

## THE MEDIATION ACT 2023- STRENGTHENING ALTERNATIVE DISPUTE RESOLUTION MECHANISM SYSTEM

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### Abstract<sup>1</sup>

Mediation, a type of Alternative dispute mechanism plays an important role in resolving the dispute by acting as a neutral party and enforcing the principles to be followed as outlined. The act gives the right to the parties to appoint, terminate and replace the mediators for the lawsuit as per the mentioned time. Furthermore, the availability of online mediation is advantageous and prominent in the digital era for dispute resolution mechanisms, the time-bound process makes mediation more suitable for legal practitioners for commercial, civil and institutional disputes.

The purpose of establishing the Mediation Council of India under the act is to promote professionalism and ensure a high success rate in dispute resolution. The Mediation act is a cost-effective resolution method and flexible to meet the requirement and maintain a high level of confidentiality to protect the interests of the parties.

This study envisages the use of mediation to resolve the legal dispute in a hassle-free and solution-oriented manner. The recent enactment of the Mediation Act 2023 has achieved substantial advances in dispute management by being the most effective and robust method of resolving disputes among the parties. This statute has been more advantageous and supportive of settling legal fights in a calm and process-oriented manner than the adversarial justice system, which is unable to provide justice due to an overburdened backlog of lawsuits. Moreover, the preamble of the Act, emphasises community mediation to make the dispute resolution to the mass.

This paper provides an depth guide on the Mediation Act and its features, advantages and challenges under alternative dispute resolution.

**Keywords:** Community Mediation, Online process, Confidential, Alternative Dispute Resolution.

### Introduction

An evolution in the existing court system is much needed to make an effective and efficient justice system. The traditional court system fails miserably to provide justice to the parties due to multiple reasons. The existing courts are overburdened by cases, and due to the coherent system, they cannot provide relief. Hence, increasing the crime rate in India. The Traditional system was made on the contemporary needs of the society, and however, reforms were not made as per the changes in the laws and failure to deliver justice. The advent of Alternative Dispute Resolution (ADR) in 1996 was enacted to transform the existing court system. The term ADR refers to Alternative Dispute Resolution and includes modes of resolution such as Arbitration, Mediation, conciliation, negotiation and more. All the mentioned Alternate dispute resolution systems are cost-effective, flexible, and provide amicable and speedy resolution of disputes. This mode of dispute management system works towards the parties and ensures timely resolution of the dispute.

ADR holds an advantage over the traditional court system because the former is adaptable according to the changes and the latter is unable to adapt to changes due to it. Due to its adaptability as the key feature, ADRs are favoured in both contentious and non-contentious disputes. All the modes of Alternative dispute resolution allow the appointment of a neutral person to provide judgment. Confidentiality is maintained in all forms of Alternative modes, which is not practised in the traditional court system. The ADR seems to hold more advantage over the traditional court system and is beneficial to the parties of the dispute. Since the advent of ADR, disputes have been resolved speedily.

Mediation is one of the modes of Alternative dispute mechanisms, aiding in dispute resolution and providing quick and cheaper results to the parties. Mediation in India has gained importance since the Vedic age. In earlier times, rural areas used the Panchayat system as a mediation to resolve individual, and community disputes or any tribal issues with the help of a neutral person. The decision of the Panchayat was

final and irrevocable. Under British rule, mediation lost its importance, and the traditional court system was developed as the replacement.

The growth of the British court system was so impactful, and the mediation slowed and lost its existence. The court system gained importance as people were opting for the traditional court system. However, the British supported establishing the groundwork for Arbitration and moving the ADR movement in the country. Hence making the framework of the English Arbitration Act, 1889<sup>2</sup>. The legislation of Arbitration Procedure provided flexibility in its procedure in all the presidency states such as Calcutta, Bombay and Madras. Initially, the act had flaws and the Arbitration Act of 1940<sup>3</sup> replaced the Act of 1899 and made it strong laws to improve the court system. Even after India gained independence in 1996, it changed the arbitration-related laws in British India.

The parliament enacted The Arbitration and Conciliation Act, 1996<sup>4</sup> after independence to make arbitration prominent in India. The Arbitration Act was more flexible and cost-effective to resolve disputes. The Indian Legal System recognised ADR and its procedure as alternative modes in India. **The Arbitration and Conciliation Act, 1996<sup>5</sup>, governs arbitration in India, but the Code of Civil Procedure, 1908<sup>6</sup>, authorises mediation.**

It was held in **Salem Advocate Bar Association v. Union of India (2003)**<sup>7</sup> by the Supreme Court that ADR is a dispute conflict mechanism and stated that the adoption of Alternative Dispute Resolution and its features can provide a quick, cost-effective resolution method for the parties involved.

Under the case **Afcons Infrastructure Ltd v. Cherian Varkey Construction Company (2010)**<sup>8</sup>. A dispute over contractual Obligations arose between two construction companies. This case was referred to ADR under Section 89, CPC. The issue arose under section 89, the CPC<sup>9</sup> mandates mediation for all types of disputes. The Supreme Court held that certain disputes involving contracts and consumer issues are more suited for mediation and highlighted the urge to encourage ADR mechanisms like mediation to reduce court arrears of cases.

**129<sup>th</sup> Law Commission**<sup>10</sup> The report stated the **Justice Malimath Committee's report**<sup>11</sup> on Urban Litigation and Mediation as an Alternative to Adjudication and the arrears recommended encouragement of parties to refer their disputes to the ADR Mechanism.

