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Mediation Act 2023, Need of an Hour

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ABSTRACT

This Research paper will bring insight to the significance of mediation and why the mediation act 2023 was enacted to curb the pendency in courts in INDIA. This paper will give brief explanation about the history of mediation and to the various modes of alternative disputes resolution while focusing on Mediation process including its online aspects. It will bring a brief comparison with mediation to the negotiation, arbitration, conciliation, litigation and lok- adalat. It also makes a comparison of mediation in India with other countries. Its benefit and demerit in litigation. As every enactment has certain loopholes, this paper gives suggestion for the upliftment of this act and fulfilling the need of the public policy of accessing justice to all.

Keywords: *Mediation, Singapore convention on mediation, History of Mediation, Mediation, Conciliation, Lok Adalts, Online mediation, Public law and Policy.*

I. INTRODUCTION

As the conflicts are inseparable part of human relationship as we all know that where there are two pots, there is a fight. Conflicts are now the integral part of human relationship; it may be either because of different thoughts, different views or different ideology or may be because of jealous, greed, ego, and misunderstanding or because of trust issues. Not only modern but also the ancient society is an example where conflicts occurred and the consequences were disastrous. Let's take the example of Mahabharata where the disputes arises between kauravuas and pandvas, the cause may be because of the greed, jealously, ego, property, prestige or dignity etc. though Lord Krishna tried to intervene and resolve the disputes with peace but all his efforts went in vein and the result of these disputes were disastrous resulting into the bleed of many people in kurushetra. Similar examples are found in modern societies and cultures. The changing time and difference in thinking brings a various conflicts such a matrimonial, commercial, family, employers and employee, industrial disputes etc. which gives rise to various litigations and due to over pendency of disputes the mediation becomes a good source of settling a dispute. Mediation prevails even before the courts establishments taking time back to the panchayaat system when the disputes were settled by the some heads or (sarpanch) from the villages who gives binding decision while considering the best interest of the people in

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mind. Mediation exists from the time immemorial, let's start from the home when two siblings fight for a petty issue considering it to be a huge one, lets for example on a toy the mother or the head of the family dissolve their fight by settling their disputes and amicably reaching to a conclusive decision settling both the kids on a mutual consensus. Mediation is prevalent in a civilized country form a time immemorial as far as the legal concept of mediation is concerned it reduces the burden of the courts, it is cost effective, time consuming and simultaneously giving an opportunity to reach to an amicably conclusive decision

There are more than over 51 million cases are pending in the Indian courts covering all level of judiciary as of 2024[1]. Mediation plays an effective role in settling the disputes voluntarily. Mediation is one of the parts of the alternative dispute resolution to solve the dispute. When we talk about mediation the Singapore convention on mediation (SCM) ought to come into the picture of which India is a signatory. The mediation act 2023, which comes into force on 9th October 2023 for some of its provisions these, includes section 1,3, 26 and section 31 to 38 notified by the ministry of Law and Justice. The Mediation act 2023 is first independent legislation on mediation. It aims to resolve the disputes amicably. It also talks about establishment of mediation Council of India, online mediation and encouraging community mediation and gives recognition to voluntarily pre-litigation. One of the most prominent features is making mediated settlement agreement enforceable as a decree of court. Mediation is not a formal process which involves courts procedure, preponderance of evidences and testimony of witnesses, whereas it's a process were parties approach together to a neutral third party called as mediator who facilitates the parties to settle their disputes and to reach out a conclusion. The Government is continuously attempting to create a policy to settle the disputes since long time. The Various provisions which talks about mediation are: -

- Section 89 of the civil procedure code,
- Section 442, 446 and 449 of the companies' act 2019.
- Section 37, 38, 39 and section 40 of the consumer protection act 2019.
- Section 30 and 31 of the arbitration and conciliation ac t 1996.
- Section 12 of the commercial courts act 2015. Etc.

