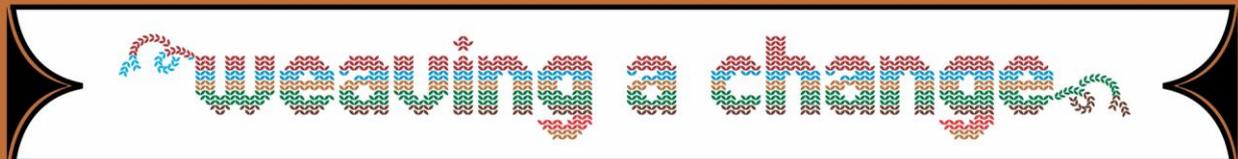


Maadhyam



Council for Conflict Resolution

Report



The National Round Table of Mediators

**India International Centre Annexe, New Delhi
2nd November, 2019**

THE NATIONAL ROUNDTABLE OF MEDIATORS

NEW DELHI 2ND NOVEMBER, 2019

REPORT

Team *Maadhyam* held a National Roundtable of Mediators on the theme “*Weaving a Change*” on 2nd November, 2019 at the India International Centre, New Delhi. It received an overwhelming response from friends and fellow mediators from all over the country. The Roundtable followed the welcome initiative taken by friends and colleagues from the Foundation for Comprehensive Dispute Resolution (FCDR) at the Mahabalipuram Retreat, held at Chennai from 20th to 22nd September, 2019. The Retreat brought the mediation family from many parts of India together to discuss and plan the next important steps that were crucial to the growth and future development of the mediation movement, especially that of private mediation.

The Roundtable began with introduction by all fellow Mediators attending it. The President of *Maadhyam*, welcomed all the participants and emphasized that all mediators in the country must work together as a family to take the mediation movement forward. He underlined the importance of synergizing our energies and adopting a futuristic approach with the common aim of individually and collectively doing all that it takes to help people resolve their disputes to further peace and harmony in society.

The agenda of the Roundtable envisaged important aspects of mediation policies and practice, especially in the field of Private Mediation, which would soon become a new professional avenue for Mediators. All the panelists and the participants present in the Roundtable contributed valuable inputs and suggestions throughout the deliberations. For that reason the Report does not carry names against specific suggestions. Suggestions made in a particular session have been maintained in that session in this Report and repetition has been avoided by making cross-references among sessions.

Several suggestions and recommendations came from the participants. However, since this was the first time mediators from across the country were deliberating specific issues, suggestions and recommendations made were naturally met with counter suggestions and recommendations. This Report has respected that and has put suggestions made under the generic head: ‘Key Issues discussed and suggestions made.’ However, where there was broad or clear consensus, this Report has recorded that under the head ‘Recommendations.’

The Secretary-General of *Maadhyam* conducted the deliberations of the following Sessions:

<p>SESSION 1</p>	<p>Building consensus on a mechanism for self-regulation pending an independent enactment on Mediation to ensure availability of credible, competent and certified Mediators with special reference to the new enactments.</p> <p>This Session was represented by teams Chandigarh, Chennai, Delhi and Kerala. The speakers were Ms. Reeta Kohli, Ms. Aparna Mukerjee, Ms. Nandini Gore and Mr. P.G. Suresh.</p>
<p>SESSION II</p>	<p>Building consensus on establishing a non-partisan and not-for-profit National Accreditation Institution for accreditation of mediators across the country, promotion of mediation and mediators, interacting with the Government with reference to policies and prescribing a code of conduct for mediators.</p> <p>This Session was represented by teams Maharashtra, Delhi, Chennai and Rajasthan. The speakers were Mr. A.J. Jawad, Mr. Parimal Shah, Ms. Varuna Bhandari and Ms. Pramila Acharya.</p>
<p>SESSION III</p>	<p>Building consensus and sharing views on the two draft Mediation Bills already circulated at Mahabalipuram - one from <i>Maadhyam</i> and other from CAMP</p> <p>This Session was represented by teams Chennai, Delhi, Gurugram and Madhya Pradesh. The speakers were Ms. Chitra Narayan, Ms. Neelam Rathore, Mr. Jasbir Singh Bajaj and Ms. Girbala Singh</p>
<p>SESSION VI</p>	<p>Discussing the role of various Registered Associations in the country to promote and protect the interests of mediators and mediation in different parts of the country</p> <p style="text-align: center;">and</p> <p>Discussing annual meetings and an annual National Mediation Calendar for sharing of events being organized at Regional/ State/National levels to enhance participation by Mediators across the country.</p>

