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Changing Contours of Mediation in India: Journey from Informal Indigenous Practice to Statutorily Recognized Practice under The Mediation Act, 2023 and its Integration in Legal Education

HARPREET SINGH[1]

ABSTRACT

An increase in cross-border trade and investments due to globalization over the years has not only accelerated cross-border disputes but has also driven every nation to lay emphasis on building robust conflict resolution systems that can effectively resolve varied issues and encourage good relationships. Therefore, in light of this ongoing economic expansion not only at a national level, but also globally, mediation has emerged as the most viable and preferred option for resolving international commercial disputes arising in the course of international trade. Talking about India, wherein this practice of mediation roots back to ancient Indian jurisprudence and the concept of Dharma, has got formally incorporated into various Indian legislations, including recently enacted Mediation Act 2023, which is a standalone Act to streamline and formalize mediation practice in India laying out a comprehensive framework for its conduct and enforcement resonating with India's rich cultural heritage. Further, the incorporation of standalone courses on mediation in legal education covering theoretical and practical aspects have not only made it a highly sought career opportunity amongst law students and legal professionals, but has also promoted to a greater extent, the culture of mediation in India. Therefore, this research paper, while tracing the historical background of Mediation, analyses its changing contours resulting into integration of this traditional practice with formal legal frameworks, especially under the 'Mediation Act, 2023' as well as it's becoming a part of legal education. While this integration introduces several progressive reforms, but at the same time, it also raises notable concerns which undoubtedly have the potential to hinder its practical application. Therefore, the research paper identifies those challenges as well. Further, with a vision to optimize the efficacy of this indigenous practice under the Mediation Act as well as part of curriculum, the research paper also suggests ways forward so that Mediation emerge as a cornerstone for culturally sensitive

[1] Author is a Senior Standing Counsel at Directorate of Revenue Intelligence (DRI) & Directorate General of GST Intelligence (DGGI), High Court of Delhi, India.

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and robust legal framework for conflict resolution and establishment of harmonious and inclusive society.

Keywords: *Indigenous, Mediation, India, Cross-Border Disputes & Alternate Dispute Resolution, Conflict Resolution, Dharma.*

I. EMERGENCE OF MEDIATION AS AN EFFECTIVE DISPUTE RESOLUTION TOOL AND ITS GLOBAL BACKING

Conflicts are an inherent aspect of every individual's existence. Conflicts are unavoidable and certain to occur in any personal or commercial relationship. Each dispute consists of three fundamental components: the individuals involved, the procedural framework, and the underlying issue. Participating in a disagreement is not inherently troublesome; instead, the essential factor rests in how the parties involved handle the issue. There are two approaches to address disputes: non-adversarial techniques like mediation and conciliation, and adversarial techniques like litigation and arbitration.[2] Though, the most effective and persuasive way to settle conflicts among all of these systems has continuously been shown to be arbitration, however, recent trends indicate that arbitration may not be as effective or cost-effective as initially planned due to substantial enforcement issues. Consequently, Mediation has become the main mechanism for resolution of disputes since it involves an unbiased third party to facilitate discussions and negotiations between the disputing parties in order to help them reach a mutually agreeable conclusion. Besides, it is an expedient and economical technique that serves the interests of both parties and improves communication between the parties concerned. It also offers answers that all parties can agree upon, which is one of its greatest benefits.

It is pertinent to note that not only at the national level only but also globally, mediation has emerged as the most viable and preferred option for resolving International commercial disputes arising in the course of International trade wherein the credibility of this process of Mediation and the uniform enforceability of mediated settlement agreements(MSAs) across borders is ensured by the 'United Nations Convention on International Settlement Agreements' resulting from Mediation which is also known as the 'Singapore Convention on Mediation', which came into enforcement on September 12, 2020. However, for the implementation of the convention, the signatory countries are required to adopt necessary

[2] Geetanjali Sethi, 'India: Mediation : Current Jurisprudence And The Path Ahead' (*MONDAQ,* 24 June 2020,)<https://www.mondaq.com/india/arbitration-dispute-resolution/957898/mediation-current-jurisprudence-and-the-path-ahead> accessed 20 April 2024

domestic legislations to give effect to the convention's provisions. Once the parties reach a settlement through mediation under this Convention, they can seek direct enforcement of that agreement before the Courts of any ratifying State without the need to resort to the redundant legal processes. Therefore, akin to the 'New York Convention for arbitral awards', the standardized procedures set forth by the 'Singapore Convention' simplify the enforcement of the internationally mediated settlement agreements and thus encourage the use of mediation processes for resolving International disputes, thereby contributing towards a more efficient and business-friendly global legal environment.[3] However, the Convention specifically targets the enforceability of International settlement agreements resulting from mediation in commercial disputes. It does not extend to settlement agreements pertaining to employment, family, or inheritance in addition to those that are enforceable as arbitral awards or the judgments of the Court.

Further, under the convention, the ratifying States have been given an option to choose not to apply the Convention to the contracts entered into by their Federal Government or its agencies so as to allow these States to maintain control of the Government-related disputes in their own ways. Statements along these lines have already been published by Iran and Belaru. Further, to enforce the convention, the ratifying States may also mandate the parties to a settlement agreement to explicitly agree to the Convention's application. To reiterate this need, Iran has released a new announcement.