II. HISTORY OF THE MEDIATION

It is very difficult to trace back the exact origin of the mediation due to colonization of about 250 years. There is no official record available regarding the customary dispute resolution; we have some scattered information to trace mediation practice from back to ancient times in post

Vedic period in India and biblical times in Europe. Different kinds of Mediation practices are used by the tribal community from the time immemorial in different part of the world. Mediation cover a rich history from thousands of years, having its roots in ancient time and cultures. Ancient civilization which covers the period from (3000 BCE- 500 CE). In Egypt mediation techniques were used to solve the disputes between pharaohs and nobles. Aristotle in (350 BCE) mentioned mediation in his writing. Mediation was also recognized as a dispute resolution method in Roman law. In China Confucius advocated for mediation in (551-479 BCE), and in India mediation was mentioned in ancient Hindu text, during the period of Mahabharata (400 BCE). Towards the end of Vedic Epoch, philosophical and legal debates were carried on for the purpose of eliciting truth, in assemblies and Parishads, which are now described as conferences. As the society grows in size complexity also grows, and a good society can't grow without the first evolving a system of resolving disputes that can keep the peace and harmony in the society. As the society grows the commerce trade and economy starts expanding which makes government as a part of litigation in many cases which creates pendency in courts and hindrances in smooth functioning of the government. Numerous new enactments create various right s and remedies which increase reliance on judicial reforms of courts which brings an unimaginable explosion of the cases in courts. Mediation gives an exceptional alternative method to solve the disputes while maintain the speedy remedy to litigants which is also one of the fundamental principle of preamble of our constitution.

According to Buddha, "mediation brings wisdom: lack of mediation leaves ignorance, know well what leads you forward and what hold you back, and choose that which leads to wisdom."[2]

III. KEY FEATURES OF MEDIATION ACT, 2023

(A) Introduction to Mediation Act 2023

Mediation has been part of India's history for a long time since traditionally Panchayats used to resolve community disputes. The British rule shifted the focus on an adversarial legal system, which led to more disputes and delays. As a result of this provision in the 1908 Code of Civil Procedure under Section 89(1), courts can suggest alternative dispute resolution methods, which include mediation, and due to this, mediation centres have been established all over India. Despite this, private mediation did not have any structured frame and support from legal jurisdictions; consequently, the practice was limited. To meet this challenge, the proposed Mediation Bill 2021 provided for a full-proof legal frame. In August 2019, India had entered into the Singapore Convention on Mediation; however, it still waits for ratification so that cross-border enforcement of settled mediated issues remains without adequate mechanism. After

review and recommendations by the Standing Committee, the revised Mediation Bill 2023 was passed by both houses of parliament in August 2023 and received presidential assent on 15 September, thus enacting the Mediation Act 2023.[3]

(B) The Mediation Act: Key Provisions[3]

The primary aim of the Mediation Act is to "promote and facilitate mediation," and it particularly identifies institutional, online, and community mediation as areas requiring facilitation to ensure timeliness in dispute resolution. It further addresses the matters of enforced settlement agreements derived from mediation and the formation of a regulatory authority responsible for registering mediators and institutions.

We consider some of the most crucial provisions of the Mediation Act below:

Mediation: The Mediation Act 2023 expands the scope of mediation to include pre-litigation mediation, online mediation, community mediation, and conciliation. The Supreme Court of India, as well as the Singapore Convention, has observed that in international standards, mediation and conciliation are used interchangeably. Therefore, Part III of the Arbitration and Conciliation (A&C).[4] Act becomes redundant, and the provisions relating to conciliation will be removed from the A&C Act.

Scope of the Mediation Act: The Mediation Act shall come into force and apply to all mediations carried out in India, as follows

1. All parties to the dispute have their domicile, place of incorporation or seat within India;
2. The mediation agreement has expressly made provision for applicability of the Mediation Act;
3. The mediation in question relates to an international commercial dispute and at least one party has its domicile or place of business outside India;
4. One party is a government entity, and the dispute is either commercial or explicitly notified as applicable.

