue also, you know the mediation issue in recent times is very important, it is accepted now as we know in the morning we talk about mediation was legally recognized after section 89, in mediation we resolve the entire dispute, in the court we are dealing with the dispute, when we are dealing with the mediation, it takes the shape of conflict, mediation in matrimonial matters we need to understand that what is the role of mediator, mediator in the morning mr. tiwari ji also said ki mediator facilitates so the prime role of mediator in mediation is facilitator, matrimonial matters are the classic example, 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, uski konsi acchi baat aapko lagti hai jo matrimonial dispute mai hona chahiye, listener, he should be a good listener any other patience patience good any other, he must be ...hahahah..i think it is the best quality, you know communications skills are very important in matrimonial disputes as sir rightly said you must be having all the qualities of good mediator, you ask the wife whether it is patience or impatience...hahaha..what you think is patience in her perception it is totally impatience and what is the difference between a

married man and an unmarried man..sorry for what you have done and sorry for what you have done, that is a successful formula for a successful man. Thank you sir, and I will be talking about the some of the technique which we use in the mediation, a good communication skill is the core of the mediation, if you are not the effective communicator, you are not a good mediator, you know in matrimonial mediation, the display of good communication by the mediator, in mediation we have three types of communication from parties to mediator, from mediator to parties and between the parties themselves. The first ability I found 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, suppose you ask are you married? Parties may say yes, how many children's you have, parties may say 2-3 children but if you are asking the questions like this and then you are asking are you married I can very well visualize after this question the mediator will be under serious medical supervision so you need to take lot of care the way we are asking the questions, the time and context in which we are asking the questions, as a mediator we are not investigating officer, we are not suppose to ask irrelevant questions or interrogatives questions and then other important skill of a mediator is your body language, your body language, I am telling you the way you are sitting in the class, the way you are asking the questions, it clearly reflect your interest in the class training progemme you know you can manufacture your words but you can never manufacture your body language, body language reflects your attention, how much you are serious for the parties, you need to take care of your body language and another quality is your active listening, can you differentiate between listening and hearing, are you listening or hearing? What is so special about listening, interest, listening means when you not only understand the word but the meaning attached with the words, we are suppose to be very good listener because if we are able to gather all the information disclose by the parties then only we can settle the parties for a amicable solution otherwise not and another important communication I found in the mediation is your neutral language because information disclosed by the parties is always coupled with emotions also so sometimes we attach with the parties or detach with the parties, there should not be any compromise as your character as neutral, you know matrimonial dispute is a complex problem when a matter refer to you, you need to deal with the divorce by mutual consent, in matrimonial matters setting a appropriate agenda is very

very important, now if you conduct an opportunity of any matrimonial mediation you will face a situation that parties are not moving further, there is a failure in the negotiation then how to manage the situation also, how to break the impasse, you know if there is a problem, a problem is always coupled with a solution. I always say the skill of mediator start when there is impasse between the parties and from the impasses situation you are taking at the settlement. You are taking from past to the future as justice manju mandam mentioned in matrimonial dispute. Generally in mediation we say focus on the future, show them this is your future what will happen from present to the future what lies ahead, now this who said I love my husband, I asked her to do a exercise, what you want to do with yourself, you are living with your brother, how long this will continue, no no you know my son likely to enter in to college, he will finish his education, he will start earning, I said what you want to do with yourself , you son will settle down in next 10 years, I said you please write down one page, you know what she has written he did this he did that he wanted to kill me, I said this is what he did, what do you want to do with yourself, I am trying to focus at the future, this is not what you want to do in the future, they always live in the past so second day she writes the same thing then I told that you said you are good at studies, you are good at computers and so many other thing then she realize that if she has to live alone she has to what will happen, if she has to live with her husband what will happen, sometimes you have to make them look at the past, there was one case of divorce, section 13, you know in all these cases emotions are overt, I asked her how they got married after she said so many things about this man then I asked man tell me 2-3 good quality of this lady. He said she is very sincerer person and I said will you take adjournment today, I don't want to pass any order, please take one month adjustments and he wants two months and believe me they never came back for divorce so you know sometimes putting at the past, telling good things about the other person may revive the lost love for each other

What should be the good strategy in matrimonial matters, I think some of you must be having conducting mediation in matrimonial dispute first 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 also and in the last I was referring one issue, family court is based on

the conciliation but even then why they resolve to mediation in family dispute even our high court and supreme court recognize mediation as effective resolution method, the supreme court in many many cases suggested the parties to resolve the dispute through the process of mediation and most important in the morning I also mention that courts may refer the matters under 498A IPC to the mediation if there exist a element of settlement, latest judgment is K Srinivas rao v. D.A. Deepa 2013 (5) SCC 226 delivered by justice Ranjana desai, in this case SC emphasize the relevance of mediation in matrimonial dispute including the complaint under section 498A IPC, it was observed in this case ki that the complaint under section 498 is completely a civil dispute which can be amicably by directing the parties to explore the possibility to resolve through mediation and It was further observed that the court has adopted a positive attitude in matrimonial dispute and discourages escalation, how our supreme court is serious about mediation in matrimonial dispute, another important judgement 2003 judgement B.A. Joshi v. State of Haryana 2003 (4) SCC 675, in this case supreme court held that the complaint involving section 498A IPC can be quashed, how the settlement can be executed, in this case it was held that complain involving section 498A IPC be quashed by the HC and we are receiving number of High Court order, whereby FIR are quashed because of the settlement in mediation, another judgement is 2012 Gyan Singh v. State of Punjab on the similar lines 2012 (10) SCC 303 in this case supreme court identified the criteria of cases which can be referred for mediation and in the last I would like to highlight the role of mediator, I am telling you from my experience, in most of the cases, the advocates are instrumental in settlement of dispute and in some of the case they are instrumental in not allowing despite parties willing for settlement so in mediation the role of lawyer is very crucial and in the last I would like to say mediation is not the only answer for matrimonial dispute, judicial verdict is also important but similarly litigation is the not the answer to every matrimonial, mediation provides very creative and practical solutions, I am sharing one experience where husband and wife filed 15 FIR so hostile to each other that complete breakdown of communication and it consume my 5 to 6 months to bring the parties to the settlement, ultimately the chain of cases is more than 25 cases but they were settled, they were withdrawn from the court because of mediation but remember mediation is not for delay the litigation, it saves the time and cost, from my experience I am telling you mediation in matrimonial cases are very successful. Whatever be the case, mediation is proved to be

useful remedy. Thank you thank you very much, thank you sudhir, I think its time for tea, all I can say as a mediator you are bound to make effort and leave it to might get resolved thank you.....we can share over tea, it is very interesting, I am looking after mediation there center in Chandigarh. Last week only we got one matter referred by the DV bench so both the parties in that case are deferendum, so both the parties to me..like what can be referendum, who under what expression, you better see bajrangi bhaijaan first, so so so for that we right now, that's a very challenging assignment, that's very challenging assignment , that's very innovative, why not. hehehe..we will go for the tea and reassemble and that's it we continue after before after there is a role play, one last matter I wanted to mention to you that what you need to see is the impact of matrimonial dispute in custody matters, you know very often you will find the custody, people are highly placed, the welfare of the child is given a go by, if the husband finds that custody is with women he starts offering by he is wiser in offering but for custody he will say look for my child I want the best boarding house, I will pay all the expenses the underlying objective is that child should be away from the mother, even he is ready to fund the best education institution, I remember the one case, I was telling my sister just now, parties are well to do, one was the daughter of son of the and other was the daughter of politician, he wanted the daughter must go, the child he could imagine, they could not find good enough school in delhi, delhi is a hub of education but according to them the schools were not of good standards so he wanted the girl to get educated abroad, the reason was apparent so at times you have to come back to it you have to go to underlying cause address it and then meet it, ultimately they settled but after paying 17 lakhs to counsels, thank you.

Session 7

Practical Demonstration: Role Play in Mediation

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

Fair manner but now we have this aliganj I am sorry for the marking I used it earlier so there are some marking.. these are the facts let us assume on record...now the parties are this hospital and the implement supplier now I have chosen the mediator Ms. Anumalhotra who is master mediator herself to be the mediator for this role play can take the role of one of the parties yaa..so I will give you the role of the hospital and the implement supplier who will be, Yogesh Ok yogesh will be implement supplier so now give them the confidential facts, where is yogesh the other yogesh.

So Anu actually does not know the facts which are confidential to the implement mediator does not know the facts which are confidence to the supplier and she does not know the confidential facts for the Hospital and hospital does not know the confidential facts of the implement supplier and implement supplier does not know the confidential facts of hospital I give them 5 minutes to read the facts you have read the, just 5 minutes all of you can read the general facts so we take lesser time

Thodasaapichekarlijiye convenient hoe jayega

Yehtoubahut close hoe gaya

Time up total you have 45 minutes

Done.so I am going to inform the mediator..madam parties for mediation have come can we call them in ..yes ..please sit down...I welcome you to the mediation just a brief introduction your goodself

I am yogeshkhanna, the managing director of pvt Ltd You sir

I am for the aliganj..thank you sir

I am Anumalhotra, trained mediator

I have done few mediation, today together we will move to resolve the this matter between yourselves

So you have before get into this are you aware of the what the mediation is Ok few can explain, We just give brief road map, At the outset when we talk about to find out we will have a joint session and to find out history what are the brief facts...you can bring what you would like to bring across and after that we will speak individually I would be speaking to you individually and individually to yourself and please bear in mind its just to take you into confidence whatever you tell me and whatever you tell me Sir will be absolutely confidential and it wont be convenient for the other side unless you give your concent and unless you give your consent and thereafter we will bring across ..the other thing I would like to bring to your kind notice is please very polite with the language you use and no harsh words and no abuses ...the other thing is of course if one of you speaking kindly listen to the other side so if we follow this ground rules we would be faster and in a much more good atmosphere and lets hope for the very best lets be optimistic so we will begin with you sir..you from Aliganj hospital...aliganj Hospital ...we are the sufferer at their hand and the way have treated us and the way they have cheated us ..please I want to request you please its not its not so easy because ultimately like we have paid for the machine which we have purchased from them and they have supplied the defective things resulting intolose of patient and our reputation so they have cheated us they are the biggest cheater on this earth so you are little upset about the problem

Yes sir, Actually there was nothing there was no shortcoming in the machine infact whatever shortcoming was there with regard to installation of machine if you kindly see the tender notice in that notice it is clearly said,.these all are stories -these all are stories.. please..please ...please...please sir let him speak....yes

You see when in the tender notice we place the tender at that time you see at the time of initial contract...please tell what the modalities are

Aa you know ki we started with the mediation it's a role play the dispute between the supplier and the hospital you know we yesterday we talk about mediation to\day also we talk about mediation and mediation process the definition of mediation and mediation process the mediation process can be divided into 4 functional stages 1st is the introduction and opening statement second is the

joint session and third is the single or individual session and some of you yesterday refer ascocus also resorted to cocs also and last is agreement...haa

In every stage of the mediation stage functional stage of the mediation process has its own importance the procedure to be followed mediation is a process structured process like the judicial process we followed ki the filing of pleading , framing of issues, evidence defendant evidence final judgement...madam has started with the opening statement and introduction what the madam is done in this opening statement and introduction part two require to welcome the parties we also need to look into whether they have proper sitting arrangement for the parties ...yesterday we understand ki there is a lot of difference between mediation process and judicial process in mediation process we welcome the parties we take care of the proper sitting arrangement, lighting arrangement and other logistics support in the mediation ..no ...in mediation in the introduction part the opening statement the mediator introduces himself tells something about the expertise and experience and ask the introduction of the parties like the madam also asked introduction of the parties and told about something ..about her own experience as a mediator and then the mediator explained the process of the mediation to the parties because mediator know the mediator knows the process of the mediation the parties and their counsel may where may not be aware about the mediation process like the introduction, joint sessions, single sessions and then closing and one thing is that the role of mediator is very important..this in the beginning of this session the madam talk about kiki mediator is a one judgmental person if mediator there is no give suggestion no solution to the parties his function is only the facilitative function he is only the facilitator of the process that we need to tell and then and important issue the confidential you know the confidentiality mediation ki aatma hai if there is no confidentiality there can never be any mediation

A mediator also has to maintain the confidentiality and then this grounds rule why grounds rule although it is just a settle of the parties the parties they themselves responsible for the settlement but who is the manager of the mediation process..i am not asking the settlement but mediation process the mediator is the manager of the mediation process he controls the mediation process he maintains the proper discipline and therefore nedd the process that is whay the madam has states the ground rules ki like no use of un parliamentary language no talk across the table no filthy language if you want to address address to the mediator directly and then in the last if mediator

ask any question from the parties any doubt about the mediation or the mediator himself and one thing more if the mediator is having the conflict of interest like the mediator is having share in the aliganj hospital and he is having some financial or benefit or financial interest in the plantsin ka plant jo hai then he need to disclose to the parties because if mediator is suppose to be a mutual person but one thing is more ki why this introduction part that is always missing in the judicial process why introduction because to develop a very convenient and conducive atmosphere with the parties for the mediation it said the formal role for the mediation process the entire mediation process and then refer building with the parties to create very conducive atmosphere conducive atmosphere for the mediation and then to neutrality of the mediator dekhiye a mediator can not say that I am a neutral person neutrality a very common term it can only be establish by your own conduct like the proper eye contact, proper use of language and that is how we conduct the introduction and opening statement..madam

Thank you...yes please ...you see his blame is that there is a shortcoming in the machine but shortcoming was their but that was there in the installation of machine as per the agreement which was settle between us he was expected to call a engineer to install but they call semi skilled worker so that is why that is why there is a problem in the short circuit of the machine and secondly I would say that there was no other condition they would they would install stabilizer also because that ...this I mean fluctuations so they have not done it infect you see they are trying to blackmail me because I am new I have entered in to this field and they know if I if I if I if I something happens to may machine it will it will adverse I mean affect on my business so that is why they are trying to exploit the money which actually their..this is my submission..its not like that ...this is repute hospital and its not that we just went to the market and picked up this company only the tenders were floated not only this company many other company participate din the tenders application were laid by us for this from lot for machine and once they also parties to enter in to the bidding process and in then tender process and they offer the lowest price so we like obviously there are financial implications also sp we short listed them ...at least realizing that in the scene that we are going to get such type of treatment from them and the movement the machine was installed prior to that all the terms and conditions were clear to them it was basically made clear to them that in their area hospital is situated there is power fluctuation and stabilizer require to be installed that is that is part of recorded that was basically like conveyed to them but despite that no stabilizer was provided that part I was we are saying is not correct because the machine was installed by them

only it was under their supervision only and the movement it was installed and then we got the first patient for tooth plant the first patient only the movement treatment was going on he got the electric shock... alright... and resulted and not only not only the patient has suffered the injury he has sued us he has sued us for damages so who is liable for

I was just if I have understood you correctly sir according to you the stabilizer needed to be bought by them and according to you it was for them to put the stabilizer...there appears to some fluctuation in current as a consequence to this there was short circuit...is that it? no we don't know.. that can be one of the cause but ultimately it is because if machine is there some inbuilt mechanism be there or should have been there it not if stabilizer will not there the machine will not work ...so now may be we will talk individually so may be we will be able to understand better so may I first speak to Hospital ...sir ...could you please get outside....yes sir ...now the madam mediator has followed the very important session that is joint session ...why the joint session is important for the mediator because to gather the information general information to understand the background of the dispute as well as to know the underline interest of the parties it is also important for the parties so that the parties can put their case before the mediator on their own language that is the relevance of joint session.