Currently, a total of Fifty Seven countries have signed the Convention. However, fourteen of them have ratified it so far. In an effort to further the development and application of International business mediation, India signed the Singapore Convention on August 7, 2019 but it still has to ratify the Convention before it can be officially approved.[4]

II. GROWTH OF MEDIATION IN INDIA: TRACING ITS EVOLUTION AND CAUSES

With the march of time, India has become as the eighth-largest beneficiary of 'foreign direct investment (FDI)' globally in 2022, making it a desirable location for foreign investment. Therefore, in light of this ongoing economic expansion in India and the increased probability of further foreign investors joining the Indian market, it becomes imperative to comprehend

[3] Arbune, Subhash & Priti Vijaynarayan Yadav, 'Analysis of the Efficacy of Alternative Dispute Resolution Mechanisms in India and the UK Section' A -Research paper'(2023) Eur. European Chemical Bulletin.7734 <https://www.researchgate.net/publication/375517581_Analysis_of_the_Efficacy_of_Alternative_Dispute_Resolution_Mechanisms_in_India_and_the_UK_Section_A_-Research_paper_Eur#:~:text=Both%20India%20and%20the%20UK, imizing%20strain%20on%20overburdened%20courts.>accessed 20 April, 2024

[4] United Nations Treaty Collection(2024)< https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXII-4&chapter=22&clang=_en> accessed 1 March2024

and give priority to the fundamental concepts of formulating equitable contracts and fostering relationships. This not only sets the stage for a major shift in India's approach to resolving disputes but also serves as a significant and necessary step in light of the numerous unresolved cases remaining pending before the Judicial system wherein it can be witnessed that the District Judiciary alone had 44.79 million pending cases in January 2024, while the High Courts had a backlog of 6.2 million cases in that period and the Supreme Court (SC) had 69,766 cases pending as on July 2023. Therefore, under given circumstances both arbitration and mediation especially court-annexed mediation have gained popularity in India and have been recognized as an effective tools to reduce the backlog of the cases and to provide quicker resolutions to disputes with legal frameworks in background. The legal framework for arbitration in India is 'The **Arbitration and Conciliation Act, 1996' and the same has been amended on many occasions** to make the process of arbitration more efficient and internationally aligned. Similarly, enactment of the '**Mediation Act, 2023' is another endeavour on the part of the Indian government to** provide a comprehensive legal framework for mediation in India, encouraging its use across various types of disputes and embedding it more firmly within the justice system. However the choice between the two methods often depends on the nature of the dispute and the desired outcomes. While arbitration continues to be a strong choice for commercial disputes, mediation is preferred where preserving relationships and confidentiality is important.

A. Journey from Informal Culture of Mediation to Statutorily Recognized Practice under Legislative Frameworks

Mediation as a practice in India roots back to ancient Indian jurisprudence and the concept of Dharma. It is well-documented in various writings and scriptures, which provide several examples of mediation dating back to the Vedic period; for instance, the 'Mahabharata' and the 'Ramayana', two of the greatest epics in Indian literature, contains numerous instances that highlight the importance of dialogue, negotiation, and the pursuit of peace, in align with the principles of mediation. In the Mahabharata, Lord Krishna played the role of a mediator in resolving domestic conflicts between the Kauravas and Pandavas. Similarly, Vidura, the wise Minister and advisor to King Dhritarashtra, consistently attempted mediation in advising Dhritarashtra and Duryodhana to treat the Pandavas fairly and to avoid the path of conflict. Similarly, in the epic Ramayana, one can witness how Lord Hanuman tried to mediate by conveying Lord Rama's message to Ravana, urging him to return Sita to avoid destruction in addition to Angada, who too urged Ravana to return Sita ji to avoid catastrophic consequences of war. Therefore, by tracing its origins to the Dharmic duty of giving peace a chance before

