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THE ROAD TO MEDIATION

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I. ABSTRACT

*"An ounce of mediation is worth a pound of arbitration and a ton of litigation."*³

By providing a successful substitute for conventional litigation, mediation considerably lessens the workload on courts by lowering the number of cases that need to be heard by judges. Mediation reduces the amount of time it takes to settle disagreements and clears the backlog of cases by settling conflicts outside of court. Courts can concentrate their resources on more complicated or contentious cases that call for formal adjudication because of this decrease in the caseload. Furthermore, the generally shorter and less expensive mediation procedure not only leads to quicker results but also lowers the total cost of litigation, which lessens the burden on the court's resources.

Through mediation, the parties are able to re-evaluate their rights and shared interests and develop fresh approaches to conflict resolution. As a result, among arbitration, conciliation, and negotiation, mediation has emerged as the most popular alternative dispute resolution (ADR) process. Mediation is seen as a legitimate means of resolving disputes. It is currently used in many different contexts, such as individual disagreements, employer-employee disputes, and family circumstances like divorce and custody issues. Global mediation also takes place, involving intervention in disputes between nations and in nations where the ruling class is at odds with its citizens. Mediation has been known to positively and permanently alter people, and in the process, its relationships. The purpose of this research is to examine mediation's function in the legal system as a successful and practical form of dispute resolution. The primary goals of the study are to determine how integrated mediation affects District Court proceedings and to introduce mediators as impartial third parties who

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³Available at <https://main.sci.gov.in/pdf/mediation/MT%20MANUAL%20OF%20INDIA.pdf> (last visited on July 20, 2024).

aid in settlement negotiations. Additionally, this study intends to investigate potential difficulties and obstacles in putting mediation into practice in a cutthroat setting.

II. KEYWORDS:

ADR, dispute, mediation, justice

III. INTRODUCTION

Mediation is a key to settlement of disputes. It is that key which not only reduces the burden on the courts but also makes the disputing parties arrive at a conclusion. Mediation is a structured process wherein a third party mainly referred to as a mediator, who is impartial and usually mutually appointed by both disputing parties, tries to resolve the conflict between the parties through the process of communication and negotiation. Mediation is not restricted to one sphere only – this settlement can be used by the corporations, state, international organisations, or any entity. In some cases, more than one mediator can also be appointed who then will work in collaboration to derive the conclusion and render the case as resolved.

The mediator listens to the facts of both the parties and then tries to arrive at a conclusion thus moving closer to the resolution process. The third party tries to make both the parties understand each other's issues, statements, and helps them to find an optimal solution to their problem through negotiation. The disputing parties opt for mediation when they wish to preserve their relationship with each other. A mediator does not direct the process of mediation but merely facilitates it.

Recent years have seen a significant improvement in the status of mediation in the Indian legal system, with growing support from the judges and legal institutions. Nowadays, mediators are acknowledged by a number of legal frameworks, such as the Civil Procedure Code (CPC), which promotes mediation in civil cases. Prominent endeavors like the Supreme Court Mediation Center and many High Court Mediation Centers have advanced the institutionalization of mediation by offering organized forums for resolving conflicts. Furthermore, institutions such as the Institute of Advanced Legal Studies and the Indian Council of Arbitration are supporting the rising emphasis on standards-setting and mediation training. Even with these

advancements, mediation's uptake is still uneven and frequently eclipsed by the conventional litigation-centric strategy that still predominates in Indian law.

A viable answer to a number of issues plaguing the Indian legal system is mediation. With courts overburdened and justice sometimes delayed, mediation offers a more efficient and economical option that can settle disputes in a matter of weeks or months, therefore lowering the backlog of cases. In contrast to litigation, which is frequently expensive and combative, mediation fosters cooperative problem-solving and protects the parties' relationships. In addition, mediation provides a private setting for conflict resolution in contrast to the public scrutiny of court processes due to its secret character. Mediation tackles the inefficiencies and excessive costs associated with traditional legal processes by giving parties a voice in the outcome and facilitating remedies suited to their individual requirements. Maximizing the benefits of mediation requires more legislative backing, increased awareness, and incorporation into legal education.