Thank you sirin short I want to repeat that whatever you can speak very freely what exactly you want to ...now...and I would just like to inform whatever you speak will not be told to the other side unless you think it is necessary and whatever you say will also not go to the court ...

So it would not go to the court of law unless there is settlement arrive at ...sir could you please tell me exactly ...no whatever I told the same story I am not going to like in his presence also whatever I told in his presence same is my version...doesn't matter...I would like to understand little more if you can put the facts little clearly ...again I can repeat the but there is like no difference and nothing was concluding his presence also from my side ...you can all ...no sir this is for my own benefit and I would like to understand things better so gain you are awarded the contract then see I can I can I can the repeat the e-bids chronologically,...we are a hospital we have got dental department there..yes.. and in that department we intended to implant toothy implant machine and for theta we floated tender...yes...this company apart from other things also participated in the tendering process since specifications were late for require as a per our requirement so they participated in the tendering process and one their bids were the lowest of

course I said earlier also in his presence that, financial interstate also to be watched since their rates were the lowest so obviously we went for that because other specification which were supplied by the different supplier and this company they were same so we short listed this company and everything was made clear to them in the beginning only that these are our specifications and the most important fact which was clear to them that in our area there is a electricity fluctuation and they need to supply the stabilizer there and then only at the time of installation of machine that was part of the contract part of the tender...that was conveyed to them and they can not like...was it part of the tender sir?

It was conveyed to them it was not part of the tender because it can not be part of tender but later it was conveyed to them...okAnd they can not ...at the time of execution of the contract it's a part of the contract that they have to supply the stabilizer and they did not...do you have the copy of the contract... right now I am not having but you can ask from him if he denies I can put it on record but at the same time machine was installed and the we got the first patient and when the treatment was going on again there was like may be electric fluctuation or I don't know the reason and it is quite possible that machine may be defective and that patient got the shock and that resulted in the injury on his cheek so now you can deal the matter that what I like force we are like very sorry for the patient who came for treatment to our hospital but instead of getting like providing the treatment we like we are party to make him further injured and he has now sued us now we cant use this machine we have to contest the civil suit which was filed by the patient against us...which is pending we have to contest that also this machine we can not use we can not take the risk like treating the other patient with this machine so you tell us that what is our fault...you have come to mediation sir...now what you propose...proposal mam..like as far as this defective thing is concerned they should take it and they should at least provided with the improve version pr something better then that and as far as that patient is concerned they should instead of paying us paying by us they should pay to patient before the court of law.And that for that perform..yes..Because its after all our reputation..yes..its our reputation and they should also take some steps so that public in general or otherwise something should be there to take care of repetition from their side either it can be written apology or it can be apology in any form.

Pardon me if I heard you correctly you are also saying there may have been electric fluctuation or it may have been a defective product...you are not really sure on that but for that in the beginning

only since there is fluctuation in that area...stabilizer didn't work. May I speak to the other side..why not why not...would you please get outside for few minutes...I II

Please sit down..thank you ...may I know in your word what would you like to say...ma'am actually they invited the tenders and this was machine known as phyciodespension so we are of course we are new entrants in to this particular field but you see we have supplied many state of art machines and it was a lowest bid and not only that we have given free consumable, Screws and all you see there is a consensus in the agreement in the contract also now if you go by the agreement ...you see you are expected to call engineer to install that to install that particular machine...now they are nether conducting engineer or engineers..now you see they have two stabilizers...they knew..i mean they knew very well they are in a particular locality where there is a lot of fluctuation they should have I mean suppose if they have not called me at least they were aware of the fact that there is lot of fluctuation in the electricity they should have installed stabilizer themselves so there is no fault of mine..my machine is totally perfect...I have manufactured the machine also if they want you see I can I mean if they say they have suffered the lose I can replace that machine and even I can supply the stabilizer in some cost but I don't know why they are creating fuss over this...all these things its their mistake they must pay I mean they must compensate the injured for that why they are asking me to pay compensation.

What were the terms of the contract Sir..were you to provide the stabilizer or do you have the copy of the contract ...no madam ...suppose I was to supply the stabilizer now in that case why they started the machine I mean it is a established fact that I have not supplied the stabilizer ...they could have wait for that particular thing for 1-2 days...they could have called me ...instead of getting stabilizer form me you see they started the machine without my consent without telling me...was there no inbuilt stabilizer in the machine?...there is no I mean not in fact in any machine we need to have stabilizer outside I mean there is no system inbuilt stabilizer in this type of machine. This is may case is, So what you have put forth forward is that you would be willing to replace the machine ...yes I can replace it I can repair the machine also I can supply the stabilizer and get it installed under the supervision of an engineer this is what you see my offer to them ..if they accept it that's ok with me.

What about the reputation...my reputation at stake I am the new entrants in this particular field I have future prospect I mean suppose if this case goes on in that case you see it will hamper my

future prospect so I still believe is a very good I mean very good alternative to settle the dispute but with regard to compensation I can only replace the machine and even supply the stabilizer.

Anything else ma'am what they are offering please tell then I can think

That I need to seek confidential information permission

But whatever you have conveyed I will convey to them what you are offering is to supply the stabilizer and replacing the defective machine then what you think about the compensation to the injured...compensation you see it is very remote thing I mean I am not connected with the patient I have given the machine..I mean its is their fault why have they started the machine without the stabilizer if they were know at what place hospital is situated this is a general I mean everybody knows that there is a electricity fluctuation in that particular area why did they took risk of start the machine without the stabilizer. As per the terms of your contract you are suppose to provided with the stabilizer even if I go to the extent I was to supply the stabilizer then why they started without the stabilizer they would have asked they would have called I would have supplied...suppose a part of machine is not supply to them...was it was there no possibility to ask me telephone me ask for that particular part why they started without..they are reputed hospital they know there are other machine also they know stabilizer is required then why they started the machine without the stabilizer...stabilizer is not a big thing for me I would have supplied them within withinwithin15 minutes...why they started that this is their negligence and the negligence of the doctor who basically use that particular machine and even installation of that machine without the stabilizer this is my submission but if you...should I say...

Yes...what is that....you have come to the mediation sir..you have accepted it you you yourself referred for the mediation...mam but even otherwise I mean all this I mean do away with the facts in fact you see I may tell you that I am new entrant in to this field ...now suppose if the case linger on so they file a case against me or litigation against me civil case...yes.. now in that case this basically that will take a long time may be 2-3 years...yes... so I may not get the future business...yes...so I am interested in settling this particular matter but of course not I mean as they demand compensation for they say they have spend huge amount and some compensation case is filed against them but I am not bound to pay that compensation but my take on this is that alright I will replace with new machine....what is your take on

compensation...compensation..Alright...how much they are demanding...the injured is demanding for sum of 4 lacks ...hmmm..alright since I have to secure a few further business for this machine alright I will pay 50000/ this is last which I can pay plus replacement of machine and supply stabilizer and plus the installation in the presence of engineer or pay for the engineer or send an engineer for installation of machine not more than that

You Would be able to mention that stabilizer had not been installed? Would you able to accept that?

No I mean You see its very simple suppose the stabilizer was not gived let us suppose stabilizer was my responsibility..they should have waited you see for installation...that is true sir..let me get back to them then and then get back to you..may I have the other side..could you wait outside sir..this aspect I may convey to the other side sir...yes...thank you so much

We have very good proposal from their side Sir as you mention that you want the replacement of defected machine they are willing to replace also and the stabilizer you said it was part of the contract the stabilizer needed to be provided... just for my own understanding if the stabilizer was part of the contract which had too be installed how is that machine was operated even without the stabilizer that of course the installation engineer and your hospital must know that stabilizer is not there..how is it that you started the machine..see we are not technical people..it was for them only the movement they installed the machine they put the machine at the place it suppose to be ...see stabilizer is not a big thing that which we can find out or trace them it was only machine which was there..even in your house also you may have brought 2-3-4 A.C.s or refrigerators can you remotely remember that is there any steplizer with that or when you purchase A.C. or refrigerator is there something advice to you that there is stabilizer which is also require because you can ask any body that stabilizer is generally provided by the supplier along with the machine..the consumer invariably never never like forces the supplier that stabilizer be supplied immediately along with the machine because generally we tale it like this that stabilizer will be there or it is there because it was them to install it in proper atmosphere and in a proper condition. It was not that we were suppose to stand there right there when machine was installed after all they are technical persons they are charging from us so they are suppose to do everything in a rightful manner. It was there duty to supply the stabilizer even if supposing there was no power fluctuation in our area supposing this thing we did not bring to their notice even then it was their duty forget that we are the purchase

from this company there must be other hospital for which they must be supplying and you imagine every prospective buyer will advise them that please supply the stabilizer also if the machine can not work without the stabilizer then why did they installed the machine without the stabilizer they want to put the things on us. Think from their point of view just put yourself in to their shoes then we would have supplied the stabilizer also...alright..you would have supplied the stabilizer also ...but think in their shoes for a minute...that if some machine is coming and it's the first time you are running the machine..before starting any machine in a hospital..don't you check its working condition..working condition whether fluctuation is met with all these aspects do you take care?

Our doctors are well trained..doctor like the doctor who was treating the patient he was made you understand the entire question of the machine it is not that we just send one of our attendant hospital attendant to check machine only to operate machine it was not like that one of our qualified doctor went there and he was made to understand the entire functioning of the machinery and there after he was only he was started treating the patient.

But he was unable to see the stabilizer..again ma'am I am repeating it is not ... stabilizer I am sorry I am a laymen person ...stabilizer is not within the equipment it is kept separate..it is kept separate but again but its not like place in the ... of the machine.. ok.. and that that and I think if they are projecting that it was due to stabilizer only that may not be the correct picture because apart from stabilizer there can be also defect in the machine and in fact they want to consume that defect under the name of the stabilizer thing but at the movement what it was the fluctuation or the defect....must be ...it can also happen that the patient who has filed the suit against us for the damages he may lead independent evident and it will be really difficult to take any complete defence there whatever we are saying is hypothetical situation and they are just shifting their onus on us by saying that stabilizer was not there ...alright ...ok...you could have call for the engineer for installing the stabilizer...pardon...you could have called the engineer for installing the stabilizer ...once the machine was installed..it was supplied by them ...how can we assume that this will happen in future ..in fact it is not happy situation that one patient has come to us in order to get treatment got electric shock ...so do you have no purchased department or something which looks into installation in your big hospital..there is there is there is ...so you didyou not see which equipment installedit was delivered by them and ultimately see as far as we are concerned supply of the machine and installation of the machine is not denied....we can not say that they did

not supply the machine the thing is ultimately the patient has suffered injury due to working of machine...supposing as you are saying supposing his electrician was there his engineer was there and his doctor was there ..supposing can you guarantee or can he guarantee in that eventuality the patient would not have got the electric shock how can you say that it was purely our fault that our doctor was at fault they did not use the stabilizer and due to that only patient got shocked

Nobody is saying that it was your fault ...there can be fault in the machine also ...yes of course...so now as you said that you need replacement with defective machine the machine and ...that I suggested when you asked ..ok..thank you and also the stabilizer which so far has not supply to you...and they would that particular instrument ...the machine ...yes they are willing to replace that and they are willing to give you stabilizer also so with that would it suffice to you....no ..what about the damages...suppose the court gives a verdict against us. the suit filed by the patient who will pay for the bill who will pay for those damages ...there is no fault of ours...after all...for a movement ...you put yourself in the dock before the court and think of the question that I have put to you in relation to the aspect of the learned doctor having...engineer having not taken in to account...the installation of the stabilizerreputed....what you think would be your prospect before a court of law...before a court of law ...infact we will not placed with all these things ..we will be there to save our honor...our prestige that will be the most important thing for us before the court and what about....not at the cost of our honor...hospital honour we will do anything for that we can do anything ...suppose verdict comes against us we will pay because our honour is at stage ...so that is why I am saying that replacement is one part and ultimately they should also afford the bill and supposing like if you want to settle the matter...yes...just I can share with you if you will not share with him ..ok..supposing some assessment is made regarding the damages for that patient is also suppose to be part of this because in his absence we can not come to the conclusion like figure that we will pay him 1 lakh and if he says that I will not accept 1 lakh ...supposing he says I want 10 lakh ..so my suggestion is if we agree something to him then what would be his amount...yes ...we can not determine that ...so you suggest that we may call her in to the picture ...he is also require...what it is that you don't want me to convey to him...my intention is supposing the patient is agreeing for 1 lakh then 75 % he should pay and at the most 25 % we can also pay ...for getting all the things which has happened because ultimately we don't want to litigate and want to treat the patient after all we have spent huge amount of money on this machine ...that we can work on that how much he would pay and you would pay but to know how

much he would pay we need to call the other person in...that can not be done without his absence and we need to consent...whatever you feel like ...in case you want to call that person you can call her but then so other person I will call her in your presence

Thank you sir..i have conveyed your proposal to the affect that you will return the machine in addition to the stabilizer in relation to the aspect of the quantum of the compensation amount we have not deliberated on that I think a very though has come from their side from the hospital that we may bring in the injured person so we can have a conversation as to what is it and we may all say amicably each once on her not being at stake ...no one thing are they asking me to pay the entire compensation to the injured?...we have not conveyed such satisfaction at this movement you put some terms to me I have not put across to them....the thing is the case is that that they are demanding 4 lacs as compensation vis a vis loss of reputation they are not disclosing what is the compensation demanded by the injured but despite that I am paying 50000/ but on one condition that they would give statement in the press that there is no fault of the machine...sir...please do not be agitate..we will get in to that...we retrying the amicable resolution of the matter...so I have your consent to calling the injured person...yes I don't mind I don't mind the injured persons the things can not ma'am who is the injured person...

Ok ...ok...hahaha....madam can you see my cheek madam ...the cheek looks stitches4 lacs not enough ...to compensate me for this losti am a young man I have to live my lifecould you please sit down..thank you...

So you are what is it that you would me to get how you would like to/.....see this ...I understand you have suffered...I will have to go to foreign hospital to get plastic surgery done...its all the hospital fault where doctor looked quite young I don't think he had the require expertise to do such serious thing the implant is a super specialization I don't know the hospital must know the qualification of the doctor...please....that is what I am saying ...patient has no concern with the machine and as far as the machine is concerned...and doctor is concerned....our doctor is the best doctor and he has got all the technical knowledge with him ...nice...and I am not blaming the patient...I am with him...but the question is who is at fault for whose fault he has suffered I am also for the patient like his concern is the main thing he came tooth and plant and got injured ...so what you are seeking what is amount you would see...you see..i really don't know ...the

compensation is for the treatment that I have to undertake ...I will speak to you...can both of you leave from here so can speak to him personally...so

I do understand how dramatic it is for you but what it is you are seeking for pain, agony..trauma ...that you will have to undergo...what is it that would suffice to you...you see my purpose is to get back the skin that I had...if they cannot organize the hospital cannot organize plastic surgery for me at a lower cost by a appropriate surgeon may be...this is what I want ...money is not...sos...my main aim is not getting money or bank account.....i am concerned with my looks ...so If they are able to organize plastic surgery that would be ok with you...that will be okk..i should be...it should be entirely at their cost..i should not be asked to pay....that should be suffice...may I convey this to them...yes yes...certainly..certainly ...may I have the hospital please. Hospital...SeerfAliganj Hospital....