	<p style="text-align: center;">and</p> <p>Creating a national website for information and interaction between mediators, for exchange of views, ideas and developments in mediation.</p> <p>This Session was represented by teams Andhra Pradesh, BIMACC, Gurugram and Madhya Pradesh. The speakers were Mr. Hari Krishna, Mr. Nandgopal, Mr. Mehrnosh Shapoorji and Ms. Neena Khare</p>
SESSION V	<p>Discussing promotion of reforms in mediation domestically and internationally for effective operationalization of the Singapore Convention and formulating the next steps in this regard.</p> <p>This Session was represented by teams BIMACC, FCDR, Chennai, Maadhyam and Telangana. The speakers were Mr. Nandgopal, Ms. Chitra Narayan, Ms. Veena Ralli, Mr. J.L.N Murthy and Mr. A.J. Jawad</p>
SESSION IV	<p>Discussing the effect of regulation of mediation and mediators provided for in the Arbitration and Conciliation Act, 1996 (as amended by 2019 Amendment) and the New Delhi International Arbitration Centre Act, 2019, though the Acts are otherwise silent on providing the necessary structure for the conduct of mediation and enforceability of mediated settlement agreements.</p> <p>This Session was represented by teams Maharashtra, Chattisgarh, Delhi and Kerala. The speakers were Ms. Nilmani Gandhi, Mr. Ranbir Singh Marhas, Mr. A. S. Chandhiok and Mr. Thankachan</p>

THE NEED FOR SELF-REGULATION

Since the introduction of Section 89 of the Code of Civil Procedure in 1999 and its coming into effect in 2002, mediation has come a long way. While court-annexed mediation has established itself and has received the support of the courts and lawyer-mediators in India, private mediation is just about taking its first steps. With India signing the Singapore Convention on August 7, 2019, the scope for private mediation is also expanding. In addition, there has been a spate of legislations in the last few years in which mediation finds itself centre-stage as a dispute resolution option. Consequently, an imminent need was felt to build a national consensus on a mechanism for self-regulation pending an independent enactment on Mediation to ensure availability of credible, competent and certified Mediators.

Key issues discussed and suggestions made

- In the above context, participants noted the potential for the mediation and mediation practice moving from court annexed to private mediation. Therefore, the need for self-regulation of individual mediators and mediation centres was strongly recommended and emphasized. The necessity of supervising and regulating the manner in which mediations are conducted was also emphasized. Participants felt that checks and balances are required on the manner in which the mediation process is presently being conducted.
- It was equally emphasized that if parties select someone as a mediator, there could be no restriction on the ground that the

person is not a lawyer, though presently mediators are largely drawn from the pool of lawyers. It was suggested that non-lawyer mediators must also receive mediation training.

- All participants strongly recommended that Mediation must become a culture in the country. While factors like the time spent in litigation, costs involved and relationships destroyed were the reasons for disputants to turn from court to mediation, mediation must be understood to be the most empowering option for disputants that gives them complete ownership of their resolution and each takes back more than what they could have asked for in a court of law. In this regard, the need for a comprehensive and universal definition and explanation of the term 'Mediation' and 'Mediator' was emphasized.
- It was recommended that the regulation of qualifications and quality at the entry level of training itself is important. Holding of refresher training programs for mediators and creating modules for awareness were emphasized. The urgent need for advance training methodologies in keeping with the latest international and national requirements was urged. It was strongly felt that that domain knowledge and good communication skills are important ingredients and impact the outcome of the mediation process and both should be given equal importance during selection and training of mediators.

- Importance of holding periodic meetings of the mediators for exchange of knowledge and experience was highlighted.
- The potential of mediation as a full-time career was highlighted.
- A suggestion was made that mediation should now move from free to paid services.
- The need to focus on quality service providers in private mediation was highlighted.
- There was a strong assertion that conciliation must go hand in hand with mediation. Under the present legal situation the conciliation agreement is the only way to execute and enforce a pre-litigation settlement agreement.
- It was agreed that best possible standards should be adopted for certification of mediators and that a National Accreditation Body must be established to ensure that. However, there was apprehension about the constitution of such a body. It was strongly felt that the fate of such a body should not be such as that of elected bodies/councils where one group can just monopolize the elected body by sheer numbers and elect their own candidates leaving no room for objectivity and independent functioning.

[Please also see views expressed in Session II in this regard.]

- Building credibility of the mediator in the process of self-regulation was keenly discussed. At the outset participants recognized that both regulation and

credibility are very complex things especially in the absence of something like a 'Contempt of Mediators Act!' It was argued that establishing credibility without criticism, on the one hand, would be a very tall order. However, on the other hand, it was equally argued that mediators too face a lot of problems because of motivated criticism. Therefore, it was felt that suggestions like a self-regulatory rule that after 3 complaints a mediator shall be removed from a panel could not be the answer. Other regulatory options would need to be explored.

- Self-regulatory mechanism, it was urged, must basically follow principles of natural justice.
- The 'market' was considered an important factor in finally establishing credibility of any mediator. In this regard it was emphasized that 'market forces' would inherently and successfully weed out the mediators whose credibility was questionable.

[Please also see views expressed in Session II in this regard.]

- An important emphasis made was that the credibility of both the mediator and the mediation process needed to be maintained and evaluated from two perspectives (1) personal credibility of the mediator and (2) the credibility of the association / organization with which the mediator is associated. And that the option to choose the mediator would also reflect the credibility of the mediator.