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engaging in conflict, the practice of mediation has a deep historical foundation. Further, emphasizing on peaceful resolutions and the role of neutral third parties in achieving settlements, one can also trace detailed guidelines on legal procedures and dispute resolution mechanisms, including mediation and conciliation under the Arthashastra, along with an appointment of mediators (Madhyasthas) to facilitate negotiations and help parties reach mutually agreeable solutions akin to the other oldest Dharmashastras, such as Manusmriti (Laws of Manu) and Yajnavalkya Smriti. It is also worth mentioning that Mediation, as a preferred method for resolving disputes, particularly in family and commercial matters, seems to be in alignment with the religious values of Buddhism, Jainism, and Islam stressing the importance of promoting peaceful dispute resolution. Further, Mahatma Gandhi's philosophy of non-violence (Ahimsa) and Satyagraha (truth force) which emphasizes negotiation and mediation as a means to resolve conflicts, has also deeply influenced modern Mediation practices in India. With the march of time, the concept of Mediation started getting implemented through the panchayat system, in which esteemed elders acted as mediators while resolving problems. Infact, it was during pre-British Rule in India, mediation gained a great popularity with the Mahajans, prudent businessmen resolving the disputes between merchants through the practice of mediation at the business centres with unifying business sanction to dismember a merchant if he resorted to court before referring the case to mediation. Later, the ancient principles of Mediation were formally incorporated into the modern Indian legislations, such as the 'Code of Civil Procedure'[5], 'The Arbitration and Conciliation Act of 1996,'[6]'The Legal Services Authorities Act, 1987,[7]'The Companies Act, 2013',[8] 'The Consumer Protection Act, 2019'[9], 'The Commercial Courts Act, 2015'[10] 'The Real Estate (Regulation and Development) Act, (RERA) 2016,'[11] 'The Family Courts Act, 1984',[12]'The Micro, Small, and Medium Enterprises Development Act, 2006' [13] etc., and recently with the enactment of ' The Mediation Act 2023', a standalone Act to streamline and formalize mediation practices in India laying out a comprehensive framework for its conduct and enforcement of mediated settlements thus enduring mediation as a preferred method of dispute resolution, resonating with India's rich cultural heritage.

[5] The Code of Civil Procedure 1908, s 89 Order X, Rule 1A
[6] The Arbitration and Conciliation Act 1996, · part III, s. 30
[7] The Legal Services Authorities Act, 1987, ss19 &20
[8] The Companies Act, 2013, s 442 &442(1))
[9] The Consumer Protection Act, 2019, ss 37, 49 & 59
[10] The Commercial Courts Act, 2015, s12A; Pre-institution Mediation and Settlement Rules, 2018
[11] The Real Estate (Regulation and Development) Act, 2016, s32(g)
[12] The Family Courts Act, 1984, s 9
[13] The Micro, Small, and Medium Enterprises Development Act, 2006, s 18

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B. The Mediation Act 2023: An Integration of Traditional Wisdom with Contemporary Legal Frameworks

Since India lacked a clear legislative framework on Mediation despite mediation's widespread recognition worldwide, therefore, to improve the efficiency of Mediation in India and to streamline the process of using Mediation to resolve disputes, the Indian Parliament enacted the 'Mediation Act 2023' on September 15, 2023, in order to meet the growing demand and develop an effective framework for settling conflicts through Mediation. This Act consolidates the various statutes containing provisions pertaining to mediation as a method of resolving commercial disputes. The Act's objective is clearly articulated and defined as the advancement of institutional Mediation for the resolution of related or subsidiary matters. Establishing the Mediation Council of India recognizing pre-litigation mediation, internet mediation, and community mediation as essential elements of the concept of 'Mediation,' making procedures for enforcing domestic mediated settlement agreements, and establishing criteria for appointing mediators are all key components of the Act intended to offer a comprehensive and standardized mediation process.[14]Infact, the Act can be seen as an integration of this traditional wisdom with contemporary legal frameworks. The influence of Dharma is evident with its emphasis on voluntariness, confidentiality, impartiality, and enforceability, ensuring that the mediation process aligns with the ethical and moral values deeply rooted in Indian tradition. By integrating these dharmic principles, the Mediation Act not only updates the legal framework for dispute resolution but also preserves and promotes the cultural heritage of peaceful and righteous conflict resolution, thereby embodying the essence of Dharma by promoting justice, fairness, and harmony in dispute resolution. Further, the Act with the recognition of the court referred mediations,Establishment of Mediation Centers and Mediation Council along with the provisions of legal backing, training and accreditation of mediators etc. not only extends the reach of indigenous mediation practice in a structured manner in adherence to standards and guidelines but also enhances the accessibility of mediation services to people across urban and rural areas. The Act also seeks to modify various existing laws such as ' the Code of Civil Procedure 1908; the ACA, 1996; the Legal Services Authorities Act, 1987; the Indian Contract Act, 1872; the Companies Act, 2013; the Micro, Small, and Medium Enterprises Development Act, 2006, the Consumer Protection Act, 2019, and the Commercial Courts Act, 2015'. These adjustments are necessary to ensure that the provisions of these statutes are in line with the requirements of the

[14] *Samik Basu,* "Decoding Key Provisions of the Mediation Act 2023" (*The Contemporary Law Forum*, 18 January 2023) <tclf.in/2023/01/18/decoding-key-provisions-of-the-mediation-act-2023/> accessed 20 April 2024

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Act. Below are some of its prominent features:

- **Expanded definition of the Term Mediation**

The definition of the term "Mediation" in the Act has been expanded to include online mediation, community mediation, pre-litigation Mediation, Conciliation, or an expression of similar import (section 3(h)Mediation Act). The idea behind this modification is to eradicate the differentiation between Mediation and conciliation in accordance with global standards wherein both terms are frequently used synonymously. The use of online Mediation also demonstrates an acknowledgment of current digital patterns in dispute resolution, as well as the increasing acceptance of the significance of technology in mediating in compliance with worldwide agreements.[15]Further, according to Section 3(h) of the Act, mediation is a cooperative procedure where parties with the help of a mediator, who has the power to encourage discussion and negotiation but not the authority to compel a decision, reach a mutually accepted agreement.