You are reputed hospital ...you have all branches in it..isnt it? You have plastic surgeon also ...we have..so the would you be in a position to let the operation done to the injured? Supposing we agree for that then whether he will withdraw the suit and that will be end of the matter ...hopefully ...from their side they are not interested in money ...so if if they are not seeking any money they will not like further agitate and plastic treatment and whatever treatment is required we will provide to them...we will just find out ...could you please call the injured Mr. Yogesh ...she is here ..i am sorry ..i didn't recognize.

I didn't know you are hereits a very nice thought they would be willing to conduct the plastic surgery done...so no need for the claim...last time the doctor I am sure was not the experienced one ...the one who wanted to do the implant ...you can call for the record so the doctor...his qualification and experience...how old is he ...he is 60 year old...no no no ...he was young doctor...I am taking of the doctor who will do the surgery...ok...the plastic surgeon has to be an experience one....please don't get me 20 or 30 year old you gave me for the tooth implant ...we are we are with you but for you we can not bring any plastic surgeon from outside...surely we will give the best treatment ...and we are having a very good team and whatever they are ...then you should give the best plastic surgeon in the country ...no plastic surgeon ...you hire at your cost ...no no that is not possible because whatever is in our means within our means we will do that ...you have absolutely no defense..you have caused this on my cheek...I will sue you...I have already sue you for compensation that is not enough if I have to go abroad an get treatment done

this 4 lakhs will suffice...our sympathy with you but again you are already in the court of law so you get your treatment from abroad and then you again seeking that money from us ...I am sorry I am using this word but I am going to use one word then what is the guarantee that...could you give me a few movements..madam ...what is the guarantee...could you ...could you ...once we are settling the matter things should not be in the threatening manner...what is the guarantee that suit will be withdraw ...it is not threatening . give me a minute.. I have understood you sir as far as....you get the operation done from the person who has caliber and I have understood from you that you have very good team of plastic surgeon ...yes they can verify from their own sources regarding our plastic surgery department...yes you have good plastic surgeon which I have put across is of 60 years of age and he is done his plastic surgery from London he has good credentials ...he is reputed plastic surgeon in the country and he has several operations to his credit that is what you have mentioned to me ...again I am repeating again I am repeating our all sympathy is with the patient because we are very sorry that this thing has happened to him and we want to rectify our so called mistake though it was not ours ...ok...so let the cost ...just at the cost ...just at the cost of our hospital and restore the facial impression of the patient because the....

Well, I will have to verify whether doctor is good and if he is good and treat me well I think that will suffice...so could you....i already have the said experience with this hospital..so ...they are very sorry....i will be really careful before because it is 4 or 6 or 8 including my stay in the hospital...everything will be provided....everything will be provided...if you could verify that...yeh..i can do that ..i will agree to that...we will take care of everything...ok...so could you verify ..now if this this suits stand finished and withdrawn then what remains is the replacement of defective machine and stabilizer so there is nothing remains after that...then we will be satisfy..there is nothing more after that ...because the suit will go...may I call the...yes...equipment men...we have spoken to the injured person and injured person also very upset with all the situation but hospital is very kind they will be looking after entire operation providing stay of the injured also and bear all the expenses. In that event you have mentioned that you will replace the machine and provide the stabilizer and plus 50000/ towards compensation...ok...no no...they were asking ...they were asking that's why...ok..as a bonus...that's a very nice gesture towards the pain and agony of the of the injured...I will pay that...so we may call the injured...and statement in the press that there is fault of may machine...Sir..operation and everything is done...its been taken care off so they are not pursuing

any suit thereof ...the suit is being withdrawn by Si...you advised me to withdraw the suit right now ...they have their reputation at stake...they have the reputation at stake...somebody like to trust somebody but supposing suit is not withdrawn and treatment is being provided and then ...that is why...that is why ...we all believing in ...we all have to believe each other so we will reduce into writing that providing operation, entire treatment, stay , the doctor and it would be a doctor of repute and credentials...you have verified the credentials sir...I did...you are satisfied...I am satisfied and they would be doing that with the best equipments which will be replaced by the Ajanta equipment company and all the facility this time you will ensure, check before any such thing...yes...I want in writing...yes it's a part of the memorandum of understanding between all of your 3 self that the equipment would be supply by the Ajanta supplier along with the stabilizer and 50000/ towards the agony that you sustained..fact that you underwent such problem and you would be providing for the plastic surgeon , providing for the stay you would not be charging any single penny and you will to the best of your ability and the date of hearing is before 1st of October in the court. On that day you would be withdrawing your suits sir and also ...no ...these are the terms of the contract ...these are the terms of the settlement which I have ...not contract..settlement between all of three selves that between your three selves that the that I just mentioned and 1st October you would be withdrawing the suit and the operationtakes place on second ...2-3 days ...ok you will specify the dates ...I can I can because I have to check the availability of the doctor...could you please ring up now and find out..we can not ..its 5th of October...alright ...alright ..is that all.. you are handing over the check of 50000/ just now..its been handed over..its a draft not the check ...so..thank you so much..give me one day at least...you are such a rich man ...alright ..alright

Thank you so much we all settled and thank you very much for your cooperation...thank you.claps

Ok..i have done this exercise before ...new dimension ahs been added by calling the patient..my previous experience that patient was never called and of course this hospital turned out to be very hard bargainer so extracted without giving out his share because as per our facts the doctor was not quite experience and that was the week point of the hospital ..if you see the confidential facts ..so there was something...both parties wanted to save their reputation you see its not the money which matters with any of the two parties or the patient and generally when we see cases its not really money its something else and here both sides were interested in saving their reputation and

the patient of course has suffered damage and if the damage can be undone by another surgery the patient is happy with that rather than money because even 4 lakhs would not have sufficed to perhaps go to another country and get it and even it is organized by the hospital as good as the ...without leaving his...we have to remember that this underline cause of conflict underline conflict and solutions and this has to be brought out gradually when you speak them individually...look my reputation is at stake...the supplier as well as the hospital both are saying it's our reputation which we want to save.

It is a very wonderful display of role play I was...I was looking at the actual mediation going on between two claimants with the intervention of another third party who is also the victim of the entire transaction between that hospital and general distributors. One thing which really impressed me that apart from the procedure which is being followed by the mediator : the communication skill. In morning, we talked about communication skills when we were dealing with mediation in matrimonial and family dispute. The most important, the communication skills which were used by the mediator is active listening. Because of the active listening, the mediator could understand the dispute between the parties not only the but also underlying interest of the parties as the reputation of both the supplier and hospital they were at stake. They want to save their interest as the representative from the Ajanta mentioned that we are new in the business and we want to save our reputation and another guarantee he was asking that this should be published in the newspaper that there is no fault in the machinery which was supplied in the instruments supplied by the agent. Second important if you notice the mediator asked many many questions to get further information to seek clarification to remove the confusion and to understand the dispute and underlying interest of the parties more realistically and more deeply and then how the mediator has used the single session to develop offer and counter offer between the parties and then initially you must have noticed the representative from the Ajanta was little bit tough very aggressive and hostile in approach. But because of the positive bargaining and negotiation and no impasse was their the mediator has prevented the position was converted into the underlying interest inverted into the settlement. The negativity of the parties was converted into the productivity and ultimately the dispute between that hospital and that Ajanta was not only settled but the person who was affected by the operation and the person whose cheek was got damaged required to undergo the surgery. His claim was also settled with the hospital amicably and to his satisfaction and then you must have taken the note of the body language of the mediator. Did you notice any ? How it was good.

Proper eye contact with the parties...proper eye contact shows you attentiveness that I am serious in your business I understand you I follow you. There was another language that was used was that the language was very positive No blame to either of the parties that you were at the fault or you are at the fault you have not taken the proper care and you have not taken the proper care very positive language so that after forgetting the differences both the parties they reach at the settlement and then very important communication skill which was displayed by the mediator was empathy. so if you analyse the entire mediation process we talk about the definition of mediation that mediation is a structure process in which a third neutral person he facilitate an amicable settlement between the parties by using communication and negotiation. First we need to understand and then move to the solution. He offered 50000/- without knowing without ascertaining whether the hospital is asking for Rs. 50000/- or not. And mediator said it is really a good gesture on the part of supplier. So, it is very good display of the entire mediation process. The process was explained all the functional stages were displayed and ultimately components attached to the mediation process right of self determination, confidentiality. Clapping

One humble submission to madam also sometime madam if you find time to acting some somewhere at some place. Acting is really very good. Ha Haah . I am a chick. Ha Ha. Thank you thank you very much. Any question any doubt if you want to ask ? You know when we are recording the settlement we need to take free precautions first all the terms and condition of the settlement must be recited and they should be recited before the concern parties and then we must seek confirmation from the parties that whether these are the terms and condition which we have settled. There should not be any line of confusion or any area of confusion about the terms and condition of the settlement. Once the settlement is recorded before the referral court it is binding on the parties. As per the F con judgment, once the settlement is recorded the settlement must be placed the referral court. Again if the parties are present it is good enough suppose if the parties are not present even then the settlement if recorded and accepted by the court that the decree is required to be passed. When we are preparing the training manual, madam malhotra was also the part of that committee and I was also the part of committee and entire day was spent whether the referral judge can be allowed to change, amend or alter the terms and condition of the settlement but what we have decided ultimately it is the settlement of the parties we must recognise the right of self determination a referral judge should not add, alter or assess the settlement by hsi own standard of reasoning. We must recognise and we must respect the settlement. Law of prudence

says that it must be recorded and acted upon in the presence of the parties or their advocate. Once the settlement is recorded you must of have seen that how much the effort they were put by the mediator in taking the parties to the settlement. It should be our endeavor that not to reject the settlement on the very petty ground or very simple ground that the settlement is rejected. You know, all the judgment that are now be passed by our hon'ble high courts and supreme court are in favour of execution of the terms and condition of the settlement. If third party is a necessary party even that as per the ethical principles which a mediator need to follow if the interest and right of the third parties are involved they can bethey must be present before the mediator if you thing that right and interest of the third parties are involved the case can be referred to referral court for impleading of that third party. If you are not sending the case for implement of third party, you can record the settlement and referred to the court and referral court will take appropriate legal steps for implementation of third party if it is required in this. Thank you and I hope this was the last question before lunch.

Dear ma'am, sir...the next session will start at 2:15 this lunch break now.

Session 8

Use of Mediation in Specific Performance Suits

Speakers: Justice Manu Goel and Mr. Prathmesh D. Popat

Welcome back, now we have a small exercise for you to do, the simple problem I will give it to you, you will break in to groups of two so you can choose your partner, groups of two and you will negotiate. Ok the facts are like this. It's a small town and town is abuzz with a 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 programe 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 programe 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 programe 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, I request you to negotiate and I give you 10 minutes to negotiate and tell me whether problem is solved or not and music night is on or it is called off. Please quickly find your partner, you are already there on the table..just..just do it somehow, whether is nice outside so if you want to do it watching the rain you can do that, you can move out of the room or you can stay here.

Well I call you back, how many couples have settled, how many you have settled and how many unsettled, these are all settled and how many could not settle, ok let us here those who could not settle, yes what is your problem, where did you get stuck

And it could be anticipatory breach of contract and another contract if there is another aspect I can file a suit of injunction because 7 days are with me so I can seek for ex party injunction from the court

What is the injunction you will seek, the injunction...no no 1 minute what injunction you will seek from the court..injunction can not be sought for the that particular act the demand for that additional amount because it is only for the additional amount..what injunction will you seek? Please paraphrase the injunction, you have to seek without any additional, this is the injunction, this is the injunction you want, the mandatory injunction..yes the mandatory injunction to come and sing but mutually you could not settle. There was no reason to increase the amount how we can bear the expenses which were not under the terms of the contract and ..any other group who has not settled yet

My lord, the singer is demanding additional 1 lakh rupees without any reason and for other he said that he will gather some 10 people and with that persons we will have cup of coffee and sign autograph but at this juncture I can not collect people and this is not my job also

Another group could not settle..yaa where did you get stuck

So that the cost we can increase and take the ruppees 1 lakh...ok now let us here those who were able to settle...what is your take....he said that this much seat is there, this much tickets have been sold that's what made clear by him and having good reputation that I am a promise bearer man if organizers pay such amount then singing will go away and reputation of the organizer too will be gone away so we came ready, get ready ...ok what is your solution ...when we came to know that he is demanding one lakh more so we were discussing the reason why are you asking for 1 lakh more though he was reluctant to share but later on he said there is a valid reason for that then I asked him what is the valid reason he said my main musician has fallen sick so I have to arrange a new musician and apart from that somebody to support is also required so need to 2-3 more persons so I am the organizer and that event should not be flop so what I have suggested is that whatever will be the..the main musician has fallen sick so there is no fault of him so I have suggested is that whatever will be the expenses of new person to whom he is hiring so that will be actually....but how will you collect the money...whatever be the profit we will reduce our margin because instead to make things as it..it is better to make less profit...ok so may get finance..somebody pay and you pay him back later...ok what is what is your take..yes..i have different idea for collecting money because I have a group so I have suggested the organizers to arrange 50 thousands extra for our group and I have also suggested that our group will also participate in a dinner so you may collect five hundred rupees each from person in your city and arrange 50 thousands rupees at dinner party. So singer reduces the demand by 50 thousands and 50 thousands is raised from a dinner where those who come to the dinner will pay and enjoy the company of singer..yes..ok..what is your.. madam, we are the organizers and we asked the singer to assign the reason for money and singer assigned the reason where singer said that there is high price of transportation charges and also to bring few more people, to make the programe success he is asking for extra money but any how we negotiated and we told the singer that children will be involved and it would be a programe of their life and singer agreed on our proposal and we will be paying extra transportation charges and we will also be taking care of boarding and lodging of

extra man that he will be bringing on that we settled the matter with the singer. Ok.. and we also took into account as we have invited him, we also took account his popularity and respect in the music world. Ok ..who else will share the story..yes..after discussion with the musician we found that both of us reputation is at stake so it is better to settle the things now on so it is decided between both of us that within 1 year organizer will organize another event and organizer will pay that extra money he is asking for along with the price which will be fixed at that time so on these conditions programe is on. Ok very good..yes

Madam, I am the organizers and my friend is the singer he found that in his name we organizers collected the money so we have to pay him additional 1 lakh rupees so the contract was with me and singer that was not known to the people who have purchased the tickets, contract is between me and singer we organize the so not only for the amusement of the people but also for our self also so accordingly negotiation was made and it was decided that 30,000/ will be paid to the singer In addition to amount debit and 30000/ will be exhaust among the organizers ok so organizers will pay from their own pocket..there is another group yes...unka hoe gaya hai so its ok..this group..anu ji apka group batai..

The singer said that he is such a good singer he has been 5 lakhs in some other programe so why should he come for this for rupees 1 lakh..he was asking for raise for rupees 1 lakh yes he was asking for raise of rupees 1 lakh and ofcourse organizers tried to blackmail that what kind of singer you are you are doing back track from your promise but nonetheless we also took in to account that there are 50-60 young children who all are waiting for that so we negotiated and agreed that the singer and those 50-60 children's will have programe at 10 to 12 and it's a musical evening and at 10-12 they will be in school and since we organizers are organizing for cancer patient he agreed to come down to 50 thousands which we have agreed to pay and we will get collections from the school students so there is be another show by the children...for 50 thousands...ok for 50 thousands ..ok you have found the way for raising funds...that group...I wanted 1 only lakh rupees because I have another offer for 5 lakh rupees so he raised that he can not pay anything more so we are thinking to raise our funds through different means because originally the venue only accommodate 1 thousands candidate so we have choosen another venue which can accommodate more number of people so he can sells more tickets and out of that he can pay that

extra amount of 1 lakh rupees so we secure the interest of both by changing the venue. Thank you. Any group who has not shared.'

