Historical Perspective and Introduction to Mediation

Distinguished members of the Bench and the Bar, respected faculty, my colleagues at Nivaaran, fellow mediators, mediation advocates, students, and friends from across the Commonwealth and beyond: welcome and greetings.

Every institution has a past, a present and a future. Its past explains why it came into being; its present tests whether it still serves its purpose; its future depends on what we learn from both. Mediation follows the same pattern. In this first session of the Seventh International Summer School, I will explore the history that shaped mediation, where it stands today, and what it must become. Among us are seasoned judges and practitioners who are passionate about mediation and represent its present, and students and young professionals who will write its next chapter. I offer a few facts from that history and a window into the present and the future.

Fifty years of litigation practice, in the Supreme Court, High Courts and overseas, have taught me to respect judicial decisions while also recognising their limits. A judgment can conclusively settle a legal question and bring litigation to an end without ending the human conflict behind it. A family may obtain a decree and remain estranged. Business partners may win their claims and lose their enterprise. Two neighbours may settle the ownership of a wall yet never speak across it again. That experience leads me to one proposition that runs through the past, the present and the future: a case disposed of is not necessarily a conflict resolved, and that distinction deserves serious reflection.

The first dispute in human history did not wait for the first court. Communities dealt with quarrels over water, land, marriage, inheritance and honour long before governments established courts and procedures for suits, writs and judgments, and before lawyers developed the vocabulary of pleadings and submissions. The trusted person who brought adversaries into conversation did not always hold legal authority. What mattered was the confidence of those who had to live with the outcome.

The Indian chaupal and the African palaver tree are familiar examples. Confucius valued the prevention of needless lawsuits. Ubuntu holds that the individual and the community are inseparable. The Rigveda's invites us to move and speak together. None of these traditions asks us to agree on everything. Each recognises the value of remaining in relationship while disagreeing.

The Buddhist account of the *Saakyaas* and the *Koliyaas*, on the brink of war over the waters of the Rohini, puts the question every mediator must eventually

ask those in conflict: is the fight over the disputed resource worth the loss of human lives and relationships?

Across the Atlantic, the Native American nations of what is now the United States offer something more consequential than a settled dispute. According to Native American oral tradition, around the year 1000 the Great Peacemaker persuaded five warring nations to unite under the Great Law of Peace and to bury their weapons beneath the Tree of Peace. A sixth nation joined in 1722. The peace became a lasting confederacy, with a Grand Council of fifty chiefs deciding by consensus and clan mothers empowered to choose and remove leaders and exercise authority in judicial affairs. In 1988, the United States Congress formally acknowledged the Confederacy's contribution to American constitutional government.

For us, the lesson is clear: here mediation did not merely end a war. It founded a constitutional order in which peace, deliberation and shared governance belonged together. The Second World War also reminds us of the consequences of an unfair peace: the Treaty of Versailles, negotiated after the First World War with the United States as a participant, contributed to the conditions that led to further conflict.

We should neither claim these traditions for any one civilisation nor romanticise them. Customary settlements could also entrench hierarchy, exclusion and unequal power. The contribution of modern mediation is to keep the human wisdom of dialogue while insisting on impartiality, informed choice, safety and the freedom to refuse an unfair agreement. A mediator cannot be neutral about coercion merely by claiming to be neutral between the parties.

In 1648, after the devastation of the Thirty Years' War, a papal envoy, Fabio Chigi, and a Venetian diplomat, Alvise Contarini, carried communications between parties divided by deep political and religious differences in the negotiations that produced the Peace of Westphalia. They did not make those negotiations simple. They made communication possible when direct engagement was not. Nearly four centuries later, the problem is the same: sometimes the first achievement is not agreement, but restoring a channel through which agreement becomes imaginable.

The Nobel Peace Prize records how highly such work has been valued. Theodore Roosevelt helped bring Russia and Japan to the Treaty of Portsmouth in 1905 and received the Prize in 1906. Ralph Bunche, as United Nations mediator, negotiated the 1949 armistice agreements in the Middle East and

received the Prize in 1950. Jimmy Carter spent thirteen days, from 5 to 17 September 1978, with Anwar Sadat and Menachem Begin at Camp David. The agreements reached there opened the way to the Egypt-Israel Peace Treaty of March 1979. Carter's own Nobel Prize came in 2002, for decades of work for peace, democracy and human rights.

