



INDIA
ADR WEEK
— 2021 —

Session hosted by:
**Cyril Amarchand Mangaldas &
Pepperdine University**

Session theme:
**Mediation in 2021: An International
Perspective**

Transcription of Proceedings



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Ms. Sanjana Promod: Hello everyone. Welcome to Cyril Amarchand Mangaldas and Pepperdine university's joint event. My name is Sanjana Promod and I work with DLA Piper. For today's webinar, we have a very exciting and diverse panel lined up for you, who will share the international perspectives on mediation in 2021. Now going around the virtual table for a quick introduction of our speakers. First, we have Justice A.K. Sikri, who is an eminent jurist and a former judge of the Supreme Court of India. He has authored over 4,700 reported judgments, announced it as a judge of the Singapore International Commercial Court. Next, we have Hon. Alexander Williams - III, previously a judge of the Los Angeles Superior Court. Hon Williams brings over 24 years of judicial experience and has served as an adjunct faculty for dispute resolution at the Pepperdine University for 15 years. Then we have Mr. Sriram Panchu, who is a senior advocate at the High Court of Madras and an internationally recognized mediator. Over the last 20 years, Mr. Panchu has been instrumental in bringing mediation into India's dispute resolution system. He is the director of the International Mediation Institute and is on the panel of several other institutions. Following this, we have professor Joel Lee, is an associate partner with the CM Partners and principal mediator with the training director of the Singapore Mediation Centre. Professor Joel is presently the founding chair of the board of the Singapore International Mediation Institute. Next up we have Dr. Sukhsimranjit Singh,

who is the managing director of the Straus Institute for Dispute Resolution at Pepperdine University, where he also serves as an assistant professor and director of LLM programs. As a successful international mediator Dr. Singh has resolved disputes across the US and beyond. Finally, we have Ms. Shaneen Parikh, who is a dispute resolution partner at Cyril Amarchand's Mumbai office. She has represented clients in domestic and international arbitration under various arbitral rules, and also specializes in commercial litigation. I'd also like to invite the audience to post their questions in the Q&A section. This session will be transcribed. Shaneen, I'll leave it to you to take it from here. Thank you.

Ms. Shaneen Parikh: Thank you. I'm actually delighted to be the moderator for today's panel session as a part of MCIA's ADR Week in partnership with Straus Institute Pepperdine University. The topic for discussion today is Mediation in 2021. And we cover an international perspective. As you can see from the absolutely stellar speakers that we have on the panel. As a lawyer, more and more over the years, I have found that if there is a possibility of settlement clients will take it rather than expend energy and resources in a litigation or arbitration that could otherwise be avoided. As always, there are horses for courses and it is not every dispute that will achieve a consensual outcome without going through an adversarial process. But certainly, it is worthwhile to make a

first attempt. Often owing to heightened emotions and egos that sometimes abound in a dispute parties may not be able to sit across the table and dispassionately discuss their issues. This is exactly where formal mediation or conciliation plays a big part or respected third party can often lead the litigants towards a compromise. I say so because human history is rich with the willing adoption of non-binding forms of ADR to resolve all kinds of disputes. Whether in the mythical times of King Solomon or in ancient India when an informal counsel of village elders mediated a dispute possibly under a large Banyan tree. However, over the past century with increased commercialization and globalization, the culture of dispute resolution has become not only more formal but also contentious. And this may be expected when the stakes run into millions. Unfortunately, this is much too often fueled by pride rather than practical or commercial prudence. And this is where I see mediation playing a starring role. Particularly when we find ourselves today in the middle of a global recession, when there's neither the mental nor the financial appetite to go through a long drawn out battle. In our panel I hope we will shed some light on the effectiveness of mediation in different jurisdictions and key to that is how to enforce settlement agreements. We will weigh into the Singapore Convention, which is a game changer that has recently come into force. I end my introduction by borrowing a quote from Joseph Greenbaum, a noted American mediation professional and

engineer, who said 'an ounce of mediation is worth a pound of arbitration and a ton of litigation.' I hope that by the end of the session you agree with that. Now coming to the questions to my esteemed panelists. When one speaks of ADR, Alternate Dispute Resolution, it is often a reference to arbitration, which is an adversarial approach without of course the formality of court procedure. The concept of mediation is sometimes relegated to a pre-contractual step, one to be simply tick marked so that parties can proceed to adjudication of their dispute. But is that still the case? Do our panelists think that in the world today things are changing? So I ask first to Justice Sikri, then to Judge Williams, and then to Professor Lee in your experience is mediation treated as a pre-step or is it becoming a standalone process? Justice Sikri, may I come to you first?

