

COMMUNITY MEDIATION IN MALAYSIA AND IIAM COMMUNITY MEDIATION SERVICE: A COMPARATIVE STUDY

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ABSTRACT

Community Mediation programme in Malaysia is a Government effort through Department of National Unity and Integration ("DNUI") in providing a channel to settle disputes or problems at the community level through mediation process. The programme is still young and there are many rooms for improvement. On the other hand, the Indian Institute of Arbitration and Mediation ("IIAM") Community Mediation Service is a product of IIAM, a private institution in Cochin, Kerala. The institute has taken a great effort to provide mediation services for the people to settle their disputes. The mediation's processes are conducted by mediators at Mediation Clinics. IIAM has developed a mechanism in handling the Mediation Clinic that is financially and administratively independent from government. Malaysia may learn some lessons from IIAM to improve the current community mediation programme especially in term of funding. The objective of this paper is to compare the practice of both countries in administrating community mediation programme and to make suggestions to DNUI in improving the current programme.

KEYWORDS: *Community mediation, Department of National Unity and Integration, Indian Institute of Arbitration and Mediation (IIAM), Rukun Tetangga.*

INTRODUCTION

Community mediation is a mediation process adopted by the disputing parties within a community to resolve their dispute; mediation is one of the ADR or alternative modes of dispute settlement. ADR is an acronym popularly referred to alternative methods of dispute settlement such as negotiation, mediation/conciliation, arbitration, mini-trial and private judging etc. (Rashid, 2000, p. 1). Mediation aims to resolve dispute and maintain a good relationship

between the parties involved in the mediation process. The role of a mediator is to assist the disputants to arrive at an agreed resolution of their dispute. The mediator bears no authority to make any decision that is binding, but uses certain procedures, technique, and skills to help the disputants to negotiate an agreed resolution of their dispute without adjudication (Brown & Marriot, 1999, p. 127). This paper shares some information on community mediation programme by Indian Institute of Arbitration & Mediation (IIAM), Kerala and Department of National Unity and Integration (DNUI), Malaysia. This paper focuses on funding issues and administration of IIAM's Mediation Clinic or mediation centre which Malaysia has yet to establish. The authors suggest the DNUI to look at the practise of IIAM and to adopt a similar method of funding of the mediation centre. The financial implication and funding factor is essential in establishing mediation centres. Overcoming the financial obstacles will greatly assist the establishment of mediation centre and the community mediators in Malaysia.

COMMUNITY MEDIATION BY IIAM, KERALA, INDIA

Indian Institute of Arbitration & Mediation (IIAM) is situated at Cochin, Kerala. IIAM was formed by a group of professionals and businessmen in 2001 and registered under the TC Literary Scientific and Charitable Societies Registration Act, 1955 (IIAM, About Us). IIAM is a centre that provides facilities to the people to resolve their disputes outside court by applying ADR. The panel of the certified arbitrator and mediator maintained by IIAM are known for their expertise in the fields. IIAM also provides training for mediators and arbitrators. It is approved by the International Mediation Institute ("IMI") at Hague as a Qualifying Assessment Programme (QAP) for IMI certification for international mediators and it is the only institution that was granted such approval in India (Khan, personal communication 5 April, 2014).

The IIAM as the alternative dispute resolution centre decides to develop a community mediation programme known as IIAM Community Mediation Service to assist the community to resolve the disputes and conflicts facing by them without involving the courts. The motto of the programme is "Resolving Conflicts; Promoting Harmony". It is a programme for a neighbour to help his neighbour to resolve disputes. The purpose of the programme is to empower the people to develop a solution that is mutually agreed by the parties by providing neutral dispute resolution opportunities (IIAM, IIAM Community Mediation Service).

The mission of the programme is to provide a trained mediator to assist the community in resolving disputes. The programme is an opportunity for the residents to take part in preventing and intervening in a conflict by applying alternative dispute resolution method before it is referred to the court. The existence of community mediation programme is seen as a method that could reduce interference by laws in conflicts at community level. As such, it promotes and maintains harmony in the community and at the same time save the disputants from paying high cost of legal fees and save time from the long queue at the Courts (IIAM, IIAM Community Mediation).