- Participants stressed that credibility of the mediator is as important as his/her certification. That who the mediator is, which organization the mediator is affiliated to, the personal ethics of the mediator and the organization are key components for evaluating the credibility of a mediator.
- An important point made with reference to credibility was that mediators must understand their responsibility with sensitivity in private mediation as distinct from court-annexed mediation. In court annexed mediation there is sense of authority, that the party perceives that the mediator holds because the reference has come from the court. However, in private mediation, which is based entirely on the mediator's own reputation and credibility, the parties may not accept such authority and perceive any authoritativeness in behavior as impunity on the part of the mediator.
- A concern was raised as to how the credibility of a judge was not questioned in comparison to that of the lawyer. Answers came from senior mediators that while in court-annexed programmes there were no major complaints of credibility as far as lawyers were concerned till date, but if self-regulation in private mediation is not established quickly, there could be a grave potential in that concern.
- Several ethics and confidentiality issues were also flagged. Participants were of the view that in mediation practice emphasis should be on good ethics as a core principle. A significant suggestion was that a mediator's voluntary pledge or oath to maintain his/her ethics and be bound by them could be incorporated in all training programmes.
- Participants agreed that the feedback in court-annexed mediation has not worked. The first step for private mediation therefore would necessarily have to be a better feedback mechanism. Suggestions ranged from maintaining a suggestion box for parties to online review of mediators, establishing a star system for reviewing mediators to maintaining a directory of mediators for consolidation of data that could be used for effective feedback as well.
- It was agreed that there should be no contradiction between the present rules of the High Courts and MCPC rules and any future legislation on mediation. The contradictions and anomalies in the Arbitration and Conciliation Act 1966 (as amended by the 2019 Act) and the New Delhi International Arbitration Centre Act, 2019 need to be looked into and removed at the earliest. The said Acts virtually usurp the mediation space.

Recommendations

1. Mediation must become a culture in India. It must be understood by all stakeholders to be the most empowering dispute resolution option for disputants that gives them complete ownership of their resolution
2. There is an immediate need for a self-regulation mechanism for mediators in the absence of an independent and comprehensive mediation legislation to ensure availability of credible, competent

and qualified mediators and the best quality of mediation service.

3. For mediation to be adopted as a favoured dispute resolution mechanism it was important that the quality of mediation service rendered to disputants and the training given to mediators should be of the best standards.
4. The credibility of both the mediator and the mediation process are of the essence and must be maintained and evaluated from two perspectives (1) personal credibility of the mediator and (2) the credibility of the association/organization with which the mediator is associated.
5. Certification of mediators must be from the best accreditation body, preferably at the national level.
6. In mediation practice good ethics must be emphasized as an important core principle. A mediator's pledge or oath taken after completion of training would strengthen his/her ethical commitment.
7. High quality basic and advanced training of mediators, regular refresher courses and periodic meetings held amongst mediators for exchange of knowledge and experience and a good feedback mechanism were essential to deliver the best mediation services.

INDEPENDENT NATIONAL ACCREDITATION INSTITUTION

Accreditation of mediators and mediation centres especially in private mediation was flagged by the Roundtable as the idea had been

strongly mooted for some time by mediators and Regional Associations. Presently in the country there is the MCPC (Mediation and Conciliation Project Committee) of the Supreme Court accrediting mediators in court-annexed mediation. Courts like the Delhi High Court, that has a stand-alone mediation programme, independent of the MCPC (though with a complimentary relationship with MCPC), have their own special accreditation standards that are far beyond 40 hours of training. There are credible private mediation organisations that are having their own accreditation for private mediation. As private mediation becomes expends and gathers momentum, there is today a pressing need to build consensus on establishing a non-partisan and not-for-profit National Accreditation Institution for accreditation of mediators across the country that also prescribes a code of conduct for mediators. It is important that whatever form this National Accreditation Institution finally takes, it's credibility and ethical standards must be of the highest level.

Key issues discussed and suggestions made

- To set the ball rolling, this session began with reference to a concept note submitted to the Roundtable by FCDR (Foundation for Comprehensive Dispute Resolution) and panelists from FCDR making the following points: That establishing an organizational framework in the shape of a National Accreditation Institution will be extremely crucial for promoting private mediation because end-users of mediation will then realize that credible, competent and certified mediators are available whose services can be availed. That this would also

establish a self-regulatory mechanism that will prevent unscrupulous fly-by-night operators from hijacking mediation. FCDR's concept note further stated that this needs to be done immediately as it would not be possible to bring in any control or regulation later. That when private mediation becomes the norm, what would stop anyone from setting up organizations of their own, conducting training and giving accreditation to mediators? without anybody knowing what are the credentials of such training, qualifying criteria for the mediators and structure of the program, it would create problems in the long run. That therefore the National Accreditation Institution needs to be established immediately as it will not be possible to regulate accreditation later once the quacks and imposters proliferate the mediation space. The view expressed by FCDR in its concept note was that the coming of a legislation for mediation will not disturb this organisational framework as this framework will facilitate the implementation of the legislation and complement it.