Justice AK Sikri: Thank you, Ms. Parikh. And my good morning to all Indian listeners and who are at other places, it may be good afternoon or good evening. You rightly in your introduction mentioned about the advantages or rather the spirit of mediation. If I may add to that before coming specifically to the question because that is the prelude to what I want to say. That in many circumstances which we have seen and witnessed and all the panelists they know fully well all those who have gone through the process of mediation they also know it, that in many circumstances, mediation becomes a

better form of access to justice. It comes out with the solutions which we cannot even think in adversarial system whether it is court litigation or arbitration. There are so many other choices possible. And best thing is that it is the party autonomy and the parties themselves, the self-determination, they think what is good for them. That is why it is called win-win situation. It is what is known as libertarian approach. And I remember Mr. Sukhsimranjit Singh is here. He has written in one of his articles on the culture and access to justice. How in different countries, different cultures are there. Western countries vis a vis the Eastern countries and how it may lead to access to justice in the context of mediation, we can't go more into that. But what I'm trying to emphasize is that, look when this is the spirit behind mediation, it is still treated as particularly in India, but we'll come to what is, what are the developments which are taking place. But it is still treated as pre step to the courts system or the arbitration that look okay before we go to the court, let us try it, if it happens. And that is also not in that form in which it is practiced in other countries. Actually, what happens and we, you have used the expression pre step, but it may be a pre-step or post step, but as an adjunct to the other system. Like under Section 89 today, when the suit is already filed under Section 89 of the Code of Civil Procedure, court can refer. So, in a way, although litigation has started, it is a post step. But in

contradistinction, under the Commercial Courts Act, under certain circumstances, you have to go to the mediation first, as a compulsory process before you come to the Court. So, it becomes a pre-step in that case. Having said that, and it is how it has begun in India. There is no, I mean quarrel about it and qualms about it. But what I'm saying is that people are realizing, the stakeholders are realizing the indispensable nature of mediation and the merit which is seen in the mediation process. As you also said that in Covid particularly when we don't have time also, we don't have money also. And, mediation is such a fast pace process which can be resorted to and the dispute can be resolved quickly. So therefore, it is, time has come when it becomes a stand-alone process in India as well, which has happened in other countries. If I mean, US is one example. It is happening in many European countries. It is happening now in Singapore also. You see how it has developed in other countries. If I give you the example of like a community mediation, which is taking place in other countries and private mediation, which we call. So, where the two parties have a dispute they won't think of going to court, but there are professional mediators, private mediators are there. So, like for providing those services institutions maybe there. They will say, let us go to that particular private mediator or that institution, as we go to for arbitration, et cetera, for these institutions and try to get the matter resolved there. So, this is a private mediation,

which we say is a peace-making in the profession and the community mediation, which I would say, about which we are also talking about a lot and why it should not be there in that communities, et cetera. And, it is the recognition of both individual human dignity and social dimension of human existence. So, when that is the purpose behind it, I think we are gearing towards, In India also, the process has started. It is slow but it has started where it may become a stand-alone process over a period of time.

Ms. Shaneen Parikh: Thank you, Justice Sikri. I come to Judge Williams, Judge, Justice Sikri alluded to Section 89. That is Section 89 of our Civil Procedure Code under which the court may refer parties to a mediation or settlement, where it believes that elements exist. What, in your experience, are you now finding that this is common, that do US courts refer parties? Is it common to have a standalone mediation process? We'd love to hear your experience?

Hon. Alexander Williams - III: Well, thank you very much, Shaneen and I really appreciate the Justice's remarks because he pointed how mediation emerges from the organic nature of litigation and has a role there. I think I'd like to look at the elephant from the other end, for starters. In my life and in my professional life now, mediation is very much a standalone prospect. It is a function to which people have

been sent with one goal in mind and that is to settle it. Don't go back to that. Don't come back to my courtroom without this case settled. So that there is that attitude about it. However, failing resolution, the mediation then becomes perhaps a first step or pre-step but it has many, many values that can clarify the issues, narrow the gaps, civilize the dialogue, foster optimism, foster teamwork have a lot of values for the purposes of advancing the ball. So, it does, it can, if it fails to be successful in its mission as a single one-stop event or process, then it still offers great value to the participants. Because of its success, mediation as is actually being baked into contracts now, baked into court rules as the Justice was pointing out and as you just pointed out. As, and therefore, it now has a pre-step kind of look to it because everybody likes it. Now, one of the problems I have to cite to you and I was going to mention this in the second portion that I'll be speaking with you today is that, in the United States, we do not have one legal system. We have 51. Plus, the territories I mean. And it, the answer is at least we joke in this country, the answer to most legal questions is, it depends. Well, the answer to most questions about dispute resolution is, it depends. And, now you have Florida where mediation is very regulated and very lawyer centric. You have California where it's easier to be a cosmetologist. It's easier to be a mediator than it is to be a cosmetologist, because there's no exam, there's no requirement, there's no

license, there's no fee, there's no certificate, there's no nothing. And there's also no consumer protection. So that it varies. So, I think that it is both a standalone process and a preliminary process. That's part of the beauty of it, is the adaptability of the process. It brings out adaptability in judicial officials and lawyers and clients to get to their real needs as opposed to their procedural needs. I think I beat my time, but I'll be happy. I'll deal that. I may need it next.

Ms. Shaneen Parikh: Thank you. Thank you. I'll come to Professor Lee where Singapore, of course, has made huge strides, particularly with the SIMC and Arb-Med-Arb procedure, which I believe has also become extremely popular and successful. We'd love to hear your thoughts on this.