- **Application**

Section 2 of the Mediation Act specifies various circumstances in which the Act is applicable to mediation performed in India. Circumstances such as when both parties reside in India, the mediation agreement specifies its use in International mediations, or when one party is the Central or State Government in a commercial dispute. Additionally, it can be applied to other dispute types as determined by the Central or State Governments when they are one of the parties involved.

- **Mediation agreement**

The Mediation Act acknowledges the validity of Mediation agreements, which can be included either as a provision within a written agreement or as a distinct document. These agreements can be manifested in different ways, such as through signed documents, exchanges of communications or letters (including electronic communication as allowed by the 'Information Technology Act, 2000'), or even claims of the presence of a mediation agreement in legal pleadings or proceedings. Parties can also engage in mediation even if an issue has been initiated (section 4, chapter III, Mediation Act). Remarkably, the Act has expanded the definition of settlement through mediation. So therefore, even if standard contracts from the past that mention settlement through "discussions" or "conciliation" are still used by commercial or Government entities, they will also be counted as falling under the category of "mediation" as defined by the Act. However, it is crucial to discuss that this is

[15] Nishith Desai Associates, 'Decoding the Mediation Act'(2023)<accessed 20 April 2024

contingent upon the parties agreeing to get involved in Mediation as outlined in the Act.[16]

- **Appointment of mediator under the mediation agreement:**

The procedure of choosing and assigning mediators is addressed in Section 8 of the Act. Anyone, irrespective of their nationality, can be selected as a mediator using a mutually agreed-upon method by the involved parties. However, according to established rules, International mediators are required to fulfil essential criteria including qualifications, experience, and accreditations. If a consensus cannot be reached, the Act allows for an application to be submitted to the 'Mediation Service Provider' to appoint a Mediator. Like the rules for arbitrators under the ACA, 1996, the Act also requires the appointed Mediator to disclose any conflicts of interest or doubts about their neutrality (section 10). This decision should include the parties' preferences and the mediator's aptitude for resolving the conflict. (Section 9). Furthermore, a mediator selected in this manner is prohibited from concurrently acting as an arbitrator or serving as a legal agent for any party engaged in an arbitration or a Court case that is under consideration under the ongoing mediation and neither they can be called upon to testify as a witness in that hearing (Section 17).

- **Commencement and conduct of Mediation**

In terms of Section 14 of the Act, Mediation proceedings can be said to have been officially commenced when a party is notified about the starting of Mediation by the other party, as per the Mediation agreement. In other cases, where the parties agree to appoint a mediator, Mediation commences when the Mediator provides his consent to his appointment as a Mediator or where one of the parties applies to a Mediation service provider for settlement of disputes, then Mediation commences from the date of appointment of the Mediator. The mediator has a duty to impartially and neutrally guide the parties following the principles of objectivity and fairness. Meetings with the parties, whether conducted together or individually, can take place as often as required. Crucially, the mediator is not bound by points of the ‘Code of Civil Procedure, 1908, or the Indian Evidence Act, 1872’ (Section 15). This strategy improves the adaptability of procedural requirements and maintains the independence of participants so as to come to a conclusion that is mutually acceptable.

- **Role of Mediator**

Section 16 delineates the mediator's function in the Mediation process. The stipulation

[16] Rangon Choudhury, ‘A Critical analysis of the Indian Mediation Bill 2021’(Kluwer Mediation Blog R. (25 November 2022) https://mediationblog.kluwerarbitration.com/2022/11/28/a-critical-analysis-of-the-indian-mediation-bill-2021/

mandates that the mediator's role is to promote voluntary resolution of conflicts amongst the parties involved. The mediator's role is to effectively communicate the viewpoints of each side to the other, as previously agreed upon, and assist in identifying issues, fostering a more profound comprehension, clarifying priorities, and examining probable grounds for resolution. The mediator serves as a facilitator, aiding parties in achieving voluntary outcomes. Their duties encompass facilitating the identification of concerns, enhancing comprehension, clarifying priorities, exploring potential agreements, and underlining that the ultimate choice rests with the persons involved. Crucially, mediators lack the power to compel agreements or ensure certain results.[17]

- **Confidentiality**

According to Section 22 of the Act, the Mediator, Mediation Service Provider, and the parties involved in mediation proceedings are required to maintain confidentiality regarding various aspects, such as statements, proposals, documents, and any other communication shared during the mediation process. Furthermore, the act of documenting mediation procedures using audio or video is strictly forbidden to maintain the secrecy of the process. Crucially, the information exchanged throughout the mediation process is inadmissible as evidence in court, arbitration, or any other legal procedure. This grants the parties the benefit of "without prejudice privilege" to incentivize them to participate in open and honest negotiations to reach a friendly resolution.

- **Place of Mediation Proceedings**

As per Section 13 of the Mediation Act, Mediation proceedings generally take place in a range of jurisdictions of the competent Court or Tribunal responsible for deciding on the disputed subject matter. Nevertheless, parties can mutually consent to conduct Mediation at a different venue. In addition, parties can get involved in online mediation, contingent upon their explicit written consent.