Actually the details that imagined by you, suppose all the solution are coming with the same idea, the organizers being able to pay something extra not 1 lakh but real impass situation will arise when organizers say that this much we can pay we have sold the tickets we have nothing to pay so then there will be a tricky situation and other situation wherever you have reached the solution you have find singer has been asked why you want 1 lakh more, if don't ask this question it is difficult to reach out the solution, what is the behind is extra demand so I may because you know in the market rates have been increased, may be somebody said that the transportation charge has increased, somebody may also say that other lesser singer are charging more or you can ask where the money coming from where the money is going so all these are related questions which will result into solutions.

Now this specific relief in the form of specific performance is not available under the law. This specific relief does not give injunction to personal service, am I correct? Neither in the 41..41 is when injunction refused and 14 is specific performance because we started discussion with contract not specifically enforceable it says contract which runs into no no no the contract which runs in to numerous details or which so much depend on the personal qualifications of the parties or otherwise that court can not enforce the contract on its material terms so since it depends upon the volition of singer the specific performance can not be order and then somebody ask for the injunction you come and sing which is injunction in the mandatory form which is very very rare thing. I always read in book that it can be granted in rare case but so far I have not seen such a rare case where injunction has been granted with approval so that is one thing so when injunction refused clause (e) to prevent a breach of a contract the performance of which can not be specifically performed so 41 has to be read with 14 and since this cannot specifically enforced the injunction can not be given to order specific performance so this specific performance is available in law only in limited number of situation and in such situations, no injunction or specific order can be granted by the court. Now had been able to settle by negotiations but those who could not settle by negotiation can come to the mediator and of course mediator can use his skills and find out the hidden agenda why is he asking for more and what is the scope here for the organizers for raising the funds who can get and for how long, one says yet there is will be another programe and we

will give your charges and raise, some says we will hold another function in the evening and raise the funds so different solutions could emerge that how some time this ADR is also known as appropriate dispute resolution because courts do not operate in such situations.

Popat ji aap kuch bolenge...there would arise situation where often we have to make a choice between the fine pen and the fire and this sort of nature of case which falls under specific relief act is of that type where you have to make a choice, give the injunction, give the relief to one side then it would be creating problem for the other and such situations are always good for mediation, 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 reason that you want mediation very actively and very seriously.

Yes Sudhir, thank You madam...you know when we are doing mediation particularly in the cases of relief, specific performance of contract in agreement when such cases are refereed in mediation then apart from other technique we need to concentrate on negotiation and other part also as most of you settle by negotiation the singer and organizers negotiated. The cases in which you settle are very cooperative negotiator. They were working on the interest of both the parties. In 2-3 cases where the dispute could not be resolved, where the negotiations are failed because of the competitive nature of the negotiation, the negotiation could not achieve. In this specific the cases related to specific performance we need to understand ki what is the conflict between the parties and how after understanding the conflict the bargaining has to be facilitated. In this case there was a conflict between singer and organizer regarding extra payment. When you could understand the conflict then you need to start bargaining. What is bargaining. Can nay one of you? Everyday we hearing this word, listening this word, no bargaining. In give and take yesterday madam Parul pointed out compromise, that is give and take, compromise is give and take, bargaining is not give and take , negotiating is much wider concept then bargaining, you proceed with the negotiation no doubt about it but you started with the bargaining, you started, you started with the positional bargaining, but what is bargaining that if you want to understand the type of negotiation that ypu have conducted within 5-10 minutes is wonderful display of negotiation and bargaining,

bargaining is that when we are trying to find a solution the conflict was regarding the extra payment sought by the singer and earlier denied by the organizer so that was the point when we start the bargaining when there is conflict in the negotiation then you started with the position, position, more extra money and extra money but one thing you must have realized that on this approach you could not settle so what have you done for settlement, further settlement, further settlement you gave concession to the opposite party, sometime direct concession and sometime static concession, when you are giving concession it means you started journey for positional, positional I stand, my position my stand, unilateral stand for the settlement of a dispute, then distributive bargaining, you try to give concession but simultaneously what you have tried, you must realize that both of you tried maximum out of negotiation. Right or wrong both of you parties tried most of it out of negotiation, that was you distributive bargaining but you ended with the settlement, why you able to settle because you could finish your journey at interest based bargaining. You understand the interest of both the parties. Organizers inviting popular singer, it may generate future business also, future prospect also so a deep understanding is required to earn more and more money out of this partnership or association, you ended with interest based bargaining and most of the bargaining you do every day is interest based bargaining, when you are purchasing vegetable from the local vendor without going to the vegetable market you are going for interest based bargaining. In 10 minutes negotiation you will face many many barriers..bata sakte hai thoda sa konsa barrier hai...yesterday I was discussing with the madam in the evening about the mediation in specific performance I said madam my experience is that, in these type of dispute more bargaining is required because interest of both the parties are involved. It is more appropriate in suit of recovery. Das hazar ka case hai chalou..kuch tum chod do kuch mai chod deta hu..lets settle down something in the mid way, cutting down the difference at the middle point but which type of negotiation you face in this because those who could not settle, sir you could not settle, why it was not settled, he was not ready to give concession, no reason, that's way he was not ready to give concession, that's why you want to take maximum benefit. It was strategic barrier and along with the perceptive barrier not, little bit technical but in our life everyday in our personal life, in our family life we are facing the perceptive barrier as well as community barrier, perceptive barriers are nothing kai baar appne suna hai naa parties koe, aapne kaha settle karle, parties kehti hai itna amount de raha hai tou dede, verna mera case bada majboot hai, I am likely to win this case that is perceptive barrier so because of this negotiations were failed, but parties could manage their

perceptive barrier and ultimately successful in negotiation. So we need to understand why negotiation and why bargaining, ultimately it is on the parties to go for bargaining or negotiation, but a mediator need to understand this side of bargaining or negotiation for settlement. Thank you. Then How to start, if there are agencies like Mr. Popat who can do it if you don't want to go to the court and I think delhi mediation center also takes such cases at pre litigation stage..yes..and even I think delhi High Court mediation center is also moving with this into the rules that even before litigation starts they can come to the mediation center, in delhi I find it many those bill boards if you come to us, police rooms have mediations, I have seen hospitals have mediations, somehow I find out these advertisement for mediation. So there are mediation center in the cities where you can go before the litigation starts and not annexed to the court, No no there is no court awards but it will work as the contract between the parties, it will work as settlement between the parties it will be enforceable in law but in this situation it is not enforceable as he was pointing it out, suppose I say I will sing in 50 thousands, it is executed in the sense that programe actually takes place in 7 days and if it does not naturally you will go for legal remedy for the breach of contract. If it does not work in actual practice even after settling the singer if he does not turn out then you go for the legal remedy for the breach of contract, for the law of torts or something like that

In the state of Maharashtra, there are rules relating to the pre-litigation stages if at the pre-litigation arose at the compromise then terms and conditions has to be endorsed on the 100 rupees stamp paper and under the law it is an award under the under the in Maharashtra. Under which law, under the Maharashtra rules, there is rule I can share those rules. Ok so you can share those with us later but coming to the discussion about enforceability, now please understand couple of things, firstly world over this discussion is happening that they want enforceability in mediated case across the globe, India stand on much better footing then rest of the world because world over they adopted arbitration law, the conciliation rules but in India we step one step further we have in the arbitration and conciliation act, 1996, if the conciliation portion section 61 to 81, part III, you will find that we have already introduced the enforceability in conciliation process, now as far as the process go there is no difficulty in mediation and conciliation, as far as the process goes. If I say to level that's the different thing, if for example swimming if a call it swimming and if you call it as back stroke or free style or some other thing, they all are style of swimming, similarly conciliation and mediation is part of collaboration that parties have with the help of neutral so they are the same in India we do have this higher list because in our case we can get finality in

collaborative process which the world is still working on. They are still talking about it, if, now look at this way, simple mediation, we need to understand parties signed on the dotted lines for settlement only because they are agree to it. If they did not agree to it they will not sign and a contract signed couple of days back they may be rethinking about today because circumstances have changed, the priorities have changed, some other dimensions have changed and therefore they want to go back to what they agreed to, probably because they have better possibility somewhere else, for example if singer says I have got a better offer why should I come for 1 lakh rupee more but if you give rupee 1 lakh more tou shayad aa jaate so circumstances changed but in mediation where parties are talking today where a dispute already exist, my in contract there is no dispute, there is an agreement but now there is a dispute which is alive and you are looking at all the circumstances and agreed to something that if you sign only because you agree to the terms and therefore, there is no need for enforceability in the written law..like today joe kal raat koe aapne kapde stri kiye hai who aap kal pahnanne wale hai, subah koi nahi bol payega yeh kya hai...I told you a joke on side line but these things happen then suddenly in 2 minutes he said arre I donet agree to what I said, that's why you don't worry about the enforceability so much in mediation simply because parties have agreed to it and that's where the come the work of the mediator. As a mediator he or she has to ensure that they do it in their own free will, in own agreement, once they enter into their own agreement, nobody else is there to question you so where ever there is a question of enforceability in mediation agreement as we aften talk about it unless the obligation was spread over the next year also otherwise there would again rethinking ki yeh kaise hoe gaya.

We have this Maharashtra mediation rules of effective compromising at pre-mediation stage of course this will apply when you are working under the.....but if you are working in your own crime then perhaps these rules will not apply then you use the general law and here it says the compromise at pre litigation stage arise between the parties and immediately after that reduce in to writing on a non judicial paper and of course there are further provisions.....

The hole problem is, I want sudhir explanation on this, the problem is like this when it is a court annexed mediation and mediator is solving a case which is pending in court after the resolution is released the decree is passed, now If there is no litigation, nothing pending in the court, there is a dispute, mediator come and settle the dispute and compromised arrived at, what is the enforceability of this because this is not the decree of the court, this is the question.

You know ki when we talk about the execution of the terms and conditions settled in the mediation agreement; it's a big issue which is still under big debate because in the absence of no statutory enactment, no concise or precise answer can be given, even how the terms and conditions can be executed in pending cases also, many a times a case is pending under section 125 CRPC is referred for the mediation and if the parties agrees for divorce by mutual consent, where is the question of complaint under section 125 CRPC, as per the international practices there are three methods adopted for the execution of settlement recorded at pre-mediation stage by the process of mediation. First is that ke by process of mediation, that in some of the countries there are legislation which are treating the settlement as award pass in a arbitration proceeding like a arbitration award, that shall have the binding force like the decree of the court and second that pre-litigation award can be treated as the decree of the court like we were having provision, legal services authority act, section 21 and arbitration and conciliation act, 1996 and third because mediation agreement is a settlement agreement which is in the writing and sign by both the parties, the it can be filed for the specific performance of a contract so these are three stages followed in the pre-litigation mediation process award but if you want very particular answer, concise answer, they nobody can give on this.

Gautam ji this practice is discussed in many form but this practice hardly find any favor ki settlement is recorded in the mediation and conciliation award and on that basis decree can be executed, that is not a good practice because scope of mediation and scope of conciliation are different.

Secretary joe district mai create kiye hai, unke yaha file kar diya jai, abhi woh pre litigation mai file hoe gaya, koi case nahi hua....yeh tou aapka kaise award declare karenge...doe parties agree kar ke...if you read Afcon Judgement, Hon'ble Justice R.V. Ravindran address this issue, it is lordship mentioned ki if the subject matter, if the pending case, in relation to the pending case, if the subject matter of settlement is much wider then what is refereed for mediation, then section 21 of legal services authority can be utilized also beside order 23 rule 23 of CPC. Like in the morning like a settlement recorded in a compoundable case, how will you enforce, why criminal compoundable cases refereed for mediation when there is no specific provision in the code of criminal procedure, like section 89 there is no provision in criminal procedure code but what we have experienced the mediation in criminal compoundable offences is very successful, even it is

more successful in mediation than in civil matters, I said answer to this question that section 320 of CRPC deals with the compoundable offences, two type of offences, one is without leave of the court and second with the leave of the court, in some criminal cases like 337, 338 IPC you see 323, 325 where they are referred relating to the personal invariance for compounding, for reaching an agreement, wider range of negotiations are required like in 337 and 338 there is medical bill, although this issue can be claimed in a claim petition also but we are not whether we can go for negation on this issue like mental agony, future lose, suddenly lose in the income, medical expenses etc so wider range of negotiations are required then we go for the mediation because of the negotiation so sir in India mediation is developing, many many milestones are yet to be achieved, many many questions still to be answered, we are deliberating, we are discussing when you are preparing mediation manual we deliberated for various issues in mediation for 3 years in the committee headed by Hon'ble Justice Cyrus Joseph, sitting judge of the supreme court of India, many many issues which requires much debate and wider consultation before we reach to the consensus decision, no precise answer can be given today.

You know abhi I mentioned section 327 what I perceived, conceived that these are the compoundable offences, like 406, 420 earlier the limit was 250 rupees that no limit is there, that cases offence under section 420, sometime, you know sometime wider negotiations are required, in the court you can not do. Right right right, even you are receiving the case at the appellate stage, at revision stage like a conviction is made under section 138....cases are being refereed for mediation, now the charges framed, the revision id filed against the charges framed, offence is the compoundable offence, the cases are being refereed for mediation you know, dekhiye entire mediation depends upon your mindset, if you are convinced about the process of mediation then many many procedural hurdles can be removed, you know CRPC in entire country is the same, CPC is the same other procedural law is the same but in some state mediation has already taken its shape why in some state it is not even started, it is our basic law is the same, basic requirement are the same.....

In chandigarh High Court we have three mediation center and we have started the pre-litigation stage and anybody who has any dispute of nay nature they can come to our mediation center for enforcing the pre-litigation mediation so like as dr. sahib said that somebody comes and matter settle so in our case suppose x comes for enforcement of certain rights and y is called but the

condition is that a person should be application when x is called and y has been issued a notice so ultimately settlement is arrived at so what we are doing is invoking section 74 of conciliation act which says that this settlement will have, shall have effect of section 30 of arbitration act so under 30 it is final award which is enforceable as civil court decree under section 36 so we are invoking these provisions so what I want to say is that even at pre-litigation stage the agreement arrived at between the parties is as good as the decree of the court.

Sir, you are doing this on the basis of presumption, not presumption, not any legal sanctity, not presumption, we have started this, like we have followed this, you have started but where is the legal sanctity, settlement is awarded by the process of mediation and you are saying ki that it is a conciliation award, pre-litigation stage, but the process is different, process may be different but, in conciliation, there has to be a conciliation contract, isn't it, no no no then we began conciliation under the conciliation act.? See the conciliation act if that is the act in your hand..yes yes, how you began conciliation under that act, section 61 to 81, section 61 save as otherwise provided law being

So this conciliation is should I read 60- save and otherwise provided by any law for the time being in forced unless parties have otherwise agreed this part shall apply to the conciliation arising out of legal dispute whether contractual or not including all proceeding so legal relationship carry on this part shall not apply where by virtue of any law for the time being in forced, for certain dispute may not be submitted to the conciliation..so you see if you take note of this, you began then only this conciliation act applies, in pre-litigation mediation you actually thinking of conciliation so actually you beginning with conciliation act, that was not the question here, if you take help from conciliation part from this arbitration and conciliation act then you have to take as given in the act, in every step you have to follow this, we are following the steps, mediation center what my friend is saying is fine, mediation center in Chandigarh playing the role of conciliator under arbitration and conciliation act and these steps are taken as prescribed in that act, therefore, it becomes conciliation award passed under arbitration and conciliation act, the first clause says that parties should have legal relationship, they all have legal relationships, so conciliation, this was the main part of it.