Prof. Joel Lee: Thank you, Shaneen. And firstly, thank you for inviting me. It's a little bit hard to follow two leading lights, such as Justice Sikri and Justice Williams. But I'll try. I think, we have made some headway and I think it's also actually with the cooperation of the rest of the world. Really. I think the world has generally been moving towards mediation as a legitimate form of dispute resolution. One of the things I would like to say is that I know we typically say, alternative dispute resolution. That's the original term

that has been used and applied to things like arbitration and mediation. I think the shift is beginning to happen into thinking about all the forms of dispute resolution as the appropriate form of dispute resolution. We can still use ADR. And, it's more than just a semantic switch, right? Because if we start thinking about what's appropriate, then we can really turn our minds to saying, hey! sometimes arbitration is appropriate depending on your needs, litigation maybe, and maybe mediation might be as well. So if we're beginning to shift people into thinking what is an appropriate form of dispute resolution then we can really turn our mind to the actual question that meets the needs of our clients, our own needs, right? So that, as a starting point, I think that's useful, to sort of put out. The second thing is as to whether it is a pre-step, or whether it is a standalone? To me, it is less important than actually parties and their counsel going in with the explicit interest of actually resolving amicably. I think that's the key thing. So, I know sometimes people refer to it as going into the mediation with good faith or lack of, at least lack of bad faith as the case may be depending on how you want to define that. But bottom line is parties and a counsel need to be open to the possibility of some kind of collaborative problem-solving resolution. Rather than, I think the intent of your initial question was, whether we just simply ticking the box. We've just done mediation and therefore it's okay now we can arbitrate all we can litigate,

right? I'm an optimistic person. I know that around the world, various statistics are that about 7 out of 10 disputes that go to mediation, if there is a genuine interest in resolving and actually get resolved, right, then there's some that don't, and that's fine. But not through lack of trying. That 7 out of 10, I am sure comprise of parties who go into that mediation, having already tried to solve the problem and probably sincerely believing that it cannot be resolved, right. Something happens in the hands of a trained mediator or a skilled mediator, like many of my panelists here, who can guide the parties to seeing things that they otherwise might not be able to see. And therefore, seeing a solution. All right. I think, I'm less concerned whether it's a pre-step or a standalone or it should be appropriate is this is my first point. My second point is that parties and counsel need to go into it with the right mindset. Going into a mediation with an arbitration or litigation mindset probably is not so helpful. It's a different way of thinking. I'll shut up now. If there's extra time I am exceeded to, I might need it. Thank you.

Ms. Shaneen Parikh: Thank you. Thank you. I will move on to my next question, which is to Mr. Panchu. How efficacious have you found mediation really in resolving disputes and from the Indian perspective particularly since we have the arbitration and conciliation rather than mediation act? How is the mediated settlement agreement enforced?

Mr. Sriram Panchu: If you'd asked me this question in the nineties, I would have said everybody thinks mediation is very efficacious because at that time people thought that mediation was meditation. Very quickly over the years we move fast, we've had legislation in 1996. We had a huge court set up, starting mediation in 2005 and building it up over the country, so that in every court system, now we have court annexed mediation. We have a few thousand mediators who mediate lacs of cases. We have driven mediation through the co-op setup, and that has given it a legitimacy and the backing of judges. Through that system commercial cases have been mediated, a good number of commercial cases in a vast number of areas, business, banking, corporate issues, construction, finance, intellectual property, infrastructure. So, these are now coming to mediation, both through the court system as well as in private mediation. Because now mediators, mediators who have built up expertise, who gained experience or the training programs. So, all of this adds to the efficacy of mediation. The fact that it can apply to range of disputes, which are big, which are small, disputes during court, pre court. So, the other important aspect of efficacious mediation is that you can combine mediation with arbitration, and combine them very effectively, again, pre arbitration, during arbitration. And I've come across instances where right at the fag end of the arbitration, people request a mediation. Because by that time they know where they're strong, where

they're weak, and they would like to see, if they can settle the matter. Once you actually get parties to, you know this, the business of finding solutions. As the judge said, it is solutions which matter to parties. And once they actually engage in that, once they look at their long-term interests. Once they look at, get a little more realistic about their cases, how strong the case is. And once again, realistic about their options for settlement, which is what a good mediator will do. Once you do these things, then I think parties see that possible settlements are worth much more, than going on to endless and open-ended cost of litigation. I find in India that two areas work very well, family, business disputes and many Indian companies are family owned. And I find that disputes within the family are particularly amenable to mediation and are best resolved by mediation because there is no other way really that you could treat that cocktail of personal and professional and business linkages. The other interestingly is cross border. And the willingness of Indian parties and foreign parties to sit down together to resolve an issue is again something, I think, which is noteworthy. These are two good areas for mediation. I would say general efficaciousness depends on some significant players. Be, the number of professional quality mediators. I think general counsel play a very important role. Because general counsel is positioned at the intersection of the company's legal requirements, the company's needs and the law's demands. So,

he can bring to the table that crucial bit of detachment required to take an overall view of the mediation. So, whereas, in a litigation general counsels relegated more to the background. I would say, in mediation of general counsel is very important. The other important player, I think there is a law firm, especially in commercial mediations. And there I think, law firms would do well to set up a division with expertise, which can advise, which can be the advocates role in the mediation, and which can monitor cases right in the beginning for an early evaluation for which is the best remedy. Too often I find cases going to litigation because many other remedies are not thought of. Let me quickly come to four factors which I think will drive mediation and then I will come to enforcement. I think the concept of pre institution mediation is gaining ground in India. Starting from 2018 for commercial cases, pre institution mediation the concept that you must go to mediation before going to court. While it hasn't taken off, exactly the manner we desire, but the concept is taking root and that will drive mediation. We have a forthcoming legislation, which is going to be comprehensive, which would cover court annexed, private mediation, cross border, provide for institutions. That can be a big factor. Another is online. Online will I think greatly will have to be efficacy in mediation. That's one thing which, COVID has done amongst all the other regretful things. One positive thing is to show the efficacy of online mediation.