The Singapore Convention[5] facilitates cross-border enforcement of settlement agreements from international mediation, but the Mediation Act only applies to mediations conducted in India and does not enforce agreements from mediations held outside India.

Non-Mediable Disputes: The Act also lists examples of cases not to be referred for mediation such as minors or intellectually disabled persons, criminal prosecutions, tax cases, and regulatory investigations. The Act also moves beyond civil and commercial disputes in that

 [ISSN 2581-5369]

compoundable offenses such as some matrimonial disputes are also referred to mediation. This guidance is able to make eligible cases move beyond the A&C Act that relies on judicial rulings for non-arbitrability.

Mediation Agreement: A mediation agreement can be a clause in the contract or a separate document written. This includes all signed documents, exchanges by electronic communication, or pleadings in which the fact of a mediation agreement is not in dispute. After a dispute arises, the parties may agree to mediate.

Pre-Litigation Mediation and Judicial Referral: The initial 2021 Mediation Bill made mediation pre-suit compulsorily binding for civil or commercial suits, while amendments were brought to give in for pre-suit voluntary mediation. According to section 5(1) of the Act, it makes provision that parties are required to give mutual consent toward mediation even before they are filing the case, even though in the case of the Commercial Courts Act of 2015, where commercial disputes of certain stipulated values are put compulsory under the pre-litigation mediation process. Courts and tribunals may also refer cases for mediation at any stage with or without an agreement for mediation.

Interim Orders: While the court-referred mediations are ongoing courts or tribunals, may issue interim orders against any party to protect interest. The Act does not define those orders as it has provided in Section 9 of the A&C Act to provide elaborate provisions.

Appointing Mediator: The parties may agree on a mediator from any nationality with qualifications and experience that meet agreed qualification standards for foreign mediators. In the absence of such an agreement, either party may request the intervention of a Mediation Service Provider to select a mediator from their roster. A mediator appointed in this manner shall disclose any interests likely to affect his or her impartiality, which he or she shall bring to the attention of the parties for their consideration and comment, in accordance with the UNCITRAL[6] Model Laws on International Commercial Conciliation. A mediator appointed in the manner above cannot subsequently accept an appointment as an arbitrator or as representative for a party in proceedings having a related subject matter.

Although the A&C Act has prescribed the qualifications of an arbitrator in its Fifth Schedule, the Mediation Act does not have similar criteria for mediators. These standards are expected to be included in the rules framed by the Mediation Council of India.

Location: Mediation should take place ideally within the territorial jurisdiction of the court or tribunal that deals with the dispute. However, it can also take place at an agreed location of both parties. Parties can also opt for online mediation, comprising pre-litigation sessions, which

require written consent.

Process: Mediation starts with notice to parties for mediation on an agreement. In case of no such agreement, mediation starts by appointment of the mediator. The mediator impartially helps with his objectivity and fairness meets parties jointly or separately as the case may be. Being an informal process, unlike regular court proceedings, a mediator is not governed by Civil Procedure Code, 1908[7], or Bhartiya Shayksha Adhiniyam, which gives way to flexibility in achieving amicable resolution.

The mediator assists the parties to reach a resolution by building an understanding, clarifying priorities, discussing settlement options, and making clear that it is the parties who decide finally. A mediator acts, but he does not force a settlement or promise a success.

Time Frame: Such mediation shall be concluded within a maximum period of 120 days from the date on which the mediator first makes appearance. The period, further, can be increased with mutual consent up to the extent of 60 days. A similar modification provided in the Commercial Courts, 2015 specifies pre-institution mediation process needs to be completed in not more than three months as extendable by mutual understanding of parties up to further two months.

Confidentiality[8]: All statements, proposals, and documents shared in mediation must remain confidential. Audio or video recording is prohibited and mediation discussions cannot be used as evidence in court to support candid exchanges. Mediated settlement agreements that have to be registered, enforced, or challenged in the courts are not covered by confidentiality. Disclosure is permitted if it relates to criminal threats, domestic violence, or serious threats to public safety.