- **Time framework and process**

The Act provides for a time framework of one hundred twenty (120) days within which the process of mediation needs to be finished after the initial appearance of the mediator, However, the same can be extended by an extra sixty (60) days with the consensus of all the

[17] Shashirekha Malagi, ' Adjudication is not solution for Matrimonial Disputes with special reference to Mediation in India'(2024) Indian Journal of Law and Legal, Vol VI, Issue-I, 1757-1760.*https://www.researchgate.net/publication/378496143_Indian_Journal_of_Law_and_Legal_Research_ADJUDICATION_IS_NOT_SOLUTION_FOR_MATRIMONIAL_DISPUTES_WITH_SPECIAL_REFERENCE_TO_MEDIATION_IN_INDIA.* Accessed 15 March, 2024

parties (Section 18). This provision encourages organized and effective mediation while also protecting the parties' freedom to make their own decisions. Furthermore, there are plans to change the CCA 2015, which now applies to pre-institution Mediation, in order to establish more stringent deadlines.

- **Submission of Non-Settlement Report**

If the mediation process fails to result in a settlement within the specified time frame outlined in the Act, the mediating party must create a non-settlement report. This report must not reveal reasons for the lack of settlement and must be shared with the involved parties. Further, the Act requires that in the case of institutional Mediation, the mediator must also submit a non-settlement Report to the Mediation Service Provider. This is consistent with international norms prioritizing transparency in disclosing mediation results (Section 21).

- **Registration of Mediation Agreement (Section 20)**

For registering mediated settlement agreements, the Parties under the enactment have the option to officially record such agreements within 180 days (with the potential for an extension) after receiving the verified copy of the agreement. Further, the Act explicitly states that registration does not impact the ability of parties to enforce or contest mediated settlement agreements under different provisions.

- **Enforcement of Mediated Agreement (Section 27)**

According to Chapter VI of the Act, Mediated settlement agreements that are signed by the parties and verified by the mediator are deemed to be final, mandatory, and enforceable as per the rules outlined in the CCP, 1908 as if it were a judgment or decree passed by a court. These agreements can serve as a dependable foundation for defense, set-off, or any other objective in any legal proceeding.

- **Grounds of Challenging Mediation Agreement (Section 28)**

Section 28 outlines the precise conditions in which mediated settlement agreements might be challenged within 90-days from the date of receipt of the copy of the settlement agreement. Such situations include situations where there has been fraud, corruption, impersonation, or where there have been disputes or difficulties that were deemed unsuitable for mediation according to Section 6. Further it provides that an additional 90 days can also be granted by the court if a valid reason is presented.

- **Certain categories of disputes precluded from being resolved under the Act**

Although the enactment allows for mediator intervention of civil and commercial issues, it

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explicitly precludes certain categories of disputes from being resolved by mediation which are as under:

- Criminal offences;
- Cases involving injuries sustained by children or people with intellectual disabilities
- Things that run counter to general principles of fairness and morality or which are in opposition to established policies;
- Everything having to do with claims of wrongdoing by a registered professional or problems with their registration;
- Disputes involving the rights of other parties, with the exception of marital disputes concerning a child's interest;
- Contents covered under statutes governing the purchase of property
- Matters within the scope of 'the Competition Act, 2002; National Green Tribunals Act, 2010; Electricity Act, 2003; Securities and Exchange Board of India Act, 1992; the Telecom Regulatory Authority of India Act, 1997; the Petroleum and Natural Gas Regulatory Boards Act, 2006'. (Schedule I to be read with section 6)
- **Mediation Council of India (MCI) and its Functions (Chapter VIII)**

The MCI, formed under the Act, functions as a central authority tasked with promoting mediation's expansion inside the country and globally. From supervision of mediation procedures, regulating mediation service providers, administering an electronic repository for mediated settlement agreements, the MCI is also responsible for reporting to the Central Government on the Act's implementation on an annual basis.The Council comprises of individuals with legal competence, mediation experience, and representation from trade and industry associations. It is pertinent to note that the formation of this Mediation Council of India, which aims to oversee, certify, and acknowledge mediators and mediation organizations, represents a significant move towards formalizing and enhancing the practice of mediation in India thereby strengthening India's progress towards becoming a legal hub that focuses on mediation.

- **Interim Orders by Courts**

If deemed essential, the courts may issue interim orders to protect the interests of any party involved when submitting them to mediation (Section 7). Nevertheless, the Mediation Act does not clearly establish the extent and power of this role, unlike section 9 of the ACA, 1996.

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- **Fee / Expenses For Mediation**

The costs related to mediation, with the exception of community mediation, will be determined as per the rules and regulations set in place by the Mediation Act. According to Section 25 of the Act, the parties shall bear equally all the costs associated with mediation, including the mediator's fee and the mediation service provider charges unless there is a mutual agreement to the contrary.