It is a good effort, no no it will also sustain, they are not doing mediation they are doing conciliation, purely conciliation following the arbitration and conciliation act, because it is said it is the same, it is the swimming, see whether you are swimming with the back stroke or free style

it is swimming. So the technique is the same and skill is the same, but like ultimately the award, the thing is at the end of the day...because we in mediation parties come together for the mediation and request the mediator to settle but conciliation is different where one parties says openly that I want conciliation as per this act.

There are three ways of looking at the difference between mediation and conciliation, one way over here is this that if the conciliation, conciliator focus 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 taking about the underlying concerns, emotions etc that is why it is slow process but in conciliation because he is focusing on 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 little bit...so what my friend says the family members, no it's a circus of the neutral, neutral can be mediator in one matter and conciliator in another matter but conciliator focusing in the issue between the parties whereas in mediation the focus is on the parties and by product of their coming together their issues get resolved so it's a question of focus of the neutral if he is focusing on the issue he is a conciliator and if he focusing on the parties then mediator and issues takes much lesser time then the parties because it evolves emotions, concerns, kya hua it all started once upon a time, it takes long time period.

I have a question, if a matter comes before the legal services authorities act at pre-litigation stage then if it is pending case the referral judge can refer the matter for mediation and if it is PLC case whom to take the responsibility, PLC PLC in pre-litigation cases before legal services authority, if that matter wants to be settled then what to do, If the third party assistance is required it means that the authority which is handling the case is summarily that authority itself taking help from the third party like the expert opinion that third party will not be mediator or conciliator but in mediation on referral mediator takes the job but here can secretary of legal service authority refer the matter for mediation?

See the practicality is this even at the end of the process if there is settlement and if one party turns back what you do with the whole process so right thing would be to send back to conciliation

section 61 to 81 to sign the agreement if you choose to send for conciliator and suppose if you choose lok adalat, see when a complaint is received against the lok adalat, against the legal services authority, if lok adalat is not able to handle the issue and issue need to go before the mediator, if it is a pending case the referral judge because we need to follow certain rules of referral also, it is in written format, the referral judge has to write in written format and refer the matter for mediation but can a secretary write in a certain format and refer the matter to mediate. Haa he can send, no problem the case can be send for mediation also, mediation will give parties the wider bargaining and negotiation power and develop more and more options, practical options for the success, the secretary, that may or may not be possible if the case is refereed for lok adalat, secretary can refer the matter for mediation no problem.....

Haa my focus is on the referral, I am not talking about the subject matter, madam question is only related to the referral, it can be..without the secretary of the legal services, parties themselves can go for mediation and refer to a mediator, see parties may not be, may not know it but sometimes the complaint from the parties, we call both parties, in lok adalat we can not have that issue we find the penal we may have this issue unless and until he does not take that so it should be referred through proper referral, see time.....one thing I would like to add that you must get it clear from the parties that this is not par against the court in mediation, that outcome would be a decree that you must clear to the parties.....

Sometimes the parties they prefer mediation over the lok adalat, arbitration and conciliation, you know I still remember this national judicial academy was having dispute with the engineer decorator and national judicial academy and decorator they were having arbitration clause in their agreement, the general, the counsel, the counsel for the national judicial academy headed by the Hon'bel chief justice of India, they refereed the matter for mediation in delhi mediation center and I along with the mediator conducted the mediation and despite being the arbitration clause, they preferred for mediation, so it was a pre-litigation stage and dispute was settled and executed by both the parties...everybody want the solution in the name of arbitration, conciliation and mediation..just 1 minute, regarding the execution thing , in mediation there is a wider range of bargaining, there is a wider range of deliberation, interest of the parties, underlying interest between the parties, more and more options are generated so there is a possibility for the compliance of the agreement without any breach because underlying interest of both the parties

they are satisfy ok with that we end todays session for the classroom here but the programe will continue, event of the day will continue and yogesh will brief us about the days programe.

Dear Sir, mam the library reading and computer skill training has been postponed, however at 5.30 prathmesh sir has given us one documentary, half and hour documentary on mediation that will be shown at auditorium, NJAs auditorium at 5.30. as per the timing it is 5.30 and followed by one movie called damini and immediately after that there is a special dinner over at NJAs auditorium,

Sir, one thing sir, thank you very much this is wonderful time for me for 2 days to be with all of you, it's a wonderful time for me, thank you very much for your presence and time, thank you thank you very much, sir I am leaving today, going back to delhi, tea over

Session 9

Use of Mediation in Intellectual Property Rights

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

Good morning friend welcome to the last day and madam you madam made a very right entry sharp at 9.30.right.31. I must compliment you all of you rather. one thing that impressed me highly is that today 99.9% of the candidates were participants rather were in before 9.30. punctuality is a habit in life it really doesn't matter in the sense it doesn't require a great effort to be in 5 minutes before the generally do make in time but they make it in 2 minute latter 5 minute latter you have

sets rushing in to the court at 10 35 it avoidable I have seen you can achieve ut I hop you do in your court you are on your seat well in time, I would like to compliment all of you on this. This is the habit you inculcate and if you follow in life people will accept you, if he has said 4.30 for tea it means 4.30 for ever. Ok today I must tell you this day is dedicated what I may call the participants day, I had requested the director in charge to give us the liberty of changing the schedule today so that we can make what I personally believe meaningful for you, we should make it participative for you, at the same time I wish to use this opportunity for making up whatever has been the deficiency I must candidly admit due to shortage of time or otherwise on the part of the resource persons, so we will grab something so will request you to give some time out of participants they in half an hour also so I make up what has been left over in last 2-3 session so that you can remove your doubts if any and rest we would be requesting each one of you and if you like from step 2 to 3 can give brief overview of subjects as it appears in you court, more concerns, what more you would like to be told and what is all relevance for you and what is not relevance for you, this I thought would be good input for national judicial academy and first that I brought about today is we have with us Mr. Popat if I don't make mistake in I can pronounce his name Prathmesh D Popat, he is veteran mediator he is counsel for more than 20 years of experience, practicing in the Bombay High Court and 14 years of experience, hands on experience you may call in mediation so he has ventured to give us brief presentation on intellectual property rights, what do they mean, how do we assert them, we are conscious of one thing that based on the requirement of the judicial work, many of you would not have had the occasion to deal with the cases which are IP cases, this kind of litigation is not prevalent across the country, am I right on that, right so the attempt today is that have Mr. poapt, I also requested him for presentation, it is sufficient for you, it is not necessary for you to go into intricacies of IP law. That unfortunate, the dry part is again left to me

so mr. popat has cream to tell you what is IP, what are inventions, what are patents, what are trademark so on to Mr. popat, I understand all of you got the material at front of you so we can put the slide up, hai slide hai but have the material at front of you so I also so that you have space to make the notes on the page so we start up with usual suspect with the IPR field, what are efficacies if you ask the question, just the few of them,

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?

first the basic question what is the property, you all know in IPR, we have got several area, we have got patent law, we have got geographical indication, we have got trademark, we have got service marks, trade secrets and we have got copy rights now in all these fields what is that thing protected what is the property which is protected, take for example I was mentioning to lordship in the last evening, Haldi, somebody get patented haldi in treatment, it was struck down, however similar product when it was patented it was protected, upheld simply because it was having ingredient which we people were using all along for generations but we created some value by some process which has self life of that product and that is why it was that process which was protected under patent law, understand whenever you have case you can't just threw it out, that process requires protection not the haldi, which is valuable and for which he is seeking protection for so bear in mind whenever you have IP case what is that which needs to be protected take for

example copy right, in copy right you have got something an idea which is floating all around we have heard that its an idea, however its that composition of that idea when it is put in to writing black and white what is that style what is that representation, that is the copy right of person who has created that material so you have be aware what is the property now who has the right to exploit I did not mention who has the ownership, I said who has the right, it could be any body, it depends upon what is my idea and what will be the right of publisher to write in his publication, if you leave it to publisher they will say you sir the thing is that we have joint copy right for 5 years so its up to the contract between the parties whatever it may be, it was 50 years, now it is 60 years, we are taking of 70 years because world Disney is pushing that because no tom dick and harry use my mickey mouse in their toys so they are working in that directing but presently it is 60 years in copy right now that may be whatever question here is who has the right to exploit and that depends upon the agreement between the parties, there are various multiple and complex agreement which may be lying in one jurisdiction in one country, right of usage may somewhere else in different jurisdiction, in mediation for example we have the book the bible the first step towards mediation now suppose that book is published in several jurisdiction , several country, that's the complex agreement the authors have with these jurisdiction so we need to aware of that who has the right to exploit and then is this IP law created by law or created by contract for that told that yes contract are several and you have to look at them but sometimes there is overriding law which would cast a shadow whatever may be the agreement so you do need to aware of these things also...that the right is created by law and modified by contract, yes yaa that way you can put it, often law is there but parties have chosen product or the service or the idea that the patent is allowed to be used by different people overriding the applicable law, because law cannot be the same everywhere so they need to modify so IP law in which you need to be very very careful because there are complex

issues which do not emerge upfront and problem is of some generalization, our notion how things should be so in such situation you need to look at mediation for two reasons, one complex issues, two we are not fully equipped with these law and what would be the right outcome when all the parties are before us.

You have the slides before you, should you have any questions, I am here we have lot of time to answer that but let me know about whatever we have done so far but coming back to the mediation aspect, the paramount purpose of mediation in IP dispute is to achieve a sustainable end. ok yaa so the paramount purpose of mediation in IP dispute is to achieve a sustainable end in value, which claims the value and which exploit the value, there is no gain say in identifying who is the owner and who is the right of having trademark or patent I if that person is not able to use it so do need to be aware of these things and send the matter for mediation so the parties can talk among themselves, there have been instances where single sole person has invested something but it doesn't have with all to market it even to manufacture it where as the big company may do it but big company has the big power to have big lawyers back with their money, to fight their case in court so these things you need to aware of now coming back to previous page, I was mentioning this vagaries of justice, now what is really vagaries of justice,

Every person has a certain life-span.

Every thing has a certain life-force.

Every jurisdiction has it peculiarities.

Every idea is only potentially valuable.

Evert creation is useful only in a context.

Every dispute is a creation of perspectives.

Every resolution is borne of creative perspectives.

The paramount, if not the sole, purpose of Mediation in Intellectual Property disputes is to achieve a SUSTAINABLE end result which:

- CREATES

- CLAIMS & EXPLOITS OPTIMUM VALUE for the Maximum Time and People

just to give you little enactor, a lawyer got the paper and then call from a client out of the town and he said sir paper mil gai, lawyer said yes got them and even read them so sir kya lagta hai what is our case he said subject to vagaries of justice you have the good case, he said but what do you mean by vagaries of justice, he said my got succeeded in divorce on the ground of impotency and my maid succeeded for maintenance of child from me and that is vagaries of justice, keeping that in mind I know we all are judges who blamed here but that's the reality we can see as much as shown to us and the capacity of counsel his capacity to show to us and in IP matter let me tell you even counsels break their heads, in fact this IPR is one field sir where you can not practice patent unless there are scientist in your team otherwise patent office will not sign on your, so that's how complicated this field is so please bear this in mind. Every creation is useful only in the context, I give you one example you people do see this advertisement in the papers, limited editions, it is something which is not easily available but they have modified something else in their place and now this new product which is streamlining the whole product, even you go to restaurant the special is nothing but what is left over yesterday, thoda masala dal ker de diya, todays special so never order todays special in any restaurant, so creation is to be understand in context, there was this person who came up with the product...hahaha...not at all sir, Madura code, I can tell you

because I have done some business with them when I was in college so they came up with this product which they could not sell and my uncle was keep sending me place order and I would see this 2-3 ganesh material and I asked what is it, he said kya kare sir bikta nahi hai, bahut time se padha hai, I asked what is the problem he said there is little roughness in this so no body is buying this so in short they couldn't sold their product so i said lets have a look at one of this, he said agar sir bikwa sakoe tou aadhe daam mai de sakta hu, well I said give it to me I find some use for it and I took it and then I looked at it and thought idea accha hai so I made a gee out of it, gee is that karate and I made it and my teacher was very happy. So the idea has no value this is one of the point I was going to mention so the idea in itself has only some potential value when you are making a product that value is created and the movement the value is created you can see that product in front of you so there can be number of cases where inventor was one prior to claim has been made by someone else even though he invented it much latter only thing is he registered first so bear in mind that these things happened and we don't need to bother about the detail of registration but these issue do occur someone says I did it first I did it first but bottom line is you must know, you should have registered it and that's the end of it. So any question let me know, now coming to the last point to make about the charm of mediation.

When contrasted with a formal, adversarial process requiring some sort of adjudication, a collaborative process conducted with the assistance of a trained neutral affords parties the opportunity to get into a joint problem-solving mode which transcends all the constraints of a formal process, to explore and achieve creative outcomes far beyond the 'four corners of the law. So thank you for your time on this aspect, should there be any question do let us know but now we move forward for the programe.

Can I ask one question? Yaa. How this mediation in IP matter is different from the normal mediation matters? Only difference lies in your choice of mediator, if you can get a good mediator he can relay turn things around, the whole crux of mediation in IPR is open ended question the mediator makes they can really turn the things and if he is good then he can get that turn around quicker and can make the things more economically for everybody. The solution lies in the introduction of alternative dispute resolution mechanisms, for the redressal of grievances related to infringement of protected rights of an intellectual property holder. Alternative dispute resolution mechanisms are less time consuming, efficient and provide flexibility to the right holder. It is important to note that in all the commercial transactions, the route of alternate dispute resolution has already shown its majority over the traditional modes of litigation. Nowadays, contracts related to transfer of intellectual property mostly include the “arbitration-mediation” clause. This highlights the weight of arbitration in commercial intellectual property transactions. Does it answer your question.