Under IIAM Community Mediation Service (IIAM CMS) programme, a team of mediators is formed and a centre is set up known as Mediation Clinics. Local people that belong to the community in which the IIAM CMS was established are trained to be the mediators. The mediators are basically the grassroots leaders who have good reputation in the area and are known as trustworthy and honest. These selected persons will undergo mediation training provided by IIAM and upon completion of the course will be empanelled as the mediators for the community mediation clinics. The community mediators under IIAM CMS play the role of peace builder in maintaining the harmony in the community. The IIAM emphasized on the importance of a mediator to acquire the skill to be a good listener (IIAM, IIAM Community

Mediation Service). The objective of the establishment of the community mediation is mentioned as follows:

"IIAM Community Mediation Service will serve as a mechanism in bringing into the consciousness of the society the effectiveness of grassroots-level arrangements to bring forth harmony in community, providing a safe environment for people to air grievances to reach a peaceful resolution." (IIAM, IIAM Community Mediation Service).

The mediation session is conducted at the Mediation Clinic premise. It is a small centre about 150- 200 square feet in area. The registration will be done by the only staff of the Clinics namely the Resident Coordinator. The selected volunteers will practice at his/her neighbourhood area or community. In Kerala, the IIAM MCS's community mediators serve his/her community at the Mediation Clinics (IIAM, IIAM Community Mediation Service). In selecting the volunteers, IIAM give more consideration to a person who has experience in dealing with public and has experience in resolving disputes at community level (Xavier, 2009 p.3).

The role and function of IIAM in the establishment and administration of the Mediation Clinics are as follow:

- Form the Mediation Clinics;
- Coordinating with the CMS Committees;
- Training, mentoring and certifying community mediators;
- Overseeing and evaluating the ethical norms and standards of mediators;
- Preparing and maintaining Feedback digest for mediators;
- Preparing educative materials on community mediation;
- Presenting the details of all Community Mediation Clinics with the empanelled mediators in the IIAM website;
- Acting as a research institution for community mediation, considering various cultural and racial differences;
- Conducting training programs for aspiring community mediators; etc. (IIAM, IIAM Community Mediation Service).

IIAM does not provide funding for the Mediation Clinic. The institution works together with organisations under the Corporate Social Responsibility (CSR) programme in which those organisations become the funder of the Mediation Clinic. The organisations are known as Partner of IIAM. The mediation clinic will bear the name of the partner such as "ABC's Mediation Clinic'. The cost of the administration of the mediation clinic will be borne by the partner. However, partner may also contribute by funding the activities of CMS Committee without funding a specific mediation clinic. The name of the partners will be published in IIAM website as "Contributor' (for a contribution of Rs.5000.00 to Rs.50,000.00), "Sponsors" (for a contribution of Rs.50,000.00 to Rs.100,000.00) and CMS Partners (for a contribution of Rs.100,000.00 and above). Few selected partners are included under the IIAM CMS Committee (IIAM, IIAM Community Mediation Service). The partners are one of the factors that contributed to the success of IIAM CMS Mediation Clinics. Previously, most of the institution or organisation channelled the two per cents of their profits as the CSR to medical institution for medical aid. Now many institutions and organisations are aware of the benefits of mediation and its advantages. Hence, they worked together with IIAM to establish Mediation Clinics (Khan, personal communication 5 April 2014).

IIAM has established 100 of Mediation Clinic in Kerala without any helps from the government financially or in any means. IIAM now is working together with partners in Tamil Nadu and Karnataka to open 200 Mediation Clinics in each States. The Mediation Clinics in overall have managed to settle 80% of family disputes (Khan, personal communication 5 April 2014).

COMMUNITY MEDIATION IN MALAYSIA

In 1969, the Malaysian Government established Department of Unity and Integration ("DNUI") to promote integration and maintain harmony. The DNUI has designed many programmes to encourage interaction between ethnics. One of the programmes is Rukun Tetangga ("Peaceful Neighbourhood") that was established in 1975 with the purpose to ensure safety of the local resident. In 1984, the focus was directed towards strengthening the relations between the various ethnics and races in Malaysia. In 2007 the DNUI developed a programme under Rukun Tetangga called Community Mediation. Under this programme, the Rukun Tetangga Committees are trained to be a mediator or a third party who is impartial to help the disputants or residents to resolve their disputes amicably (Khan et al, 2013). The community mediators are volunteers and do not received salary from the DNUI. They are the grassroots leaders whom are known to the residential areas. The Community Mediation project was developed in 2007 in the States of Selangor, Penang, Johor and Federal Territory of Kuala Lumpur and started to be introduced in the year of 2008 (Hua, 2009). It was later developed in all the States in Malaysia. The first batch of the East Malaysia's community mediators received their certificate of appointment on 8th October, 2011 (Khan, personal communication, 27 November 2013).