- One suggestion from FCDR in its concept note was that the said National Accreditation Institution could possibly have three categories of mediators: 1) mediators specializing in family disputes, 2) mediators specializing in commercial disputes and 3) mediators specializing in cross border international disputes. A possible mechanism for accreditation in categories 1 and 2 was also suggested in the form of a Qualifying Assessment Programme (QAP), where the mediator

performs a simulation role play and it is assessed by any three nominated persons of the Accreditation body, after which the said mediator will be interviewed and if the mediator qualifies then the mediator gets the accreditation certificate from the Accreditation body. It was suggested that in category 3 the process would be same but the assessors would be drawn from SIMI or IMI. It was further proposed that a fee, to cover the recording facilities, a nominal honorarium payable to the assessors and to the members of the Advisory Board and administrative expenses could be collected from the candidates.

- An equally strong argument made by other participants was that there was no need for categorising mediators. This argument believed that a qualified mediator is a qualified mediator and has the skills to conduct mediation in any jurisdiction. However, in this regards there were also strong opinions on the importance of domain knowledge. The debate on domain knowledge versus process knowledge continues with equally strong views on both sides.
- The proposal of a National Accreditation Institution providing mediation accreditation to various associations, organizations, individuals and service providers was comprehensively discussed. It was also underlined that this body should not itself offer either training or mediation services.
- There was a strong sentiment voiced that that the National Accreditation Institution

as proposed by FCDR to comprise of the senior most mediators in the country was personality driven rather than process driven. That this body should be affiliated to a university. Several voices including the FCDR concept note were in favour of the structure of the National Accreditation Institution being either a body corporate or a trust.

[Please also see views on an 'elected body' expressed in Session I in this regard.]

- It was proposed that the National Accreditation Institution must design a state-of-the-art training programme with India-centric criteria and curriculum for mediation training / assessment criteria. And that such training programmes would equip Indian Mediators to add quality and proficiency in conducting their mediations. It was felt by many participants that the 40 hours training module was inadequate and that should be revisited.
- It was further proposed that National Accreditation Institution must set ethical standards on the lines of IMI and/or SIMI. That in the absence of a statutory backing, accreditation cannot be made mandatory. However, just as at IMI and/or SIMI, accreditation is not mandatory but gives credibility to the mediator, the accreditation by the National Accreditation Institution would also do the same.
- It was again re-emphasized that the 'market,' comprising of the end-users of mediation, was the most efficient mechanism to ensure that the quality of mediation/mediator would be rewarded

and lack of quality penalized. That it should therefore be left to the 'market' to decide the credibility of any accreditation institution and the challenge for the mediation movement would be to establish the goodwill of that accreditation institution. That for the purposes of credibility it did not matter if the accreditation body comprised of either elected or selected members.

[Please also see views expressed in Session I with reference to the 'market' and 'credibility'.]

- Suggestions were made that individuals and organizations must request/apply to the National Accreditation Institution to be recognized as service providers or trainers.
- The need for establishing a National Federation (as distinct from the above National Accreditation Institution) as an umbrella institution with one central office or various regional offices, or both, was comprehensively discussed. It was strongly felt that since so much varied work was being done all over the country, for strengthening our work, while preserving regional autonomy, the imminent need was for an umbrella organization in the shape of a National Federation of which individual mediators and/or regional mediation associations would become members. It was strongly felt that the proposed National Federation would add value to the work of the regions by connecting them with other sister institutions and also give a holistic national strength to the mediation movement.

- It was also suggested that the said federation would require the backing of institutions like MCPC, NALSA the Judiciary and Government.
- Awareness among the law students about the multi-door courthouse approach was also emphasized.
- It was proposed that all service providers could become part of the proposed National Federation.
- Some participants were of the view that in many states in the country there is very little or no awareness about mediation. Since private mediation is at a nascent stage, it was proposed that Government agencies should be involved in policy making for mediation.
- In this session several questions were raised about individuals who would head both the proposed National Accreditation Institution and the proposed National Federation, funding for both the National Accreditation Institution and the proposed National Federation, whether accreditation should be made compulsory and whether trained mediators should be subjected to regular periodic evaluation.

Recommendations

1. There is an immediate need for the establishment of a National Accreditation Institution to regulate private mediation for end-users of mediation to know that credible, competent and certified mediators are available. Establishing this National Accreditation Institution is also important to prevent unscrupulous operators with little or no credibility from exploiting the

mediation space and bringing a bad name to the mediation movement.

2. The National Accreditation Institution must itself not offer either training or mediation services.
3. The National Accreditation Institution must help design the best state-of-the-art mediation training / accreditation programmes with India centric criteria and curriculum that meets the national requirement of the country and regional requirements of each of its States.
4. While in the absence of statutory backing, accreditation cannot be made mandatory, the National Accreditation Institution must set ethical standards on the lines of IMI (International Mediation Institute) or SIMI (Singapore International Mediation Institute). Accreditation by these bodies is not mandatory but they provide high credibility to the mediator as a recognized service provider.
5. Accreditation can be provided to individuals, organisations and associations providing mediation services.

IS MEDIATION LEGISLATION THE WAY FORWARD?