Let me with permission supplement his answer by telling you few things which would involved in the IP mediation this takes the mediation far higher and you know in normal mediation the civil dispute the property dispute, family disputes those dispute can be handled by any lawyer from the penal but in the IP you need a person who is well versed in IP law this is what experience has shown and seeing the discussion going on let me put me in our country the difference between the mediator and conciliator is based on the judgement of the supreme court in , not afcon, started with salem bar that a mediator does not have a pro active role while a conciliator is entitled for suggest solutions, he can also suggest but he always encourage them that this is how you decide, he can make a proposal for the decision while a mediator is short of it, this is the area you can talk about it, possibly if you move in this direction, you will find the solutions, this is the distinction

you have otherwise, a conciliator is straight away entitled to suggest the solutions to the parties. Conciliation is also a voluntary process, someone will left out, right in salem bar they have said so but you will learn when you do role play especially in matrimonial and other matters, the distinction is between mediator and conciliator, theoretical difference is very clear, a conciliator can his own make suggestions say this is my solution please go for it, consider it, 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. That is the pro active role of conciliator, so at this stage let me gather some suggestions from all of you which can be used in judicial settlement, now what in india we are not really have this conception, it really deals with American jurisprudence more of it, there what happens in America, before a matter comes before the court and it is there system which come to the court for solving there earlier problem, before the matter comes even the lawyers exchange and suppose if the lawyers are empowered, but in india it may or may not work out you please give notice pleas disclose to me the evidence in support of your contention. So they have this concept of early neutral evaluation, the matter is before the court, the courts appoint independent persons. In this case neutral evaluators are appointed, they asked the parties to submit their brief and on this neutrals gives their opinion and then parties are left to access..ok these are the points in merits of my case and then the conciliator comes in or they send it for judicial settlement, one judge would send the matter to another judge for settlement of the matter and neutral valuation they have, generally the settlement comes in, this is known as judicial settlement, have I make myself clear, in our country this system is not yet put in to operation so

this is the concept it is sufficient for you to know at this stage, this is broadly the contour of judicial settlement in salem base legislation,

now I am taking departure from IP for few minutes just to clarify my friends rather for my self also because when we read education, it is for us also, I remember the first time I read this section 89 the thought came in my mind, what I asked to do, draws the terms of the settlement, now please tell each one you what do you mean by this phrase, the terms of the settlement, lets read out section 89, terms of the settlement mean you identify the dispute, what is the nature of the dispute, as a matter of fact you don't have to do it, that is why my appeal to all of you that whether you read any things else or not when you go home please read Justice Ravindran judgement in afcon case, this is at page 271 I gave you the paras he said it clearly all that is required is firstly the referral judge says, let me put it very proudly, what you have to do, is this the case for mediation or not, I am talking very practical terms, when it comes up before you the first decision taken by you is, is this the case fit for mediation, how do you decide that. Section 89. Settlement of disputes outside the Court-it says (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 given them to the parties for their observations and after receiving the observations 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.

we have fortunately with us one or two very good trainers from delhi, it is not my bias for the delhi but is for people who have spent couple of years over there so i have no hesitation in asking them, anu ji tell me if something i have missed out in this aspect i would like to supplement it..no no feel free you are not criticizing me, you are adding value, its absolutely fine, this is exactly what afcon laid down and salem bar laid down that its the only summary of the dispute which needs to be

refereed and there cannot be any formulation or reformulation on the terms because if that is done the judge has been applying his mind and would be biased, he is not required to apply his mind, so any one has doubt on this reference part so lets have open discussion on this and dont worry we are learning in this process, yes, all clear, at times all clear signify nothing clear, yes, it is desirable because what happens is at times law does not require them to be but it is desirable sometimes it is instructions from the counsel, right, you may or may not be satisfy whether there was willingness on the part of the parties to go for the mediation so that is not so it is highly desirable that parties are present and what they are going for and you see the best part of the mediation is they have to decide any point of time they say we are opting out, that is why if you come back to what i was telling the other day, in arbitration and conciliation the consent of the parties is required for the referral, mediation not required, why, tell me what is the reason why it is not required, no no any time the rational is its a voluntary process at any time it can't be forced, they can walk out, they can say they are settling so whether you give your consent or not is irrelevant and similar is the situation for lok adalat ,

patent under section 53 is for 20 years and copyright under section 23 is presently for 60 years, copy right as my friend told you that when you give up your right, it is subject to contract, now the purpose is this each one of this right, broadly speaking there is an effort involve in them, let me take up patent, now the argument in favor of patent is what i am broadly generalizing for all of you, we need to innovate, we need to research, companies spent crores and crores at time it runs into couple of 100 crores, over that in research and development, now that there is a justification, research may or may not lead to a results so they may or may not be successful, suppose they are working on 10 patents, 10 process are working on, then one of them works out now this cost has to be recovered by them, so that is why there is need in law to give the person who has spent

money, investment, a return on their investment and effort that is the genesis of rationale behind granting of the patent but then patent should not be for life that is why it is for limited period with in which you could have exploited the value so that should be the life of the patent.

Now coming back to the law, that is not there, each person who has been granted is entitled to exploited now this comes now the cause of action IPR terminates on violation or infringement of IPR which entitled the holder to fruits for his labour without the authority of law, now point is this this introductions are for limited period, even injunction is granted and it carries on the inventor is deprived from the fruits of his labour, therefore, there is need for swift decision, that is why the SC in all the cases said that look this is the bajaj auto, there are two cases *Shree Vardhman Rice & Gen Mills v. Amar Singh Chawalwala*, 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. This is not proper... In our opinion, in matters relating to trademarks, copyright and patents, the proviso to Order XVII Rule 1(2) C.P.C. should be strictly complied with by all the Courts, and the hearing of the suit in such matters should proceed on a day to day basis and the final judgment should be given normally within four months from the date of the filing of the suit.

you know in these IP suits very often the whole battle is on Order XVII Rule 1(2), IA is application but days and days senior counsels argues, forget these cases, so in these cases SC said beside Order XVII Rule 1(2) CPC relating to adjournment and cause to the adjournment applicable to the day

to day application, i am mentioning it, this is the practical aspect, if at all you get IP cases you watch out, this is what the SC has said, in these cases you put adjournment and one also said these are the ideal cases where Order 39 Rule 3A we all remember Order 39 Rule 3A which is never implemented or is it implemented, what is your view, ok bajaj auto limited is also to the same effect, where Supreme Court of India held that experience has shown 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. We direct that the directions in the aforesaid order be carried out by all courts and tribunals in this country punctually and faithfully.” 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. Moreover, the commercial nature of the transactions involved in majority of intellectual property based litigations, solicits such an approach, this is its in your reading material, there are two you take down the notes *Shree Vardhman Rice & Gen Mills v. Amar Singh Chawalwala and Bajaj Auto Ltd. v. TVS Motor Company Ltd*, give the citations please, now ADR mechanism, resort can be held for arbitration, mediation, judicial settlement and conciliation, in all the cost effectiveness, expeditious resolutions are available, now lets ask this question when the stakes are so high why would how can be the mediation be the successful, or ADR can be successful in these, for instance the stake is 100 crores minimum and party has got an injunction, restrain the others, that party has challenged it, would mediation be successful, would arbitration be successful, what it can go, haa ji, no no that is one part, that is one part, where is the application of law, what we are saying is look at the same time granted the inherent delays entail in the legal system, supposing

one has filed won injunction application, leave granted, he goes before the division bench, the division bench grant the appeal and stays the trial court order there happens, appeal is not heard over night, appeal is heard, takes one and half years, it is decided expediently, the matter reach to the supreme court, notice is issued in SLP, right, that is again expedient, nothing to 2 years or 3 years, this entire process, despite of your effort, expedited with in the time frame of 4 to 5 years now in this 4 to 5 years we are left out what do we do this is where conciliation, mediation or arbitration can see, if they can find the acceptable solution, i think the best i am reminded is tea break right now so we will continue after that, no we will continue, the citation the case which Hon'ble justice Sarin referred is 2009 (10) SCC 275, name of the case is Shree Vardhman Rice & Gen Mills v. Amar Singh Chawalwala and bajaj auto, Bajaj Auto Ltd. v. TVS Motor Company Ltd, The citation is 2009 (9) SCC 797. both are 2009, i take about 10-15 minutes after this, just to cover 2-3 good cases with you so that will give good idea about the patent law, right, i hope you are finding it interesting, you want me to continue or i can change it, yes bhanumati you tell me, you will rule us, you are interested in knowing this further, this is new area, ok lets have tea.

Session 10

Mediation Rules of High Courts: Discussion on Similarities and differences

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

I think let's start dear friend can join us later, what I propose to do is right now refer to a case which is there in IP case mediation was attempted now this is a case Bawa Masala Co. v. Bawa Masala Co. Pvt Ltd and another, reported 2006 Del 284 this also appears the summary of it appears in your case material at p-286. If you take it out you will find it there. Now in this case the Delhi HC had done was appointed two advocates one Mr. Raj Varmani and another Deelip Mehra the mediators the mediators not only went in to the dispute of trademark which is pending in the HC but also there were several disputes which were matters which were there in the trial court the mediators as we have discussed. Mediator, there is no limitation if parties want they can enlarge the scope of mediation so they have brought those trial court matters also within the scope of this mediation, unfortunately the mediation resulted in solving all the other matters except the one in HC so the mediator could not agree on this, let put this way if again if you talk in mediation terms the parties could not be persuaded to reach an agreement but here all other matters were settled so the judges both the advocate also felt that there still some scope and then here is the case in judge went into what is called early evaluation (ENE) I was referring to you so this is the best case where mediation fails at that point of time the judge has appointed ENE the expert mediators who will go into this question yet another attempt at solution in ADR so where one mode has failed you are switching over to technically speaking conciliation, because ENE in India in one way conciliation where the evaluator gets the right to suggest and say this is what you should settle, unfortunately we

don't have detail of whether ENE was successful or not but that opens up the vista of thinking if mediation fail you can resolve through conciliation now taking the cue from that I am putting to you a further step court be where mediation has failed conciliation has failed you will go for judicial settlement subject to the HC rules permitting it what JS means in this case the matter is refer to a judge, in which case what is decided would be binding here the judge has to be independent and unbiased and not having involved in the process so this is the possibility which in the coming years could be something practice now I want to put to you from my experience I have seen mediation concept is totally voluntary mediator won't even impose the solution, he will make the parties bring around and do it although there are gray areas mediators do exceed the jurisdiction and nudging forward a little but conciliator go ahead and does ENE one step further ahead is judicial settlement now in judicial settlement judge could make out the decision, now one of the thing antithesis of mediation is this and which has been subject matter of debate in many jurisdiction they say judges do not make good mediators why judges are authoritarian they have their set views, he has no patience to listen. You know you listen the whole day you have no patience..jaldi se batau tell well nahi nahi this won't do further you don't give time to the parties to proceed they say authoritarianism is antithesis of mediation because mediation is based on consent your will should not be suppressed as a judge if a judge is a mediator he tells the parties no this is all right I think you should settle on this this is virtually amount to direction does it or does it not who can afford any the judge so all the precaution taken is a judge who is acting as a judicial settlement or other if at all there is no settlement or anything the matter should not come to same person it should come to independent person, independent judge..what I am putting is that these are the areas where you could have in stages where first stage fails then second than second fails then third there is good possibility of judicial settlement try over, anybody have any comments on this, before we now at this stage I would allow let our friend young research scholar who has done some comparison of the various HC rules in relation to mediation to speak and point out to you the difference of rule of different states and you can also contribute in this we look forward what is your contribution on case if there is amendment has been done in your state why it has been done and what would you like to be. Yes Yogesh.. Thank you respected sir, good morning sir, mam, in next five minutes presentation I would like to assist hon'ble judge in knowing the overall scenario with respect to the mediation rules framed after the Jagannadha committee framed the mediation rule, model mediation rules, across the country, as we know in salem bar first case,

the Jagannadha Committee, the SC directed to constitute the Jagannadha Committee in Salem Bar II the Jagannadha Committee framed the mediation rule in two parts there are total 28 rules in the mediation rules part I deals with the ADR rules and part 2 deals with the mediation rules so and the SC in Salem Bar II directed all the HC to frame this rules in their respective HC with or without modification in order to give effect to S. 89 2 (d) of CpC as we all know there are 24 HC in our country, now during research I have gone through all the websites of all the 24 HC some of the HC have not yet implemented the mediation rule, some of the HC simply copied which are similar to Model rules framed in Salem Bar II case those HC are HC of Patna, HC of Jharkhand, HC of Sikkim, Guwhati HC and HC of Himachal Pradesh they did not do any changes their rules are exactly similar to model mediation rule, I would like to have your attention on p. 232 to 245 of reading material where the CP model mediation rule are there, however, there are few states like delhi HC, P & H HC, Karnataka HC, Kerala HC, Gujrat HC, they have changed the mediation rule substantially for instance rule 2 which deals with the appointment of Mediator, the Delhi HC mediation rule simply deleted sub rule d only the delhi HC mediation rules has deleted this none other HC and Sub rule d says that when there are more than 2 sets of parties these 2 sets of parties will nominate one nominee and these two nominee will nominate one mediator and if these two nominee fails to nominate mediator than HC will nominate, this important provision has been deleted by delhi HC, rule 3 which deals with Penal of mediator it says that principal district and session Judges, if they have deleted it than what they have provided, they have just deleted it from model mediation rule , that's the lacuna that's the question, if it is a superfluous rules than it can be deleted, only delhi HC, what is your view on that, I think this was one of the important rule because there could be a situation where there are two or more than two sets of parties, and there have to there would be conflict as to whom should be appoint as mediator so they can appoint a nominee and these nominee can appoint a mediator but this important provision has been deleted by the only Delhi HC but other HC have followed it. Yes..we are not dealing with co mediations, it is single mediation function generally, co mediation because there are different though processes of mediator that is why it has been avoided by district court of delhi and Hon'ble HC of Delhi and it really it's a voluntary process suppose if anybody objects to the appointment of mediator the parties can always point it out to the coordinator of the mediation center and it can always change so the deletion of the rule has not really affected. I think this is a situation rational as I see is this when you are making persons empowering them to adjudicate like in the case of arbitration you

have the right to appoint the nominee your nominee arbitrator in case of multi member body and those two arbitrator choose an imparer presiding arbitrator here the concept is mediation is the process solely voluntary so there is no question of your mediator or my mediator a mediator has to be somebody who enjoys the overall confidence in any case if the mediator when he is doing the mediation any body who has any reservation he does not agree to the mediation so it really doesn't matter. Right. Right. yogesh pointed out that except from except delhi no other HC changed the rule d except delhi. It shows to things either delhi is applying his mind, so I would like to point out that Punjab n Haryana HC has also changed a bit in rule d. yes, I will point out that, no you said that no other HC. No, the Punjab and Delhi go together that's all right its part of the parent HC. you are the parent, now another important change the only delhi HC has done it with regard to rule 3 which deals with penal of mediator, it says that the Principal and District Judge shall prepare a penal of mediator with in a period of 30 days which is half of the standard model mediation rule which provide for 60 days but delhi HC has provided only for 30 days, now sub rule e added in the penal of mediator by the Delhi HC and Punjab and Haryana HC only which says that penal should be for 3 years which can be further extended discretion of the HC and by discretion of the District and Session Judge with the approval of HC this has been changed by the delhi and Punjab and Haryana HC, moving further rule 4 which deals with the qualification of a person to be empnalled as mediator its quite flexible in when we talk about the delhi mediation rules it says the legal practitioner having 10 years of experience can be a mediator except or other professional persons who has themselves expert in mediation, quite flexible in dehi HC but in Punjab and Haryana HC it is only 5 years but in model mediation rules it is 15 yeas these two states have changed it other than these two state Gujarat HC also mention 10 years of experience of a legal practitioner. Sir. Right sir, the model mediation rules provides 15 years of experience, yes sir, yes in Orissa HC as far as the fee of mediator , provision has been changed and fee is from 500 to 2000, I will come to that also the changes which have been made by the Orissa HC, moving further rule 6 which deals with the venue of conduction mediation, this particular rule has been deleted by many HC because and some of the HC have changed in the sense Bombay, Karnataka and kerala HC they say mediation center established by the HC and directed by the HC shall be the venue of the mediation, now rule 8 which talks about the duty of a mediator of disclosing certain facts it says that he shall disclose any circumstance likely to give rise to reasonable doubt this justifiable doubt which was there in the model mediation rule has been deleted as reasonable

