A Renewed Interest In Mediation In India

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Mediation has found increased statutory recognition in India and the legislature has recently introduced it in the Companies Act 2013, the Insolvency and Bankruptcy Code 2016, as well as the Commercial Courts Act 2015, among others. Two separate updates from the Supreme Court of India this month have engaged the Indian community in the discussion of giving mediation a more expansive role in the country.

Update I: Proposal for an Indian Mediation Act

On March 5, 2019, a two-judge bench of the Supreme Court asked the government to examine the feasibility of setting up a Motor Accident Mediation Authority in every district so that road accident claims can be settled in a speedy and amicable manner.[fn]M.R. Krishna Murthi v. The New India Assurance Co. Ltd., Civil Appeal No. 2476-2477 of 2019, order dated 5 March 2019.[/fn] Two factors specific to India make this ruling very significant. One, there are a large number of accidents in India – in 2017, about 147,000 people died in road deaths, a number which surpasses the entire population of Shillong, the capital of an Indian state. Two, these large number of accidents have given rise to a phenomenal jump in claim cases, adding to the already piling litigation backlog that India is infamous for. It is not too difficult to understand then that mediation is needed in India for quick resolution of these motor claims. What is most notable about this ruling, however, is that the Supreme Court held that the need for more mediation efforts in the country is *generally* felt, and is not limited to motor vehicle claims alone. The bench noted that "the way [the] mediation movement is catching up in this country, there is a dire need to enact [an] Indian Mediation Act as well." Acting upon this note, it held that "we impress upon the government to also consider the feasibility of enacting [an] Indian Mediation Act to take care of various aspects of mediation in general."

An 'Indian Mediation Act' as suggested by the Supreme Court is indeed a promising proposal for India. Even though various statutes have given the parties the autonomy to get their disputes resolved via mediation and there exist court-referred as well as private means of engaging in mediation, there is a scarcity of clear procedural guidance on this aspect. The Mediation and Conciliation Rules, 2004 are inadequately framed and do not cover the entire spectrum of the mediation process. Moreover, these rules have been lazily drafted as they seem to be more or less lifted from the Arbitration and Conciliation Act, 1996. This lends a great lack of confidence and uncertainty to the mediation process in India. A comprehensive statute will certainly clear up the muddle.

Update II: Mediation becomes a topic of household discussion in India

The second update is from March 8, 2019. A five judge "constitutional" bench of the Supreme Court of India ordered a court-monitored mediation in the *Ayodhya* dispute.[fn]M. Siddiq (D) v. Mahant Suresh Das, Civil Appeal No. 10866-10867 of 2010, order dated 8 March 2019.[/fn] The *Ayodhya* dispute is of immense political and religious sensitivity in India. It started centuries ago in the year 1528 when a mosque was built under Mughal emperor Babur's regime on the site which Hindus believe marks the spot where Lord Ram, a highly revered Hindu deity, was born. Thus, the Hindus want a temple to be built there instead of the mosque. The first recorded incidents of religious violence at the site emerged as long back as in the year 1853. Members of both religious groups filed civil suits in the Indian courts in 1949. Worse, in 1992, the mosque was torn down by some Hindu groups prompting nationwide rioting between Hindus and Muslims in which over 2,000 people died. Since then, efforts by courts of all levels in the country, commissions of inquiry, renowned archaeologists as well as politicians have failed to resolve the dispute. It is then significant that even in the face of slim chances of consensus between the parties, the Apex Court has relied on mediation as a last ditch attempt to bringing peace. In its order, the Supreme Court has stressed on the necessity of confidentiality of the mediation proceedings. It has also given liberty to the chairman of the three-member panel to bar the press from reporting the proceedings. More pertinently, it has asked the panel to submit a report of the progress of the mediation process within four weeks from its commencement to the Supreme Court.

Conclusion

The reference of the highly sensitive *Ayodhya* dispute to mediation has brought the mediation process to the attention of the general Indian citizen. It cannot be denied that any outcome of this process will play a heavy role in influencing the opinion of Indian citizens about the mediation process. Lack of public awareness about ADR methods is the key reason why the Indian citizen is more conditioned to signing up for the adversarial process by default. In the case of arbitration, this changed when the Arbitration and Conciliation Act, 1996 was enacted. Today, there is a much better arbitration culture in the country than 1996 thanks to the statute. A mediation-specific statute may similarly make the country more open to mediating disputes.

India currently faces a lack of not merely a dedicated mediation statute, but also mediation focussed institutions with trained professionals as well as public awareness on the meaning and significance of the mediation process. It is hoped that the push from the Supreme Court in the first update, and the rise in public awareness about mediation due to the second update will help remedy this situation.