So, I think a lot of online mediation is now going to be, to because you can synchronize schedules, you can synchronize dates, you do it much faster. And the Singapore Convention about which we'll talk later. These are the reasons why I think mediation has now come to stay. Why it is efficacious. In the area of enforcement, I would say two things. One, it was, actually very few mediations actually go to court for enforcement. Most cases parties just act on their agreement because when you reach an agreement, which is in your best interest you implement it. So very few cases actually need implementation. In India, we had a bit of a, you see, we use the term mediation for court annexed mediation. In court annexed mediation you get a mediation agreement and the court will give you a decree. We use the term conciliation for, I will, what I would say is really private mediation. Under the Arbitration and Conciliation Act, a conciliation agreement has a status of an arbitral award by consent. The arbitral award by consent is enforcement by court. So, we followed these dual models, of mediation for the court system and mediation outside the court system. I think that is going to be resolved now in this enactment, taking a cue from the Singapore Convention and through UNCITRAL, where I think, we are going to use just the word mediation and that should be ironed out.

Ms. Shaneen Parikh: Thank you, Mr. Panchu. Dr. Singh your thoughts and the international perspective. And also, just one

very quick question. What happens to a mediated agreement that has taken place outside the auspices or outside the supervision of the court? In view of the fact that our act uses the word conciliation and Mr. Panchu touched upon that. How is that enforceable?

Dr. Sukhsimranjit Singh: Thank you for having me here. Justice Sikri and Judge Williams so wonderful to hear your comments. Professor Lee and Mr. Sriram Panchu such a nice auspicious occasion to be in your company. My comments first I will gear towards just briefly on what is mediation, how mediation is helping us. Since I've had the pleasure or luxury of being in India and now based in US, but also travelled around the world. Let me give you a global perspective, but before I go there, let me quickly say something about how mediation is powerful tool. We have heard Justice Sikri mentioned access to justice. We've heard Mr. Williams mentioned goal is of settlement. Mr. Lee mentioned this appropriate dispute resolution process as not alternative. And Mr. Panchu mentions the efficacy of mediation, especially as it combines with arbitration. I want to talk about it very simply as three concepts. I think mediation is powerful. It is effective and it is long lasting. We teach at the Straus Institute mediation courses to hundreds of students every year, to dozens of judges and attorneys every year in our advanced training. And this is what we talk about. We say mediation is about economy

of scale because you can impact many lives, but it's also about being economical. And both are important. We think mediation is life-changing. It is a process that is both internal and external. This thing hasn't been covered yet. So, allow me to say a word about it. It is internal process because it has the power to reform you as an individual. So don't pick up mediation just because you want to do a high-end commercial case or help neighbour to neighbour or help a shopkeeper resolve a conflict with another shopkeeper. Also pick it up because it has a tendency and the power to change you to become a better human. My colleagues will I'm sure agree or thumb it on that. Outside of it, before outside, I think part of what we have to remember is it is impartiality, the power of being present, the power of teaching to listen to others and the power of being creative, standing on your feet and being creative. Which other process asks you to be excelling in all those four categories? So externally, if you go external, that is internal changing you, right. Externally. I think mediation is wonderful because it helps parties to reach a satisfactory outcome, which is different than litigation. We can win a litigation. You may not win in mediation but you can reach a satisfactory outcome, a long lasting one. You can preserve a relationship. It helps parties to participate, right. Mr. Sikri mentioned, Justice Sikri mentioned about parties' process, justice Williams mentioned that as well. The autonomy of party is critical. It helps

parties to articulate, to speak. It helps attorneys to be amicable changing the culture of litigation. It helps courts, our dear courts, that have done so much work. Let's talk about Indian courts. Our judges are heroes to be able to handle such a huge case load on a daily basis. It helps remove some case backlog, if not all of it. I think lastly it helps society live a better life. So going to the question now of how mediation and vis-a-vis enforcement. I think it is prudent for us to understand mediation is for reconciliation not always looking for a binding settlement. These are two different goals. See, to have something enforceable, let's be very clear. You need at least three different angles to enforceability. One angle is judiciary. If judges, courts, accept mediation agreements that have been already signed done as judiciously enforceable. Second is, it is based on parties and attorneys. So, if they commit to the process and they think this is a good solid process, then it's good. But lastly, it is the technical skills of writing a good agreement, which we, which somehow, we oversee. We have to teach in mediation how to write a good mediation agreement, which can be enforceable. Let me end by talking to you about global, how globally mediation has been changing or impacting. It is very different. Quickly, Japan, Kyoto International Mediation Centre, commercial mediation centre helped establish with the help of Straus Institute has done some amazing work lately, but it's very new. It's only a few years old. Right.

France is struggling still. Large time to enforce mediation because the society has not accepted mediation, as an enforceable mechanism. Situation is very different in England and in Italy. In England, we all know London Court of International Arbitration really put forth. The whole fact that dispute resolution is the future, and that propelled mediation being accepted as a very good appropriate means. Italy, my friend, Leonardo di Arso and his company ADR world and Giuseppe de Palo's work in promoting mediation has even led to a legislation being passed. That almost every case belonging to a certain amount in commercial cases must go through mediation. Same last country, I'll mentioned is, Brazil. Do you folks know that there are more cases pending in Brazil by some estimate, than the number of people living in Brazil. There is some terrific work being done by my colleagues in Brazil, like Marcella rose Adella and others. That talk about, how we can at grass root levels implement mediation without having to worry about is it going to be enforceable or not? So, I want to lay out the ground yet but I'll come back and talk a little more about how Singapore Convention has impacted the enforceability and other, other aspects to it. Thank you.

