

# SANDHĀNA

A publication of the Bangalore Mediation Centre  
(An initiative of the High Court of Karnataka)

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Quarterly

September - November -2016



## PATRON-IN- CHIEF



**Hon'ble Mr. Justice Subhro Kamal Mukherjee**  
Chief Justice, High Court of Karnataka

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**Justice Anand Byrareddy,**  
Judge, High Court of Karnataka



Ph : (High Court) 2295 488  
Ph : (Res) 2528 4809, 2295 5333

Residence at : 776, 12<sup>th</sup> Cross  
Indiranagar, 2<sup>nd</sup> Stage,  
Bangalore – 560 038  
E-mail : anandbyrareddy@yahoo.co.in

## Message

Greetings on behalf of the Board of Governors!

May the New Year bring peace, prosperity and Good Health to all. As one grows older, the years seem to get shorter. Let's make the most of it.

It is noticed that invariably, some of the Judges who are on the Board of Governors would be sitting either at Dharwad or Kalaburagi, or both. This makes holding meetings difficult. The Video Conferencing is unpredictable and inconvenient. Hence, some key changes that the present Board intends to make, is taking longer than it should.

It is noticed that mediation at BMC has come of age! The glorious achievements of the Centre speaks for itself. But sadly, it is not reflected anywhere else in the State. A cloning of sorts could be tried. In this direction, the High Court has decided to bring the Mediation Centres at the Dharwad and Kalaburagi Benches under the aegis of BMC. Thus far it was being managed and supervised by the officials of KSLSA.

An intensive three day refresher course has been conducted for the Mediators at both the Benches and awareness programmes, as well, for the members of the Bar has been conducted with good response from all concerned. This was during the first week of this month. Proper facilities to conduct mediation which was lacking, is being put in place in those two Benches.

There is preparation on, to conduct refresher training programmes for all the 1951 Mediators across the State by BMC, with financial assistance from the KSLSA, as BMC is facing a serious financial crunch.

Though mediation has proved to be a most effective dispute resolution mechanism, it is unfortunate that even after a decade, there is no legislation governing the process and legal sanction for finality of mediation settlements as in the case of an Arbitration Award, a Settlement Agreement in conciliation, or an Award of the Lok Adalat. The absolute neglect in this direction is glaring. There is no indication of any such legislation being in the offing. Please note that even after seven years of the Supreme Court rendering *Afcons Infrastructure Limited and Another vs. Cherian Varkey Construction Company Private Limited and Others (2010) 8 SCC 24*, highlighting the blatant anomaly and the unpardonable draftsman's error in Section 89 CPC, there has been no attempt by the Legislature to take corrective steps. There is hence an urgent need for everyone involved in the Mediation Movement in India to work towards canvassing for statutory sanction of Mediation and its processes. Particularly, pre-litigation mediation which would be the most sought after remedy and the need of the hour for a country like ours.