The Roundtable considered it of importance that mediators in the country deliberate seriously upon the imminent need for a stand alone Mediation Legislation for the regulation and control of mediation. This deliberation was especially important in view of the fact that India had signed the Singapore Convention in the first go with 45 other nations including the

United States and China. The Singapore Convention of 2019 had attached to it the UNCITRAL Model Law 2018 on mediation. This deliberation was also important keeping in mind that there were more about 22 legislations and regulations on mediation / conciliation along with section 89 of the Code of Civil Procedure 1908 (as amended in 1999 and brought into effect from 2002) and the spate of recent amendment / enactments. However, no law provides for enforcement of Mediation settlement agreement, unlike an arbitration award. In any debate of a law on mediation two strong views have been expressed. One, that too much regulation will kill the flexible, informal, collaborative spirit of mediation and the other that for credibility of mediation as a serious dispute resolution forum, a comprehensive law determining the concept and process of mediation, the code of conduct for mediators and overall supervision is required now.

Key issues discussed and recommendations made

- The need for a mediation legislation that covers court annexed mediation and/or only private mediation was discussed. There were divergent views expressed on 1) whether there is a need for a new mediation legislation on private mediation considering there are already 22 legislations and regulations on mediation. 2) whether the new mediation legislation should include court annexed mediation considering the essence of mediation lies in its flexibility and informality and courts are already supervising it.
- Attention was drawn to the importance and necessity for 'Mediation' to be defined in Indian legislation (though now defined under the Singapore Convention, 2019) since there are various perspectives and varied definitions being used. Attention was also drawn to the following aspects in a new legislation: who could be a mediator? Should anyone willing to help become a mediator? What would be the qualifications of the mediator? Who would be the overseeing body for mediation and what will be its constitution? Will it be independent or under any law?
[Please also see views expressed in Session I on new legislation.]
- An interesting aspect contemplating whether the new mediation legislation could incorporate a provision in it akin to Section 11 of the Arbitration and Conciliation Act 1996, with reference to the appointment of mediators and the procedure agreed upon by the parties was presented.
- It was also discussed how now courts in Section 9 Petitions under the Arbitration and Conciliation Act 1996, also have started referring matters to mediation. However, it was pointed out that the fate of such references in resulting a settlement has not been looked into by the courts.
- Aspects of the nature of the mediation settlement arrived at through private mediation were discussed and views were expressed on the status and effect of such a settlement that has the effect of an award.

- Incorporating cross border mediation in commercial disputes and settlements arising therefrom in the new mediation legislation was discussed. Participants also narrated their frequent experiences across the country in cross border matrimonial and family disputes where parties were in different countries and many were of the view that this jurisdiction needs to be addressed somewhere as it has been specifically excluded in the Singapore Convention.
- Strong views were expressed on the need to separate 'Mediation' from 'Arbitration' and 'Conciliation' in any new legislation and an amendment to the present Arbitration and Conciliation Act 1996 separating 'Arbitration' And 'Conciliation' was strongly proposed.
- The need for a robust conflict resolution mechanism was proposed particularly for the reason that though various legislations including recent ones incorporate mediation as a concept, none of them actually provide provision for process, the qualification, the effect and the enforceability.
- The need for gender-neutral provisions in the legislation was emphasized.
- A need for a committee to examine and suggest amendments to all the laws was felt.
- The draft bills circulated were discussed and certain suggestions, corrections and modifications were suggested. A suggestion was given that the word he/she should be replaced by 'person or 'such person'. Many were of the view that eligibility criteria should be more specific and hours of training should be specified.
- It was further suggested that certain financial incentives and advantages should be introduced in legislation for people to settle disputes through mediation.
- It was proposed that pre-litigation mediation could be made mandatory in all appropriate jurisdictions and not just the commercial disputes under Commercial Courts Act, 2015.
- There was a comprehensive discussion on whether a new legislation should provide for challenging a Settlement Agreement at all. In this regard it was discussed that if a challenge to a mediated settlement agreement is allowed by the legislation, the grounds should be limited in view of the principle that if finality of a Settlement Agreement is allowed to be questioned, then it will lose its sanctity.
- With reference to any new mediation legislation an important caveat was placed before the house that mediation may lose its strength because an exhaustive legislation on mediation may deter people from adopting it as their chosen dispute resolution process.
- *Maadhyam's* role in India signing the Singapore Convention was appreciated.

Recommendations

1. The house acknowledged that in any debate of a law on mediation two strong views have been expressed. One, that too much regulation will kill the flexible, informal,

collaborative spirit of mediation and the other that for credibility of mediation as a serious dispute resolution forum, a comprehensive law determining the concept and process of mediation, the qualification, accreditation and the code of conduct for mediators and overall supervision is required now.

2. Today serious deliberation upon the imminent need for a stand alone Mediation Legislation for the regulation and control of mediation was especially important in view of the fact that India had signed the Singapore Convention that requires States signing it have a domestic law on mediation. This deliberation was also important keeping in mind that there were already 22 legislations and regulations on mediation / accreditation. This deliberation was also required in view of the fact that the Government was in the process of introducing a law on mediation.
3. The Draft Mediation Bill(s) prepared as a result of deliberations held in different parts of the country must be further discussed and inputs given through the Subcommittee proposed which would present its report at the next Roundtable.