doubt by the delhi mediation rules, 2004 and one another particular change which happened in delhi mediation rules is he shall disclose the same to the parties in writing which was there in the model mediation rules has been deleted, in writing has been deleted, however, Punjab and Haryana HC has said it should be in writing without any delay and other HC have the Same with with respect to this rule 8, now coming to rule 18 which talks about the time limit for completion of the mediation, there is a lot of variation in with respect to timing the expiry of 90 days . 90 days is the limit but in model mediation rules 60 days is being given but Delhi HC and Punjab and Haryana HC has provided the same 90 days with which which shall not which can be extended but it should not go beyond 30 days interestingly Gujarat HC has also have the same provision but the only change is that the extension can be done 30 days at a time and the further extension can be done but it can not cross 120 days in any case, in other Hc it is only 30 days but in Gujarat HC 120 can go up to 120 days, and kerala interestingly 60 days for that time limit for completion of mediation and the same 60 days. My concern is further extension is by the bench it's not by the mediation after the expiry of 90 days further extension is by the bench who has referred the matter, period I am taking about the period can be extended, but by the bench, right, right, now we are hearing what is on the statute, but reality is that in Bombay HC we also have the similar rules of 30 days to complete the mediation but ground reality is that the court when the report is send back it takes its own time to hear the matter sometime even 6 months even after the matter has been resolved in 1 and half months the court takes 6 month to take its take out some time to take their on record and pass an order basis thereof so the practicality are such we continue mediation even after that time because its after all in discretion of the parties, if they want to continue they can certainly continue, we send in report the time is over and I have put in my report as far as the records go but parties come and continue and if they settle fine and the judges are fine with that because they are happy as long as you are settling they don't go in to peculiarity and they don't attempt that ohh you went beyond time so bear that in mind, a fight which started 10 year back escalated over a period of time you cant expect to get done with over night, mediators are not magicians, they cant do it in 30 days they have other things to do too, and so also with the lawyers and the parties so when you are taking of getting both come together and finding time also you have work for yourself all these things do take on the scheduling of the mediation sessions so these are the practicality I don't say that that should be the norm but you need to be aware of, like 3 months is that things should be within a reasonable time, so that it should not go like endlessly, so it's like if the judge in the

meantime takes it up first and then send the matter, as far as our center is concerned we do take care that it is taken up once it is settle in within 7 days we get it listed, exactly, ours is listed in very next Monday but that list doesn't reach, well I think let me say this must peculiar to Bombay. But, Bombay HC, I don't what is the situation in city civil court, much better, fine you are at liberty to say so but generally they refrain, I will put is this if the mediation is successful and the settlement is being reported any judge would like to take it up next day and get off his board because what he has to do is to record the compromise in them of settlement so that list I think is the fault of the registry because judges who like it matter to go off their pending cases if the matter is settle you have to do nothing as a matter of fact however bust you may be some party say that I want to record the settlement today he says come after 3.30, so but I don't know in Bombay there are more different life style, ok. yes carry on, two more, but tell me something what exactly is the general experience of most of you how much tome does an average mediation takes, it can vary from case to case, but but mostly it's well within settle in 3 months, I think that is a reasonable time, because otherwise party won't intend to settle its get settle within 3 months say what is your view. 3 months. Alright, mr, Arun Gupta, hoe jata hai. Hallmark for me is that it get settle a day after the dead line is over. No. that will be condoned, that will be condoned, that will be condoned, yes carry on, the last two important rules I would like to high light rule 20 deals with the confidentiality and disclosure and inadmissibility of information when a mediator, it says when a mediator receives factual information the confidential information which we generally use, which should be given by the parties that particular word has been removed by the Delhi HC instead of that the factual information has been modified has modified and sub rule e added by Delhi HC it says that no statement of parties shall be recorded by the mediator, however, in other model mediation rules and rules of the different HC it shall not be recorded by the mediator , now the last rule I would like to point out with respect to the fee of a mediator, it varies from state to state but state like Punjab & Haryana categorically and extensively has provided for this particular provision including auditing and each and everything and but I would like to highlight only maximum fee of a mediator which is 4000 in Punjab and Haryana. Must be old. It must be revised. Yes sir. He is going by the earlier rules. Sir. This I have taken from the website. Copied. Exact copied, may be and for successful it is 3000 sir, unsuccessful 3000 and successful 10,000/. ok sir. It has changed. Earlier it was 3000 for successful and nothing for unsuccessful sir website has not been updated. kerala has a different opinion on this. It says that the expenditure shall be fixed by the

mediator with the concurrence of the court and the same shall be paid by the parties and as far as Orissa is concerned sir was pointing it out, who is from kerala, anyone from kerala here, I don't think, if the mediation fails half of the amount return..other than the amount...is it fixed or not ..that I don't remember correctly..i think it is 3000..only 3000..no but he is talking of fee being fixed by court in individual cases....fixed by the mediator with the concurrence of the court..i hope it is not one of the case where expenses are 10 times...generally what is the expenses in mediation...this is what id being done..please I am not able to put across to you...what is the mediation fee in conducting the mediation.

I think one thing i can look at it is when you people go back, please ask your respective jurisdictions to have a view in the website and whatever see updates are required to be made because what he is reading, the kerala website says that the mediator shall fix the expenses and other fee himself and court approves it, so one of the thing to be done is when you go back home please ask the concern person, we have in fact NJA has sent the letter to all the registrar general of all the High Courts to get the original copy, the question is in pursuance to this rule has it been fixed, something must have been fixed naa, rule 26 says the fee of the mediator and expenditure for the mediator shall be fixed by the mediator, mediator with the concurrence of the court and the same shall be paid by parties so aggrieved so is it done case to case basis or is it a standard fee fixed, no generally if mediation is successful, fixed amount is paid, haa tou then, when it is not successful, half of the amount is return so is there any standard amount prescribed for it, standard amount, so please update it naa, when you go back home, suggestion to all of you is please ask your respective jurisdiction have a look at the website, tell them when they go the judicial academy, it gives a very arbitrary feedback about Kerala High Court, its says that mediator can fix from case to case basis and can proceed which is not true so have that updated. Sir, had a question on orissa, what are the fee of a mediator, it starts with 500 up to 2000 Rupees. thank you sir, these are the important changes and other then that there were very minute change in the mediation rules. no the mediation fee is generally paid by the court, right, is it not borne by the court, please keep one by one and on the mike please, yes, legal services authorities paid in our state sir, legal services authority, yes NALSA, one by one, one by one, in kerala the amount is sanctioned by state mediation center and from there the amount shall be given to each mediator, no no what our question is, may i explain the entire, one second, the question is, may i explain, one minute later, the short question is does the funding is done by the legal services authority, it could be done to the mediation center or the

court on say on the consolidated basis the courts sends the expenses and legal services authority paid it, i am explaining that, please yes, now this as far as funding of mediation expenses is concerned

Now its under the NALSA and under the 13th finance commission which ended on 31st march this year the funds for mediation air marked and all these now at the disposal of NALSA and state legal services authorities are forwarding this amount to district legal authority and district authority are now making payment to mediator and all District judge are chairmen of district legal authority so the source is NALSA because there is air marked funding from the central government, now this is interesting and important development, thank you for the information , NALSA is funding as he says, i think if NALSA go one step further and the each state having its own rules and the scale of fee, have they tried to bring about uniformity, to my mind its a very difficult task, NALSA if it has done uniformly it has to take in to account the situation as prevailing in various cities, metros and standard of fee applicable, for instance the fee in say in remote district in Jharkhand can't be the same as the fee would be in the metro town or metropolis of Bombay or delhi, right so i remember once in NALSA this question was raised and we left it to the respective authorities to fix the fee, taking in to account the in the states, so i don't know whether that is continuing or not. Now the NALSA has fixed the amount 3000/ everywhere yes everywhere but as far as punjab and haryana is concerned, we are paying 10000/ we have separate budget for that because we are not seeking any budget or any funds from NALSA, ohh so what is happening is NALSA will fund you to the extent of 3000/ balance will be taken care off by yourself. ok so any more questions on this aspect or we are all clear on it, i think that is enough, anyone having any comment or doubt on it, or suggestions for modifications, of then thank you yogesh, you have something else to say, no sir, no we will give you the last words, no sir that is all, those relevant points, you can say thank you, thank you, thank you so much it was pleasure, so i think Mr. Yogesh skipped one interesting information which in our rules is there for tea, coffee, please sorry he is not making presentation for Punjab, no i want to share this interesting information for like for the litigants and mediators who are coming to our centers, we have earmarked 10000/ rupees for snacks and tea, coffee per month, that is a good part, i think it can be started, actually what happens is, let me put it differently, it is not important that 10000/ rupees is sanctioned for tea and coffee what is important is something you know my friend will excuse my saying so which is missing in the Maharashtra culture, Bombay especially, in punjab, delhi, north India and generally UP also there are certain

amount of courtesy extended so when heated discussions are going on, if at that point of time, a hot cup of tea with a samosa comes in, it helps in diffusing the situation, it diffuses the temper, it sets the tone in. so i would tea and coffee as an aid to mediation successful, not the question of hospitality, sir that is the purpose, i hope you people get what i am saying.

Now two cases i wanted to discuss talked to you about, one i think you can take up, summery is given in your reading material, at page 287, Cipla v. Rosh, these three pages i will recommend all of you to read, 287, 288 and 289. you know this sums up to you the controversy which has arisen, now i am broadly giving it you without any details of it, the applicable section 3(d) of the Patents Act, right, for a second i will read to section 3 (d) it says that mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance or the mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant. now heading is The following are not inventions within the meaning of this Act mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy these are the important words came in the rosh case also, starting from the point where my brother left it, supposing haldi is not used in other compound or other things and medicine is developed which increases the efficacy that no patent can be granted so the test would be theocratic efficacy has been increased by the efficacy or not now this is what came up for discussion in Cipla v. Rosh, you know rosh has patented Roche's patent for the anticancer drug 'erlotinib', sold by Roche as 'Tarceva' , this is an anti cancer drug, nothing can be human side of it. the cancer drug should be available at the best price.

The Division bench of the Delhi High Court dismissed Roche's appeal against the refusal of a single judge to grant an injunction restraining Cipla from manufacturing, offering for sale, selling and exporting its generic version of 'erlotinib'. Both Roche and Cipla drugs are based on a compound that goes by the name of 'Erlotinib Hydrochloride'. This case is regarded as a very important case in a series of high profile patent battles between multinational pharmaceutical companies and Indian generic drug companies. Roche, along with Pfizer, claimed that it had been granted a patent in February 2007 for 'erlotinib', the molecular amine hydrochloride. The patented product, which Roche introduced onto the Indian market in 2006, was marketed under the brand name TARCEVA. In December 2007 and January 2008, Indian newspapers reported Cipla's plan

to launch a generic version of 'erlotinib', and soon after Roche commenced patent infringement proceedings.

The single judge he went on see the public interest The generic drug version of 'erlotinib' manufactured and marketed by Cipla is available at one-third the price of Roche's drug, Tarceva. Further, the Court noted that Tarceva is not manufactured in India, it is imported. The Court noted that the right to access to life-saving drugs, and the need for secure long term supplies, is a serious issue in India. In cases of this sort, the injury that would be caused to the general public if the generic version of the drug were not available is a strong point in favour of a refusal to grant an injunction. Now Rosh went in appeal to the division bench, right, now they said this is right to life saving drugs The bench said that the patent in question related to a mixture of Polymorphs A and B, whereas Roche's Tarceva drug consisted of only Polymorph B, for which a patent had not yet been granted. The division bench considered that this fact ought to have been disclosed by Roche both at the time of examination, and during the proceedings before the single judge. The bench gave weight to the fact that Polymorph B of 'erlotinib hydrochloride' was the subject of a later patent application, and that this had not been considered by the single judge, they even question the grant of patent and they said was Rosh is not able to establish that there drug has increased the theocratic efficacy that is the ruling they gave so these are the cases and they ultimately held dismissed the appeal with the result Cipla was allowed to marketed. The Court dismissed Roche's appeal, and upheld the order of the single judge. It did not fully elaborate the public interest point relating to the pricing of the drugs, basing its judgment instead on the ground that Cipla had raised a credible challenge to the validity of the patent. Now this can go to the supreme court, there is another case which the Supreme Court which you might read that is the Novartis case, the citation is 2013 (6) SCC where they again laid down the case of enhanced efficacy has been approved, now coming back to the application, now we are thinking and i want you to think with me, how could ADR can work in a case like this, is there any scope for ADR, yes, enhancing of corporate image could be a factors which corporations value in terms of money, supposing let me illustrate this point, supposing, i will develop it further, and geeta ji you also contribute, you know what is a brownie point, which will add to their corporate image so corporate image building could be a factor which large corporations, multi nationals value in monetary terms, they spent lot on that advertisement so that could be a factor. Another thing could be this for competing interest, Rosh and Cipla can think that look we can agree unless visualizing it that you will not object to

our marketing in these area within the country which are more advanced and they say alright cipla you take over the market and you will not supply it, in the villages or other area, these are left out for you so these are the possibility of ADR, that was the purpose to make you alive on that, Mr. popat you want to say something.

so you people have done very patience listeners, you have given us attention now its time for us to listen to you patiently, you start with whatever you want to say, what have you learned in ADR, what is your thought on, what should be ADR and changes should be brought about and you can also comment on the programe. i confess i was not aware of this ADR system, i was not having 40 hours training. ADR in my district in Meruth is not functioning proper, building yet has not been constructed, the mediation center is being maintained by state legal services authority and we looked after by secretary, full time deputed secretary, he use to manage all the affairs, now i am satisfy, i will go through all the judgement and i will prepare myself, yes, i was working in CBI court so there is no scope yet my experience as PDJ so far as cases are concerned, it is excellent. thank you sir, the present programe is really excellent it has given us lot of inputs, we are happy with this.

Sir i am B. M. Patil, District and session judge, recently joined as PDJ mylord, in my district i have got independent secretary who is taking care of ADR work and legal services authority work, so far as this workshop is concerned, this workshop for the last 3 days, the subjects dealt with with respect to ADR methods particularly in mediation is highly positive and innovative for us, all of us, thank you. as a PDJ do you people get the number of reference made under section 89 of CPC, is there some statics maintained on section 89 CPC, referral judge, register has to be maintained, its a regular record, the success of mediation mainly depends upon referrals, private mediation hardly catches up, it is what the court referral go which is the back bone of all successful mediation yes, sir i am Rajesh Gupta, Distt. and session judge, Neemuch, madhya Pradesh, i have undergone 40 hours training and attend one refresher course before this seminar, i can say this workshop was excellent with reference to sensitization and i have i will use this experience in my district to develop ADR more effectively, thank you,

my lord i joined the judiciary department just last year as a direct require-tee as Additional District judge, being an advocate i had some apprehension about this mediation process but after joining the services and finding it quite effective in 496, 498A cases i find that mediation is really good

but as far as what are the duties of mediator and how the litigation goes on i have learned only through this programme, what kind of matter we can refer for mediation, i was referring the cases as a referral judge but what kind of matter can be referred to that vision has now been broaden and i find that this programe has helped me a lot in how the mediation can more effectively be used as a referal judge and how i can make the parties understand before going to the mediation, because what i was doing as a referral judge in 406 and 498 cases i was doing it in routine, because in bail application, people were coming to us and at that stage i use to call the girl, after giving one day notice, the allegations i find is not so bitter, i asked to bring the girl next day and after making both understand i use to refer mediation but that was only a part, now after this training, i have my view, now i will look into civil matters where party can be referred, where there is a tremendous scope and looking to the various aspects which my lord has also refereed to, that i have been benefited a lot. Thank you.

i am Registrar (rules) in Punjab and Haryana high court and i am looking after, thank you thank you sir, and i am looking after mediation work also, your programe still going on so that is why i am saying it is excellent programe and my humble suggestion is if other things could be added in such type of programe, related to ADR, some material on Arbitration could also be added in study material and some discussion or some dedicated lecture if can be there on arbitration also, you are right but what happens is arbitration is so well known and its been going on for so long as a matter of fact, may be, i will recommend to Dr. Geeta one thing that now that law commission has made its recommendations for the amendment in the arbitration act, once that comes up that would be the time, more opportunity to take it up and discuss all the aspects of arbitration also.