IV. DEFINITION

As per **Dictionary of Black's Law** Mediation is "a method of non-binding dispute resolution involving a neutral third party who tries to help the disputing parties to reach a mutually agreeable solution"⁴

V. HISTORICAL BACKGROUND

The history of mediation can be traced back to the ancient time in India. In ancient time, the disputes were resolved through Panchayats. But mediation was recognized as formal and legal with the advent of British colonialism. With tremendous economic growth in our country, the litigation has eliminated because of delay in procedures and decisions. Therefore, we have shifted to Alternative Dispute Resolution Mechanism.

Mediation gained popularity worldwide with the introduction of Lok Adalats. The Lok Adalat was given statutory recognition and its powers were deemed to be that of civil court by the Legal Services Authorities Act, 1987. In India, the Legal Services

⁴ Bryan A Garner (ed), Black's Law Dictionary (11th edn, Thomson Reuters 2019) 119

Authorities Act of 1987 has been instrumental in acknowledging and endorsing mediation as a practical alternative dispute resolution (ADR) method. In particular, the Act creates Lok Adalats (People's Courts) and gives them the power to resolve conflicts via the use of techniques including negotiation, conciliation, and mediation through provisions found in Sections 19, 20, and 22. To aid in the resolution of conflicts, Section 19 calls for the formation of Lok Adalats at various levels. It gives these Lok Adalats the authority to take on matters for settlement that are either anticipated to be filed or that are currently ongoing in court.

The clause essentially acknowledges mediation as an official procedure for resolving disputes inside the legal system. The authority and functions of Lok Adalats are delineated in Section 20, with a particular emphasis on their ability to mediate solutions through mutually agreeable or voluntary compromises. This highlights the value of mediation since it helps parties to settle their differences peacefully and without the need for drawn-out legal proceedings. The decisions made by Lok Adalats are given finality by Section 22, which makes them legally enforceable and binding like a civil court ruling.

This clause, which grants the agreements reached through alternative dispute resolution (ADR) techniques the same legal standing as a court verdict, significantly enhances the legitimacy and acceptance of mediation. Thereafter, Section 89 of Code of Civil Procedure (CPC)⁵, 1908 was formulated that came into effect on July 1, 2002 which states that if the dispute can be resolved between the parties in a way that it is mutually acceptable by the parties, then the court may refer the case to ADR mechanism.

These provisions have a significant effect. They promote the settlement of conflicts outside of regular courts and institutionalize mediation, establishing it as a fundamental component of the Indian legal system.

⁵ Code of Civil Procedure 1908, s 89

VI. MEDIATION BILL, 2021 AND THE ENFORCEMENT OF MEDIATION ACT

The Mediation Bill, 2023 received the President's assent on September 15, 2023, thus, changing the status of mediation bill to mediation act. The mediation bill was passed by both the houses in August 2023 and it received President's assent in September codifying the process of mediation. The bill codified the community mediation and also provided for online mediation and an option to go for voluntary pre-mediation. The bill also halved the time for completion of mediation proceedings that is, to 180 days.

An important step in formalizing and improving mediation in India is the Mediation Act, 2023. The creation of a Mediation Council of India, the mandate for pre-litigation mediation, and the acceptance of internet mediation are some of this Act's main features. The Act places mediation at the forefront of the dispute resolution process by requiring parties to undertake mediation before bringing legal action in certain situations. This clause is expected to greatly lessen the number of cases that courts handle and encourage the practice of settling conflicts peacefully. Another important element of the Act is the creation of the Mediation Council of India. The Council is in charge of licensing mediators, monitoring the mediation procedure, and making sure that moral principles are followed.

Certain aspects of the Mediation Act, 2023 will play a major role in determining how mediation develops in India in the future. For some issues, Section 4 requires pre-litigation mediation; parties must explore mediation as a means of resolution before commencing litigation. This makes mediation an essential initial step in conflict resolution because it not only helps to reduce the backlog of cases in court but also fosters a culture of peaceful settlement. The Mediation Council of India is established under Section 8 and is in charge of accrediting mediators, establishing guidelines for mediation procedures, and overseeing the mediation industry. It is anticipated that this institutional framework will professionalize mediation by guaranteeing that mediators follow ethical guidelines and are well trained, thereby boosting public trust in the process.

Another important clause is Section 29, which acknowledges online mediation and permits parties to settle conflicts using digital channels. This segment recognizes the increasing significance of technology in the legal domain and enhances the accessibility of mediation, particularly for parties residing in different regions, with the potential to expedite the settlement process.

