

Role of Lawyers and Referral Judges in Mediation

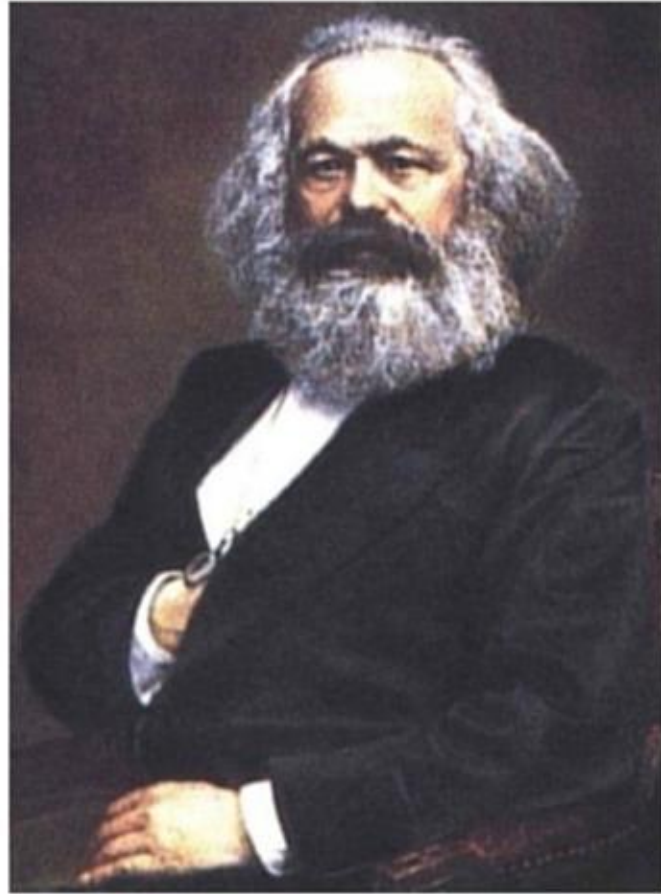
"A Presentation by"
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Mediator, Kolhapur.

“Interpretation of the Present”

- People are abandoning the justice system
- Criminal has more rights than the victim,
- Defendants can defeat legitimate claims of the Plaintiff
- Business transactions are frustrated due to costs and delays: Ease of doing business?
- Should we accept the status quo or
Try to make a change ?
- There once was a smoker so disturbed by reading stories about the harmful effect of smoking that he decided to do something about the problem- He stopped reading !

“Karl Marx: Theses 11”

“Philosophers have only interpreted the World, in various ways, the point, however, is to change it.”



“Culture of Mediation”



Importing Mediation from Foreign Countries will be successful only if we bring in **Culture of Mediation** amongst Judges, Lawyers and Litigants.

“Role of Lawyers”

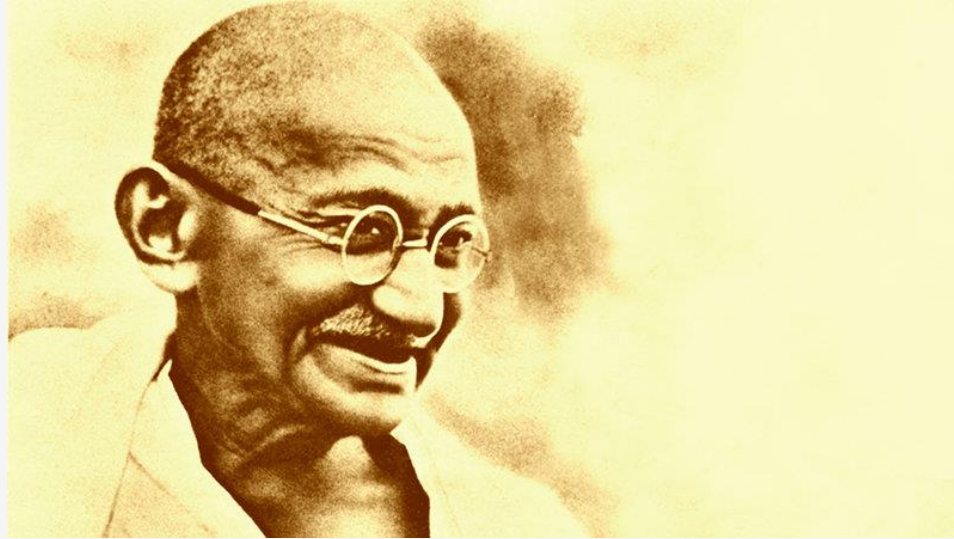


“What Mediation offers to Lawyers”

- Stable Fees
- Client’s Satisfaction
- Speedy Solutions
- Avoid Adjudicatory Processes
- Options open on failure
- Less Hassle
- Restoration of client’s faith in system
- More and more citizens will comes in the system.