C. Integration of Mediation into the Legal Education System: A Path towards Competence-Based Learning

It is worth mentioning that apart from the above mentioned legislations enduring mediation as a preferred method of dispute resolution, integration of mediation into the legal education system too has played an important role in promoting the culture of mediation in India. Inclusion of Mediation and ADR as mandatory subjects in the curriculum for law schools on the recommendation of 'the Bar Council of India', in addition to the incorporation of standalone courses on mediation in legal education covering theoretical and practical aspects with an aim to allow students to gain hands-on experience, offering of internships by the mediation centres and encouragement of research on mediation and dissemination of same through reputed journals, conferences, and online platforms, have indeed contributed to the changing contours of the practice of mediation making it a highly sought after career opportunity amongst students and legal professionals thereby bringing in progressive changes in the mind-set of students, legal professionals and the public, while laying down strong foundation for promoting mediation as a mainstream dispute resolution process.[18]

It is also pertinent to note at the juncture, with a vision to transform India's educational landscape to cater the needs of the 21st century, the Ministry of Education announced the 'New Education Policy (NEP) 2020' covering all aspects of education i.e. from elementary to higher education, as well as vocational training and lifelong learning. The new education policy provides for a comprehensive framework for education reforms in India by recognizing the importance of integrating indigenous knowledge systems into the education framework with a special focus on holistic development, life skills, ethical and moral education. Thus, the integration of mediation in general education, in addition to legal education, gets a boost from this policy and such extended integration can undoubtedly enrich students' learning experiences while preserving and promoting traditional practices and wisdom that have been part of India's cultural heritage for centuries. Teaching of various mediation skills via setting

[18] Carrie Menkel, 'Meadow, Toward Another View of Legal Negotiation: The Structure of Problem Solving'(1984) 31 UCLA L. Rev. 754

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up of mediation clubs, collaborations between various educational institutions will not only bring together students from diverse backgrounds to resolve conflicts but will also inculcate a strong sense of ethical and social responsibility amongst them.

III. JUDICIARY'S INITIATIVES IN FOSTERING A CULTURE OF MEDIATION

The Indian judiciary has also consistently promoted Mediation as a viable alternative to traditional litigation. Creation of dedicated mediation centres at various levels (district, state, and national) with trained mediators to assist in the process along with the training of judges and lawyers to consider and promote mediation as an integral part of their practice not only fostered a cultural shift within the legal profession, but also paved the way for a more balanced and effective legal system wherein dispute resolution has been made easily accessible to a wider population including marginalised and rural communities. Also perusal of various landmark cases of the Constitutional Courts advocating for institutionalization of mediation coupled with directions for robust legal and procedural frameworks sets the groundwork for its broader acceptance and implementation across various types of disputes. For instance, in the landmark case of '*Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.'*[19] the Apex Court i.e., the supreme Court (SC) clarified the scope and application of Section 89 of the 'Civil Procedure Code (CPC)', which mandates court-referred mediation and also laid down guidelines for identifying cases suitable for mediation, emphasizing that mediation is appropriate for disputes involving relationships, like matrimonial matters, business partnerships, and family disputes. Similarly, in another case of '*Salem Advocate Bar Association v. Union of India'* [20] the Apex Court directed the formation of committees to ensure the proper implementation of Section 89 CPC and the training of mediators, under its commitment to making mediation a mainstream method of dispute resolution. In '*Sukanya Holdings Pvt. Ltd. v. Jayesh H. Pandya and Anr.'*[21]*,* the Supreme Court (SC) emphasized the Voluntary participation of all parties involved in the dispute for the referral of disputes to arbitration and mediation under Section 89 CPC. Similarly, *in 'B.S. Krishnamurthy v. B.S. Nagaraj'* [22]*,* emphasis was laid down by the SC on the need for mediation in matrimonial disputes in order to reach amicable settlements. In *'M/s. ICOMM Tele Ltd. v. Punjab State Water Supply & Sewerage Board'*[23] the SC reiterated the importance of ADR, including mediation, for resolving commercial disputes in the business environment.

[19] *Afcons* Infrastructure Limited v. Varkey Construction Co. (P) Ltd. (2010) 8 *SCC* 24.
[20] Salem Advocate Bar Association, T.N. v Union of India AIR 2005 SC 3353.
[21] Sukanya Holdings Pvt. Ltd vs Jayesh H. Pandya & Anr, (2003) 5 SCC 531.
[22] B.S. Krishnamurthy v. B.S. Nagaraj& Ors (2011) 15 SCC 464.
[23] M/S. Icomm Tele Ltd. v. Punjab State Water Supply & Sewerage Board, AIR 2019 SUPREME COURT 2682.