The Mediation Act respects the participation as completely voluntary and balances the right to autonomy with structured timelines to avoid delay, protects confidentiality and invites open communication.

IV. MEDIATED SETTLEMENT AGREEMENTS

(A) Form, Registration, Enforcement and Challenge

Form: The mediated settlement agreement shall be in writing and shall contain all or some of the parties to the mediation and may resolve all or some of the disputes. It has to be authenticated by the mediator and shall be subscribed with the voluntary signatures of all parties. The absence of such conditions deems the agreement to be void. Moreover, this agreement can go beyond the disputes initially referred for mediation, while arbitration under the A&C Act will strictly

confine resolutions to the referred disputes. This flexibility allows for the fact that complicated, interconnected disputes may need broader negotiations with a chance of more lasting resolutions.

Registration: The parties may, if so desired, file a mediated settlement within 180 days, extendable. This registration is, however optional under Legal Services Authorities Act, 1987 in court or tribunal-referred mediation. The Act nowhere provides the consequences for lack of registration.

Non-settlement Report: In case settlement does not occur within the given timeframe or the mediator determines that settlement is not achievable, then a non-settlement report is presented before the parties or the Mediation Service Provider, institutional or ad hoc. A non-settlement report remains confidential, and no reason or conduct detail is furnished.

Finality and Enforcement: A mediated settlement is binding once agreed upon and thus is enforceable as a court decree.

Challenge: The grounds for setting aside a mediated agreement are limited: fraud, corruption, impersonation, and matters not within the contemplation of mediation under Section 6 of the Mediation Act. The filing is done within ninety days, but a court order may extend the filing. The court can also impose further limitation on such filings to ensure that it does not abet an abuse of the Act or the intent it was passed with.

(B) Institutional Mediation Under the Mediation Act

Mediation Service Providers: The mediation proceedings can be organized by Mediation Service Providers that consist of a set of organizations, authorities of the Legal Services Act 1987, court-annexed centres, or any other recognized body approved by Mediation Council of India, MCI. The above providers shall accredit the mediators, maintain the panel and provide infrastructural and administrative support to the mediation proceeding and shall take care for the registration of mediated agreement.

Mediation Council of India (MCI): Mediation Act constitutes the Mediation Council of India as a corporate body. Obligations will be incurred in making India a hub for domestic as well as international mediation. The MCI shall regulate mediation procedures, oversee Service Providers, create an electronic repository for settlement agreements, and report yearly on implementation, all the while drafting regulations with respect to the Mediation Act.

Amendments to Existing Statutes

The Mediation Act also mandates corresponding amendments to be made in existing laws, such

as the Indian Contract Act, 1872; the Code of Civil Procedure, 1908; the Legal Services Authorities Act, 1987; the Arbitration and Conciliation Act, 1996; the Micro, Small and Medium Enterprises Development Act, 2006; the Companies Act, 2015; the Commercial Courts Act, 2015; and the Consumer Protection Act, 2019.[9]

V. MANDATORY V/S VOLUNTARY MEDIATION

One of the most debated issues regarding the institutionalization of mediation is whether participation should be "mandatory" or "voluntary." In modern ADR speak, "mandatory" does not mean that every case must be sent into mediation; it does mean, however, that a judge may also direct parties to mediate in appropriate cases, although neither, or either, may want to do so. Some referral systems are "semi-mandatory," providing parties with an option to opt out, sometimes on the grounds of a required valid reason.

The rationale for compulsory mediation is that an initial requirement can focus parties' attention on settlement, especially in areas in which mediation is not an institutionalized process. A period of compulsory participation can help to reduce resistance to this alternative dispute resolution approach. Experience has demonstrated that participation rates in ADR programs generally correspond to the level of compulsion. Voluntary programs initially attract fewer participants than compulsory ones, partly because attorneys are sceptical of new programs and the parties prefer traditional courts. Low compulsion usually leads to high refusal and no-show rates: the less unpleasant the alternative, the less likely the parties are to agree to mediation. These findings would suggest that compulsory mediation should be made mandatory to ensure interest, besides familiarity with the process, thus enlightening members of the public and the legal profession about the advantage of such a process.