“Words of Mahatma Gandhi for Lawyers”



“I had learnt the true practice of law. I have learnt to find out the better side of human nature and to enter men’s hearts. I realized that the true function of a lawyer was to unite parties driven asunder. The lesson was so indelibly burnt into me that a large part of my time during the twenty years of my practice as a lawyer was occupied in bringing about private compromises of hundreds of cases. I lost nothing thereby- not even money, certainly not my soul.”

-Mahatma Gandhi

"Suggestions for Effective Role of Lawyers in Mediation"



- Make Mediation remunerative for Lawyers.
- 15 year standing rule should be abolished
- Recognize it as a specialized branch of Practice: with deal making skills and not Litigation skills.
- Inclusion of Mediation Clause in Lawyer's Notices.
- Change of mindset from Law schools and colleges.
- Training and Development of Special Skills.

“Role of Judges in Mediation”

- Adversarial Legal System, too much emphasis on litigation.
- Expected to be Inquisitorial and Participative than Adversarial
- Litigation an obstacle to the growth of Human beings , Society and Country
- 21st Century India needs effective and multi door Dispute Resolution System.
- Voltaire : I was ruined twice in my life, once when I lost the law suit and once when I won a law suit..!



“Role and responsibility of Judicial Officers u/s. 89 of CPC”

- Afcons Infrastructure Ltd & Anr. Vs. Cherian Varkey Construction Co (P)Ltd. & Ors. (Supreme Court)
- U/s 89 of C.P.C, the court is only required to formulate a “short summary of disputes” and not “terms of settlement”.
- The civil court should invariably refer cases to ADR process except in certain recognized excluded categories by giving reasons.
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“Full time Co-ordinator Judge”

- To continuously and unflinchingly promote mediated settlement.
- To screen the cases sent by referral Judges to recommend appropriate mediator having expertise in the given subject.
- To keep continuous supervision on the progress of each case referred for mediation.
- To ensure that mediation is completed in specified time by the mediator as per Rules.
- To submit periodical report to the Referral Judge before the next date of hearing of the case about the status of mediation proceedings.

“Full time Co-ordinator Judge”

- To appoint mediator by consent of parties in cases where the Court has not appointed mediator while making reference for mediation.
- To ensure that feedback is received from the participants in every Mediation Case to analyse the same and take corrective measures where necessary.
- To inspect complaint box on regular basis and take follow up action on complaint or suggestion so received.
- Publish periodical handbills / pamphlets including on local cable TV, Theatre, etc. about the concept of Mediation and its benefit.
- Informative pamphlets be displayed at conspicuous places in police station, court premises, Tehsil offices, Village Grampanchayat. etc.
- Ensure that informative brochures / pamphlets are circulated with court summons / notices to the litigants and also regularly displayed on the notice board for lawyers / litigants in the court complex.

“Suggestions for Effective Role of Judges in Mediation”



- Give incentive to Judges for successful mediation even more than litigation
- Start imposing heavy costs and actual costs in prolonged litigation so as to make litigation costlier than Mediation
- Inclusion of Mediation option in Court Summons.