23.01.2017

**JUSTICE ANAND BYRAREDDY**  
PRESIDENT, BOARD OF GOVERNORS  
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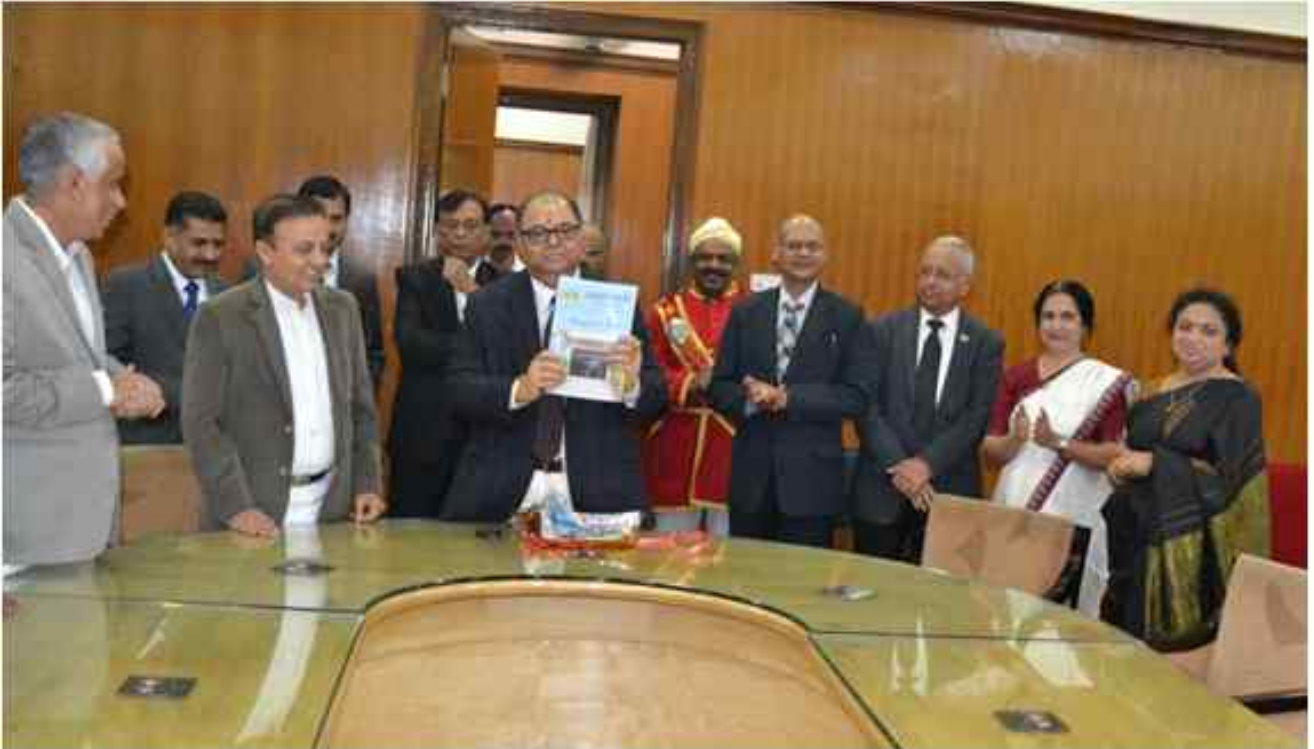
The Director

for

**BANGALORE MEDIATION CENTRE**

'Nyaya Degula' building,  
H.Siddaiah Road, Bangalore – 560 027.

## RELEASE OF INAUGURAL ISSUE OF “SANDHANA” OFFICIAL NEWS LETTER OF BMC



The inaugural issue of “SANDHANA”, the official news letter of Bangalore Mediation Centre (BMC) was released by Hon'ble Mr.Justice Subhro Kamal Mukherjee, Chief Justice, High Court of Karnataka and Patron-in-Chief, BMC on 31.08.2016 at the Conference Hall, High Court of Karnataka in the presence of Hon'ble Mr.Justice Jayant Patel, Executive Chairman, KSLSA, Hon'ble Mr.Justice Anand Byrareddy, Hon'ble Mr.Justice Ravi Malimath, Hon'ble Mr.Justice S.N.Satyanarayana, Members, Board of Governors, BMC.

Hon'ble Mr.Justice H.Billappa, the then President, BMC and Hon'ble Mr.Justice Aravind Kumar, Member Board of Governors BMC participated from Dharwad through video conferencing.

The other Hon'ble Judges who participated on the occasion are Hon'ble Mr. Justice H.G.Ramesh, Hon'ble Mr.Justice

S.Abdul Nazeer, Hon'ble Mr.Justice B.S.Patil, Hon'ble Mr.Justice Raghavendra S.Chauhan, Hon'ble Mr.Justice A.S.Bopanna, Hon'ble Mr. Justice A.N.Venugopala Gowda, Hon'ble Mr. Justice L.Narayanaswamy , Hon'ble Mrs. Justice B.V.Nagarathna, Hon'ble Mr. Justice B.Sreenivase Gowda, Hon'ble Mr. Justice B.Manohar, Hon'ble Mrs. Justice Rathnakala and Hon'ble Mr. Justice G.Narendar.

Hon'ble Mr.Justice Vineet Kothari, Hon'ble Mr. Justice R.B.Budihal and Hon'ble Mr. Justice B.Veerappa participated from Kalaburagi through video conferencing. Hon'ble Mr. Justice K.N.Phanendra, Hon'ble Mrs. Justice Sujatha and Hon'ble Mr. Justice Dinesh Kumar participated from Dharwad through video conferencing. The Registrars of the High Court, the Member Secretary of KSLSA, the Director, Deputy Director and Coordinators of BMC were also present.