FORMING A NATIONAL FEDERATION

Ever since mediation came of age in the country, the efforts of mediators in many states were recognized and appreciated and mediators themselves started having faith and confidence in their own abilities and their contribution to the cause of conflict resolution and peace, there was a growing need felt for

cooperation and cohesion among the fraternity. Whether mediators were working in the area of court-annexed mediations, private mediation, community mediation or in any other mediation space, mediation is a strictly confidential process unlike the public space of litigation. The mediator works alone (or with a co-mediator) in a room with disputants with or without their counsel. In such an environment of privacy, sharing of experiences while protecting the confidentiality of a given case in hands is greatly beneficial for the confidence of all mediators. This need was the basis of regional associations forming and when these associations grew and strengthened their members in the common cause, a strong need was felt for a larger affiliation of regional affiliation of these regional associations with each other for mutual benefit of all mediators across the country. The Roundtable, therefore, thought it fit to deliberate upon the idea of a National Federation of mediators that would be an umbrella body where affiliation by regional associations would be voluntary, yet open to all those who believed in a national affiliation.

Key issues discussed and suggestions made

- Attention was drawn to many states where mediation is still at a nascent stage and interest of mediators needs to be protected. An example was district Anantpur in Andhra Pradesh that had only three Mediators in the entire district and the last training took place in 2011. Further, that these three mediators go to every new District Judge to plead with him that matters be marked to mediation as envisaged in Section 89 of the CPC. That in

small towns matters are sent to Lok Adalats instead of mediation. That remuneration in mediation is still very low and at many places the payment is only made, if the matter is settled.

- It was suggested that like Advocates Act, a Mediators Act should be brought in to protect the interests of the mediators.
- The discussions on the role of Regional Associations in the country to promote and protect the interests of mediators and mediation revolved around the important need for all regions to have autonomy to work in their own ways, for all regions to strengthen each other and for all regions to benefit under the umbrella of the proposed National Federation that would synthesize the efforts of the regions, connect them with each other and strengthen the mediation movement in the Country. It was proposed that the National Federation should symbolize diverse cultures, ideas, problems, views, and perceptions.
- Important questions were asked by the panelists and the participants about whether the Regional Associations were ready at this stage to leave their individuality and share knowledge without reservations? Answers to this came in the form of reiteration by the panelists and the participants that Regions must respect each other's autonomy and individuality and yet be part of a national mediation movement.
- Participants strongly argued that since awareness about mediation amongst the common people is either limited or absent, it was important for the proposed National

Federation as well as the Regional Associations to systematically spread awareness both nationally and at the regional levels.

- It was proposed and agreed that it will be useful if all the regions would share their respective calendars of events so that an overlapping could be avoided and all regions could participate in each other's events and programs. It was also agreed that regular annual meetings of all the regions would enhance the participation of mediators across the country and add value to their work.

Recommendations

1. Today there is a growing need for cooperation and cohesion among the mediation fraternity to take forward the national mediation movement.
2. A National Federation that would provide an umbrella of support to promote and protect the interests of mediators, connect the regions with each other and synthesize their efforts while ensuring their autonomy was required.
3. The structure and functioning of the National Federation was a matter of further debate and discussion at the next Roundtable.

CREATING A NATIONAL WEBSITE

Communication in every sphere of professional life is of the essence today. Staying connected to other members of the fraternity as well as to all stakeholders holds the key to the success and growth of mediation. From sharing

information to connecting with mediators across the world, from learning new methods in training to learning about new mediation legislation, from writing about mediation issues to reading mediation news domestically and internationally, mediators in India need a website of their own. Establishing a website and running it is a very specialized task. The Roundtable found it appropriate to invite suggestions on the nature of the proposed national mediation Website and how it would function.

Key issues discussed and suggestions made

- A good beginning had been made by CAMP by extending the imediate.com global website to India in the form of imediateindia.com that would be exclusively for Indian stakeholders. There was a discount announced by CAMP at the Roundtable for all those who wished to subscribe and join.
- There was an important agreement that an India-centric website should be developed which can be used by mediators from all the regions to connect with each other, share important knowledge and developments on Mediation and use the website for spreading awareness and connecting with the general public. It was also discussed that both the internal audience and the external audience should be targeted.
- A template of a potential All India Mediators Association Website was shared with the members. The main page of website carried the main heads:

ALL INDIA MEDIATORS

EVENTS & WORKSHOPS

ASSOCIATION • FEEDBACK

SUGGESTIONS • LATEST NEWS

Each of the above-mentioned heads when clicked on will give further details under each head.

- In the context of data it was pointed out that collecting data is a responsible task as personal data shared in public using internet could be misused. Ethical questions were raised with reference to sharing of personal data collected with public at large or with a closed group. Confidentiality clauses in this regard were also deliberated upon.
- The website being an extremely specialized initiative, the house agreed that it is best handled by experts in the field and a website sub-committee be formed that would create the appropriate national website taking into account the special requirements of a mediation website, possible content and financial aspects of membership.

Recommendations

1. A national mediation website is important for targeting both the internal and external audience. Mediators from all regions need to connect with each other, share knowledge, experience and developments in the subject. There is also need to connect the general public and end users of mediation.
2. Since there is so little awareness of the concept and the process of mediation all

over the country, the website would serve as an important tool for the purpose.