### **Research Aim and Scope:**

The main purpose of this research paper is to analyse how the Mediation Act 2023<sup>12</sup>, Strengthening Alternative Dispute Resolution Mechanism System in India and its impact. Alternative Dispute Resolution system has significantly achieved positive impacts on the people, now Mediation act to ensure its impact along with ADR and to accomplish the aim, the objectives are considered in the research below -

- Investigate the role of the Mediation Act 2023 in strengthening ADR systems.
- Analysed its potential impact on India's legal system and the public.

### **Strengthening ADR Mechanisms through the Mediation Act**

The Mediation Act 2023<sup>13</sup>, is a robust legal framework for mediation and its practice in India, marking an important milestone in the country's dispute resolution landscape.

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<sup>2</sup> The Arbitration Act, 1889, enacted on 26 August 1889

<sup>3</sup> The Arbitration Act, 1940 (Act No. 10 of 1940)

<sup>4</sup> The Arbitration and Conciliation Act, 1996 (Act No. 26 OF 1996)

<sup>5</sup> The Arbitration and Conciliation Act 1996, (Act No. 26 OF 1996)

<sup>6</sup> The Code of Civil Procedure 1908, (Act no 5 of 1908)

<sup>7</sup> Salem Advocate Bar Association v. Union of India (2003) AIR 20054 BOM CR 839

<sup>8</sup> Afcons Infrastructure Ltd v. Cherian Varkey Construction Co (2010) 8 SCC 24

<sup>9</sup> The Civil Procedure Code 1908 (Act no 5 of 1908)

<sup>10</sup> Law Commission of India, 129<sup>th</sup> Report on Urban Litigation Mediation as Alternative to Adjudication, 1988.

<sup>11</sup> Malimath Committee Report, Committee on Reforms of Criminal Justice System, India March 2003.

<sup>12</sup> The Mediation Act, 2023 (Act no 32 of 2023)

<sup>13</sup> The Mediation Act, 2023 (Act no 32 of 2023)

As per its preamble, the objective of the Mediation Act, 2023<sup>14</sup> is to promote and facilitate mediation, especially institutional mediation, for the resolution of disputes, commercial or otherwise, enforce mediated settlement agreements, provide for a body for registration of mediators, encourage community mediation and to make online mediation as acceptable and cost-effective process and for matters connected therewith or incidental thereto.

### **Effectiveness of Mediation as an ADR Tool:**

The cost-effectiveness of mediation has grown in importance as a dispute mechanism. The Mediation Act is an effective tool as an ADR method in the Arbitration and Conciliation Act. Mediation is prominently used as a best practice in dispute resolution because of a neutral party who is known as a mediator and assists the parties in resolving the dispute, just like the old Panchayat System, where independent Panch used to resolve disputes of individuals, communities, and tribes. The decision of the panchayat was final and irrevocable.

The role of the Mediator plays an important role in creating a conducive environment for parties to find solutions to the matters themselves instead of fighting long legal battles. The reasons why Mediation is more suited to the adversarial system are that of its flexibility and its work around the parties of the suit. Additionally, no penalty is imposed on parties. The parties of the disputes run the show as they can communicate openly and mutually agree with the mediator. The mediation act is attracted to every kind of the population and a plethora of disputes are resolved under the Mediation Act, such as Civil, Family, Insurance and Commercial Disputes.

The Mediation Act has significantly changed the way of resolving disputes as it is a simplified, amicable, and time-bound process. The legislation of the mediation act and its features will smoothly attract the litigants to opt for the mediation system for being effective, smooth, and making it solution-oriented. Mediation Act has its roots in the traditional Panchayat system, which aims at resolving individual, community, or tribal issues, and its decision is final and irrevocable. Another form of mediation is Lok Adalat, resolving the matters of small pecuniary interest under the Legal Services Authorities Act 1987<sup>15</sup>.

Mediation gained importance in resolving labour disputes under the Industrial Disputes Act, 1947<sup>16</sup>. The mediators were appointed under Section 4 of the Act and are "charged with the duty of mediating in and promoting the settlement of Industrial Disputes," and from there, we see the growth of mediation in India.

Amendment of 1999<sup>17</sup> to the Civil Procedure Code for introduction of section 89, which deals with Alternative Dispute Resolution such as Arbitration, Conciliation, mediation, judicial settlement, Lok Adalat, and Order 10, Rule 1A, 1B & 1C was incorporated to facilitate mediation between the parties before the court proceeding. In case the mediation between the parties wasn't helpful, then the parties can go for court proceedings. This Amendment came into effect on 1st July 2002.

The first court-annexed mediation centre in India opened on April 9th, 2005, under the Tamil Nadu Mediation and Conciliation Centre, according to the statistics, we can witness 25% of cases opted for mediation in 2005 and a little decline in the middle years but with steady growth from 2020 onwards. With the success of the mediation centre in 2005, we can witness the establishment of mediation centres at several courts and courts referring matters to mediation centres.

The judges of the Supreme Court have contributed to the development of mediation as an ADR mechanism significantly. A Mediation and Conciliation Committee in 2005 was established by Hon'ble Mr Justice R C Lahoti.

A Permanent Mediation Centre was inaugurated at the Tis Hazari court complex and judicial mediation was started at the Karkardooma court complex in 2005. Thus, mediation as an Alternative Dispute Resolution mechanism, has received significant impetus over the years through the enactment of various legislations and by the efforts of various judges of the Supreme Court.

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<sup>14</sup> The Mediation Act, 2023 ( Act no 32 of 2023)

<sup>15</sup> The Legal Services Authorities Act, 1987 (Act no 39 of 1987)

<sup>16</sup> the Industrial Disputes Act, 1947 (Act No. 14 of 1947)

<sup>17</sup> The Code of Civil Procedure (Amendment) Act, 1999 (Act 46 of 1999)

Section 442 of the Companies Act, 2013<sup>18</sup>: Mediation and conciliation Panels: The onus of the central government to authorise a “Mediation Panel” to conduct mediation between parties to resolve the pending proceeding of companies matters before the Central Government, Tribunal or Appellate Tribunal under the Companies Act. These rules provide an opportunity for the company’s issues to be resolved by the Alternative Dispute Mechanism for civil matters of the Companies Act.