The responsibilities to train the community mediator in Malaysia are shouldered on The Institut Kajian dan Latihan Integrasi Nasional ('IKLIN') (National Integration Research and Training Institute). The institute has appointed a trainer from socio-psychological background to train the mediators. The community mediators in Malaysia is a merely a third person who has the knowledge to assist the residents in their neighbourhood to resolve disputes. They have never undergone a professional training (Khan & Hak, 2014 p.180-195). Currently, the DNUI has 874 trained Community Mediators all over Malaysia. The DNUI plans to train more mediators to enable each of Rukun Tetangga areas to have one community mediator (Khan, personal communication, 7 Mac 2014).

However, the mediators have no centre that could provide them room for mediation sessions or to keep records. All the records of cases handle by mediators are forward to the DNUI officer at district level. Hence, the DNUI has created a platform called Community Conferencing Centre (Pusat Sidang Komuniti) to allow the community mediators to meet, discuss and shares experiences with each other at each States in Malaysia. It is not a physical centre but one-to-two day programme conducted at hotel with a purpose to meet all the mediators in the State. On that day, the mediators share their concerns with the DNUI's officer and Directors of the respective unit.

Some mediators have taken initiatives to establish their centre at their respective States to overcome the lacking of centres for community mediators. For example, Community Mediators Johor has established its own centre at Tongkang Pechah. The centre is managed by the community mediators themselves.

In term of funding, the mediators are still dependent on DNUI or their Rukun Tetangga Area's grant. It is not wrong to depend on the Rukun Tetangga because community mediators are not a separate organisation but part of Rukun Tetangga. The mediators may utilise the Rukun Tetangga grant and claim from the DNUI later. The DNUI offers to give RM50.00 as disbursement

payment for the mediators for each report submitted to them. So, the mediators do not have to use their pocket money for travel expenses in rendering their services to the community.

Further, the mediators are trained and appointed by the DNUI hence it is expected from the department to play some roles in helping them in term of funding until an independent structure of community mediation centre is established. Having said this, the DNUI had never left the mediators totally without any assistance. In 2012, the DNUI has granted some money to the Malaysian Community Mediation Association to conduct short course by inviting lectures from International Islamic University Malaysia as the speakers. There were almost 50 participants participated in the course.

Currently, the DNUI is not only depended by the mediators but also the Malaysian Community Mediation Association ("MCMA"). Despite that the MCMA was formed in 2011 and officiate in 2012, it is unable make a move without the funding from DNUI. The MCMA collected very minimal fee from its members but the fees are insufficient to cover basic expenses. Hence, it is reverting to the DNUI for financial assistance. Recently, the MCMA has sent proposal to the DNUI for some grant to enable them to conduct a short course in continuation of the earlier course (Khan, personal communication 19 May, 2014).

DISCUSSION AND SUGGESTIONS

From the above discussion, there are some lessons which we in Malaysia can learn in order to support and enhance our community mediation service. Firstly, mediators from IIAM requires a centre or small space to allow them to conduct mediation session in a proper manner and at a proper place.. However, in our case, the DNUI lacks funding; to overcome this shortage the DNUI conduct Pusat Sidang Komuniti at hotels and not to provide a physical centre. A physical centre would be costly for the DNUI to manage. It is also to note that each state would require its own centre and this will increase the costs. So far, the mediators and the associations are solely depending solely on the DNUI except for some mediators in Johor. They have taken the effort to ensure they have a proper place to conduct mediation session such as at their centre in Tongkang Pechah or District office or police station or municipal office. It must also be noted thatt it is very costly for the DNUI to set up a centre for each mediator or a group of mediator. There are 874 mediators in Malaysia and if each group consists of 5 mediators, there will be 135 groups. 135 small centres may cost RM135,000.00 if one centre's monthly expenses is RM1000.00. Thus, the DNUI need to find a way to solve this financial issue.

Secondly, the mediators and the MCMA are depending on the DNUI for fund. The mediators need fund to enable them to move on by establishing a small centre. Again this issue is related to the first issue. The MCMA is not supposed to depend on the DNUI because it is considered as non-governmental organisation but the DNUI are still helping them.

The authors suggest that the DNUI adopt the structure of IIAM CMS. Even though the mediators are trained by IIAM, the institution does not directly involves with the financial issues. . The institution takes the effort to ensure that Mediation Clinic is established and funds are available for the clinic's administration by getting Partners that interested to contribute to the clinic under CSR programme. The funds are sufficient to maintain the centre expenses including the salary of its staff.