I am new recruited in the judiciary, i joined last year, i am additional district judge in ludhiyana, sir prior to joining i was the prosecutor so i did not have any idea about this ADR system and i have learned a lot and i will try to implement it properly, most likely in the coming years, i have gained a lot, definitely, thank you.

Sir, I am upendra sharma, Dist. and session judge, kinoor in Himachal, in fact lordship mediation as a whole has picked up so fast in Himachal for various reasons, on 19 of this month we had a meeting in HC in HPHC and all the chairmen called and advocate, trained mediator they were also call so HC was looking in to various reasons in why the mediation is not picking up in himachal, but there are so many reasons for that. the programe as such for the last 3 days was really fruitful

and as a chairmen of DLSA i will try to give more importance to mediation and other ADR machanism so we hope that we come up with good results in future, thank you.

Sir, myself Anil verma from Sagar, M.P., its a very excellent and useful programe for us, we got the new reasons to deal with the ADR methods, that was the objective so it was very successful workshop, but ADR system is very effective for our judicial system but my humble submission is our sitting judges have so much burden with routine court work, they can not spent sufficient time for mediation and other ADR works, that is why, mediation need not be done by the judges, they are busy, it goes to lawyers. we have 48 mediators and out of 48, 39 are judges, it would be better independent agency should be formed, even 48 mediators are not sufficient but only 9 legal practitioners out of 48. Good afternoon sir, i am neelam chand shankhla, i am District and session judge Durge, Chattisgarh, this progrme is very useful for us, this programe helps us to solve many problem through mediation, mediation ke joe benefit hai, i have written so many quotations. i want to share one, must, must, must.

Director has raised a query i think you had a session on the first day there is some fight between the neighbor on dog bite, now if one agrees to give up the dog, the options can be for the owner of the god, it is the property and he can leave it at home for dogs, for instance if a dog is continuously biting is a nuisance to other, such a dog has to be removed, the director is asking me, possible she is a dog lover, how can a dog person to give up his dog, but there are two things, it is with consent, the person is agreeing to give up the dog, may he wants a better dog or smaller dog who won't bite, but the actionable can be as i said there is no end of vision of law and broadness you must be, you need to examine here whether if you are asking dog simply to be left in the jungle, are you violating the SPCA act, there is an act society for prevention of cruelty towards animal so the judge will have to see that the whatever has been provided for the dogs, removal doesn't violate the provision of that law so that answer your question, right.

Lordship i am Gautam Boruah, yes you are from Assam, from Assam your lordship, i have joined the judiciary in 2012 only and i have not undergone any programe for ADR mechanism and was also ADR mechanism would be successful or not but after going through the programe today, i am very well confident that it will be very successful mechanism, where in our state it is not have gained the space, i will carry whatever i have learned here and speed in my state, thank you.

Sir i am from Orissa, PDJ, my views on this programe is same as my friends, co participants but i would like to add sir, this programe has given me a national perspective and it has brought change in attitude, that is very important, that is very important and i hope to be more successful in coming days in regard to ADR and particularly in mediation, secondly sir, to continue with my friend from chattisgarh, i would like to add that we have 100 of laws in our country and if we write the law, all the laws in the sheet like this probably it will appear like a enact and all alternative dispute mechanism are provide a golden way, i say to do justice and to secure justice and i hope we all benefited from the programe and these 2-3 days were quite learning experience for me sir. thank you sir. right

My lord myself also from Orissa, myself B.S. Mohanty, now PDJ in baleshwar. actually from 2013 these ADR methods get momentum in our state so with in these two years, we being the PDJ we use to refer the cases in civil side so far as the appeal, basically the participant suit is there in family court and the guardianship letter and in criminal side basically the appeal under 138 NI act but after going through these programe for 3 days, i could be enlightened that there are certain other matters for example IPR matters those can also be referred for mediation for quick disposal which involves the lots of reputation of firm and the company so that i have gained in this programe. thank you. now one important thing on the last page of reading material which provides interesting thing for all of you, page 289 gives you the authority that even in case of 138 NI act the notice was given by fax etc or email is acceptable so those of you who always thought conventional once is said to be registered the notice board can see those.

My lord i am Suryakant shinde, PDJ, Maharashtra, i have taken charge as a PDJ in month of july, mylord about this programe, i must confess, in our state the concept of mediation judge introduced and as my lordship said judge is in a habit to dictate the terms and not to listen patiently, in these 3 days programe from the drama and from live we came to know what qualities the mediation judge should have, normally that quality can not learn in any books and it can only be by live performance and experience and with interactive session so as a mediation judge now it would be easy for all of us what a mediation judge has to do in doing the role of mediator in successful mediation so i learnt lot of things from here and with respect to infrastructure development with respect to ADR in our state and particularly in my district ADR building is constructed in the next month we are going to inaugurate the building and our High Court has also given us direction for

creation of staff for that mediation center, with respect to, my suggestion not my suggestion but my query, my anxiety the model rules the fee of mediator it is provided that it should be borne by each of the parties and it shall be fixed by the court now later i came to from my friend the later issued from the NALSA and the fee structure is given in that rules so i want to make suggestion here that each case depends upon cause of case and the that nature of the cause should be the criteria for determining the fees, the model rules provide that it should be fixed by the court after taking consent of the parties but the later is issued by NALSA in other state while in Kerala 3000 is fixed. you see the funding by NALSA to my mind has to be confined to cases which really come within the domain of legal services, yes yes , for instance let me put it this way, supposing there is private dispute between two wealthy companies over property as there is no reason for NALSA to fund for mediation, both of them can afford it and they both can have good mediators let them pay for it but normally so in cases or for instances IPR cases there is no justification for the state to fund that so you see this funding by NALSA can be confined to other then private disputes, it can be confined to where people don't have resources. Parties can't afford the court fees in those cases NALSA support can go. You Please remember one thing in life whether it is medical set up or for any system to be successful over a period of time, it has to be self supportive, same in the case of mediation, mediation should also become self sufficient, self financing so that is the reason the private fee has been fixed, yes next.

My lord myself rajendra Singh Chouhan, District and session judge, utterkashi, state of uttrakhand, this ADR programe is very useful for all of us. This programe has given me a national perspective and it has brought change in attitude, that is very important, that is very important and i hope to be more successful in coming days in regard to ADR and particularly in mediation.

Yes please, My Lord Jafar Imam Malik from Saharsa, Sasaram, accha bihar, the birth town of late Jagjivan Ram, Sher shah suri, the imperial of India at one time, Jagjivan ram also, right. sir i may informed that this is my third visit here, firstly menon sahab was there then Mohan Gopal sahab, we should be thankful to you at least on last two interaction we did not interact, basically we are trial court officer, we did not get opportunity to interact much, whatever the feeling is, liberty to express but most of the time thing which they feel truly that really come on surface but this time we are free to give their, if i can express my feelings with all humbleness i can say that Sarin Sahab ka yeh verdaan ban gai mehfil ki jaan, as a trial court judge i am, i am principal family court judge

so i am totally confined to family courts there, in the last 30-40 days i joined on 5th of august so i came to know the real facts about the family, sometimes in the course of hearing i myself get involved in but i avoid, we are carrying conventional system of administration of justice, last evening i was witnessing a movie Damini, one lawyer has given up the practice of law, one girl she manage to escape from there and she took shelter of a man who was previously lawyer and he encountered another wicked lawyer who was managing the things as he wishes. so this was truth, my feeling is sir that we all are this way or that way part of the system which is not reaches the people at large and somehow we are going that khana purti, if that is the case prevalent in the society around us.

yes who is next, myself Udip Choudhary from tripura, basically i am district and session and judge and additionally i am also chairman of State legal services authority, in our State the ADR system is totally not implemented so far as lok adalat is concerned i have some experience but i have come across a new idea, an innovative idea mostly setting a new cases pending in my court definitely after returning i will try this system also, myself is actually not fit to be a good mediator, may i suggest you, seek an appointment with your chairmen of state legal services authority and tell him sir i wish to see you go to him with a broad plan made out what you want to implement. if you succeed in that you will also help in whatever you want, now i am totally satisfied that this is a particular system.

Sir, i am Anu Malhotra, Principal and District session judge, Saket, i have learnt a lot in last 3 days it has really helped me in sharpening my skills as a mediator and aspect of justice in mediation and also power imbalance, for conflict management i would request the NJA to share the presentation of Parul Rishi, i have also learnt in the are of IPR, i have never handle the IPR case except one case that the magistrate more then 29 years. i am really grateful for this opportunity, thank you. My Lord i am Yogesh Khanna, District and session judge, north west delhi, my lord we have mediation court where judges are actively involved as a mediator and very month we are having cases for referral judges also so we are doing that particular thing in our court, now my lord i just want to refer one thing when my lord was discussing the justice issues and discussing section 89 and discussing 3 Is that is integrity, impartiality. That really helped a lot and as far as this programe is concerned, it was very fruitful, well planed and i learnt a lot.

Yes madam, Namaste Chief i am Bhanumati, District and session judge, east Godavari, Andhra Pradesh, in fact i learnt a lot, as a principal district judge i am suppose to conduct meeting of all the judicial officers and take them forward for enforcement of ADR system, though i underwent some training on this but i was not totally equipped with that and i had lot of confusion how to take it forward but this 3 days workshop helped a lot to myself more clear before i take it forward, really it is good workshop. in the ADR system what i find working in the system like there will be blocking, when we refer the matter for mediation they stay where they are but if it is conciliator they suggest something but can this process be altered to conciliation, the matter which is being refereed to mediator for mediation to break that, let me answer this way, these are grey area as you know even a mediator doesn't keep a record he is not required to keep a record of the mediation proceeding because the purpose is parties freely say what they want to say and they are not bound by what they have said. what i found in practice is very often the thin line between mediation and conciliation is obliterated you know the mediation hands up little pro active so instead of directly giving suggestions saying price has been settled between two parties, compensation 5 lakhs or more so if the mediator says if you increase a little bit tou hoe jai so that is with in the limit of mediator and if he say mere hisaab se aap 6 lakh dijiye that is the conciliator so the line is thin a skill mediator can bring them to 6 lakhs by requesting so this is where the skill of mediator operates.

yes, next, i am Narayana Prasardi from kerala, as a principal judge and as a referral judge, the programe has been benefited me, As a PDJ i have to motivate the other officers in my district the programe has to be supervise for that purpose the programe is very fruitful, i will try for excellence in the future programe, thank you, thank you. yes

I am Manoranjan Kavi from PDJ, jantara, jharkhand, we have already crossed so i have to concur with my friends, from my side only i can say is thanks for everything for whatever has been done, thank you.

I am Praveen Mekhiya from Gujrat, after comments of all the participants i have to say speakers are very excellent, participants are also very good and we have learnt a new area being the part of the drama and after attending this programne i have to say mediation is very useful system to reduce the pend ency in the court. thank you very much.

Good afternoon my lord, myself T.S. Nand Kumar, Principal and session Judge, Tamil Nadu, at first place I would like to thank NJA for conducting this programme and Hon'ble High Court of Madras for appointing me for participating in this programme, the programme was pleasant and memorable, my lord so far as Tamil Nadu is concerned we have good infrastructure and very effective ADR services through Legal Services Authority of State of Tamil Nadu. My humble opinion is the programme was on use of ADR and mostly it was focused on mediation, there are other modes which are equally important that should also be included. My humble opinion is this ADR brought in 2005 in Tamil Nadu now it has become so important in Tamil Nadu so NALSA may take the initiative, but the judicial settlement should also be given importance. Why I am saying that because in other arbitration cases also it has not been discussed, mostly this 90% of the time consumed on mediation topics. So there are instances like this, brother let me put this way. I am not trying to defend it what has happened but to put the matter in perspective is this arbitration has been on the scene for long starting from 1948 to 1996 each one of us dealing with day and day out, the emphasis in the academy is there are areas where people are not aware or familiar and those are the areas which need emphasis so if you want a workshop exclusively on arbitration, why not it can be part of a half-day seminar also where arbitration and new case laws etc those areas can be gone into, right but emphasis here was on mediation which is catching up so along with mediation the conciliation comes in that is why the difference between mediation and conciliation was explained to you and why I have touched upon the judicial settlement is to open up the vistas to you. So it's a case of emphasis. Thank you so much what you are pointing out is right. Thank you my lord thank you, what you have pointed out is right, it needs to be addressed. Thank you my lord thank you. right.

Now that one person who did not get a chance to speak is additional director in charge Dr. Geeta Oberoi and she must have..thank you so much, about all of you have given feedback in evaluation form if not then please keep it on table, Sudama will collect it. Thank you so much and first of all I think we should give a big round of applause to Hon'ble Justice Sarin because I have been always telling him sir we really need you come. hehehe so this is really nice thank you so much for actually taking all the questions and explaining the judgments and all of you take part in those exercises to part in role play if there is a course I understand was not done may be next time as Hon'ble Justice Sarin has already said we will take care of this matter. Arbitration applies in those injunction matters section 9 and 34 and they don't come as ADR to you because judges don't act as arbitrators, not all

judges refer those civil disputes which are there with you for arbitration if am not mistaken, arbitration is done now by business houses actually so that is why this arbitration was not taken and ignored and 9 and 34 does not become the award. that does not form the part of alternative dispute resolution, its your usual work actually, its part of your statutory duty, statutory work so therefore this was not discussed and lok adalat also we did not put much emphasis on reason being there is separate conference for district legal services authority chairperson and secretaries in the month of February so we thought that we will take all related to legal aid and lok adalat in that section so then we had only section 89, this actually the whole seminar stressed on section 89 and one of the i know there are 5 options given in section 89 but one of the thing which is very successful within 89 you will see is lok adalat sorry mediation 89 yes we also in to collecting information, why this was organised for PDJs to know that you take care because you are not only responsible for your court you are actually courts below you like other courts like your peers, your district, you have so many magistrates below you and ADJs and other district judges. i also have to thank so you have to mentor them and see that the section 89 referral is done and i also need to thank all of you then i have to thank to 2-3 more persons, first of course Mr. Papat, sir thank you so much it was is is there with us for all the three days helping us with your case exercises from day 1st to now and also i need to thank yogesh, our programe coordinator and research fellow at national judicial academy because his material you have seen, its his first programe and i think we need to encourage him so he continue with good material and good research work which serves the needs of judges in India so with this and thank you Justice manmohan Sarin once again and thank you every one and if there is any mistake we are of course there to rectify it and not repeat it next time. Thank you so much. Yes we will do that. Thank you so much.