Commercial Courts Act, 2015<sup>19</sup> was introduced for adjudicating the commercial disputes of specific values and matters, the 2018 amendment introduced chapter IIIA and section 12A provides for mandatory pre-institutional mediation and settlement in certain classes of Commercial Suits, where no urgent relief is sought. The Act provides a time frame of three months from the date of application by the plaintiff and time extendable mutually by both parties. In 2015, mediation centres were in the Karkardooma Court complex and the Patiala Court in Delhi.

The Consumer Protection 1986<sup>20</sup> Act was legislated to ensure the rights of the consumers are not violated and safeguards to be provided to the consumer. With the growth in international trade and technology-driven markets, many unfair trade practices, dishonest and deceptive selling of products started, and ineffective advertising violated the rights of the consumer, hence this arose the need to develop laws to settle the disputes arising due to technology and international trade, i.e., mediation in consumer disputes. Section 37 of the Consumer Protection Act 2019<sup>21</sup> refers to mediation. The district forum can refer the case to mediation with mutual consent of the parties. This Mediation helps parties avoid a lengthy court process and instead reach a mutual resolution.

The objectives of the Mediation Act, of 2023, are

- a) The Mediation Act includes institutional mediation for resolution of civil and commercial nature and provides a structure for uniform procedures for both national and international disputes.
- b) The Act has a robust mechanism for resolving disputes effectively and smoothly, a cost-effective method, and access to justice for the general population.
- c) The act introduced online mediation between parties under the provisions of the Information Technology Act<sup>22</sup> to resolve disputes with international clients.
- d) The Act aims to alleviate the court arrears by solving disputes outside the court.

#### **How mediation can help alleviate the burden on courts.**

Over the years, traditional courts have struggled with a significant backlog of unresolved cases that were not addressed timely. To tackle this issue, new legislation on mediation was developed after carefully analyzing its pros and cons. Mediation has been increasingly adopted in various countries as an alternative method to alleviate the burden on the courts. The legislation highlights several features that make mediation a prominent choice over the traditional court system.

**Uniformity in the Mediation Process:** Mediation offers a robust and comprehensive framework with standardized procedures for both national and international disputes. Unlike the traditional court system, there is no appellate authority to challenge the decisions made during mediation.

**Providing an Effective System:** The mediation process is designed to deliver effective solutions for litigation and ensures a timely resolution of disputes. This reliability makes it a more attractive option compared to the conventional court system.

**Encouraging Pre-Litigation Mediation:** By mandating mediation before litigation in certain cases, the process helps prevent disputes from escalating into prolonged legal battles. This approach facilitates early resolution, saving time, costs, and preserving relationships.

**Promoting Access to Justice:** Mediation is accessible to everyone, with no prescribed financial or territorial restrictions. It aims to provide cost-effective and timely solutions for the general population. Mediation deals

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<sup>18</sup> The Companies Act, 2013 (Act No 18 of 2013)

<sup>19</sup> The Commercial Courts Act, 2015 (Act No 4 of 2016)

<sup>20</sup> The Consumer Protection Act, 1986 (Act No. 68 of 1986)

<sup>21</sup> The Consumer Protection Act, 2019 (Act no 35 of 2019)

<sup>22</sup> The Information Technology Act 2000, (Act no 21 of 2000)



in civil and commercial matters. Numerous judgements state the kind of disputes are resolved through mediation.

In the case of **Ruby Sales v. Bharat Petroleum Corporation Ltd(2010)**,<sup>23</sup> a contractual dispute emerged between Ruby Sales and Bharat Petroleum Corporation Limited, resulting in litigation. The key issue raised was whether mediation should be encouraged in disputes involving public sector undertakings. The court directed the parties to explore mediation and urged public sector entities to adopt alternative dispute resolution (ADR) mechanisms to efficiently resolve disputes. It was held that directed the parties to explore mediation and urged public sector entities to adopt ADR mechanisms to resolve disputes efficiently.

In the case of **B.S. Krishnamurthy v. B.S. Nagaraj(2011)**<sup>24</sup>, a longstanding family dispute arose over matrimonial issues, including divorce and division of property. This conflict led to a protracted legal battle that strained relationships and consumed significant resources. The Supreme Court addressed that mediation could serve as an effective alternative to lengthy litigation in family matters. It ultimately favoured mediation, encouraging the parties to pursue this method. The court acknowledged mediation's benefits, such as preserving relationships and facilitating quicker, mutually agreeable solutions. This decision emphasized the importance of constructive conflict resolution in family disputes.

In the case of **K. Srinivas Rao v. D.A. Deepa (2013)**<sup>25</sup> The Supreme Court emphasized the use of mediation in resolving matrimonial disputes. Thus, family matters can be resolved under mediation.

The Issues arose in the dispute of **Vikram Bakshi v. Connaught Plaza Restaurants Ltd. (2019)**<sup>26</sup> if mediation can resolve high-profile corporate disputes efficiently. The court referred the matter to mediation, and the dispute was successfully resolved, showcasing the efficacy of mediation.

### **Improved Access to Justice:**

Mediation is a tool for promoting affordable and accessible justice. The Arbitration and Conciliation Act, 2019<sup>27</sup> states about the Mediator and the Conciliator. Both are different from each other. Under the Mediation between parties, the role of mediator is to assist and guide the parties to evaluate while the Conciliator can evaluate the parties' cases and settlement options to suggest terms for an agreement.