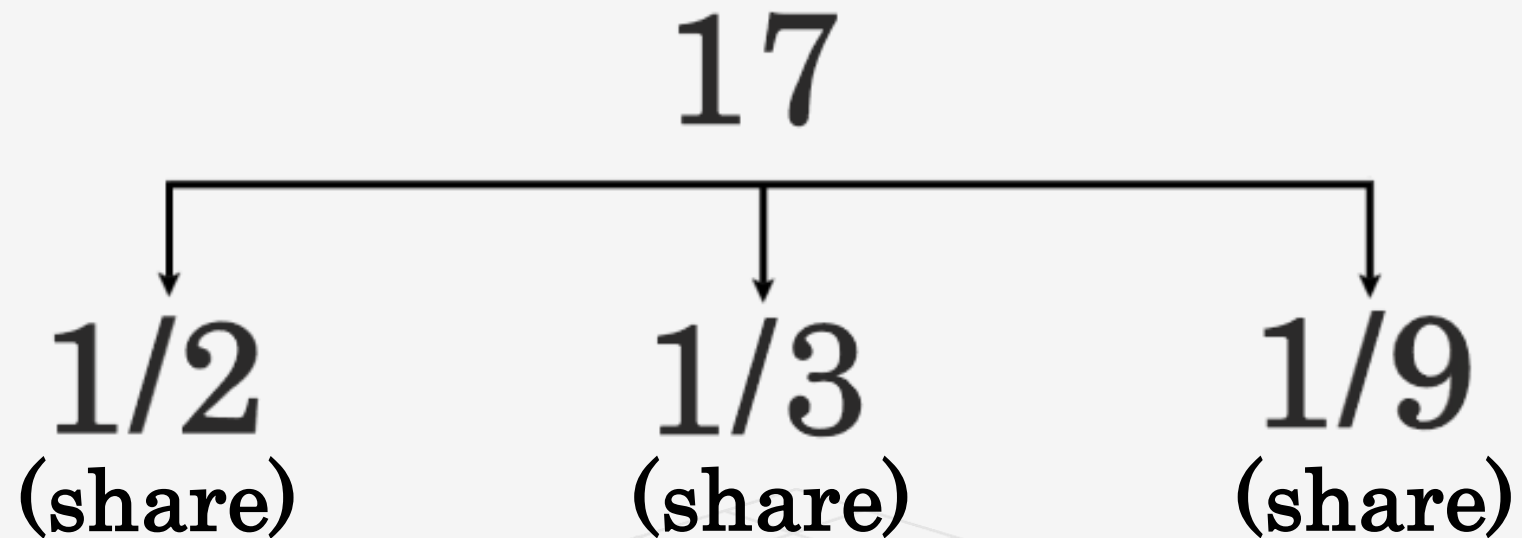
“General Suggestions”



- Awareness Building amongst Lawyers and Litigants through effective use of media, social media, films and print media.
- Remove myths relating to mediation
- Recognition of private organizations and Professionals from other fields and experts as Mediators.
- Involve Experts wherever necessary in Mediation Process.

“Think Out of Box”

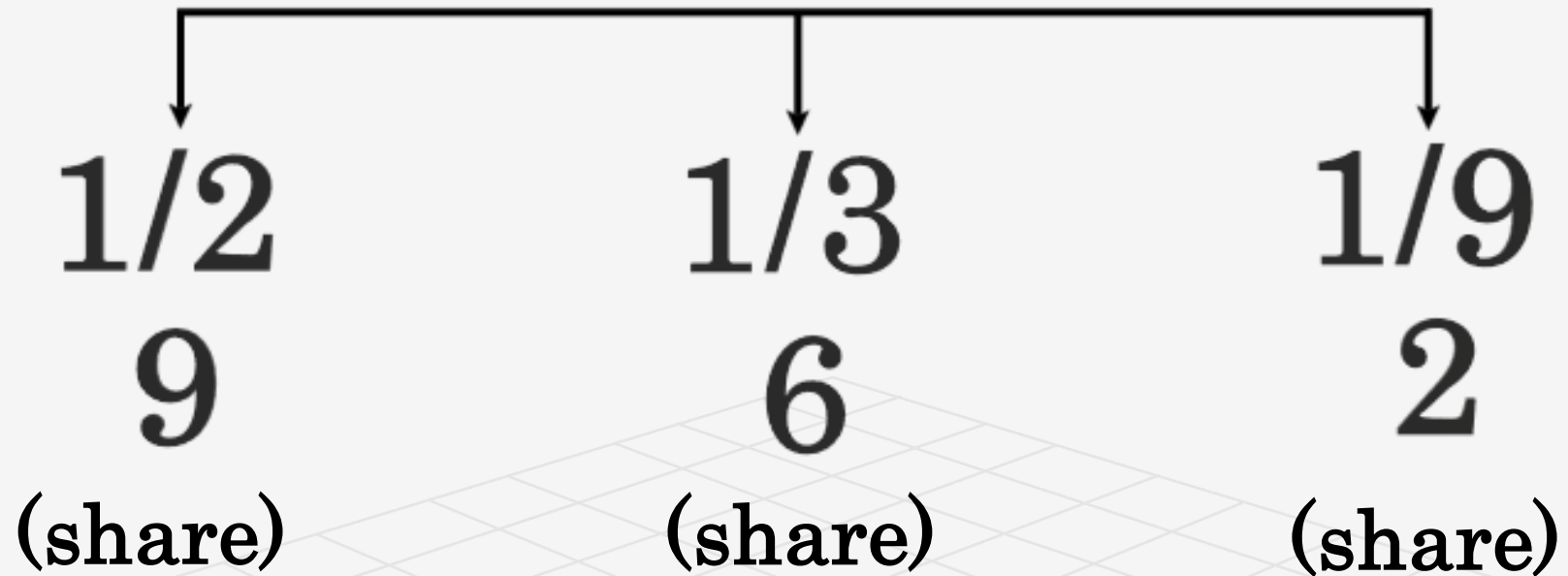
Story of Cattles
Dispute relating to partition of 17 cattles