Low participation rates of voluntary mediation programs generally lead to a failure to reduce court backlogs, become cost inefficient, and are incapable of building up a bench of veteran mediators. It is evident that an increase in mediation outcome success emanates from the mediator experience and, hence, the jurisprudence lays a demand for a high volume of cases to afford the mediators all the essential on-the-job training.

To foster long-term improvements in the civil justice system, and since their voluntary use has been at best only partially successful, many believe Congress and state legislatures should authorize mandatory mediation on a far more extensive basis. To alleviate concerns about coercion in mandatory mediation, however, a number of safeguards could be developed to protect fairness and to ensure effectiveness. These include active participation by clients and attorneys, ensuring oversight over quality for confidential proceedings, precluding the

occurrence of major delay over trial timelines, and screening cases to identify those more suitable to traditional legal processes.

Research suggests that persons who seek mediation are more open-minded than others to alternative processes. Just as corporations commit hundreds of millions of dollars to advertising, repeated exposure to new systems and practices could help dissipate public resistance and lead to increased acceptance of alternative methods for resolving disputes. Experience has shown that "most people learn about mediation best by participating, and the vast majority are satisfied with what they find."

Although mandatory mediation appears to operate in tension with the voluntariness and self-determination values that mediation is purported to uphold, advocates do not perceive a real contradiction. However persuasive the threat of compulsory mediation may be, respondents are never forced to settle or alter their position but remain free to choose-to accept or reject-whether to settle or not.

In non-mandatory mediation, for instance, it may not really be a question of choice because either party can always choose to forgo mediation and thereby prevent the other party from doing so. Or it may not at all be the question of voluntariness versus coercion; it may simply depend on which party's preference takes veto power over the process. Under law, parties can be compelled to attend mediation without the need for parties to necessarily agree. Constitutional rights are not violated for mandatory mediation because parties can still proceed with their case in the courts. Such has been the rationale of mandatory mediation that most participants, though not wanting at first, benefited from the process and will appreciate having been forced into it.

Studies also indicate that the voluntary nature of participation has no effect on the mediation outcome, and settlement rates show no considerable difference between voluntary and mandatory mediations. Other empirical evidence indicates that those who are subjected to mandatory mediation tend to express greater satisfaction with the outcome than those who receive adjudication. Critics argue that because parties, judges, and attorneys all report satisfaction with the process of mandatory mediation, no justification can be served by such a process, which seems to subvert the very tenets of traditional principles of fairness and due process.

Some interest-based mediation advocates question whether forced programs will teach participants much of anything since any person having some level of awareness will be capable of making meaningful settlements. Additionally, litigants needlessly may bear costs the

 [ISSN 2581-5369]

mediation cannot prevent, with no commensurate benefits in terms of cost savings.

Brown and Ayres offer a middle-of-the-road compromise to stand between mandatory and voluntary mediation and they suggest that such a program is tailor-made for disputes concerning contracts. They would recommend legislation making a "default mediation provision" in contracts, effective unless opted out. As such, mediation would be mandatory for disputes over contracts unless otherwise agreed by the parties concerned, thereby preserving some of the benefits of mandatory mediation. This would also prevent one party from blocking mediation by withholding its consent, and the private information that often makes parties hesitant to opt for mediation might also make opting out of a default mediation provision less likely.