Mediation provides a quicker and more affordable alternative to the court system. The mediation process is typically scheduled over 120 days, with an additional 60 days allowed for resolution. In contrast, the court system often lacks such strict timelines due to recurring delays in proceedings.

According to the Mediation Act, mediation is party-centric, unlike court proceedings, which aim to deliver justice. The parties involved mutually select a mediator and determine how they would like to proceed, following the rules laid out in the Mediation Act.

Mediation fosters open communication, encourages mutual problem-solving, and ensures the confidentiality of discussions between the parties. The Mediation Act outlines several forms of mediation, including preliminary mediation, online mediation, and community mediation, all designed to promote affordable and accessible justice for the parties involved.

Section 5<sup>28</sup> states that pre-litigation mediation allows parties to resolve disputes amicably through mediation before resorting to court. This process is voluntary, maintaining the essence of mediation as a consensual approach. The Act reflects a balanced perspective, encouraging pre-litigation mediation without making it obligatory.

Voluntary pre-litigation mediation can help alleviate the burden on the judicial system while improving business relationships and promoting a culture of settlement among the parties.

Online mediation is an advanced feature that incorporates digital tools into dispute resolution, making mediation more effective than traditional court processes. It includes features such as video conferencing, chat rooms, and email communication. Online mediation is especially suitable for parties located in different

<sup>23</sup>Ruby Sales v. Bharat Petroleum Corporation Ltd (2010)8 SCC 24.

<sup>24</sup>B.S. Krishnamurthy v. B.S. Nagaraj (2011) 15 SCC 464.

<sup>25</sup>K. Srinivas Rao v. D.A. Deepa (2013) AIR (2013) SC 2176

<sup>26</sup>Vikram Bakshi v. Connaught Plaza Restaurants Ltd. (2019)

<sup>27</sup> The Arbitration and Conciliation Act, 2019, (Act No 33 of 2019)

<sup>28</sup> The Mediation Act, 2023 (Act no 32 of 2023)

regions, reducing costs and minimizing delays in proceedings. Additionally, as online meetings are limited to the parties involved, confidentiality is maintained.

Another noteworthy aspect is community mediation, as mentioned in Section 43<sup>29</sup> of the Act. This allows for the resolution of disputes within communities or tribes through mutual consent between the parties involved. The establishment of the Mediation Council of India<sup>30</sup> is a key provision of the Mediation Act, ensuring that mediation functions professionally. Chapter VIII<sup>31</sup> addresses the roles and responsibilities of the Mediation Council of India. The Council is tasked with the proper training and certification of mediators and their team members. Its objectives include creating guidelines for ethical and professional mediation practices, as well as organizing awareness campaigns to highlight the benefits of mediation over traditional court systems. A digital repository has also been created for settled mediations, promoting transparency and accessibility for all parties involved.

### **Impact on the Legal and Judicial System**

The introduction of Alternative Dispute Resolution methods has impacted the legal and judiciary system. The introduction of court-annexed mediation in 2005 in Tamil Nadu and Delhi has shown successful mediation, and it has a method which can be widely used. There are two types of mediation, i.e., court-referred mediation and private mediation.

Under Court Referred mediation – the court can refer a dispute to the mediation, if the parties' dispute is settled by mediation, then the matter is settled. In the case the mediation is unable to resolve the disputes, it is referred to the court.

In private mediation, the parties file their disputes to the mediator and get the resolution done under the mediation. The features of the Pre-Litigation mediation have been stated in the act, allowing the party to approach the mediation centre before courts in urgent matters.

Engaging the judiciary at all levels to recognize the significance and purpose of mediation is crucial not only for popularizing this valuable tool but also for realizing its full potential. Judges play a vital role in implementing and practising mediation within the Indian court system. Court-annexed mediation aims to reduce the burden on the judiciary, promote social welfare, and deliver justice to all parties involved.

India to implement that judges should undergo training to understand mediation processes and alternative dispute resolution (ADR) mechanisms in general. This training is considered essential for developing a comprehensive dispute resolution system, as it enhances judges' understanding of cases and helps them determine the most suitable dispute resolution method. The role of referral judges is crucial to the success of mediation; without judges who appreciate the value of mediation, the referral of cases and the overall success of court-connected mediation would be difficult to achieve.

The importance of educating judges about various Alternative Dispute Resolution (ADR) processes and their role in fostering party confidence in mediation was emphasized. It was also deemed essential for judges to engage with the disputing parties and prepare them for mediation by informing them of its advantages over lengthy trials. The goal is to ensure that mediation is regarded as equally important as litigation, which can only be achieved through judicial support and increased awareness of mediation<sup>32</sup>.

In **M.R. Krishna Murthi v. New India Assurance Co. Ltd**<sup>33</sup>, the court held that the Integration of mediation into the dispute resolution process for the insurance sector reinforced the need for alternative dispute resolution mechanisms to alleviate the burden on courts. This judgment provided a roadmap for quicker and cost-effective conflict management for insurance companies, being the best practice for grievance redressal.

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<sup>29</sup> The Mediation Act, 2023 (Act no 32 of 2023)

<sup>30</sup> The Mediation Act, 2023 (Act no 32 of 2023) Chapter 8, under section 31 - 39

<sup>31</sup> The Mediation Act, 2023 (Act no 32 of 2023)

<sup>32</sup> Supreme Court's observations in *Afcons* were also broached to highlight the crucial role of a referral judge, inter alia, in determining the possibility of a settlement in a case before him or her, as well as assessing the viability of the different forms of ADR listed under Section 89. *Afcons Infrastructure Ltd. and Anr. v Chierian Varkey Construction Co. (P) Ltd. and Ors.*, (2010) 8 SCC 24.