Ms. Shaneen Parikh: Thank you. So, you, I noted that you said that in mediation a party may not win. That reminds me of the saying that, 'a successful settlement is one where neither

party is perfectly happy', But I think what you're saying is that the key is that they are satisfied with the resolution and the outcome. I think that is, that is really, the point of it all. I moved back now specifically to the two learned judges on our panel to ask for their thoughts on the effectiveness of mediation in resolving conflict, both within the United States. And I come to judge Williams first and then to Justice Sikri.

Hon. Alexander Williams - III: Very well, thank you the simple answers that the literature seems to be fairly uniform that when we started a serious mediation practice in the United States in the last couple of decades of the prior century, that the success rate was in the 70, 75, sub 80 range. The sense now is that the success rate is in the 85 range. Now I'm talking about a very parochial area and that's my area of litigated cases. Mediation. One of the things I love about the Straus Institute at Pepperdine is we are not lawyer dependent. We are in a law school, but we are proud to train an awful lot of mediators who have no desire to be a lawyer but have other things to bring to the table, because certainly the world needs some peacemakers. What I found myself intrigued about was reflecting quickly, if I may on what, on why, what makes for the success rate to be good or bad, what factors are involved. I think there's a number and I'm just going to throw them over very quickly for purposes of putting them in the

stew soup to be considered, if anybody else wishes to. The nature of the mediation, is it court connected. Is it court conducted such as a settlement conference, which some States call it a mediation, and California does not? Believe it or not, it has different consequences. It's crazy, but it has different consequences confidentiality. Or is it private? Is it a compelled to voluntary? There were people who told us as judges, we shouldn't compel mediation because the success rate was only 50%. Whereas if it was voluntary, it was 75%. Well, what did judges hear. Judges heard that it, they forced, it they'd get 50% of their cases settled. So, the argument was somewhat self-defeating, but at least that's the thought. Sometimes the area of law matters in terms of statistics. Everybody understands the history of labour law going back to the union movement. And, and those are very specialized areas. However, in the area of both family and probate law, we've seen the emergence of something called collaborative law. They really are in the vanguard and it's a very specialized practice. Most mediators in those fields advertise themselves, at least in California, as being involved in those fields. A lot has to do with the legal culture. It was revolutionary, when a very conservative Chief Justice Warren Burger in 1984 called upon lawyers to become healers of conflict. I didn't hear that in law school 50 years ago. I can tell you that. And, and that is so. So that's part of the culture. However, I have to tell you, when I was interviewed by the local legal

newspaper, when I was on the court, and we talked about all the cases I was settling. They asked me when was the last time I tried a jury trial and I love jury trials, but I told him I hadn't tried one in a year and a half. My presiding judge was not happy with me because that's how we measure judges is how many cases are you trying one at a time, at a time, at a time taking weeks, as oppose to one day. The culture didn't sink all the way down sometimes. Legal education matters. 50 years ago, I went to law school. Three years I never heard anything about mediation. I took three separate bars in three separate States. Because that's what we have to do, if you're in different States, nothing about mediation. Now we have the Straus Institute where I work with or for Dr. Singh, which is a fabulous place and a fabulous family of peacemakers and other programs around the country. I've even heard it suggests that civil law systems may be less needing of mediation than common law because civil law at least attempts to codify the law and give you more certainty than you may have any word of precedence. We have only one civil law jurisdiction in the United States. That's the state of Louisiana. I've rushed to assure you that everything is different than New Orleans. It's just, it's a very different place. In terms of, I think that's just about it. One thing that is interesting, I do focus on and when I teach and when I work with people that settlement is not an event. It's a process. My job is to try to make that process occur inside today's event. If it doesn't, I'm not

going anywhere. I tell people, I will not quit on a case unless they get a restraining order or shoots me or shoot me, because it takes, it's going to take the time it takes. The one final point I would make, and this is anecdotal among mediators with whom I work here in Los Angeles. We actually think we are doing better, being more effective on zoom than were doing face to face and that's harassing. A year ago, when we had to pivot overnight to this model. But it is a very effective device and by many measures. Thanks.

Ms. Shaneen Parikh: Thank you. Thank you, judge. That was fascinating. I know Justice Sikri is going to have some comments on what you just said, and we'd love to hear your insights Justice Sikri from your time on the bench.

Mr. Arjan Kumar Sikri: Thank you, Ms. Parikh. Let me tell you, as well as India's experience is concerned. In 2002, Section 18, and of course, as Sriram Panchu, said 1996, when the Arbitration and Consolation Act was passed. And, the consolation provision was introduced in the mediation at this, this arbitration act also. But the paradigm shift was with the introduction of Section 89 in CPC, which was in 2002. I always say, I thank Salem Bar Association, which filed the petition in the Supreme Court challenging the vires of Section 89. Because had they not come to the court like many other, pieces of legislation, it might have been gathering dust somewhere.