Hence, the DNUI may coordinate with companies, institutions or organisations under the CSR programme to get funds for community mediation programme. As a token of gratitude for their assistance, the companies and institutions that contributed funds to the running of the mediation centre may be made "an associates". This way, the financial need on establishment of a centre

can be resolved. With the funding by the Associates, the DNUI may establish four-tiers of community mediation centres.

It is suggested that the DNUI at States level to obtain funds from the Associates and this will facilitate DNUI to manage the centre. There may also be a need to employ temporary staffs to handle this matter; thus the available fund from the associates can be utilised for employing the staff. . Since the DNUI itself is the headquarters and is the policy makers, there will arise no issue on handling mediators. The DNUI may need to provide a small room at the headquarters building to be the Malaysian Community Mediation Centre for purpose of keeping all the records of the mediators and cases conducted by the mediators. The States need also to provide place for the establishment of Community Mediation District Centre at District level to keep all records from the Mukim or Rukun Tetangga Areas and is answerable to the States (Community Mediation Branch Centres) and Community Mediation Offices at Mukim or Rukun Tetangga Area (for example Community Mediation Centre Taman Melati). This idea is better illustrates as follows (Figure 1):

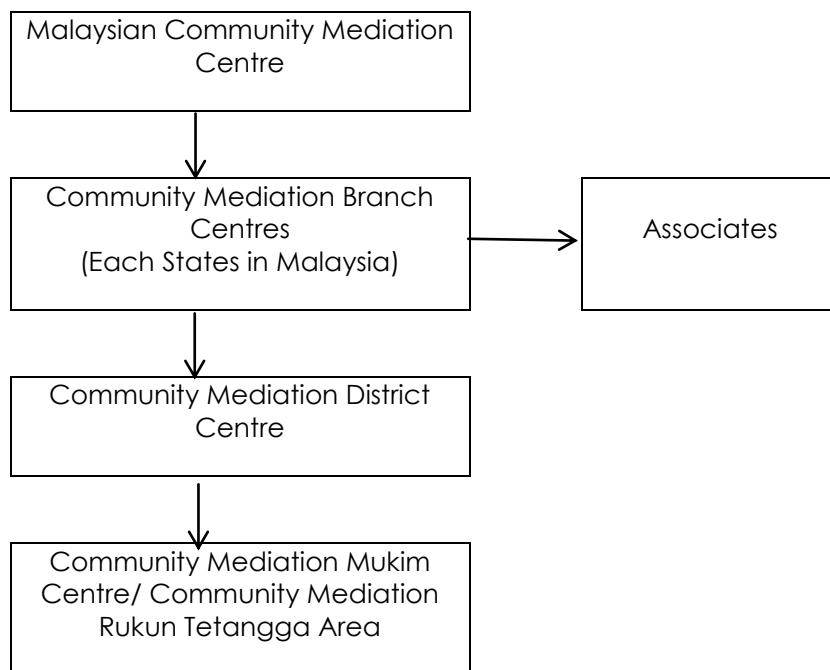


Figure 1: Propose Organisation Chart of Community Mediation in Malaysia

It is also recommended for the DNUI to advise Malaysian Community Mediation Association ("MCMA") to adopt the same method. The MCMA needs to approach companies and institutions that willing to support the DNUI effort to spread the usage community mediation as a method of dispute resolution at community level to be their partner in funding their activities. The MCMA cannot depend solely on the DNUI for funding. MCMA being a Non-Governmental Organisation must put effort to get financial aid. The DNUI may assist them in providing letter of recommendation in each application they made to obtain fund under the CSR programme. Their determination to gather the mediators is a great step and an excellence effort. Thus, it is time for them to make further steps to move on in supporting the DNUI in improving the skills and knowledge of community mediators.

CONCLUSION

The community mediation programme can be made financially independent. Currently there is too much reliance on DNUI. Malaysia may adopt the same method as practised by the IIAM in obtaining funds for community mediation programme. The CSR programme as elaborated above may be utilised by DNUI in funding community mediation programme in Malaysia. Harmony is one of the assets of Malaysian that must be maintained by the government. There are many companies, institutes and organisations which have supported the government's efforts in maintaining the harmony in the country and are willing to assist in making Malaysia continuously a harmonious and peaceful country.

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