<sup>33</sup> *M.R. Krishna Murthi v. New India Assurance Co. Ltd* [2019] 3 S.C.R

The professional and educational backgrounds of mediators should be clearly outlined, including details about their previous mediation experiences, the specific issues they have handled in past mediations, and any relevant expertise in other disciplines. The goal of accreditation is to enable participants in the mediation process to evaluate a mediator's competence. This evaluation can help determine which mediator may be more suitable for specific disputes and the issues involved in a case.

All mediators must complete basic training to become mediators, and ongoing training through refresher courses should also be implemented at all court-connected mediation centres. In Delhi, the prospective mediators seeking to become mediators must complete a training program consisting of forty (40) hours. Additionally, they are required to co-mediate alongside empanelled mediators for one year. During this period, they must participate in at least ten (10) complete mediations before they can be empanelled as full-time mediators with the Delhi Mediation Centre.

The Mediation Council of India is a central body appointed as per the regulations of the government, to ensure the conduct of training, awareness camps, and continuous education for mediators. It formulates guidelines for ethical and professional conduct for mediators. Composition of the council as mentioned in Section 32<sup>34</sup>, the council to consist of members who hold relevant experience in Law, alternative dispute resolution, public administration and such appointments to be made by the Central Government.

The duties and functions of the council, as outlined in Section 38<sup>35</sup>, include the following:

1. The manner of conducting mediation proceedings.
2. Establishing standards for the professional and ethical conduct of mediators.
3. The process for registering mediated settlement agreements.
4. Guidelines for conducting online mediation sessions.
5. The terms and conditions for engaging experts and committees of experts.
6. Conditions for the registration of mediators, as well as the processes for renewal, withdrawal, suspension, or cancellation of such registrations.
7. Criteria for the recognition of mediation institutes and mediation services.
8. Duties and functions to be performed by mediation institutes.
9. Any other matters necessary for the Council to perform its functions under this Act.

### **Opportunities and challenges for lawyers, judges, and law firms.**

Meditation offers a valuable opportunity for lawyers, judges, and law firms to enhance their mental well-being by managing stress, improving focus, and promoting emotional regulation—skills that are essential in the demanding legal profession. However, there are challenges to consider, such as fitting meditation practices into busy schedules, overcoming initial scepticism, and finding suitable training or guidance to effectively implement mindfulness techniques in the legal setting.

Some of the opportunities are laid below:

**Stress reduction:** The demanding nature of legal work can result in significant stress, and meditation can serve as an effective tool for managing anxiety and enhancing coping mechanisms.

**Improved focus and decision-making:** By cultivating mindfulness, lawyers can better concentrate on complex legal issues, analyze information more effectively, and make sound decisions under pressure.

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<sup>34</sup> The Mediation Act 2023 (Act no. 32 of 2023)

<sup>35</sup> The Mediation Act 2023 (Act no. 32 of 2023)

**Enhanced client relationships:** A calmer and more present lawyer can better understand client needs, communicate effectively, and build stronger rapport.

**Reduced bias and ethical conduct:** Mindfulness practices can help lawyers become more aware of their own biases and promote ethical decision-making.

**Positive workplace culture:** Law firms can foster a more supportive environment by encouraging meditation and promoting mental health awareness among staff.

The challenges are mentioned below.

**Time constraints:** Lawyers often have demanding schedules, making it difficult to carve out dedicated time for regular meditation practice.

**Scepticism and resistance:** Some lawyers may be hesitant to adopt meditation due to a lack of understanding about its benefits or perceived stigma associated with mindfulness practices.

**Finding the right approach:** Selecting the appropriate meditation technique and finding a suitable training program tailored to the legal profession can be challenging.

**Accessibility and cost:** Access to quality meditation instruction may not be readily available or affordable for all lawyers.

**Integration into legal practice:** Implementing mindfulness techniques in the context of legal work, such as during client meetings or complex case analysis, might require specific guidance and adaptation.

### **International Approaches to Mediation:**

The origins of mediation can be traced back to the beginning of civilization, including in countries such as China, Greece, and various Islamic nations, where it was established to resolve disputes in a peaceful and organized manner. Over the years, nations such as the USA, China, Russia, Japan, and France have developed laws around conflict management through mediation, which has proven to be effective in providing result-oriented solutions.

Mediation was first utilized in the USA to resolve labour disputes in the early 20th century. This led to courts actively adopting alternative methods to address their backlog of cases, resulting in the establishment of court-annexed mediation programs. Mediation offered quicker and more cost-effective solutions for the court system.

In Japan, mediation is deeply rooted in the culture. The Japanese constitution, issued in AD 604, emphasizes, "Harmony is to be valued, and avoidance of wanton opposition, is to be honoured.". The country has utilized court-annexed mediation for over a century, with a preference among the Japanese people for resolving disputes mutually rather than resorting to the traditional court system. The Japan International Mediation Centre in Kyoto (JIMC-Kyoto) was officially launched on November 20, 2018, as the first international mediation centre in Japan. It aims to provide world-class mediation services for disputes between foreign countries and Japanese parties, with over 40% of disputes in the country being resolved through mediation.

China has practised mediation for thousands of years. The role of neutral parties in assisting dispute resolution has been ongoing since ancient times and continues to integrate into the modern court system. Mediation is recognized in China as an effective mechanism for resolving commercial, civil, and family issues. There are five broad types of mediation in China: People's Mediation, Judicial Mediation, Administrative Mediation, Arbitral Mediation, and Industry Mediation. People's Mediation is also known as Civil Mediation or Judicial Mediation. Judicial Mediation is conducted by the Judicial Mediation.