Finally, Section 12 ensures that settlements obtained through mediation carry the same weight as court rulings by granting mediation agreements legal enforceability. By strengthening mediation's credibility, this clause encourages more parties to choose mediation as an alternative to litigation.

VII. CHARACTERISTICS OF MEDIATION

Mediation is a time effective process, that is, it is just a matter of hours, and the case stands resolved unlike the courts where the case seems to be pending since ages and the advocates seem to extort the people by charging higher fees in every meeting whereas the mediator charges as per the hours. Mediation is a non-coercive process which means it does not create a forceful obligation on the parties. The mediation process remains confidential that is, the dispute stays between the parties and the mediator unlike the court proceedings which are public. The mediators shred their notes once the case is finished to maintain the confidentiality of the case.

The mediation is a non-obligatory process, the disputing parties are not bound by the decision of the mediator. The parties continue with the mediation only when their interests are met, once the parties lose their interest they can simply walk out of the process of mediation. Mediation provides an upper hand to the negotiating parties as the interests of the parties are the priority and are always kept in mind, moreover the result always favours the parties thus, creating a win-win situation for the parties. The mediator has the role of assistance only and is not a decision maker in any case.

VIII. PROCEDURE OF MEDIATION

Mediation is a process which begins with an introduction of the mediator where the mediator formally introduces himself to the parties and gives them assurance of his neutrality and makes them aware of the confidentiality which he is obliged to

maintain throughout the case. This stage is followed by a joint sitting wherein both the parties with the mediator are made to face each other and through the discussions an agenda is set, the issues are defined and the problems or the concerns of the parties are discussed with a motive to attain a conclusion.

After the joint session, there comes the stage of separate caucus which helps in breaking the quandary between the parties. It is held between the mediator and each individual party. Here the parties are separated physically. This stage provides the mediator an option to ask such questions and gain such insights which may help to resolve the dispute in a more efficient manner, and it could also be proved as a turning point in the mediation. Furthermore, it gives the confidence to the party to express more freely its concerns and viewpoints.

The last stage is of the agreement which involves a mediator to understand the terms of conflict of parties and convert them into a harmonious settlement and reduce the settlement to a clear and complete agreement.

A combination of institutional regulations, court precedents, and statutes control mediation procedures in India. The Arbitration and Conciliation Act, 1996, which includes arbitration, mediation and conciliation, provides the main basis for mediation. In addition, Section 89 of the Code of Civil Procedure, 1908, which gives courts the authority to submit conflicts to mediation, was used to draft the Civil Procedure Mediation Rules, 2003. These guidelines describe the steps involved in conducting mediation in a court-annexed setting, such as the selection of mediators, confidentiality requirements, and the legal force behind settlements achieved through mediation. Participants in mediation are able to end it whenever they choose.

The mediation process places a strong emphasis on confidentiality, making sure that no information or communication shared during mediation may be utilized in a different legal procedure. Without making decisions for the parties, the mediator serves as an impartial facilitator who assists them in coming to a mutually agreeable resolution. Organizations that are essential to standardizing mediation procedures and educating mediators include the Supreme Court's Mediation and Conciliation Project Committee (MCPC) and numerous state mediation centers. Pre-litigation

mediation is being encouraged and is becoming required before bringing some civil lawsuits, according to recent legal changes like the Mediation Bill, 2021. These efforts seek to further codify mediation procedures. With mediation being acknowledged as a useful technique for settling conflicts peacefully, India's dedication to alternative dispute resolution procedures is reflected in this changing legal landscape.

IX. ADVANTAGES OF MEDIATION

- Mediation is more of a structured and an informal process. The process of mediation has proved to be a boon for many parties.
- Mediator does not impose its decision over the parties, the parties made free to decide for themselves thus maintaining the supremacy of the parties.
- Mediation is both a cost-effective as well as a time-effective process. The case is resolved in less time and less fees. The mediators are forbidden to disclose even the minute detail of the parties thus, respecting the confidentiality of the parties in a dispute.
- One of the main tenets of mediation is confidentiality, which guarantees that the talks and information shared throughout the process are kept inside and not revealed to third parties. Because of this secrecy, the parties are able to explore choices, share problems, and negotiate in a secure atmosphere without worrying that what they say could be used against them in court or in another situation. The guarantee of privacy promotes openness and truthfulness, which are essential for coming to a consensus. Without this safeguard, parties may suppress crucial information, compromising the mediation process' efficacy and making it more challenging to settle disagreements amicably. Thus, keeping things private is crucial to preserving confidence and promoting fruitful mediation outcomes.
- Through open communication and group problem-solving, mediation promotes innovative solutions. In mediation, parties gather in an impartial environment to talk about their problems under the direction of a mediator who supports mutual understanding and communication. Through this