(A) Mediation in relation to public policy and law

Public policy is very pervasive because it influences nearly every aspect of life. According to Michael Teitz, public policy impacts citizens throughout their lives: "Modern urban persons are born in publicly financed hospitals, educated in public schools and universities, spend much of their time on publicly constructed transportation, communicate via the post office or semi-public telephone systems, drink public drinking water, dispose of waste through public services, enjoy library books, picnic in public parks, and are protected by public police, fire and health services. Eventually, they may die in a hospital and be buried in a public cemetery."[10]

Ideological conservatives notwithstanding his everyday life is inextricably bound up with government decisions on these and numerous other public service. The mediation act 2023 is a significant legislative framework in India and it’s relation to public policy and law are as follows:

- **Public policy aims**: every public policy aims to support the needs of the people by delivering such a system wills fulfils the need. The mediation act supports public policy goals such as promoting access to justice, reducing litigation and attempting to make a culture of amicable dispute resolution.
- **Regulatory framework**:-T he mediation act provides a detailed legal framework for mediation to make mediation process as standardized, regulated and enforceable.[10]
- **Court Facilitation**: Courts and tribunals are empowered to suggest parties to mediation, so that mediation becomes a preferred way of settling the disputes amicably.

VI. MEDIATION AND ITS OTHER DISPUTE RESOLUTION TECHNIQUES

(A) Mediation and Negotiation

When conflict occurs, disputants can first try negotiation- settling disputes amicably without

recourse to a third party. Agreements made are binding as contracts. Mediation is another procedure where one uses a mediator to aid in the solving of an issue. These processes both happen informally; they are voluntary, not costly and can protect privacy while rendering outcomes that all parties satisfied with.

(B) Mediation and Arbitration

Arbitration is the most widely used alternative dispute resolution mechanism that exists today. Considering the high costs and time-consuming nature of arbitration, it is no longer favoured compared to mediation and negotiation. Parties are often infuriated with arbitration, which is highly noted by the Supreme Court of India. Arbitration is binding; however, the formal and rigid structure that arbitration possesses is quite different from the informal and voluntary resolutions that are reached through mediation.

(C) Mediation and Litigation

To appreciate the benefits of mediation, it is important to discuss the limitations of litigation as a method of dispute resolution. This, however, does not mean that litigation is archaic or useless. It only suggests that for some kinds of disputes, non-adjudicatory processes like mediation might be more beneficial for the parties. It should not be a question of mediation being better than litigation but which process is appropriate for the case.

Cases, however, may call for judicial decisions if the criminal cases involve matters of public interest, affect so many people, or if they are about taxation and administrative law. Civil litigation will require judicial resolution in cases involving fraud or coercion or where a declaration is required from the court so that it can be solved and cannot be settled through negotiation.

On the other hand, negotiation often proves to be the best available option for specific civil disputes, mainly those founded on strained personal relationships, such as matrimonial disputes, partitions, and partnership disagreements. In addition, commercial and contractual disputes over contracts, specific performance, and customer-supplier relations are also amenable to negotiation. It would be suitable for negotiation, disputes that need maintenance of relationships such as the existing relationships between neighbours, employer and employee, members of associations. Cases such as tort claims for damages compensation on motor vehicle accidents or consumer disputes in which it is essential to preserve the business reputation are well suited for mediation.

One way of showing that mediation should accompany court proceedings is by taking the example of the judicial system compared with a health system. A government, establishing a

 [ISSN 2581-5369]

small hospital with only a few facilities, and lacking outpatient care and sufficient medical staff, would not cater to its people's health needs. A hospital has to distinguish those who require in-patient care from those who require outpatient care; similarly, courts should realize which matters are to be adjudicated and which can be mediated.

Thus, by diverting such cases not requiring trials to mediation, courts can free up more time for the serious matters that may call for judicial intervention. No diminution of the role of courts is there by saying that mediation is an adequate alternative for some disputes. The purpose of mediation is to offer a quick, efficient ADR process to civil cases where amicable solutions are reached without burdening courts with such matters while they focus on those matters that require adjudication. Building awareness about mediation builds the judicial process rather than replacing it.

(D) Mediation and Conciliation

Mediation and conciliation both are founded on dispute resolution but vary in the role of third-party facilitators. A mediator has a more mainly facilitative role, trying to get the parties into an agreement without necessarily providing solutions, while a conciliator, very often an expert in the matter, has a more active role since they propose terms for guiding the parties toward settlement. