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IN CONVERSATION WITH MS. LAILA OLLAPALLY

Editor's Note: Ms. Laila Ollapally is the founder of CAMP Arbitration and Mediation Practice Pvt. Ltd. ["**CAMP**"], a leading private mediation organization based in Bangalore, India, established in 2015 to advocate for mediation as an alternative method for dispute resolution. CAMP is recognized as the sole Qualifying Assessment Program ["**QAP**"] for the International Mediation Institute in India. She has been a lawyer for more than 3 decades, practicing in the Supreme Court of India, as well as the High Court and Consumer Courts in Karnataka. Additionally, Ms. Ollapally is an IMI-certified mediator and serves on the mediation panels at the Singapore International Mediation Centre ["**SIMC**"] and the American Arbitration Association's International Centre for Dispute Resolution ["**AAA-ICDR**"]. She has also been appointed to the SIMC User's Council and sits on the advisory board of The Foundation for Sustainable Rule of Law Initiatives ["**FSRI**"], California.

Editorial Board ["EB"]: You have mediated hundreds of complex civil and commercial disputes. Can you share any recent trends or changes you have observed in the types of disputes being mediated in India? How has the nature of these disputes evolved over the years?

Laila Ollapally ["LO"]: I have had the privilege of being the founding coordinator of the Court-annexed mediation program in Karnataka for almost ten years. I have also been in private mediation for the last decade. So, I can give you my observations from both perspectives.

At the court-annexed mediation program, many cases that came in were matrimonial in nature. When I think about the reason for this, I think that a huge number of these cases come because the judges are familiar with the concept of 'conciliation' through the Family Courts Act, 1984. Conciliation had limited impact in family courts, but when mediation was introduced, judges were more willing to refer the cases for mediation instead of the required conciliation. As they observed positive outcomes, they began referring more cases, leading to matrimonial cases dominating court-annexed mediation programs.

As the Coordinator of the Bangalore Mediation Centre ["**BMC**"], I often noticed that when the

Chief Justice and the Governing Board of the BMC encourages the referring Judges, diverse kinds of cases would come in for mediation. When this spirit abates, matrimonial cases dominate. So, a lot depends on the enthusiasm of the Judges to refer cases for mediation.

When we started CAMP in 2015, the larger public did not know anything about mediation. We once had a situation when somebody came into our office with a yoga mat, asking for a yoga session. They did not know the difference between "mediation" and "meditation". Things have changed since then. We have mediated cases under diverse subject heads including commercial, Intellectual Property ["**IP**"] related cases, workplace disputes, tenancy related disputes, etc.

I have noticed an interesting trend. When mediation-friendly judges are handling Section 11 applications under the Arbitration and Conciliation Act of 1996, they try to persuade parties to try mediation before going in for arbitration. Most often these references are to the court annexed programs. Sometimes they refer the mediation to a mediator who mediates outside the Court program. All such cases that came to CAMP have been resolved successfully. This clearly indicates institutional mediation would be a good option for commercial disputes and this could be a trend in the future.

Another interesting development I notice, and which I cannot deem a trend as yet, is the National Company Law Tribunal recently referred a case for 'private mediation'. This gave the parties an opportunity to choose their private mediation institution, and the mediation came to CAMP.

These are beginnings of the trend for institutionalized mediation, as envisaged in the Mediation Act, 2023.

EB: Since mediation spans across various areas, including matrimonial, commercial, and family disputes, could you tell us how you tailor your approach to mediate disputes across these diverse areas so that parties can reach an effective settlement?

LO: I think we in India have an advantage. Our mediators are mostly generalists. In court-annexed programs, mediators are often allotted cases where they may not be familiar with the domain. The mediator relies on their process expertise. A process expert knows how to use the domain experts available in the room. The parties and lawyers are invariably the domain experts. It further helps that these domain experts are the decision makers. Further mediation allows outside experts to be brought in, if required. A skilled mediator knows how to bring information onto the table so that parties can take informed decisions.

EB: Given your experience with international mediation institutions like the Singapore

International Mediation Centre and the American Arbitration Association, how do you compare the mediation practices in India with those in other countries? Is there a particular practice from a specific jurisdiction that you find especially interesting or unique, that we could also imbibe in our system?

LO: I had the privilege to co-mediate a case at CAMP with Judge Danny (Daniel) Weinstein, who is one of the founders of JAMS, USA, which is the biggest private mediation services provider in the world. After observing the process at CAMP, he clearly approved of the process we followed. I am confident that we in India could build the best practices for mediation, on par with any other in the world, with due attention and commitment to follow best practices.

I have the confidence that a skilled mediator in India is as good as any other in any part of the world. Our efforts should be to nurture skills and best practices in the profession.

To answer the second part of your question, we could study the community mediation practice in Bhutan. Mediation has been prevalent in Bhutan from the 7th century. A senior member of the Judiciary (Judge Pema Needup from Bhutan), was a Weinstein Fellow with JAMS Foundation the same time I was doing my fellowship in 2011. After studying the modern concepts of mediation during the Fellowship, he went back to Bhutan and committed himself to work with the traditional mediation to strengthen the concepts like confidentiality, voluntariness and self-determination. He recently told me that this adaptation has made a huge difference, and mediation has become even more popular in Bhutan. Mediation has become the first preference of the people for the resolution of their disputes. A large majority of their cases are now being resolved through mediation.

EB: You co-founded the CAMP mediation practice. Could you share the inspiration behind this initiative, how the idea originated, and your journey so far? How has the practice evolved since its inception, and what are your future goals for CAMP?

LO: I was one of the few lawyers who experienced a difficult litigation in my personal life. Many years ago, a case was filed against my husband's business. At that time, my father was a sitting Judge of the Supreme Court and when I shared with him my ordeal, the first thing he said was "*please resolve this dispute outside the courts."* I was almost angry with him for his suggestion. My husband continued the litigation for four more years and I witnessed the stress that litigation involves. After four years, we resolved the dispute outside the courts. That was my first attempt at mediation, although at that time I was not a trained mediator. I think it is this experience that

planted in me a deep desire for amicable dispute resolution.

During my Fellowship with the JAMS Foundation, I observed mediations of diverse nature; bankruptcy dispute, employment dispute, IP dispute involving four large tech companies, a maritime dispute, and a dispute between a police officer and the public. Many of these disputes were multimillion dollar disputes. I realized how immensely powerful this process was to resolve a wide variety of disputes. That inspired me to contemplate private mediation. I realized that to optimize the potential of mediation, it must become a profession, a career choice and cannot remain a pro-bono service.

CAMP was set up in 2015 and since then we have mediated a large variety of disputes at CAMP, including bankruptcy, IP, employment disputes and others.

More and more people are opting to be trained in mediation. At CAMP, we see a growing interest from different sectors for mediation training. Lawyers, Human Resources ["**HR**"] professionals, Counselors, Leadership coaches, Chartered Accountants, Medical professionals, Actors and others.

My dream for CAMP is that it becomes a space where several mediators with a passion for peace can practice their mediation and in CAMP the community will find excellent mediation services.

EB: Based on your professional experiences, you have discussed IP and mediation. In fact, there was a recent article of yours in Bar & Bench on the intersection of IPR with mediation. Going a bit technical, with respect to that, section 12A of the mandates mediation between the parties before seeking interim relief. Have you come across any misuse of the section by the parties in order to avoid mandatory mediation? What could possibly be the viable tests in assessing the applications for interim injunctions to determine whether mandatory mediation is necessary?

LO: The Supreme Court, in the 2023 case of *Yamini Manohar v. TKD Keerthi* ["**Yamini Manohar**"], established that it is not the plaintiff's prerogative to decide whether interim relief should be granted. The commercial court Judges must apply their mind to assess whether the balance of convenience and potential harm justify departing from mandatory mediation in favor of interim relief. Only upon such an evaluation can parties be granted interim relief instead of proceeding with mandatory mediation.

Although I have been a lawyer for several decades, since 2015, I am exclusively in the practice of mediation. I understand from some others that often there is a reluctance by the parties and lawyers

to go in for mediation in commercial disputes and instead they seek interim relief under section 12A.

EB: Considering the recent letter of the Arbitration Bar of India urging the government to withdraw its "protectionist" guidelines regarding government procurement contracts, how far do you think this saga of *arbitration v. mediation* will stretch? According to you, which method is the most effective in dealing with government procurement contracts?

LO: We cannot pitch two different dispute mechanisms against each other. These are all tools required for dispute resolution. Just as scalpel and scissors are required in the toolkit of a surgeon and it must be used appropriately, both these dispute resolution mechanisms are required in the tool kit of a dispute resolver and must be used appropriately.

Government officers are reluctant to use mediation to resolve a dispute as they apprehend being accused of favoritism and bias. It is safer for these officers to rely on arbitration where the arbitrator is the decision maker. These guidelines have provided for the protection of government officers from such consequences while they negotiate in mediation.

EB: What are your views on the current level of public awareness and acceptance of mediation as a dispute resolution mechanism in India? What strategies do you believe are essential to enhance public trust and utilisation of mediation for dispute resolution?

LO: There is growing awareness of mediation in larger cities. All high courts have set up mediation programs. However, mediation requires a change in mindset. The intuitive response to conflict is adversarial. Historically, for many years in India, we relied on the adversarial approach for dispute resolution. For mediation to become the norm, we need to work more towards changing mind sets.

In my view we need to reimagine our court-annexed mediation programs. It is recognized all over the world that when mediation is new in a society, people are reluctant to use it. An aspiring mediator will find it extremely difficult to get a case to mediate. However, in court programs, there are many more cases. The cases are allotted to mediators. This will give an aspiring mediator the opportunity to mediate, develop skills, gain experience and reputation.

More and more aspiring mediators need to be given opportunities to practice in the court programs irrespective of the current requirement of 15 years of court practice. This opportunity should be given only for a limited period. After completing that period in the court program, they need to

move on and make space for new mediators to come in and hone their skills. This may motivate the mediator, while in the program, to focus on developing skills to prepare himself for private practice later and at the same time enhance the quality of mediation in the court programs. A mediator aspiring to do private practice will have to prepare herself for the stringent requirements of market selection.

EB: Looking ahead, what are your aspirations for the future of mediation in India? What key initiatives or reforms do you believe are necessary to strengthen the mediation landscape in the country?

LO: Today, the legislation exists, and it has been drafted with a lot of attention. We at CAMP worked on its first draft along with several expert mediators from the mediation community, Judges having experience in mediation, and other international mediators. Several other consultations were conducted throughout the country by different groups of mediators. The Supreme Court set up a committee to make recommendations and the ministry set up a committee to work on the legislation. Many progressive elements are present in the legislation. However, all this fructifies when we build mediation capacity i.e. mediators with skills. Mediation is based on self-determination. The parties have to come to their own realizations and only a mediator with superior skills can achieve that. Mediators who can bring in reflective practices and become self-aware will be able to help build mediator capacity and improve the quality of mediation in India.

EB: Drawing from your extensive experience in the field, what advice would you offer to young mediators regarding the essential qualities and skills that contribute to becoming an effective mediator?

LO: Mediators need to have a thirst for dispute resolution and peace building. Mediators need listening skills, empathetic understanding and an ability to connect with human beings. It is crucial that mediators have an ability to talk straight on critical issues and have the courage to highlight risks in a non-threatening and humble way. Robust preparation, i.e. knowledge of the facts and the law, is very important, and to add to these, a curious and creative mind makes an effective mediator.