approach, people can delve deeply into exploring their needs and interests, frequently uncovering underlying difficulties that were not immediately obvious. Participants are more likely to think creatively and consider novel ideas that might not surface in more combative contexts when they collaborate to create solutions that satisfy both parties. Because mediation emphasizes cooperation over conflict and looks for win-win solutions that satisfy all parties concerned, its collaborative character fosters an atmosphere conducive to the development of creative solutions.

- Mediation is an important tool for maintaining corporate relationships because it provides a flexible yet structured method of settling conflicts. In contrast to adversarial judicial processes, mediation places an emphasis on cooperation and understanding between the parties, enabling them to honestly explore their differences under the direction of an impartial mediator. Through this method, a cooperative atmosphere is created where all parties are encouraged to voice their concerns and work together to find a win-win solution. Through a non-confrontational approach to conflict resolution, mediation fosters mutual respect and trust amongst the parties. Usually, the result is a more cooperative conclusion that maintains business ties and creates the groundwork for future cooperation.
- Case studies show that mediation has numerous important advantages over traditional litigation. For example, mediation helped resolve a long-running business disagreement between two corporations in a matter of weeks, when litigation would have taken months or even years, consuming large sums of money and raising tensions. Because of the informal nature of mediation, the parties were able to have an open discussion and come up with a creative solution that addressed underlying concerns while maintaining their working relationship. Similar to this, mediation gave parents a forum to work together to decide on custody arrangements in a family law dispute, leading to a more cordial agreement and less emotional stress on their kids. On the other hand, conventional litigation frequently makes matters worse and imposes strict

decisions that might not be in the best interests of the family. These instances demonstrate mediation's

X. TYPES OF MEDIATION

There are various types of mediation processes worldwide but there are two types of mediation processes which are being followed in India-

1. **Court referred mediation:** A court may refer any pending case for mediation if it appears to the court that there is still a scope of settlement between the parties. Court referred mediation is mainly used in matrimonial cases or family matters. It is mentioned under section 89 of Code of Civil Procedure, 1908 which was inserted through the 2002 amendment³ to the CPC. However, in **Afcons infrastructure Ltd. V. Cherian Varkey Construction Co. (P) Ltd.**⁶, the Supreme Court pointed out various ambiguities in section 89 of CPC, there is no clarity in use of phrases like 'mediation' etc. There is prescribed procedure for referring a matter to mediation.
2. **Private mediation:** Under private mediation, the mediator is privately appointed by the parties and is not appointed on a referral basis. Private mediation is also mainly used for matrimonial cases like child support, discussing alimony, etc.

In India, the cases resolved by mediation are shown by following statistics⁵.

- The number of mediation centres in India are - 839
- The number of cases resolved through mediation are - 336455
- Number of mediators trained by MCPC are - 6480

XI. JUDICIAL APPROACH

1. **MR Krishna Murthi v. New India Assurance Co. Ltd**⁷. The Hon'ble Supreme Court advised the Government to investigate the viability of enacting the Indian Mediation Act while taking into consideration a plea seeking reform in

⁶Afcons Infrastructure Ltd v Cherian Varkey Construction Co (P) Ltd (2010) 8 SCC 24

⁷MR Krishna Murthi v New India Assurance Co. Ltd. (2019) SC 315.

the Motor Vehicle Accident Claims system. The Court recommended taking into account a number of mediation-related factors.