Kofi Annan, who shared the Nobel Peace Prize with the United Nations in 2001, continued to mediate after leaving office. During Kenya's post-election crisis, he chaired the African Union's Panel of Eminent African Personalities, whose work culminated in a power-sharing agreement on 28 February 2008. The lesson, particularly for our colleagues from Africa, is that a mediator's credibility can outlast the office in which it was earned, but it must be renewed in every new conflict.

The lesson of the Nobel Peace Prize winners is not that great leaders spoke persuasively. It is that disciplined preparation, generative dialogue and the will to continue through apparent failure made breakthroughs possible.

A number is worth remembering: 700. That is roughly how many days of negotiations, chaired by Senator George Mitchell and involving the parties and the British and Irish Governments, preceded the Good Friday Agreement of 10 April 1998. No single ingenious question produced that agreement. It took persistence, structure, political courage and the recognition that an imperfect negotiated future was better than a prolonged violent past. We often praise a mediator for closing a matter quickly. History also teaches us when not to rush.

These examples concern nations, not private disputes. The comparison is about process and judgement, not about equating a family quarrel with war. Their common lesson is that a mediator's influence comes less from the power to decide than from the capacity to keep a credible process alive when direct dialogue is failing.

The international legal order recognised this in 1945. Article 33 of the United Nations Charter requires parties to disputes likely to endanger international peace and security to seek a solution, 'first of all', by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means. Those two words matter. They place peaceful engagement at the beginning of a dangerous dispute, not at the end of exhausted hostilities.

In April 1976, the Pound Conference met in St Paul, Minnesota, seventy years after Roscoe Pound had challenged the legal profession over public dissatisfaction with the administration of justice. There, Harvard Professor Frank Sander advanced the idea that became known as the multi-door

courthouse: each dispute should reach the process suited to its nature. The aim was not to push every case into litigation. It was to stop forcing every problem through the same door.

That brings us to the present. Half a century after the Pound Conference, mediation rooms have been added to courthouses, but too often litigants still wait until litigation becomes expensive, bitter and exhausting before considering mediation. The alternative, or indeed the real route to resolution, exists, but its availability has not yet changed when parties turn to it. The greater opportunity lies in early, informed choice of process, before positions harden into identities and disagreement becomes a lifelong grievance.

One measure of where we stand is the Singapore Convention on Mediation. Adopted by the United Nations in 2018, it opened for signature on 7 August 2019, when forty-six countries signed on the first day, including India, China and the United States. Today it has 60 signatories and 25 parties. In participating States, and subject to its conditions, it provides for the enforcement of international commercial settlement agreements resulting from mediation. What the New York Convention of 1958 did for arbitral awards, the Singapore Convention seeks to do for mediated settlements.

However, signing a convention expresses intent; ratifying and implementing it is the test of commitment. India signed in 2019 and has yet to ratify. Neither the prestige of signing nor the elegance of a treaty can substitute for institutions that businesses and citizens trust. The next measure of progress is implementation.

Other jurisdictions have made mediation part of their design. Article 159 of Kenya's Constitution of 2010 calls for the promotion of reconciliation, mediation, arbitration and traditional dispute resolution, within constitutional safeguards. Singapore has made mediation, arbitration and international commerce work together as one dispute-resolution architecture. Hong Kong has taken mediation into public life far beyond corporate claims.

The same shift is visible in the public calendar. This year, Poland marked International Mediation Day in October; the United Kingdom held Family Mediation Week in January; Hong Kong ran a Mediation Week reaching schools, sport, older people and neighbourhoods; Singapore Convention Week convened specialists in August; and in the United States, the American Bar Association recognises the third week of October as Mediation Week, while the third Thursday is observed as Mediation Day. These are not one global observance, nor need they be. Their significance is that mediation is becoming

visible in schools, families, communities and business: a civic capability, not merely a specialist service.

In India, conciliation received a statutory framework under the Industrial Disputes Act, 1947. Amendments in 1976 encouraged settlement in family disputes; Section 89 of the Code of Civil Procedure, inserted by the 1999 amendment and brought into force in 2002, provided for settlement through arbitration, conciliation, judicial settlement and mediation. The Supreme Court constituted the Mediation and Conciliation Project Committee (MCPC) in 2005 to help turn that idea into practice. Parliament enacted the Mediation Act in 2023, and on 27 August 2026 the Central Government established the Mediation Council of India.

These milestones are real progress. But in a country with enormous litigation pressure, a mediation system must be judged by more than the number of matters referred or settled. The Mediation for the Nation campaign of 2025 showed what focused judicial leadership can achieve. The task now is to make that energy enduring rather than episodic: suitable matters identified early, competent mediators widely available, advocates equipped to advise responsibly, and outcomes that can be implemented without another round of litigation.