“Think Out of Box”

Mediator to add one cattle

$$17+1$$



“Think Out of Box”

Two children fighting for a larger piece of a cake.

Both demand, they be allowed to cut and have the cake first.

Mediator – One cuts and the other gets the choice for picking up the piece first.



“Think Out of Box”

Two brothers fighting over an orange

Ad-judication – cut into 2 and give each $\frac{1}{2}$ share

Mediation -One Brother may want the orange, the other may want the cover.



“Think Out of Box”

Fight between a Husband and Wife (universal)

They start sleeping separately –

child one night sleeps with Father other night sleeps with mother-

First night tells the father,

“ Daddy, Mom yesterday told me that she too goes wrong and feels bad about it”, - Next night he tells the mother, “Mom, Daddy tells me that he too is wrong and feels bad about it”. – Third night the husband & wife came together.

“Enacting Indian Mediation Act”

**M.R.H Krishna Murthi Vs. The New India
Assurance Company Ltd. and ors.
Supreme Court**

- **Need for Enacting Indian Mediation Act.**
- **Need for Institutionalizing Mediation**



“Suggestion Specifically for litigation involving Government and Public Sector”

- Alternative Dispute Resolution and Mediation Rules, 2006 – Rule 3 – 1(2) and 3 (A)
- Government, Local Authorities, Public Sector, Statutory Corporations and all public authorities to nominate a person or group of persons who are authorized to take a final decision relating to ADR and communicate the same to the High Court.
- When no such nomination is made they must file a memo in the Court in every matter of such nomination.
- The provision applies to all other plaintiffs and defendants as well-
- Referral judges must therefore now insist on compliance of this Rule.

“Lawyers and Judges ”

- A dispute is a problem to be solved, together, rather than a combat to be won.
- Litigant not a mere recipient of the Court verdicts but consumer of justice delivery system: C.J Mohit Shah, Bombay High Court.
- Different litigants want different methods of dispute resolution



Prof. Frank Sander of Harvard Law School- “Please re-imagine the Civil Courts as a collection of dispute Resolution Procedures tailored to fit the variety of disputes .”

International Position

General Assembly Adopts the United Nations Convention on International Settlement of Agreements Resulting from Mediation on 20th December 2018.