2. In its order dated March 8, 2019, the Supreme Court oversaw mediation in the Ayodhya issue (**M. Siddiq (D) v. Mahant Suresh Das, Civil Appeal No. 10866-10867 of 2010**). One pertinent passage from the order is, "We have considered the nature of the dispute arising." Despite the parties' inability to agree on anything, we believe that mediation should be tried as a means of resolving the conflict.
3. **In Salem Bar Association v. Union of India**⁸, The Supreme Court of India considered whether some sections of the National Tax Tribunal Act, 2005 were constitutional in the case of Salem Bar Association v. Union of India (2003). The National Tax Tribunal (NTT) was created under the Act to settle tax-related issues. The primary questions in this case concerned whether the Act went against the separation of powers and judicial independence provisions of the Constitution. The Court ruled that although the NTT could have been formed, some of its provisions regarding the selection, dismissal, and tenure security of its members were unconstitutional.

The Hon'ble Supreme Court recommended that the matter be referred to mediation. The Court noted that the cases do not always need to be decided by the courts alone. It can be resolved using a variety of different approaches. The Supreme Court further declared that courts must promote alternative dispute resolution (ADR) between parties. The Hon'ble Court also recommended creating a committee to guarantee that parties receive effective and prompt justice.

XII. WHAT MAKES MEDIATION DIFFERENT FROM LITIGATION

Litigation is a time-consuming process which eats up several crucial years of a person and still the case seems to be unresolved whereas mediation is a time effective, and a speedy process and the case is resolved quickly in two or three meetings. The plaintiff

⁸ Salem Bar Association v Union of India (2003) 1 SCC 49.

can claim all the refund of the court fees as per section 16 of court fees act, 1860 if the case is settled through mediation. There is no or less investment of finances in mediation, but litigation consumes even the single penny of a person. In mediation, the disputing parties enjoy some kind of supremacy but in litigation no supremacy is given to the parties. Mediation is not legally binding unlike litigation which carries with it a lawful obligation. There is no provision of appeals in case of mediation but in litigation appeals can be made to the higher courts.

XIII. MEDIATION COUNCIL OF INDIA

The Mediation council of India consists of following members –

- A chairperson
- Full-time members
- Ex officio member
- Chief executive officer
- Part- time member

The members are eligible to hold the office for a term of 4 years and can also be reappointed. The members cannot be reappointed after they reach the age of 70 years.

An important part in regulating and advancing mediation in India is the Mediation Council of India. Its duties include setting and upholding standards for mediators and mediation procedures in order to guarantee the caliber and efficacy of mediation services. In order to improve the legitimacy and professionalism of the mediation industry, the Council is responsible for the training and certification of mediators. Additionally, it develops policies and procedures to harmonize mediation procedures between different industries. The Council also promotes the advantages of mediation as an alternative dispute resolution process through advocacy and awareness campaigns. Through the promotion of a mediation-friendly atmosphere, the Council hopes to reduce the load on the legal system and promote more cooperative conflict resolution.

XIV. ANALYSIS OF MEDIATION ACT, 2023

A legislative framework known as the Mediation Act of 2023 is probably going to be centred on encouraging and governing mediation as a form of conflict resolution. Although the details may differ depending on the jurisdiction, the following are some common features and possible elements commonly present in such laws:

1. **Scope:** The act would outline the nature of mediation and the kinds of conflicts or circumstances in which it can be used. It could set mediation apart from other dispute resolution procedures like litigation or arbitration.
2. **Facilitation of mediation:** It is expected that clauses will be included to encourage parties to think about mediation as an alternative to filing formal lawsuits. This could involve offering incentives or making it mandatory for parties to attend mediation sessions or to consider mediation as a starting point for conflict resolution.
3. **Procedures for Mediating Disputes:** The act may include requirements pertaining to confidentiality, the mediator's role, and the impartiality and fairness standards.
4. **Standards and Qualifications for Mediators:** Mediators may be subject to standards governing their conduct and ethics, as well as regulations about their training and qualifications.
5. **Enforceability of Mediated Agreements:** The act would deal with the subject of whether agreements made through mediation can be enforced in court, possibly defining the circumstances in which this can happen.
6. **Court Referral and Integration with Legal System:** Provisions allowing courts to send matters to mediation and accept mediated settlements may be included, so incorporating mediation into the larger legal framework.
7. **Costs and Accessibility:** Provisions for fee structures or subsidies may be taken into account to guarantee that mediation stays inexpensive and available to all parties.