3. It was important to deliberate upon privacy issues and confidentiality clauses while planning the national website.
4. Since establishing a website requires specialized inputs, the website sub-committee would deliberate on its format and present its report at the next Roundtable.

OPERATIONALIZING THE SINGAPORE CONVENTION

India signed the historic United Nations Convention on International Settlement Agreements Resulting from Mediation, 2019 (known as the Singapore Convention) on 7th August, 2019. UNCITRAL (United Nations Commission on International Trade Law) had decided to concurrently prepare an amendment to the Model Law on International Commercial Conciliation to accommodate the different levels of experience with mediation in different jurisdictions and to provide States with consistent standards on the cross border enforcement of international settlement agreements resulting from mediation, without creating any expectation that interested States may adopt either instrument. This amendment did away with the concept of conciliation and gave birth to the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, 2018. It was a day mediators around the world had been waiting for. India's was the largest delegation at Singapore to witness the signing of the Singapore

Convention. While providing many answers to international commercial settlements resulting from mediation and consequent potential scope for mediation services, the Convention also raises legitimate questions and challenges. The Roundtable therefore found it appropriate to deliberate on the various nuances and consequences of the Singapore Convention.

Key issues discussed and suggestions made

- It was agreed that the Convention, once ratified, would give the same impetus to Mediation that the New York Convention brought to Arbitration.
- Signing of the Convention led to the Mahabalipuram retreat that was a monumental achievement in itself and was lauded by everyone.
- An important factor was pointed out with reference to many corporates finding it difficult to accept cross border mediation as a dispute resolution mechanism. The reason given by a participant was the problem of jurisdiction and where and how to implement it. It was appreciated that the signing of the Convention would change this perception of the corporates as well.
- It was lauded that the ease of doing business in India had improved and India has moved from rank 163 to 63. However, in spite of this fact the concern still remains that in terms of ease of dispute resolution and enforcement of contracts, India lags far behind. This is where the Singapore Convention assumes importance and provides the answers.

- It was agreed that the Convention has the limitation of only covering commercial disputes relating to cross border mediation.
- It was agreed that both the Singapore Convention, 2019 and UNCITRAL Model Law, 2018 has further limitation that they specifically exclude court - annexed mediation and disputes arising from transactions engaged in by one of the parties (consumer) for personal, family, or household purposes or disputes relating to family, inheritance or employment law.
- Mediators dealing with cross border matrimonial and family disputes through video conferencing on a daily basis were disappointed by the specific exclusion of matrimonial matters in the Singapore Convention but understood that there were valid arguments opposing it. The said matters were excluded due to the fact that these matters have country specific laws and matters of public policy and hence kept out of the Singapore Convention and the UNCITRAL Model Law.
- Queries were raised why 'competent authority' was not defined in the Convention', inspite of the fact that there were elaborate grounds laid down in Article 5 of the Singapore Convention for the competent authority to refuse to grant relief. On the other hand, arguments were made in favour of the non-definition because concerned States would have the flexibility to appoint their respective 'competent authority'.
- Panelist and participants emphasized the need for a procedure to be provided for enforcement of Settlement Agreements resulting from private mediation and pre-litigation mediation. The inappropriateness of the Central Government authorizing the Authorities constituted under the Legal Services Authorities Act, 1987 for the purposes of pre-institution mediation was critically discussed.
- In view of the above discussion it was pointed out that inspite of India having signed the Singapore Convention in the first instance, enforcement of a Cross Border Mediated Settlement Agreement will still be a challenge.
- With reference to the promotions of the reforms in mediation domestically and formulating the next steps in this regard, the following were emphasized as follows:
 1. Policies, rules and regulations need to be framed to promote mediation.
 2. Training of lawyers for mediation advocacy is crucial.
 3. The Singapore Convention will have to be recognized through a statutory body in India as soon as possible.
 4. Effective use of the media is important for awareness about the Convention.
- Participants strongly felt that in India our competence is very essential for the business to stay with us. And that the quality of Mediators is going to play an important role in this era of high specialization.
- Important issues were raised about it being very difficult for India to follow the provisions of the Convention verbatim in

spite of having been a signatory. That India would have to devise its own methods to operationalize the Convention.

- A question was raised whether it is right to raise doubts and discuss the problems of private mediation without bringing on board all the stakeholders of private mediation at this stage.

Recommendations

1. The Singapore Convention needs to be ratified by India.
2. The Singapore Convention will need to be statutorily recognized in India as soon as possible.
3. Since it would be very difficult for India to follow the provisions of the Convention verbatim and enforcement of a cross border mediated settlement agreement will still be a challenge, India would have to devise its own methods to operationalize the Convention. Deliberations on how to do this must continue.
4. Post the Convention, with cross border commercial mediation disputes opening up mediation practice, it becomes even more important to have the highest standards of mediation services and credibility of mediators. Mediators and mediation organisations must cooperate and collaborate in ensuring this.
5. Post the Convention, training of lawyers for mediation advocacy becomes crucial as counsels in commercial cross border disputes will need to represent their clients before international mediators.