But by bringing it to the Supreme Court, Supreme Court not only dismiss that, but the Supreme Court took it upon itself to now carry forward this moment and of mediation, and to ensure that Section 89 becomes a reality, so to that section. So, the courts have played a very important role and MC-PC which we call in the Supreme Court, Mediation and Constellation Project Committee was constituted. First, a pilot project started in Delhi with the, with the Tis Hazari, a centre was established in the Tis Hazari. The Supreme Court had invited people. I still remember trained mediators from the trainers from US who gave training to Indian, at that time district court judges, they are after it was given to the lawyers as well. I think that they were following the Californian model and here also it started with those judges. But one thing would end within few months, I think, the, in Madras High Court also, and Sriram Panchu was the main person who established that centre. And I just now noticed, Chitra Narayan saying on this chat, that today is the 16th anniversary of the opening of the Madras centre or mediation centre. Look in 16 years where we have come up to. And in the first centre which was set up, that I told you about, Tis Hazari, the lawyers boycotted it. The lawyers at that time protested, they thought that with the coming of mediation as if their practice is going to be taken away. Which I always say ADR, most perceived as alarming drop in revenue for lawyer, alarming drop in revenue ADR rather than, the

Alternative Dispute Resolution. But in these 15, 16 years, the way the psyche has changed, the way acceptability has come which Sriram Panchu also mentioned. This say, we have made really big strides, no doubt about it. And I was just thinking when, Mr. Sukhsimranjit was mentioning, that there's something common between two of us. He, I saw his article, as I mentioned on culture and access to justice. I had written one article that mediation is the best form of access to justice under circumstances more than 10 years ago. Then he just now talked about the mediation - making us good human being. I had written one article exactly on this maybe that also almost 8 to 10 years ago, where I connected mediation with spirituality. How it is so close to spirituality. Therefore, what I am saying is before coming to the effectiveness, that these are the aspects which are to be seen, becoming a real model for access to justice, it is making the life easier, more, I mean comfortable by making all those who are involved in the process of mediation, by making them a better human being. And about a couple of months ago I had written another article, where I had said, time doesn't permit to give details of that. But I said, mediation today is becoming a saviour, it became a saviour of the system in US of the court system. Because initially the, it was thought that the, we are burdened with so much of arrears, so something should be given to alternatively, and that let out should be there. Of course. In that sense, and by making, I mean, resulting into

settlements, which settlements once it comes another thing which is to be seen is no appeal. Because the parties have settled the matter. So, the, it takes care of the appellate courts load work also indirectly. And so, therefore it, and not only that it is becoming the saviour of even the arbitration process, with Med-Arb-Med all these processes, which are and why mediation is introduced by all arbitral institutions to save arbitral. Therefore, this is the effectiveness of the mediation which in the league, which in the entire legal system of dispute resolution system, which we have to see. Now, I tell you from my personal experience, last two years after my retirement, I've been, I was given, I was sent six cases, four from the Delhi High Court, one from Supreme court. One from, even from NCLAT, National Company Law Appellate Tribunal for mediation. Five were settled by me. One, I could not settle. But as Sriram Panchu also mentioned, where 80% or 90% was settled but there was some difficulty, they were not. But when they went to the court, it got settled immediately, on the basis where the settlement was going to take place. So, therefore, that is the process of effectiveness, even when it results in the failure there, which has to be seen. And my experience is that when it comes to family matters and Section 89 or I give you another example from my experience only. When I was sitting in Delhi High Court. And in family matters when the suppose it's a 498A case and say a criminal complaint is filed and the husband comes or

the family members come for anticipatory bail, et cetera. We used to do in High Court. Okay, we'll grant you for some time. But in the meantime, go for mediation, even in those cases. My experience was for the time, I sat 8 out of 10 cases used to be settled and commercial also, which Mr. Sriram Panchu said from, I can say from Delhi High Court and in district courts, 50 to 60% cases are settled. It is showing effectiveness there also, but it has other distinct advantages, which I said. So, if we keep in mind all these aspects then it is becoming effective. Only one area, I'll take, because I know I overshot my time. I take the few seconds where we need to concentrate and have to find the solution is the where the government is the litigant. Because there the, for various reasons, fear of CVC and fear of audit, et cetera. Many times, even when they feel that the case should be settled, they are not coming forward. But of course, there are solutions for that also, which we can discuss. But this is one area which we have to see in order to make it more effective in a country like India. Thank you.

Ms. Shaneen Parikh: Thank you, Justice Sikri. We now move across the world to Singapore. The year 2008 brought to us the Singapore Convention, which is, I think a game changer. The Convention's purpose is to provide a comprehensive and uniform framework for cross border enforcement of international settlement agreements, resulting from mediation. It is thought

that the Convention could do the same for mediated settlement agreements, that the New York convention has really done for enforcement of arbitral awards. I think we just have the 168th signatories now to the New York Convention. Coming to Professor Lee, what are the benefits of the Singapore Convention and how do you think it is going to impact mediation?

Professor Joel Lee: Thanks for that. The, I mean, for those, for those of our friends who may not know Singapore Convention mediation was signed in 2019 and came into force in 2020. I think the two main benefits, to this and one is practical and one is symbolic. Hope you don't mind, if I actually split it into those two forms. In terms of the practical considerations, Shaneen as you've already said, the intent is for the Singapore Convention to do for mediated settlements, what the New York convention has done for arbitrated, arbitration, right. And the thing, if you actually do a comparison, I believe that New York Convention was signed in 1956, if I, if I remember correctly, and SCM of course, in 2019. Just the number of signatories on day one is actually significantly more than what the New York Convention had at that point in time. Although, obviously that number has grown since. And I believe that New York Convention was a significant push, positive push in the direction of promoting arbitration or the use of arbitration in international

disputes. The hope then is that, as more and more countries, and this will take a little bit of time. So, so people can say right now, or, it's only these many countries and so on and so forth. But it will take time for countries to sign and ratify. The rate at which this will be, or would happen or be faster, I think than the New York Convention, right. When there is a critical threshold, and I believe that will be fairly soon. What it actually means is that a mediated settlement, in Singapore, can be easily enforced in another signatory country, in as much the same way as an arbitral award can be under the New York Convention. Correct, right now, what we're faced with is either it's an arbitral award under the New York Convention or we sue on the contract or we get a consent judgment and then enforce a foreign judgement, so it's a little bit, it a little bit, not east to do. Once you have SCM and it comes into full swing, and people have sufficient, sufficiently people have ratified it. I think the impact is quite good, would be quite significant. And that's the practical impact. It actually gives people the security that the form of dispute resolution they pick, mediation has some kind of real impact. Okay. I think, Mr. Panchu said just a little bit earlier. That, in the old days, I mean, most of the time people comply with their mediator settlements, because they worked, they had power, they were involved. And so compliance is usually built into that process. But there will be a small number that, for which compliance is, is becomes

such an issue. Right. And, and so, in a sense, you could say the SCM, Singapore Commercial Mediation, gives mediated settlements a little bit more teeth, a little bit more firmness, a little more of enforceability and that's the practical consideration. The symbolic consideration or a symbolic benefit of SCM. I think it's twofold. Number one is, it puts mediation out there as a real legitimate and valid form of dispute resolution. Right. Until now everybody goes, yes, Arbitration great, legitimation great and all kinds of stuff. On mediation. Well, that's kind of luck, mediation. Right. Some people will even say mediation is not binding. Actually, that's not true, right. Mediation is binding. If you have a deal as contract, now it's even more binding. Right. Okay. The only difference between mediation and arbitration is when we say, the mediator doesn't deliver an award, doesn't actually bind the parties with an award. But it does a contract as a contract, and it's enforceable. Therefore, now equally enforceable under the SCM. So, it legitimizes mediation. Right. The second symbolism of course is that the moment that this is legitimized, it gives a rally flag for, for all the mediation professionals in the world. All of us converts, all of us people who have been promoting mediation all these years to basically rally behind and say, Hey, hang on a moment, this is the indication. This is the validation. And I mean, for someone like Mr. Panchu, I know, was been pushing mediation for years, without necessarily

acknowledgement without necessarily validation. I think this is an important thing and this is a power of the fruits of your labour. I think this is why the SCM is particularly important, at least for both Singapore and for the world and for mediation. I'll shut up now. I think, I'm still within time.

Ms. Shaneen Parikh: Thanks. Thanks Prof. Lee. Mr. Panchu, India was one of the first signatories to the Convention at a very glamorous ceremony in Singapore. How do you think the Convention is now going to fit in with India's new thought process and to the new bill that has come out and when can we expect it will be ratified? I have put you on the spot there. I know.

Mr. Sriram Panchu: Well, to the answer to that, you should have invited somebody from Government. I hope soon. I hope soon. Because India was very positive about the Convention. One of the earliest big countries to join. I think India's, coming on board was a big flip for the Convention. I think the Convention is important, because it's like a seal of confidence. It is a seal of confidence on the part of the Government, acknowledging the movement that has been made in mediation. What's now the forthcoming legislation, that mediation is very much, it's very prominent on the legal landscape in India. It's also important as a seal of

confidence for industry, because as much as one talks about, time and cost and parties participation all of these are very beneficial to parties. No doubt. Yes. It will engage in hearing solutions, et cetera. You still have the kind of missing element. How much of this is enforceable in a global context, that global context is important. It is not sufficient, I think, just to focus on domestic setting. And what the Singapore Convention has done, is to give us that global context. To point to it and say, here it is. It is now globally accepted. I think with that every box is ticked off as far as the acceptability of mediation is concerned. Combine that with the fact that now, you have professional mediators, it's a growing number. The success stories are growing. Now you have a profession coming up, you have a training coming up, you have world stamp on it. You have Government to support, you have legislation, which is going to come in. It sends a very positive, overall situation. Focusing specifically on the Convention, I would say one very important thing is, it uses the word mediation and says all similar processes are covered by the Convention. Therefore, there's this big problem we've had between conciliation and mediation, are the two processes different, if we using multiple terms. All that has gone now because UNCITRAL earlier used the term Conciliation. And now they recognize the worldwide claim towards mediation and say, we'll just use mediation comprehensively. So that's a very big step. The singular

system of enforcement, for evaluating and enforcing, good. As I said, our coming in there, is going to very well for our ease of business and to retain investor confidence. Because, any other methods of dispute resolution, foreign investors always feel they are at risk. The fact that mediation is growing in India has been strongly adopted and that the settlements are going to be enforced, well I think boost investor's confidence. So on ease of business I think, that's another particularly good point. The fourth point I want to make is because the Convention does not provide a seat for mediation. It permits online mediation. And therefore, it will cover online mediation. That's, again, I think this was why the Convention was brought in before COVID. But I know this was a happy occurrence that the seat of mediation is not covered. Therefore, we can work online through that. The other is that investors state disputes, can also, I think, now come in through the Convention. It's up to us, I think, to draft a robust law, because that's what the Convention requires, nation states to do, to draft a robust law in line with the Convention. Once that's done, I think we're done as far as mediation is concerned.