Administrative Mediation is conducted by Government officials. Arbitral Mediation is conducted by arbitral administrative bodies and Industry Mediation is conducted by the respected association with industry. China combines the traditional concepts of harmony and dispute resolution with the norms of modern international Alternative Dispute Resolution (ADR) practices.

In France, mediation has been introduced as an alternative method for resolving divorce cases and disputes involving public authorities, aiming to alleviate the inefficiencies and expenses associated with court proceedings. This shift led to the adoption of mediation as a quicker, cheaper, and more effective resolution for civil issues. In the early 1990s, France became the first country in Europe to develop legislation on mediation. Notably, mediation can also be applied to criminal cases in France, where the mediation agreement is reached between the perpetrator and the victim, occurring only with the victim's consent or request at the pretrial stage. If a mediation agreement is successfully concluded, the criminal case is terminated; otherwise, it proceeds to court. Mediation in France includes mandatory pre-trial mediation procedures as well as court-ordered mediation.

Russia brought mediation legislation in the 20th Century with the motto of "promoting harmonization of social relations" and the use of mediation came into force from 1st Jan 2011 as dispute resolution culture because the government was unable to handle the delicate matters of the people. The development of mediation in Russia sailed through a rough patch but eventually grew as a strong medium to resolve the less the burden of the courts. In 2005, the first centre for Mediation was founded by Tsisana Shamlikashvili. These mediation centres were used as training centres for the new mediators and academic research. The parties would commence amicable mediation to dispute management. Various amendments have been made to Mediation laws to make it more effective to use in dispute management.

Australia has become a global leader in mediation law and practice. The introduction of court-based mediation began in 1983 with the establishment of the Noble Park Centre, the first government-funded mediation centre in the Victorian Country Court. By 1989, a total of 72 mediations had been conducted. In 1991, the Federal Courts amended their processes to incorporate mediation with the consent of the parties involved. Mediation centres started to focus on family disputes, and the impact of mediation laws has been positive in resolving conflicts.

### **Lessons India can learn from these jurisdictions**

Mediation is not a new concept in India; it has been practised since the Vedic age. During the Mahabharata, Lord Krishna served as a mediator between the Pandavas and the Kauravas. Recently, India enacted the Mediation Act, recognizing its positive impact on the traditional court system. This development has opened new opportunities for lawyers to work as mediators and arbitrators in private practice. The growth of mediation laws has also allowed retired judges to serve as arbitrators for both civil and commercial disputes. The Act outlines the enrolment, remuneration, qualifications, and disqualifications for Mediators. The inclusion of a mediation clause in all commercial agreements has led to the establishment of arbitration and mediation centres in the district and high courts, facilitating the growth of mediation. Primarily, these centres address civil and commercial disputes. Some features adopted by the Mediation Act in India include community mediation and pre-litigation mediation.

### **Challenges and Criticisms of the Mediation Act 2023**

The sudden outbreak of the COVID-19 pandemic has led to an unexpected rise in commercial disputes across the world. Many corporations are facing unprecedented challenges due to delayed contract performance. We can witness many reasons which are challenging for the Mediation Act's growth in India.

**Inconsistency between existing laws:**In *M/s Afcons Infra. Ltd. &Anr. v. Cherian Varkey Construction Co. Pvt. Ltd*<sup>36</sup>, The Supreme Court stated that the terms 'mediation' and 'conciliation' are synonymous with

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<sup>36</sup>*Afcons Infrastructure Ltd v. Cherian Varkey Construction Co (2010) 8 SCC 24*

each other. But the Section 89 of CPC, aims to differentiate between mediation and conciliation. Hence, the ambiguity has created a lot of vagueness in mediation.

Another ambiguity with the existing frameworks states that the newly incorporated section 12A of the Commercial Court Act was about compulsory mediation in commercial disputes, but on the other hand, the section provides an exemption where urgent interim relief is created. The mediation process cannot be trusted in such a scenario. Therefore, Uniform legislation is necessary to address the inconsistencies present in the current laws.

**Infrastructural and Administrative Concern:** Without the infrastructure, the mediation act will lose its importance, i.e. quicker conflict management. Hence, the state government should invest funds to bolster the infrastructure and required resources for mediation centres and make a conducive environment for mediation. The governing bodies must have autonomy to discern the ground situation and utilize the funds provided to them.

The High Court must take the opportunity to improve the mediation by engaging the members of the bar to ensure proper administrative concern can be looked upon and necessary action can be taken,

**Public Awareness and Capacity Building:** User awareness about mediation and court-annexed is critically low, and steps to improve will be crucial. The current efforts to promote and raise awareness about mediation in India have been inconsistent and lack a systematic approach. A significant shortcoming of these initiatives is the absence of structured and continuous dissemination of data that highlights the success rates, cost efficiency, and overall effectiveness of court-connected mediation programs. This information is crucial for individuals considering litigation, as it helps them understand the benefits and effectiveness of mediation as a dispute resolution method. Ongoing public awareness campaigns need to be more organized, with a clear strategy for addressing specific target groups.

### **The Lawyers Role**

Lawyers are key players in promoting the mediation to their clients. The Lawyer can recommend the client the mediation for dispute management, unfortunately, lawyers are not confident about the efficiency of the mediation act efficiency as proper training is not provided to the mediators.

Lawyers may be reluctant to embrace mediation because it conflicts with their professional interests. To address this issue, it's important to engage with local bar associations and encourage their support in promoting mediation as a successful and viable alternative to litigation.