8. **Privacy and Confidentiality:** Strict clauses safeguarding the privacy of mediation communications and proceedings would probably be included, making sure that anything said or revealed there cannot be used against you in a later court case.
9. **Assessment and Revision:** The act may incorporate procedures for assessing the efficiency of mediation as a conflict resolution method as well as measures for the act's recurring examination and revision.
10. **International Aspects:** Requirements regarding cross-border mediations and the acceptance of mediated agreements in international contexts may exist, depending on the jurisdiction.

The proposed Mediation Act of 2023 could have a substantial impact on the advancement and expansion of mediation in India by providing a methodical structure for its instruction and advocacy. This legislation may result in mediation practices being more widely recognized and standardized, ensuring that instruction and practice follow set protocols. The Act has the potential to increase the legitimacy and allure of mediation, drawing in both institutions and practitioners by creating a more controlled environment. Additionally, the Act would make it easier to incorporate mediation into public health campaigns and educational projects, which might increase its effectiveness and reach. A formal endorsement of mediation might make it more widely accepted, which would enhance financing, support, and research on meditation-related initiatives.

All things considered, the Mediation Act of 2023 is a pledge to strengthen the function of mediation in settling conflicts, encourage efficiency in the legal system, and provide parties the ability to come to mutually agreeable agreements with the help of qualified mediators.

XV. INSTITUTIONAL FRAMEWORK

The organizational structures, entities, and bodies involved in managing and assisting mediation procedures within a jurisdiction are referred to as the institutional

framework of mediation. This framework is essential to guaranteeing that mediation as a form of dispute resolution is implemented, regulated, and promoted effectively.

The following are essential elements commonly included in the institutional context of mediation:

- 1) **Institutions or Centres for Mediation:** Whether they are private or public, these businesses are committed to managing and enabling mediation services. They could have been founded by non-profit groups, professional associations, or the government (private), or they could be run by the government (public). They manage case administration, schedule mediator appointments, provide mediation facilities, and occasionally provide mediator training and accreditation.
- 2) **Programs for Public Awareness and Outreach:** Projects and campaigns aimed at educating people about the advantages of mediation and promoting it as the go-to approach for resolving disputes. Public awareness sessions, workshops, and seminars are held to educate interested parties about mediation procedures and their rights and obligations.
- 3) **Initiatives for Research and Development:** Performing investigations on the best procedures, results, and efficacy of mediation. To improve efficacy and efficiency, encouraging innovation in mediation methods, instruments, and technologies.
- 4) **International Standards and Cooperation:** Cooperation with international organizations and respect for global norms and directives concerning the practice of mediation. Thus, enabling cross-border mediation procedures and acknowledging mediated settlements in global settings.
- 5) **Providers of Education and Training:** Institutions or groups that provide courses and training programs for prospective mediators are known as mediator training providers. Providers of Professional Development and Ongoing Education are the Organizations that help mediators in practice advance their expertise and abilities.

- 6) **Mechanisms for Quality Assurance:** Establishing and upholding codes of conduct, norms, and rules for mediators and mediation organizations. Procedures for keeping an eye on the calibre of mediation services, assessing their efficacy, and gathering input from relevant parties.
- 7) **Finance and monetary assistance:** Public monies are allotted, particularly at public mediation facilities, to finance mediation services. The setting of prices for mediation services with the goal of ensuring that mediation is within everyone's means. The goal of the institutional framework for mediation is to foster a positive atmosphere that encourages the use of mediation as a workable substitute for litigation, advances equity and efficiency in the settlement of disputes, and guarantees the competence and honesty of mediators and their services. Every jurisdiction may have distinct institutional structures that are adapted to meet the needs of the society, the legal system, and the cultural setting.

XVI. INTERNATIONAL LEGISLATIONS

International Legislations are designed to facilitate the States to reform and modernize their laws on mediation so that the disputes can be resolved emphasizing voluntary participation, confidentiality and impartiality. Following are some international frameworks and conventions in relation to mediation:

- 1) *United Nations Convention on International Settlement Agreements resulting from mediation* - It was adopted in 2018 and is also known as the Singapore Convention on Mediation which provides for the efficient enforcement of the International settlement agreements arising out of mediation. It ensures the enforcement of settlement agreement in signatory countries.
- 2) *UNICITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation* - It was adopted in 2002 and was amended in 2018. It provides the stages for conduct of mediation from commencement to termination of mediation and covers other aspects related to it such as composition, jurisdiction, and role of mediator and enforcement of settled agreements.