Mr. AK Sikri: I may only add for your information. Good thing is as Mr. Panchu rightly said, we did never know and that's the question to be asked to the Government when they are going, when it was going to come up with legislation. But one

development which has taken place is that, Niti Aayog started the project on ODR, Online Dispute Resolution in the wake of a pandemic. In the report they have highly recommended the passing of this legislation as early as possible. Coming from Niti Aayog to the Government, I think may, speed up the things. Let us hope.

Ms. Shaneen Parikh: One hopes. Okay. Thank you. I now come to Sukhsimranjit for your thoughts on the Convention. I know you were there and involved with it, and also for your general comments and closing. Sukhsimranjit.

Dr. Sukhsimranjit Singh: Well I absolutely thank you. Thank you, Ms. Parikh. I would love to, I'll be very brief folks. I'll try to be brief and such a wonderful, I love this "Seal of Confidence", that Mr. Panchu spoke about or "Legitimacy of the process", that Professor Lee spoke about, about the Singapore Convention. I'll give you two positives and two things we still need to work on. Let's not get too happy with the Convention. That is a lot of work needs to be done. Let's quickly summarize where we are in good things with the Convention, right. First of all, what hasn't been mentioned, I want to mention that, and that is Asia. Asian culture has been given prominence. The fact that Singapore got to host, got to be the Chairperson behind the conference is a big win. We should not under recognize that fact. The fact that one of the

most diverse places on earth is Asia and beautiful cultural traditions, different ways of resolving conflict. India has a whole sanskriti of how conflicts can be resolved. Ramanaya discusses how, to resolve conflict that we have to explore. We have to see how our religious principles teach about resolving conflict. So, things that needs to be explored. Can be explored. Because it happened in Singapore. Two, I love the fact that the Convention gives international recognition as Mr. Sriram Panchu was mentioning, about online dispute resolution or bindingness or agreements. So that is terrific. That is great. But here are two things we need to work on. Number one, let me remind everybody. We are in a very divided time. All over the world we have fights going on. We have strikes going on. We have people looking for their rights. We have people who are being killed just because they're speaking up. We cannot ignore that fact. Human beings are divided more, if you may, than ever. Maybe information technology is helping us realize that's happening, but it is happening. Mediation has a role to play. The Convention is not going to resolve in itself. It, as Mr. Lee said, it gives it recognition. Mr. Panchu said it gives it the seal. We have to take it forward. My last comment, we have a lot of work to do in terms of let's not commercialize mediation throughout and let the Convention take care of commercial cases and be a success in it. What about all the regional cases, cultural practices, those beautiful bond with some villagers, somewhere in India could

be knowing how to resolve conflict. Will that be recognized by the Convention? Will that be ignored? In some ways the Government of India is taking time. Let's not jump on it saying, that's wrong. I want to always give benefit of doubt. Maybe they are thinking through this. Let's hope they are. I want to thank everybody for coming here today. First of all, I want to thank our host, our moderator, Ms. Shaneen Parikh. She has so kindly, you should see her resume. We haven't introduced her, but she is one of the leaders in Indian, not only in legal industry, but Indian dispute resolution industries, she has done some phenomenal work in arbitration. Ma'am first of all, thank you for your humility and for bringing us all men together and giving us the dais, whereas you stood back and allowed us. So, thank you so much. Thank you. I quickly thank you ma'am and I quickly want to thank Neeti, Ms. Neeti from MCIA. She has throughout been, the warrior and she's done so well. And of course, Mr. Madhukeshwar, who is leading the Institute in Mumbai, and because of him, we are here together. Last, but not the least quickly, Justice Sikri, thank you for all you have done, all you're doing and all you're going to do. We can't wait to see, sir, what you bring next, your passion and your writing. I am going to read your article on spirituality. Thank you for mentioning it. Mr. Williams, Judge Williams. You've been a force for Strauss, and Sir, thank you for taking time. I know it's 10:30 PM in US and thank you for giving us your time. I

know you have work in the morning. I really appreciate it. Mr. Lee, thank you for leading the efforts in Singapore Convention. I know you were backbone to all the efforts and you've been an amazing teacher, so thank you for all you're doing for mediation. And last but not the least, Mr. Sriram Panchu, you are a model for young mediators worldwide. With this, I will respectfully ask the organizers to conclude.

Ms. Sanjana Promod: Thank you so much, Dr. Singh. I think you took the words right out of my mouth, for your brilliant concluding remarks.

Mr. Sriram Panchu: He spoke for all of us.

Ms. Sanjana Promod: Yes, I would completely agree. I have nothing more to add, but just to say, that wraps up an excellent session and has given us all a lot of food for thought, a big thanks to such an illustrious panel, who shared their rich experiences with us. And thank you, Shaneen for brilliantly moderating the panel across multiple jurisdictions. I know it was no easy task. And thank you to the audience for your enthusiasm and for tuning in. Before we drop off the next session for the day, which is on arbitration and litigation funding is hosted by Innsworth Advisors and starts at 12:00 PM IST. Please do tune in and thank you all for joining us again.