### **The Future of Mediation in India**

The primary objective of the Mediation Act has been to codify issues such as how courts can opt for mediation as an alternative dispute resolution (ADR) method, the immunity of mediators, and the outcomes of mediation. However, due to existing gaps in the legislation, these questions remain unanswered and diminishing the significance of mediation. The Mediation Act lacks clarity regarding training standards, confidentiality, accountability of mediators, and the enforcement of settlement agreements. There is a strong need to preserve the autonomy of mediation centres concerning their infrastructural and administrative requirements, as well as the proper utilization of available resources. Reforming uniform mediation laws in India is essential to effectively address commercial disputes across different legal frameworks. Mediation laws can become robust legislation when appropriate training proposals are codified and implemented immediately. This would alleviate the burden on courts regarding commercial disputes, making mediation the primary option available to the parties involved.

There are some measures by which the mediation in India can be used in its full potential. With the growing time, Mediation can be fruitful in resolving technical commercial disputes.

### **Quality of mediators and infrastructure**

Currently, Mediator and infrastructure quality are a concern. Lack of well-trained Mediators is negatively impacting the settlement rates in mediation. Hence, it is imperative that the mediators empanelled in the court-connected programmes are of the highest quality and possess the requisite domain expertise. Additionally, the infrastructure plays an important role in achieving the objective of mediation. Currently, we lack proper infrastructure such as waiting areas, meeting and conference rooms for the mediation centre.

### **Increased judicial involvement**

Judiciary has played an important role in promotion of Mediation in an active manner. The Supreme court has mentioned about the kind of cases taken up for mediation. The judiciary should be actively engaging the bar association of district and high courts for conducting workshops, training sessions, preparing training manuals for the mediators and promoting mediation for Justice dispensation framework.

### **Increased user awareness**

To highlight the merits of Mediation, a constant effort by the legal fraternity is made. Every district with mediation centres records the statistics on the number of matters resolved monthly on different criteria and awareness regarding the same to be disseminated. Disseminating the awareness can be done in planned ways such as social media campaigns, use of mass media, and advertising mediation as a viable alternative method.

Mediation centres should also spread relevant information about the mediators engaged, such as their expertise areas and experience in years, to enhance public confidence and involvement. Such information should be made available in vernacular languages widely. Some possible ways can be brochures, booklets and pamphlets, etc., that can be distributed in all court premises, and counselling sessions can be made for the clients to understand the advantages of Mediation.

### **Role of lawyers**

The Lawyers are the keyplayers to promote mediation at a large level. It's one of the duties of lawyers to provide the best advice to their client, so sensitising the clients with the merits of the mediation process and using mediation as a dispute resolution method whenever possible. Without the right guidance and awareness, the clients will unlikely to approach the mediation and will have to approach the traditional courts system especially in family, civil and commercial disputes.

Moreover, making educational and training law students about the process of mediation and its merits can make drastically positive change in growing strong Mediation process in the country.

A mandatory training on ADR mechanism should be made as prerequisite in India for young graduates, and for existing lawyers, the bar council should make as mandatory annual sensitisation workshop on Mediation.

### **Law school curriculum**

The bar council regulates the curriculum of the Law schools and universities. The Bar Council to actively add the new enactments as part of curriculum. The participation of students to session by the renowned experts on mediation should be mandatory and attendance at such events will be marked. The colleges or university to hold moot courts specialising the Mediation law, which will ensure practical knowledge in mediation law in students. The contribution of the professors by holding debates, session by experts will aim at strengthening the mediation law and its application.

### **Mediation as a profession**

The Experienced and professional mediators who can devote time develop mediation centres, can be aim at making mediation law and its applicable strong in India. Due to slow growth of mediation, currently mediation is voluntary process with nominal fee. To make the mediation practise more strong, incentive system or paying lucrative remuneration to mediators should be focussed on. A standard incentive

percentage and fee schedule to be made and adopted by the Mediation council of India. This will create more inclination of the mediators to resolve issues by mediation and create strengthen the mediation framework.

### **Training of Lawyers specialising in mediation**

Mediation can grow stronger and will improve the qualities of the legal service in India, when we provide provision of having full time mediators to take up mediation for disputes. This can only be possible when Bar Council provides strong training methodology to be followed and certification is provide post clearing the exam. Currently, the Law Minister, Chief justice of India, Judges of Supreme court and High Court to collaborate to make mediation a strong and impactful mechanism to work in India. The Mediation centres to hire efficient and professional team to successfully take care of administration of mediation and organise awareness campsto grow and impact the importance of mediation in India.

### **Autonomy of higher Authorities.**

The Judges of High Court with state government to maintain the functioning of mediation centres and supervise the professional to make the policy around the mediation centres. An analogy can made, where High Court judges to act as Board of Directors and mediation centre head to function like Chief Executive Officer. The function to works up regarding the mediation centres development, promotion of mediation and its operations

### **Financial support and management**

Funds are required for promoting and development of mediation centres. Proper utilization of funds are required to keep the mediation running and its growth as medium to resolve the dipsutes. The Professionalism to be maintained and freedom to develop their own budgets and seeks funds from state government as and when required. The strong promotion by state in all its district and high court to churn the disputes to mediation centres can be helpful.

### **Case management and recording data**

The process involves consolidating mediation briefs, coordinating the timing of mediations, and managing case data. At the initial stage, case managers must reach out to the involved parties to emphasize the importance of mediation. Additionally, they provide administrative and management support to the mediators. Follow-up is also necessary after the mediation concludes to determine whether the resolution was effective. Therefore, it is essential to appoint dedicated case managers to streamline case management in court-connected mediation centers.

Accurate and consistent data collection and archiving are crucial for enhancing the efficiency of court-connected mediation centers. As mentioned earlier, case managers assist in archiving this data, which can be used for periodic evaluations of the centers' progress and to address any performance shortfalls.

### **Training of judges**

With the enactment of new laws, judges are required to incorporate these changes into their judgments. Therefore, there is a pressing need to train judges in the fundamentals of mediation to enhance their understanding of its role as an alternative dispute resolution (ADR) mechanism. This training will also prepare judges to assist parties effectively during the mediation process.

In addition to basic training, ongoing refresher courses should be held regularly to keep judges updated on the latest practices in ADR and any amendments to the law.

Chief Justices of all High Courts and state governments should collaborate to establish a comprehensive training framework for judges within their jurisdictions. Furthermore, Chief Justices should monitor programs that focus on the continued training of judges.

### **Professional and ethical standards for mediators**

A code of ethics should be developed to ensure fairness, transparency, and accountability among mediators. This code draft must be created by the Bar Council, with the Chief Justice of India leading the initiative to establish a code of conduct for mediators working in accordance with court-annexed mediation in India. The aim of the code is to regulate mediators effectively, thereby enhancing the parties' confidence in the mediation process. Additionally, the code should outline potential consequences for mediators who fail to meet its standards. These consequences could range from removal from a specific case for minor infractions to being barred from the mediation center for major violations.

### **Mediator accountability**

Legislation should establish a grievance redressal framework to ensure a consistent standard of accountability for mediators across court-connected mediation centers. This framework should facilitate the prompt and timely resolution of complaints against mediators. Additionally, it should outline penalties for mediators found to be at fault. Conversely, there should be mechanisms in place to deter frivolous complaints against mediators.

### **Enforcement of settlement and confidentiality**

The main issue with enforcing mediated settlements is the uncertainty surrounding the grounds on which these settlements can be challenged. Therefore, legislation should clearly define specific grounds for parties to challenge mediated settlements. Additionally, concerning the confidentiality of mediation proceedings, the law must outline clear exceptions under which this confidentiality can be legally waived. Legislation should also specify punitive measures for any unlawful violation of the confidentiality associated with mediation.

### **Training and accreditation of mediators**

Professional and competent trainers with practical experience and expertise in mediation laws and dispute management should train new mediators. A regulatory body governed by the Bar Council should ensure that the proper training centres or affiliated training centres complete the necessary and mandatory training to ensure the quality of mediators. Training manuals should be updated as and when amendments are made. Proper rules can only be formed bar council and proper implementation must be adhered. The performance of mediators to be evaluated and incentive or credit system to be practice to improve the performance of the mediators. .

### **Digital Mediation and the Role of Technology:**

The role of AI, blockchain, and other technologies in enhancing the mediation process is increasingly important, especially in light of the rise in cybercrime and commercial disputes between vendors and clients. One of the most labor-intensive aspects of Alternative Dispute Resolution (ADR) is managing case documentation. Mediation require extensive reviews of records, such as contracts, legal precedents, and witness testimonies. AI tools that utilize advanced natural language processing can quickly process large volumes of data, summarizing documents, flagging relevant information, and predicting potential outcomes based on historical decisions.

This automation not only speeds up the document review process but also significantly reduces the costs associated with human labor, making ADR more accessible to a broader audience. For example, AI algorithms can help legal practitioners identify crucial evidence among thousands of documents, drastically cutting down pre-arbitration preparation time. Furthermore, AI can handle scheduling, communication, and other administrative tasks, streamlining the overall process.

### **AI as Virtual Mediator**

AI can serve as an impartial virtual mediator in certain disputes. With advancements in technology, AI systems can interpret the intentions of disputing parties based on their communications. This technology can facilitate preliminary discussions, propose mutual compromises, and guide parties through a structured



resolution process. An AI mediator can identify points of contention in real-time and suggest solutions that align with the interests of the parties and existing legal frameworks. While human oversight remains crucial—especially in complex or emotionally charged cases—AI's role in mediating initial stages or lower-stakes disputes can significantly reduce the burden on human mediators, allowing them to focus on cases that require nuanced human judgment.

### **Online Dispute Resolution**

As digital transactions and e-commerce continue to grow, online dispute resolution (ODR) has become increasingly important. Artificial intelligence (AI) enhances ODR platforms by automating the intake of disputes, facilitating asynchronous communication, and providing instant feedback based on predefined rules and algorithms. This approach not only speeds up the resolution process but also makes it more convenient for parties located in different geographical areas, thereby increasing the reach and efficiency of alternative dispute resolution (ADR).

### **Conclusion**

The enactment of the Mediation Act has significantly changed court proceedings by providing parties with the option of court-annexed mediation before formal court processes begin. The Mediation Law includes several important features aimed at reducing the burden on the courts, such as confidentiality clauses, pre-litigation mediation, the appointment of mediators, and the establishment of the Mediation Council of India to oversee mediators' conduct and functions. The COVID-19 pandemic has highlighted the potential for mediation to resolve civil, family, and commercial disputes.

Prior to the introduction of these mediation laws, various amendments were made to different regulations, including consumer protection laws, the Companies Act, and the Commercial Courts Act, to facilitate mediation in dispute resolution.

The Supreme Court of India has played a crucial role in developing the legal framework governing mediation in the country. The apex court has taken significant steps by establishing committees and panels to draft the necessary legislation and recommend amendments to existing laws to incorporate provisions for mediation. Former Chief Justice N.V. Ramana was particularly dedicated to advancing the mediation system in India.

From the discussion above, it is evident that the time is right for a robust mediation framework. We strongly believe that the necessary laws will be enacted soon. The urgency for this cannot be overstated, given the socio-economic and global impacts on Indian society due to the overwhelming burden on the judiciary.