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Further, in the case of '*K. Srinivas Rao v. D.A. Deepa'*[24], directions were issued by the apex court to the family Courts, regarding the *settlement the matrimonial disputes through mediation. I*t was also held even in divorce proceedings, criminal courts can transfer instances involving complaints made under Section 498-A of the IPC to mediation. Further the mediation Centres were also directed to set up pre-litigation desks or clinics to settle marital disputes at the Pre litigation stage. In the case of '*MR Krishna Murthi v. New India Assurance Co. Ltd.'* [25] the Apex Court recommended the *Government to examine the feasibility of setting up* 'Motor Accidents Mediation Authority (MAMA)' by making necessary amendments in the 'Motor Vehicles Act' *while* evaluating the feasibility of enforcing the ' Indian Mediation Act' including all aspects of mediation.[26] In the Ayodhya dispute '*M. Siddiq (D) v. Mahant Suresh Das',*[27] the constitution bench of the Hon'ble SC ordered a court-monitored mediation of the highly sensitive Ayodhya dispute to be conducted with the utmost confidentiality and putting a prohibition on the reporting of the said proceedings in any form (para3 &7). In the case of '*M/S Patil Automation Private Limited v. Rakheja Engineers Private limited'* [28], the court laid emphasis on the basic requirements of the existence of adequate infrastructure and, more significantly, the accessibility of proficient and competent mediators to enhance the credibility and success of mediation process while recognizing the potential of mediation as a viable method for resolving disputes. It is also worthwhile to mention here that it was in the year 2005, the then 'Chief Justice of India (CJI), Hon'ble Mr. Justice R.C. Lahoti', took the initiative of setting up the 'Mediation and Conciliation Project Committee (MCPC)' which proved to be very instrumental in formulating mediation rules and training programs in addition to establishing Mediation Centers across the country, providing for successful resolution of the cases referred to by various courts from time to time.

However, with no organized system in place to govern the mediation process in India having clear regulations guiding the process, the efficiency of Court-annexed Mediation fell short of expectations, despite endeavours by both the legislature and the Judiciary. Though several Mediation centres established their own norms to adhere to but, the absence of a well-defined framework acted as deterrence for individuals to engage into this process. Private Mediation too met with the same fate.[29]

[24] K. Srinivas Rao v. D.A. Deepa, (2013) 5 SCC 226.
[25] Mr. Krishna Murthi v. New India Assurance Co. Ltd. (2019) SCC Online SC 315.
[26] *Id.* Para 29
[27] M. Siddiq (D) v. Mahant Suresh Das, (2019)SCC Online 1440.
[28] M/S Patil Automation Private Limited v. Rakheja Engineers Private Limited (2022) 10 SCC 1.
[29] Partha Paritam Mitra &Nehal ahmed Nadwi, 'Development of the mediation mechanism in India to resolve commercial disputes under international investments '(Mediate, 23 April, 2024).

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IV. PROSPECTIVE CHALLENGES AND SUGGESTIONS TO ENCOUNTER

A. Challenges to the Mediation Act,2023

Indeed, the Mediation Act, encompassing several facets of mediation, signifies a substantial transformation in India's legislative structure, underscoring the advocacy of mediation as a favored approach for ADR. This legislative enactment is also noteworthy because it takes a unified approach by being influenced by the international community, where the terms conciliation and mediation are often used interchangeably and thus demonstrates a commitment to streamlining the process of settling disputes and establishing practice of mediation as a significant force in shaping the future trajectory of legal practices in India. However, like other revolutionary laws, the Act has its fair share of critiques that can be seen as under:

Another important constraint under the Act is its limited jurisdiction in implementing settlement agreements that originate from conduct of international mediations outside India. International Mediation, as per the Mediation Act, pertains to mediation that includes at least one party not a citizen of India. Since, the Mediation Act applies solely to mediations taking place out in India, including those involving international parties. Therefore, it does not outline how to enforce settlements that begin with mediations outside of India.

Further, it can be seen that the term 'mediator' as defined under Section 3(i) classify mediators in into two categories ie, - those registered with the MCI and those who are not and thus underscore the need to balance the accessibility of mediation with safeguards to prevent abuse. With this classification, there is a risk of the conversion of ordinary agreements into MSAs by the parties and getting them enforced as judgments or decrees of the court, potentially bypassing due legal processes and exploiting the weaker parties.

Similarly, a list of disputes that are excluded from mediation by the virtue of Schedule I read with section 6 requires Re-evaluation on the grounds of being discriminatory as well as limiting access to justice by way of Mediation. For instance, exclusion of disputes involving the Government, unless it meets the criteria of being a commercial dispute, seems to be oblivious of the fact of Government being the largest litigant in the country. Similarly, the exclusion of disputes involving minors, deities, or individuals with disabilities in addition to disputes involving professionals(such as lawyers, doctors, and chartered accountants) before any statutory authority in relation to registration, discipline, or misconduct too seems to be

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discriminatory and restricting the access to Mediation. It is pertinent to note that in the Ayodhya case wherein the deity himself was a party in the dispute, the matter, despite being highly sensitive, was recommended for Mediation by the Apex court. However, such reference would not have been possible under the extant Act now. Similarly certain criminal cases compoundable in nature and tortious disputes can also be recognized as suitable for Mediation as they are found to be in many jurisdictions facilitating the concept of restorative justice.

Further, the absence of precise definitions for the phrases "*place of business*" and *"habitual residence*" under the Act can lead to varying interpretations by the courts and the consequent inconsistent application of the Act itself, particularly in international disputes, in context of the jurisdiction and enforcement.

Meeting the specified time limits for mediation, especially in intricate instances also needs to be met by appropriate extensions as to avoid hasty procedures and assure comprehensive and efficient solutions.