## FELICITATION TO HON'BLE MR.JUSTICE H.BILLAPPA, PRESIDENT, BMC



*Hon'ble Mr. Justice Aravind Kumar garlanding Hon'ble Mr. Justice H. Billappa, President, BMC in the presence of Hon'ble Mr. Justice Anand Byrareddy and Hon'ble Mr. Justice K.N Phaneendra*

On 4<sup>th</sup> October 2016, the Bangalore Mediation Centre felicitated Hon'ble Mr.Justice H. Billappa, President, BMC, on the eve of his retirement as Judge of the High Court of Karnataka on 7<sup>th</sup> October 2016.

Mr. M.A.Humayun, Co-ordinator, BMC, welcomed the gathering of Hon'ble Mr.Justice Aravind Kumar, Hon'ble Mr.Justice Anand Byrareddy, Members, Board of Governors BMC, Hon'ble Mr.Justice K.N.Phaneendra, Mrs.Uma M.G, Member Secretary, KSLSA and the Mediators.

Hon'ble Mr.Justice Anand Byrareddy recalled fond memories of his association with Hon'ble Mr.Justice H. Billappa. On the occasion, Mrs.ShobhaPatil, Coordinator, BMC spoke of gentle nature and excellent sense of humor of Hon'ble Mr. Justice H. Billappa.

Responding to the felicitations, Hon'ble Mr.Justice H. Billappa reiterated his belief in Mediation and expressed his intention to undergo training in Mediation at BMC so that he could be of continued service to society. Quoting from literary stalwarts like Sri.D.V.Gundappa, Hon'ble Mr.Justice H.Billappa emphasized the need to imbibe and preserve values in life.

Hon'ble Mr.Justice H.Billappa was honored and participants wished him the very best in his retired life.

Mr. M.Chandrashekar Reddy, Director, BMC, proposed the vote of thanks.

BMC wishes Hon'ble Mr.Justice H. Billappa a very meaningful retired life and fondly hopes to see him often at BMC.

## EXCHANGE OF KNOWLEDGE

A delegation of 14 Mediators from Afghanistan lead by Mr. Joseph L. Gattuso, Attorney-Advisor , International Commercial Law Development Program (CLDP) U.S. Department of Commerce and Mr. Leonardo D'Urso, Co-Founder and CEO of ADR Centre, Rome, Italy visited the Bangalore Mediation Centre (BMC) between 8<sup>th</sup> to 10<sup>th</sup> of November, 2016.

The visit was a part of the global Mediation development program of the Commercial Law development Program of the U.S. Department of Commerce.

In the three days at the BMC the visiting Mediators interacted with co-ordinators & mediators of the BMC and were observers at several Mediation sessions. Discussions regarding Mediation techniques, the prevalent Law in Afghanistan, the status of Mediation in Afghanistan and related issues were discussed. A healthy exchange of views and several interactive meetings between them and Mediators of BMC made their visit meaningful.



Mr. Prasad Subanna and Mr. Shivakumar, Coordinators BMC, interacting with Mr. Joseph. L Gattuso and Mr. Leonardo D' Urso

Mrs. Shobha Patil,  
Coordinator BMC,  
Mr. Joseph L. Gattuso,  
Mr. Leonardo D' Urso,  
Mr. Shiv Kumar  
Coordinator BMC &  
Mr. Prasad Subanna,  
Coordinator BMC.





Delegates from Afghanistan discussing at BMC with the Director, BMC.



Delegates from Afghanistan discussing at BMC with the Director, BMC.



Mr. S. Sudarsana Reddy, Coordinator, BMC greeting Mr. Joseph L. Gattuso.



## **ADVANCED MEDIATION TRAINING WORKSHOP, BENGALURU**

Mr. Leonardo D'Urso, Co-Founder and CEO of the ADR Centre, Rome, Italy conducted a workshop on “Advanced Mediation Techniques” at the ITC Gardenia, Bengaluru on Friday the 11<sup>th</sup> November, 2016.

Participants were members of the Mediators' delegation from Afghanistan, Master Trainers, Coordinators, and Mediators of BMC .

The workshop witnessed an enumeration and discussion of several techniques of Mediation practiced in some parts of the world. Interactive sessions focused on the importance of cultural influences in accepting Mediation as a dispute resolution process and variations in techniques based on geographical locations.