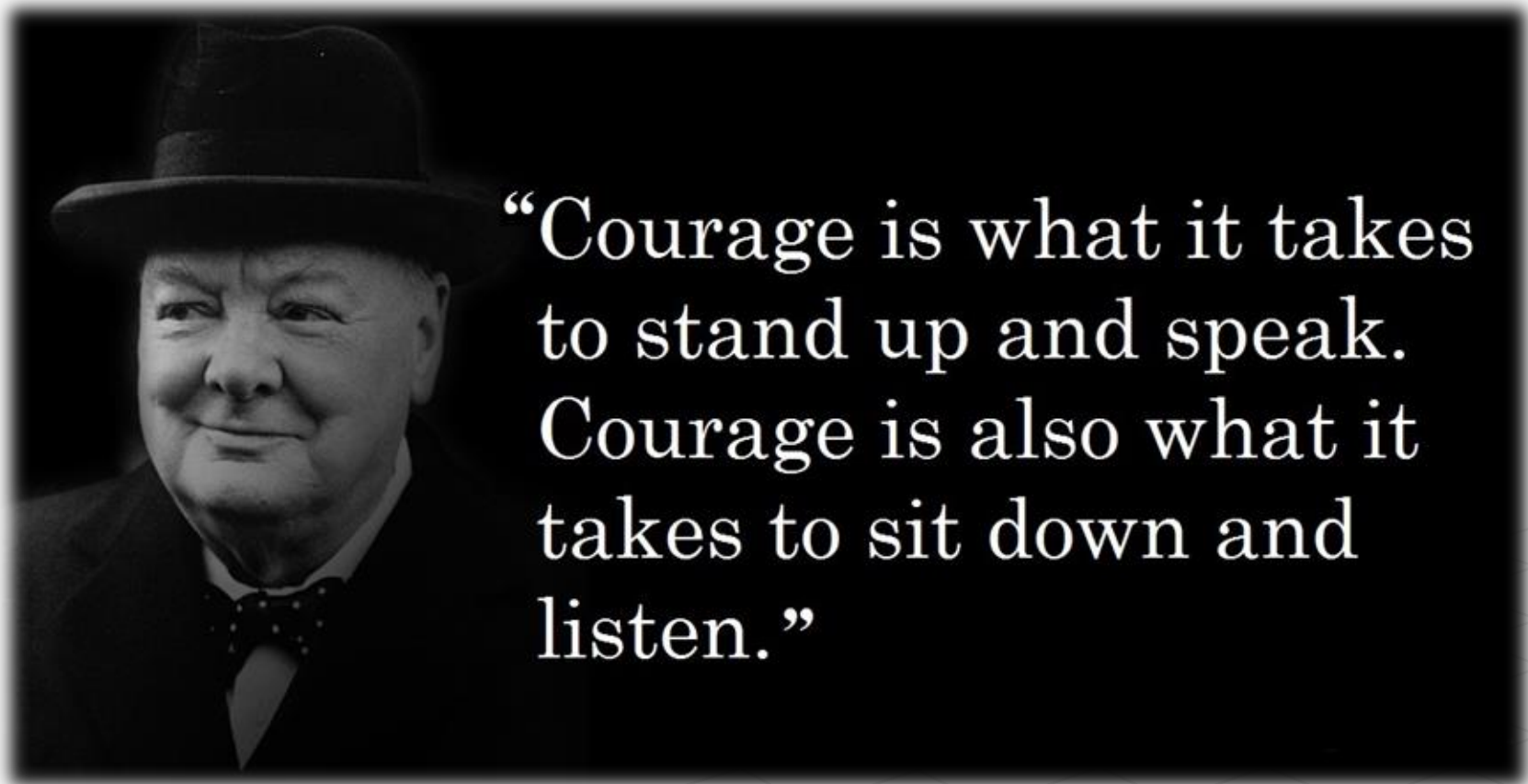
“Lord Denning”

Denning L J in *Packer v Packer* [1954]



“What is the argument on the other side? Only this, that no case has been found in which it has been done before. That argument does not appeal to me in the least. If we never do anything which has not been done before, we shall never get anywhere. The law will stand still whilst the rest of the world goes on: and that will be bad for both”

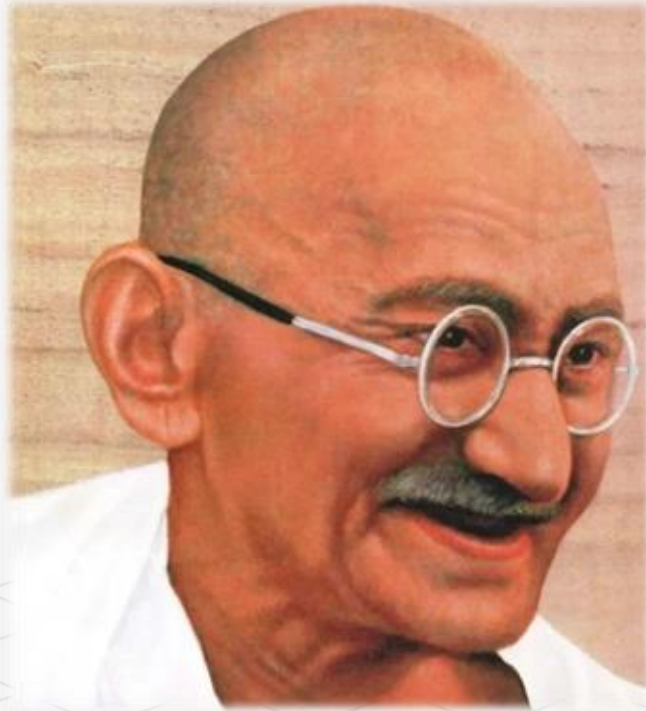
“Winston Churchill”



“Blessings”

You must be the change you want to see in the world

Mahatma Gandhi



“Thank You...”

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