



India and the Singapore Convention on Mediation

Mr. Anil Xavier

Date: 06 May 2020 **Time:** 1:00pm CEST

Presentation Summary:

Mr. Anil Xavier (President of the Indian Institute of Arbitration, IMI Certified Mediator, and SIMI Certified Mediator) gave a presentation on the topic 'India and the Singapore Convention on Mediation'. Mr. Xavier started his presentation with a brief overview of the mediation scenario in India. He stated that mediation existed in India for centuries before he proceeded to classify the modern mediation movement into three segments: (i) Lok Adalat, (ii) Arbitration and Conciliation Act, 1996, and (iii) the Code of Civil Procedure, 1908.

Mr. Xavier explained that the system of Lok Adalat is governed by the [Legal Services Authorities Act 1987](#) (LSAA 1987). Under LSAA 1987, Lok Adalat has the jurisdiction to facilitate a compromise between disputing parties through mediation. In addition, this system allows any type of new or pending litigation matters to be brought before the Lok Adalat. Furthermore, the compromise reached by the parties at the Lok Adalat would have the same status as a court decree.

Mr. Xavier opined that mediation was given statutory recognition through the [Arbitration and Conciliation Act 1996](#) (ACA 1996). Under ACA 1996, settlement agreements are treated as arbitral awards. That aside, he said that the [Code of Civil Procedure 1908](#) (CCP 1908) was amended with an insertion of section 89. Under s. 89, every court has the authority to refer matters to any form of alternative dispute resolution such as mediation, arbitration, and Lok Adalat. If parties arrive at a settlement through mediation or Lok Adalat, then the terms of the settlement agreement would be recorded in a decree that would be issued by the Court.

Mr. Xavier then gave an overview of the Singapore Convention of Mediation¹ (SCM) and explained that the SCM was adopted to facilitate mediation in international trade and commercial matters. The SCM also provides a framework for the enforcement of mediation settlement agreements. There are currently 52 Signatory states, and three parties – Singapore, Fiji, and Qatar – have ratified it. As the last ratification was on 12 March 2020, the SCM will come into force on 12 September 2020.

Mr. Xavier stated that settlement agreements enforced as court judgements or arbitral awards are outside the scope of the SCM. Thus, this would mean that the three segments of India's modern mediation movement would fall outside the purview of the SCM. Due to this, Mr. Xavier believes that there is a need for new domestic legislation to clearly define mediation while incorporating the terms of the SCM. He stated that the Indian Government and the Supreme Court of India are actively working on a new Mediation Act thus, he is hopeful that India will be able to ratify the SCM soon.

Mr. Xavier said that until the SCM is ratified, the Arbitration-Mediation-Arbitration protocol would pave the way for international commercial disputes. Under this protocol, a dispute is first referred to arbitration before mediation is attempted. If the parties can settle their dispute through mediation, then their mediated settlement agreement will be recorded as an arbitral award.

That aside, Mr. Xavier believes that COVID-19 would provide a different perspective to the concept of justice and the access to justice. The reason being that many commercial parties may no longer have the luxury of time and money to be involved in litigation or arbitration. Therefore, he believes that mediation is the best solution to resolve disputes in a manner that is beneficial to the parties and the economy. Mr. Xavier opined that in the present economic condition, companies should be collaborative instead of competitive as this would help everyone tide through this difficult period. He also suggested that online mediation could be the way forward in overcoming the present financial limitations and travel restrictions.

He concluded his presentation by encouraging all players in the mediation field, including mediation institutions, mediators, and legal professionals to utilize the present opportunities to promote the benefits of mediation as a dispute resolution mechanism.

¹ Officially named United Nations Convention on International Settlement Agreements Resulting from Mediation

Q&A Discussion

Some questions addressed by Mr. Xavier during the Q&A session:

- Why has the Indian Government not ratified the SCM?
- How is a mediated agreement settlement converted into an arbitral award?
- What can India gain from signing the SCM?
- How can the SCM help to change the perception of mediation in India?
- Can the SCM assist mediation in the same way that the New York Convention helped arbitration?
- How will mediation in India be like 10 years from now?

We invite you to listen to Mr. Xavier's answers from the video record of the session available [here](#), as well as his response to other questions not listed above.

Links to other requested resources that came up during the session are provided below:

- [Code of Civil Procedure, 1908](#)
- [The Legal Services Authorities Act, 1987](#)
- [National Legal Services Authority \(Lok Adalats\) Regulation, 2009](#)
- [The Arbitration and Conciliation Act, 1996](#)
- [UNCITRAL Arbitration Rules \(2013\)](#)
- [United Nations Convention on International Settlement Agreements Resulting from Mediation](#) also known as the 'Singapore Convention on Mediation'

The team at SIMI and IMI would like to express our gratitude to Mr. Xavier for sharing his time to be a speaker at the Singapore Convention Seminar Series and to participants for joining us live for the session. Do join us for our next seminar on '*Impact of the Singapore Convention on Mediation on Investor-State Mediation*'!