Certificates of participation were presented to all the participants.



***PARTICIPANTS IN THE WORKSHOP ON “ADVANCED MEDIATION TECHNIQUES”  
AT ITC GARDENIA BENGALURU***

## NATIONAL CONSULTATION ON CHALLENGES IN MEDIATION AND WAY FORWARD AT NEW DELHI



**Sri Ravi Shankar Prasad, Hon'ble Union Minister for Law & Justice and Electronics and Information Technology, delivering his address on 1<sup>st</sup> of October 2016. Hon'ble Mr. Justice T.S.Thakur, Chief Justice of India, Hon'ble Mr. Justice Anil R. Dave, , Hon'ble Mr. Justice Dipak Misra, Hon'ble Mr. Justice Madan B. Lokur are on the dais.**

The Theme Song of the National Legal Services Authority (NALSA) was officially released and the Web portal of NALSA was also launched on 1<sup>st</sup> of October, 2016 at New Delhi . To coincide with the event, a National Consultation was held on “Challenges in Mediation and the Way Forward”.

Hon'ble Mr. Justice Jayant Patel, Judge, High Court of Karnataka and Executive Chairman, Karnataka State Legal Services Authority and Mrs. Uma M.G, Member, KSLSA were present on the occasion. Hon'ble Mr. Justice Aravind Kumar, Judge, High Court of Karnataka, Hon'ble Mr. Justice S.N.Satyanarayana, Judge, High Court of Karnataka and Members, Board of Governors,

Bangalore Mediation Centre (BMC) attended the Consultation. BMC was represented by Mr. S.N.Prashanth Chandra, Mr. Joe Joseph, Mrs. Manjula N.Tejaswi and Mrs. Shanta Chellappa, Mediators.

Hon'ble Mr. Justice T.S.Thakur, Chief Justice of India and Patron-in-Chief ,NALSA inaugurated the event as the Chief Guest. Shri. Ravi Shankar Prasad, Hon'ble Minister for Law and Justice and Electronic and Information Technology, Government of India who was the Special Guest presented the Keynote Address . The Hon'ble Mr. Justice Anil R.Dave, Judge, Supreme Court of India, and Executive Chairman NALSA, Hon'ble Mr. Justice Dipak Misra, Judge, Supreme Court of India and

Hon'ble Mr. Justice Madan B. Lokur, graced the occasion.

Following subjects were discussed in the four business sessions held in the afternoon of 1<sup>st</sup> October 2016:-

**Session I:** The requirement and availability of funds for Mediation in various States, including honorarium to Mediators in the District Courts.

**Session II:** Imparting training to Judicial Officers as Mediators for District Courts.

**Session III:** Discussion of the working and management of Mediation Centres.

**Session IV:** Discussing steps to increase referrals to mediation and giving appropriate units to Judicial Officers for every case that is successfully settled through Mediation and discussing the participation of State Judicial Academies in conducting awareness and referral judges training programs.

Some of the key conclusions /deliberations arrived at during the technical sessions related to :-

i) rate and method of payment of honorarium for Mediators; (ii) conducting Awareness and sensitization programs for Judicial officers, Referral Judge Training program 40 hour Mediation Training Program under the guidance of MCPC by the State Judicial Academy; (iii) High Courts considering about appointing Judicial Officers as mediators one day in a week on the pattern of Delhi and Maharashtra; (iv) giving additional units / points to the Referral Judges if the mediation is successful and giving additional

units/points to Judicial Officers who successfully mediate a dispute as Mediators; (v) Judicial Officers also to work as Mediators in addition to Advocate Mediators; (vi) providing each Mediation Centre with a coordinator and full time staff and basic infrastructure; (vii) preparation of a Plan of Action by each High Court for encouraging Mediation and better monitoring and supervision of Mediation Centres; (viii) effectively utilizing existing resources of Mediators and Mediation Centres; (ix) developing a Training Manual by the MCPC for training of Referral Judges on the lines of the Training Manual for 40 hours Mediation Training Program.

The business sessions were chaired by Hon'ble Mr. Justice Anil R. Dave, Hon'ble Mr. Justice Madan B. Lokur, **Hon'ble Mr. Justice A.K. Sikri**, Hon'ble Mr. Justice A.M. Khanwilkar and Dr. Justice D.Y. Chandrachud, Hon'ble Judges of the Supreme Court of India.