ANOMALIES IN TWO ARBITRATION LEGISLATIONS

Two recent enactments (the 2019 amendment to the Arbitration and Conciliation Act 1996 and the New Delhi International Arbitration Centre Act 2019) have been of great concern to the mediation movement. Both deal with Arbitration yet between them, both have more or less usurped the mediation space and that to without providing for the process, the qualification of mediators, the effect and the enforceability of mediated settlement agreements. This has been worrying mediators across the country. Not only are these legislations illustrative of bad legislative drafting and lack of comprehensive knowledge of different and distinct modes of Alternative Dispute resolution (ADR) but more seriously, have run roughshod over the whole concept and process of mediation with no respect for its sanctity. The Roundtable therefore, found the occasion to deliberate upon the anomalies in both legislations and try to find solutions.

Key issues discussed and suggestions made

- The following is just one example of anomalies like under Section 43D (1) of the Arbitration and Conciliation Act, 1996 (as amended in 2019) : Section 43 D (1) enumerates the duties and functions of the proposed Arbitration Council of India and provides:

“It shall be the duty of the Council to take all such measures as may be necessary to promote and encourage arbitration, mediation, conciliation or other alternative dispute resolution mechanism.....”.

While Mediation has been included in Section 43D, the act however provides only for arbitration and is completely silent on mediation and / or its procedure. The Roundtable discussed that 'Mediation' and 'Conciliation' cannot be part of Arbitration. The definition of 'Arbitration' therefore needs to change. The Roundtable also argued that in no manner can this provision be interpreted as a provision for Mediation-Arbitration (Med-Arb) or Arbitration-Mediation (Arb-Med).

- The following is just one example of anomalies under the New Delhi International Arbitration Centre Act, 2019: Section 14 enumerates the objects of the New Delhi International Arbitration Centre as follows: *“(b) to promote research and study, providing teaching and training, and organising conferences and seminars in arbitration, conciliation, mediation and other alternative dispute resolution matters; (c) to provide facilities and administrative assistance for conciliation, mediation and arbitral proceedings; (d) to maintain panels of accredited arbitrators, conciliators and mediators both at national and international level or specialists such as surveyors and investigators”* Section 15 of the New Delhi International Arbitration Centre Act, enumerating the functions of the Centre, states that without prejudice to the provisions contained in Section 14, the Centre shall strive: *(e) to promote studies in the field of alternative dispute resolution and related matters, and to promote reforms in the system of settlement of disputes; (f) to impart training in alternative*

dispute resolution and related matters to those who are handling arbitration, conciliation and mediation;

- It was noted that The New Delhi International Arbitration Centre Act, 2019 has been challenged by the ICADR Society whose undertaking has been taken over / nationalized by the said Act and the same is pending in the Delhi High Court.

Recommendations

1. To examine inconsistencies between all existing laws dealing with mediation (enactments provided by *Maadhyam* in pen drive at the Delhi Roundtable) including the Rules framed under Section 89 CPC by the High Courts in exercise of their respective legislative jurisdictions to ensure uniformity and take appropriate steps to file a comprehensive writ petitions.
2. To file writ petitions in respective High Courts in order to remove inconsistencies, if any, within the Central legislations and legislation/amendments by various States.
3. To also examine whether Section 12A of the Commercial Courts Act empowering the National Legal Service Authority to refer matters to mediation and other statutes requiring government nominated mediators, is an impediment to the promotion of mediation.

CONCLUSION

In the closing remarks, the Senior Vice-President, *Maadhyam* congratulated all participants of the Roundtable for doing what no other professional group does easily -

exposing itself to peer review. Not only had the participants done that but done it in a very congenial environment. They had really illustrated what the theme of the Roundtable – “Weaving a Change” meant.

The consensus of the house on areas requiring imminent action was then summarized as follows:

1. There was a clear consensus on the formation of both a National Accreditation Body and a National Federation. It was further agreed that steps be taken to formalize and institutionalize both after consensus on their structure and functioning. This could be done at the next national meeting.
2. It was agreed that steps would be taken to make a comprehensive challenge to the vires of the amended Arbitration and Conciliation Act 1996 and the New Delhi International Arbitration Centre Act 2019 or any other enactment to remove inconsistencies therein. Teams from the all regions would decide whether to join the pending petition or to file fresh challenges in the respective regional jurisdictions.
3. It was agreed that Sub-Committees be formed and put on the WhatsApp group so participants could volunteer for the sub-committee they wanted to be a part of and have their respective reports ready by the next national meeting.
4. It was agreed that as a priority for the next national meeting, sub-committees would be formed on (i) The Draft Mediation Bill (ii) The National Federation Institution and the

National Accreditation and (iii) The National Website.

5. It was agreed that to ensure continuity and furtherance of the decisions taken at the Delhi Roundtable, the next Roundtable be held at Hyderabad. In case that was not possible Chandigarh was offered as an alternative venue.
6. The members were informed about the ADR Festival planned by Maadhyam from 15th - 22nd March 2020 at Delhi.

A Vote of Thanks for the invaluable contribution of all the participants from all regions was proposed by the President of *Maadhyam*.

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