- 3) **International Mediation Institute (IMI)** - The purpose of IMI is to establish global standards for mediators and to promote the use of mediation in the world. It provides for the certification of mediators and also provides the required guidance and resources to mediators which helps in the recognition of mediation agreements.

The evolution of mediation regulations in India has been greatly impacted by international legislation. Although India has never had a formal framework for mediation, its approach to alternative dispute resolution has been influenced by the adoption of international norms and practices. India has benefited greatly from the use of the UNCITRAL Model Law on Mediation and the UN Model Law on International Commercial Arbitration. These international frameworks highlight concepts like impartiality, secrecy, and voluntary involvement and promote mediation as a workable means of settling conflicts. As a result, India has progressively incorporated these ideas into its legal framework, which led to the passage of the Mediation Act, 2023. With the help of this legislation, mediation procedures will be more formalized and streamlined, meeting both local and worldwide norms at the same time.

XVII. HURDLES IN MEDIATION PROCESS

- 1) **Lack of awareness and understanding**- People are not aware about the process of mediation and there are various misconceptions about the effectiveness of mediation proceedings which make people reluctant to choose it.
- 2) **Infrastructural and structural challenges**- There are a limited number of mediation centres available which increase the burden on them resulting in pendency of cases and thus not providing speedy disposal of disputes. Also, the funding and resources are insufficient for conducting mediation programs.
- 3) **Complexity of disputes** - The disputes which are complex in nature i.e. disputes involving multiple parties and severe legal issues cannot be solved through mediation.

- 4) **Resistance by lawyers** - Lawyers are not in favour of mediation institutions because they believe that the income which they are earning from litigation will be curtailed and their clients will be lost through the mediation process.
- 5) **Non-binding in nature** - The decision of the mediation proceeding is not binding upon the parties. Mediation only facilitates a mutually acceptable solution between the parties but it is the discretion of the parties to accept it or not. However, if the parties are not satisfied then they can go to the court for resolving the dispute.

XVIII. FAR HAS MEDIATION BEEN EFFECTIVE IN INDIA?

With growing institutional backing and recognition, mediation's position in the Indian legal system has been improving. The Delhi High Court Mediation and Conciliation Centre (DHC-MCC) Annual Report 2023 states that more than 60% of cases assigned to mediation are successfully settled, demonstrating the value of mediation in promoting conflict resolution. In 2022, the Supreme Court Mediation Centre revealed that over 55% of the cases that underwent mediation were resolved, indicating a noteworthy success rate in contrast to conventional litigation. Recent data from the National Judicial Data Grid (NJDG) indicates a 15% increase in cases referred to mediation by various High Courts over the previous two years, reflecting the judiciary's rising support for mediation. The judiciary's instructions, which emphasize mediation as a pre-litigation process and mandate it for certain sorts of conflicts, including family problems and business disputes, are partially to blame for this change.

Additionally, mediation is shown to be economical and successful. According to a 2023 study by the Institute of Advanced Legal Studies (IALS), mediation expenses are usually 30–40% less than litigation costs, which include ancillary costs including court and attorney fees. Furthermore, mediation frequently results in faster dispute resolution than the drawn-out legal process; the average mediation settlement takes three to six months, whereas court proceedings typically take years.

Despite these encouraging figures, different disagreement types and regions have varied rates of mediation acceptance. According to a 2023 assessment by the Indian

Council of Arbitration (ICA), rural and semi-urban areas lag behind metropolitan areas in terms of mediation rates, indicating a need for more outreach and infrastructure development.

The Arbitration and Conciliation Act, 1996 has been implemented and amendments are made to the Civil Procedure Code which has resulted in the promotion of mediation as a reliable method of alternative dispute resolution. Therefore, mediation has been accepted widely and preferred over litigation by the people and corporate sectors because now it has been given statutory recognition.

Various institutions have been established such as Indian Institute of Arbitration and Mediation (IIAM) which provide training to mediators. The Government has established Pre-Institution Mediation and Settlement (PIMS) which had made mediation compulsory before opting for commercial suits that highlights the government initiative for promoting mediation.