*Mr. Joe Joseph, Mrs. Shantha Chellappa, Mrs. Manjula N. Tejaswi and Mr. S.N. Prashanth Chandra, Mediators BMC at the National Consultation at New Delhi on 1.10.2016.*

## ***'Another Feather in the Cap of the Champion'***



Ms. Jyothi M, Mediator of BMC who is also a regular participant in the State and National Level Swimming Competition conducted by Karnataka Swimming Association and Swimming Federation of India since 2004 has once again proved her mettle. She was recently awarded with six gold medals which include four individual events and two relay events on 1st and 2nd October, 2016. She has also participated in **World Record Attempt** for non-stop swimming covering 100 mtrs in one hour.

**She has got 45 Gold Medals, 25 Silver Medals and 10 Bronze Medals to her credit.**

**BMC congratulates the achiever.**

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### **REFLECTIONS:**

“The Twenty First Century requires a dispute resolution system, which provides user-friendly, speedy and cost effective solutions. A dispute resolution system that can provide multi options solutions. A dispute resolution system that will permit the litigant to have his say in ultimate solution which can be tailor- made to meet his requirements and, at the same time, meet the requirements of the other side. Mediation appears to be the only solution on the horizon.”

**By Hon'ble Mr. Justice R.V.Raveendran, Judge (Retd.,) Supreme Court of India** in C. L. Agarwal Memorial lecture at Jaipur on 15.5.2010 - Reported in (2010)8 SCC (Journal Section) J-1 to 16.

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### **SOME DECISIONS**

#### **1) PRE-LITIGATION DESKS/CLINICS**

“All Mediation Centres shall set up pre-litigation desks/clinics; give them wide publicity and make efforts to settle matrimonial disputes at pre –litigation stage.”

**K.Srinivas Rao Vs. D.A.Deepa (2013) 5 SCC 226.**

#### **2) KIND OF REPORT TO BE SENT BY MEDIATORS TO COURTS:**

“Mediation proceedings are totally confidential proceedings. This is unlike proceedings in Court which are conducted openly in the public gaze. If the mediation succeeds, then the Mediator should send the agreement signed by both the parties to the court without mentioning what transpired during the mediation proceedings. If the mediation is unsuccessful, then the mediator should only write one sentence in his report and send it to the Court stating that the “mediation has been unsuccessful:. Beyond that the mediator should not write anything which was discussed, proposed or done during the mediation proceedings. This is because in mediation, very often, offers counter offers proposals are made by the parties but until and unless the parties reach to an agreement signed by them, it will not amount to any conditional contract. If the happenings in the mediation proceedings are disclosed, it will destroy the confidentiality of the mediation process.

We are compelled to observe this because the mediators should know what kind of reports they should send to the courts”.

**Extract from the judgment of Hon'ble Supreme Court in Motiram Vs. Ashok Kumar (2011) 1 SCC 466.**

## INFORMATION

### EMPANELMENT OF MEDIATORS UNDER THE COMPANIES ACT, 2013

Under Section 442(1) of the Companies Act, 2013, the Central Government is required to maintain a panel of experts to be called as **the Mediation and Conciliation Panel** for mediation between parties during the pendency of any proceedings before the Central Government or the Tribunal or the Appellate Tribunal constituted under the Act.

On 9.9.2016 the Central Government has notified Rules called **THE COMPANIES (MEDIATION AND CONCILIATION) RULES, 2016** under which any person possessing the prescribed qualifications could apply to the Regional Director in Form MDC 1 to be empanelled as a Mediator or Conciliator.

**Qualifications for empanelment have been prescribed in Rule 4. A qualified legal Practitioner for not less than ten years or any person who is an expert in Mediation or Conciliation who has successfully undergone training in Mediation or Conciliation would be entitled to apply for empanelment.**

Mediators who are interested in utilizing this opportunity to be empanelled could apply to the Regional Director, Ministry of Corporate Affairs in Form MDC 1.

