

BOOK REVIEWS

KRISHNA AND MEDIATION (2023) by V. K. Ahuja, published by National Law Judicial Academy , Assam Hajo Road, Amingaon, District Kamrup. ISBN Number: 978-81-954276-3-5.

I HAVE just finished reading the book: *Krishna and Mediation*; and feel very glad that the author has written this timely work in the post-pandemic era. We are at a point of time when the entire world has been forced to realize that the solutions we have built up in the past few decades are just not adequate. We had faced recently and continue to be overwhelmed by multiple challenges: interpersonal, environmental, economic, legal, physical health and many more. Consequently, we are compelled to re-examine our history, religion and indigenous life-skills. Even though the wisdom of centuries is available to us, we have only now started to realize its relevance and significance – that too only piece-meal. The author is a doyen of legal knowledge and pedagogy. He also has a deep understanding of spirituality and philosophy. He has used this backdrop to provide better insights into and answers, in this book, for a very basic and pressing issue: the role of mediation in alleviating many complications in the legal systems of a number of countries including India. He feels that mediation is one of the primary solutions. Towards this, he has demonstrated the historical and contemporary importance of mediation by analyzing the teachings of our religious-philosophical texts; principles of *dharm*a in Hinduism; and more specifically, the importance of actions and words of Krishna and Rama in the maintenance of law and order in the society; and the indigenous justice delivery process. He has also illustrated how the very real principles, indeed the crux, of all ADR mechanisms, especially mediation, had always been inherent in the Indian socio-legal system since time immemorial. He has done this with special reference to Krishna's role as a mediator in the context of the war which eventually came to be known as the war of Kurukshetra. The contemporary need for this study is borne out by the fact that mediation is getting acknowledged internationally as one of the most effective ADR mechanisms. Consequently, the efforts to make it even more operationally efficient and popular are also speeding up.

The first chapter, commences by pointing out that many ADR mechanisms, including conciliation, arbitration and mediation thrived in the ancient Indian jurisprudence. They were entrenched as the first level of legal addressal. They had to be exhausted for the potential litigants to approach the formal courts. However, colonialism and its aftermath swept away so many pillars of our ancient thought on access to justice, including mediation. They were replaced with institutions which were alien to our cultural and other conditions. This is why there have been problems in their implementation. The author has quoted Justice N. V. Ramana (then Chief Justice of India) who was speaking at the India-Singapore Mediation Summit in 2021 as:

“Mediation, as a concept, is deeply embedded in the Indian ethos. Long before the arrival of the British adversarial system in India, various forms of mediation were practiced as a method of dispute resolution. Disputes were often resolved by the chieftains or elders of the community. Similarly, disputes relating to business were resolved by merchants, either by direct negotiations or through merchant bodies” (pg. 67). While tracing the current developments in the recognition of mediation as the preferred choice for resolution of disputes, in the second chapter, the author demonstrates how resolution of some kinds of conflicts are more amenable to mediation, as compared to other methods of dispute resolution. Moreover, mediation can actually pre-empt some types of conflicts. Even if checks have to be exerted on the mediator in order to prevent bias and/or corruption, streamlining and then using it can certainly contribute hugely towards reducing the mind-boggling number of pending cases in the Indian courts. In fact, mediation can become the legal resolution of choice in the future. The author quotes from an observation of the Supreme Court in *Vikram Bakshi & Ors v. Sonia Khosla [Dead] by Lrs*¹: “Even in those cases where relationships have turned bitter, mediation has been able to produce positive outcomes, restoring the peace and amity among the parties”². This observation clearly mirrors the efforts of Krishna to mediate between the Kauravs and Pandavs before the war of Kurukshetra commenced. Not only did he try to prevent the war, his focus was on repairing the animosity between the families from both the sides. He tried to balance the interests of both; and also pointed out the pyrrhic victory inherent in any major war in which everyone associated with the parties take part. This, in effect, is the life-work of a mediator. This is just one instance of the parallels between past, present and future. This is only natural as human nature remains constant across time, regions and conditions. This is why it behoves us to constantly revise from the lessons of the past. In this vein, one would agree with the author when he points out in the third chapter that apart from being a sacred book, Shrimad Bhagvat Gita is also a “Life-Manual” for all humans across nationality, caste, religion *etc.* (pg. 83). It imparts skills to resolve almost any problem in the life (pg. 83).