In order to make mediation a realistic substitute for conventional litigation, the government and the court are essential. The judiciary ensures the efficacy and legitimacy of mediation by assisting in the establishment of precise norms and standards for the practice through the integration of mediation into the legal framework. In an effort to encourage parties to settle differences peacefully before pursuing legal action, courts frequently send matters to mediation. Government actions that provide institutional support and financial resources, like funding for mediation programs and legislative amendments, further strengthen this process. Government-sponsored mediation certification and training programs also help to increase the number of mediators and elevate professional standards. When taken as a whole, these initiatives not only facilitate conflict resolution but also promote an atmosphere of cooperation and mutual understanding, which helps mediation gain more traction and acceptability.

XIX. THE ROAD AHEAD FOR MEDIATION

The growth of mediation has been promising with its effective implementation and adoption in India. The support from judicial bodies and government can further enhance the development of mediation by setting up more institutions for mediation

and expanding mediation programs that can provide training to mediators. Enactment of new laws and amendments to the already existing laws can strengthen the legal framework for mediation. Organising public awareness programs to tell the people about the advantages of mediation and its effectiveness can help create awareness among the public so that they can get their dispute resolved easily and faster with minimum cost.

The programs for mediation such as Pre-Institution Mediation Settlement (PIMS) should be expanded in order to expand the use of mediation for resolving disputes of commercial and civil nature. Mediation proceedings can be held virtually which makes it easier and comfortable for the disputing parties who are from different locations. Mediation practices should be developed with respect to particular sectors such as family, commercial, etc. that can bring effectiveness in specific areas. India must collaborate with other mediation organizations worldwide to strengthen its practices in the country. Thus, businesses in India should be encouraged to opt for mediation for settling commercial disputes that would prove a success for mediation in India.

The COVID-19 pandemic has had a significant influence on meditation practice and has accelerated the transition from in-person to virtual sessions. Lockdowns and physical distance aside, meditation techniques evolved for online platforms, opening out mindfulness and mental health to a wider audience. This shift has preserved the tradition of meditation while also democratizing access, allowing people from different places to attend sessions that they might not have previously been able to. The popularity of virtual meditation can also be used to increase access to justice by providing those navigating the frequently overwhelming and stressful legal system with emotional and mental resilience support. Online tools can assist people cope with the stress of legal processes by offering mediation services, stress management classes, and mental health resources. Virtual meditation can improve general well-being and make justice more accessible and helpful, especially for underprivileged communities, by being included in legal aid programs.

XX. CONCLUSION

To sum up, the Mediation Act is a crucial piece of legislation that aims to improve the status of mediation in contemporary dispute settlement. The Act seeks to ease court backlogs, lower legal expenses, and provide parties more ability to actively engage in resolving their conflicts by highlighting mediation as a voluntary, effective, and economical substitute for traditional litigation. Its dedication to equity and efficacy is emphasized by important clauses including outlining mediation processes, setting requirements for mediator credentials and behaviour, and protecting the privacy of mediation sessions. Additionally, the Act encourages consistency and dependability in results by incorporating mediation into the larger judicial system through enforceable mediation agreements and court referral procedures.

Policymakers, the judiciary, and the legal community must unite behind a common vision and strategic action in order to effectively solve the problems facing India's legal system and fully utilize the transformative potential of mediation. Enacting comprehensive regulations that offer precise rules and enforceable standards for mediation processes should be a top priority for policymakers who wish to increase legislative support for mediation. By doing this, mediation will become a recognized primary conflict resolution process and its implementation across jurisdictions will be guaranteed to be equitable and consistent.

The court is a key player in promoting mediation. Judges ought to aggressively advocate for mediation as a workable substitute for litigation, urging parties to consider mediation before pursuing conventional legal procedures. As a vital component of legal practice, mediation must be accepted by the legal community. This entails encouraging a mediation culture among aspiring attorneys, providing continuing professional development assistance for seasoned practitioners, and introducing mediation instruction into legal education. Legal practitioners should support mediation, inform clients of its advantages, and acquire the abilities required to resolve conflicts amicably.

All of these parties working together will accelerate mediation's rise in India and change the country's dispute resolution environment. Together, we can improve

judicial assistance, professional development, and legislative frameworks to create a more effective, affordable, and peaceful legal system that meets the interests of all stakeholders.

XXI. REFERENCES

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