## INFORMATION

### STATISTICS FROM 01.09.2016 TO 30.11.2016

| No. of cases referred for mediation | No. of cases pending at the beginning of the period | No. of cases Mediated | No. of cases settled through mediation | No. of Cases not settled | No. of cases not mediated | No. of cases pending for mediation |
|-------------------------------------|---|-----------------------|--|--------------------------|---------------------------|------------------------------------|
| <b>1831</b>                         | <b>2122</b>   | <b>1503</b>           | <b>860</b>                             | <b>643</b>               | <b>369</b>                | <b>2081</b>                        |

**Sri. Sunil A. Shettar**, Deputy Director, BMC has been transferred as I Addl. Sr Civil Judge, Bengaluru Rural with effect from 18.11.2016.

**Sri. Prabhakara Rao**, Senior Civil Judge, has taken charge as Deputy Director, BMC

**FOR INFORMATION**

RSB: NO.51/2016

HIGH COURT OF KARNATAKA,  
BENGALURU

DATED: 15.03.2016

**GENERAL CIRCULAR No.4 / 2016**

**Subject: Referring of cases for Mediation**

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The Principal City Civil & Sessions Judge, Bengaluru and all the Principal District & Sessions Judges in the State are hereby informed to direct the Referral Judges working in Bengaluru to refer minimum of 4 fit cases in a month and direct Referral Judges working elsewhere in the State to refer minimum of 2 fit cases in a month for Mediation, as per the Bench Mark set by the Committee and also to direct them to follow the directions issued by the Hon'ble Supreme Court in AFCONS Infrastructure Limited and Another Vs. Cherian Varkey Construction Company Private Limited and other reported in (2010) 8 SCC 24 and K.Srinivasa Rao Vs. D.A. Deepa, reported in (2013) 5 SCC 226, while referring the cases for Mediation, as resolved by the Hon'ble Board of Governors of Bengaluru Mediation Centre.

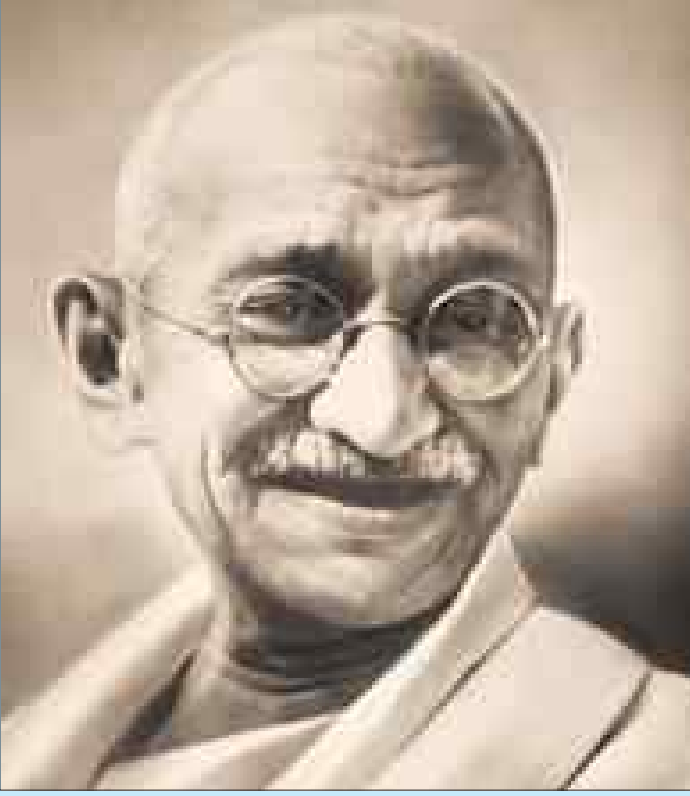
By Order of the Hon'ble High Court,

Sd/-

(JOHN MICHAEL CUNHA)  
REGISTRAR GENERAL



*BMC family facilitates Hon'ble Mr. Justice H. Billappa on the eve of his retirement*



*“My joy was boundless. I had learnt the true practice of law. I had 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 riven 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**



## **BANGALORE MEDIATION CENTRE**

‘Nyaya Degula’ building, H.Siddaiah Road, Bangalore – 560 027.

Off – 080 2295 4654/56 | Fax – 080 2295 4657

Website: [www.bangaloremediationcentre.kar.nic.in](http://www.bangaloremediationcentre.kar.nic.in)

E-mail ID – [bangaloremediationcentre@gmail.com](mailto:bangaloremediationcentre@gmail.com)

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