Similarly, mediation, in its broadest scope, can encompass success in failure. As the author analyzes in the fourth chapter of the book, even the failure of mediation in the case of the war of Kurukshetra succeeded in highlighting some inalienable facts. These included the reminder that if one persists in pursuing a conflict due to arrogance, revenge or thoughtlessness; while ignoring the warnings of large-scale destruction, there is bound to be unimaginable and irreparable loss for both the parties. This is an eternal truth. Hence “going back” to Krishna, the adroit mediator of eons back, would make mediation the “game-changer” of today (pg. ii). This is even more palpable given the fact that the Divine, in the incarnation of Krishna, appeared in a persona in

1 (2014) 15 SCC 80.

2 *Id.*, para 16.

which reposed the highest qualities of friend, counsellor, brother, husband, lover, son, statesperson and many other relationships. As such, this persona also displays the highest form of an ideal mediator. It follows that a mediator, in the broadest understanding, can create bridges between the chasms of multifarious conflicts.

This is also the trend of thought which the current legal developments affirm. These developments are delineated in detail in the fifth chapter of the book. The ramifications of the profession, the standards expected from the professional mediators, their importance in the volatile international equations of today, the ongoing war between Ukraine and Russia and the accompanying paucity of global community's efforts to mediate therein – all of these are described in the context of the increasing realization of the value of mediation. In the next chapter, the author takes up these and surrounding issues with special reference to India. He describes how, since the past few decades, the ADR mechanisms were adopted in India, in the face of staggering pendency of cases. The dynamics in the acceptance of mediation by the Indian courts and public are also described with perspicacity. The author has also presented us here with his insights into the history of the making of the recently (in 2023) enacted Mediation Act.

The next chapter of the book: Chapter 7, is devoted to a panoramic discussion of the issue of the pendency of cases in the Indian legal system, which was first taken up in the preceding chapter. The author has referred to the amount of new cases which are filed in the courts yearly and the quantum of old cases which keep choc-a-bloc, with the legal system unable to deal with them. "Luxurious litigation", "increased access to justice", inadequate infrastructure and number of judges, limited use of artificial intelligence in the justice delivery system: all of these are demonstrated as only some of the reasons for this lacunae. This is why, as the author points out, mediation, both post- and pre-litigation, is the best way to serve the public better and reasonably. Since the current adversarial system has its own limitations and strengths, it is imperative that we re-look at our indigenous system and mechanisms – in order to deliver timely and active justice, including restorative justice. That mediation is pre-eminently one of such mechanisms, was demonstrated by the ease of its working during the COVID-19 pandemic when its online process took on a life of its own, taking the stalled legal activity forward with it. To take these strengths of mediation forward, the author suggests mediation clinics in the curricula of the law schools throughout India. He also discusses the roles of private mediators; of advocates; of the necessity of simplicity in the settlement agreements; and of many related matters. All of this would draw the legal and public gaze favourably towards mediation.

In the end, the author says that when we work with all honesty, sincerity and conviction for a noble cause, we are bound to succeed. In the present case, it is the triumph of effective justice for the public. The present reviewer would also like to conclude by saying that this is exactly what the author himself has done. Through writing this

book, the author has paid his honest, sincere and reverential homage to Krishna, the divine mediator, who showed the world that a war is won not through numbers but through strategies imbued with *dharmā*. As we all would agree: this was true in the *Treta Yūg* and this is just as true today.

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