The Commonwealth Peace Mediation Conference in Jaipur, from 31 July to 2 August 2026, added another dimension. Its delegates adopted the Jaipur Declaration on Peace Mediation and the Rule of Law. The Declaration does not claim that any one country owns the idea of peace. It invites us to build credible pathways to peaceful resolution while preserving constitutional rights, judicial independence and access to public justice. That matters especially for the Global South, where the cost of reaching a courthouse can itself deny justice.

Where, then, should mediation go next? Here I depart from the conventional language of success. A signed settlement is a document. A resolved conflict is a human outcome. The first can be counted on the day of mediation. The second is tested after the parties leave the room. Did they understand the agreement? Could they perform it? Did the party with less power retain a meaningful choice? Did they return to court? Could the family, business or community continue to function? These are harder questions, but they are better measures of our work.

One uncomfortable truth deserves emphasis: not every settlement is a success, and not every mediation that ends without settlement is a failure. A party who recognises an unsafe bargain and freely declines it may have been

well served. Parties who narrow five disputes to one, clarify the real issues or learn to speak without hostility have made progress even without agreement. Our professional incentives must not reward pressure merely because pressure raises the settlement rate.

Our next advance, therefore, must be from settlement statistics to what I call the peace dividend. Wherever appropriate, and with respect for confidentiality, we should ask whether settlements still work after six or twelve months, whether repeat disputes decline, whether compliance improves, and whether parties regard the process as fair. We must measure what matters without turning confidential conversations into surveillance or reducing dignity to a score.

A second advance concerns advocates. Mediation advocacy is not softened litigation. The lawyer must explain legal rights and risks, and has the opportunity to distinguish what a client is entitled to demand from what will enable that client to live or trade well tomorrow. A settlement that cannot be performed, or that leaves a child, an employee or a vulnerable party unprotected, is not improved merely because it was signed without a trial. Good mediation advocacy protects choice while making agreement practical.

A third concerns technology. Today parties in Nairobi, Nassau, London, Singapore and Delhi can enter one secure mediation room without crossing a border. Artificial intelligence can assist with translation, document organisation and option-mapping. But computational power does not create legitimacy. We must ask who can access the platform, whose language is accurately represented, how confidential information is protected, and whether an algorithm is quietly nudging parties towards a preferred outcome. Technology should reduce the distance between people, not distance them from their own decisions.

For the Global South, this is an extraordinary opportunity. Quality mediation need not depend on a major city, a costly building or international travel. Yet access will not come merely from placing a portal online. It requires trust, local languages, professional standards, legal support where needed, affordable fees, and genuine choices for those with poor connectivity or limited digital confidence. Institutional imagination must accompany technical innovation.

Goal 16 of the Sustainable Development Goals places peace, justice and strong institutions together. That is also the idea behind what I call Legal Revolution 5.0: the public judiciary remains indispensable for protecting rights

and declaring the law with authority, while credible mediation, arbitration and online resolution provide additional routes to justice. Neither should seek to displace the other. The question is how they can complement each other without sacrificing fairness, transparency or public accountability.

That future places on mediation platforms a responsibility greater than merely training people to conduct sessions. There is a need to develop mediators whose credibility survives difficult cases; mediation advocates who understand the future as well as the claim; judges who know which disputes should, and should not, be referred; and institutions in which ordinary people can place their confidence. Those in this School come from different countries, generations and traditions. That diversity is not ceremonial. It is what prevents us from mistaking one jurisdiction's habits, or one generation's assumptions, for universal principles.

History has taught us that promoting peace and harmony through mediation requires concentrated effort, endurance and institutions that outlast individuals. Our profession requires all three: craft, patience and credible systems.

The past has shown that mediation can end wars and give birth to institutions. The present shows that recognition and legislation, though essential, are not enough. The future depends on what we choose to build. Let us move beyond teaching mediation merely as a technique and establish it as a trusted capacity within our societies. Let us celebrate not only the agreement signed, but the harm prevented, the dignity preserved and the relationship made workable. Above all, let the parties, not the mediator, remain the authors of what happens next. A court may pronounce the last word in a case. A mediator can help parties find the first words of a different future.

I thank our distinguished faculty, the entire Team Nivaaran and every participant who has joined us across continents and generations. Welcome to the Seventh International Summer School on Mediation. May we draw wisdom from the past, examine the present without complacency, and leave better equipped to mediate a new era.

Thank you.