The ‘Mediation Council’ which is entrusted with the responsibility of supervising the profession, not only needs to have members who have indepth knowledge of mediation law and familiarity with the nuances of mediation in view of such practice being skill-based but also needs to have autonomy for leadership. However, the Council's dependence on the approval of the Central government for its regulations sparks concerns over possible conflicts of interest, particularly when the government itself may be involved in certain mediations, thereby having impact on council’s effectiveness in executing key functions provided under the Act.

It is also pertinent to note, due to non application of ‘the Singapore Convention’ to the Settlement Agreements enforceable as decision of the court. Consequently, settlement contracts resulting from International Mediation held in India, which are considered official rulings or decisions of an Indian court, could not be enforced legally in countries that have ratified the Singapore Convention. Consequently, while the foreign party can enforce the settlement agreement as a court judgment against the party in India, the opposite is not possible. This could potentially discourage them from engaging in international mediation within India.

Also as mentioned supra, Section 28 of the Act allows for the raising of challenges against mediated agreements based on particular reasons, such as fraud, corruption, impersonation, or where mediation was used for matters that are not covered by Section 6. These challenges

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must be commenced within 90 days after receiving the agreement, with a potential 90-day extension. Nevertheless, the grounds for contesting the agreement are limited and do not include matters such as duress, coercion, or the uncovering of fraud after the specified time limit. Furthermore, the Act prohibits individuals who have not signed the agreement from raising challenges, so imposing a constraint within the framework.

Thus, it becomes clear from the aforesaid discussion that effective implementation of Mediation may require setting up clear rules, promoting transparency, and conducting regular evaluations to adapt to changing demands. However, despite these concerns, it cannot be denied that the Act serves as a commendable foundation for refined mediation practices in the Indian legal landscape. For its effective implementation and unparalleled success, it is essential that the legislation should incorporate unambiguous and precise directives, considering the geographical locations of the involved parties or mutually agreed upon jurisdictions, to facilitate adaptability in diverse circumstances. An ongoing conversation among lawmakers, legal experts, mediators, and the general public can promote the development of a dynamic and efficient mediation system that aligns with the objectives of the Mediation Act. To begin, after the MCI is established, proactive measures should be done to encourage and support mediation. This entails compelling the Government and public sector undertakings in India to incorporate mandatory mediation in their contracts, implementing multi-tier dispute resolution clauses, partnering with the business community, corporations, and in-house counsels to raise awareness, extending mediation to all business-oriented medium and small cities in India, and promoting mediation within micro, small, and medium enterprises. Additionally, it involves substantiating the efficacy of mediation through empirical data and presenting practical examples of successful outcomes.

B. Challenges to Integration of Mediation into the education system and the way forward

As mentioned supra, integrating mediation into the curriculum of various educational institutions at different levels will indeed open doors for various career opportunities for students ranging from being mediators, ADR consultants, or specialists in corporate dispute resolution. However, at the same time, teaching of this indigenous practice of mediation is not free from challenges and requires structured readings and simulations reflecting upon suitable mediation skills and techniques in addition to appropriate content area.[30] Therefore, genuine and sincere efforts to integrate mediation into the education system of the country calls for an

[30]Jacqueline Nolan-Haley, Teaching Mediation As a Lawyering Role Developments' (1989) 39 J. Legal Educ. 571.http://ir.lawnet.fordham.edu/faculty_scholarship/286

appropriate infrastructure in the form of establishing mediation centres, mediation societies or clinics, where students can practice their skills under supervision, and through their participation in mock mediations, workshops, discussions, role-playing activities and simulations etc. Similarly, collaborations with local communities to bring traditional mediators or community elders into the classroom in addition to addition well-equipped faculty to teach these skills as well as conduct of teacher training programs to equip teachers with skills in mediation and conflict resolution along with encouraging research and documentation of indigenous mediation practices will pave the way for both learning and preservation efforts.

V. CONCLUSION

Thus, to summarise, the above discourse represents a significant shift in the contours of indigenous practice of mediation by analysing its integration with formal legal Structure and legal education to enhance the scope, accessibility and enforceability of this deeply rooted practice in the Indian legal system with a strong foundation for its greater acceptance in the contemporary times. Such integration also showcases a dedication towards conforming to global norms for mediation while indicating a deliberate endeavour to improve the practical implementation of the mediation process in India by providing a clear and organized method for mediation, which has the potential to improve India's legal system greatly. Given the large number of pending cases in India's courts, mediation allows for resolving disputes outside the judicial system, where they are more likely to be bogged down by red tape and delays. Though such integration greatly enhances the formalization and progress of mediation process in the country, however, at the same time also requires the need to address certain challenges which may create barriers in achieving the objectives of such integration. Nevertheless, this journey of Mediation from an informal indigenous practice to a statutorily recognized practice under ‘the Mediation Act, 2023’ and its integration in legal education, makes India well-positioned to shape the resolution of disputes as a non-confrontational and time-saving substitute for conventional litigation while fostering a culture of dialogue, tolerance, and peaceful conflict resolution necessary for **strengthening social harmony** and promoting social inclusion.

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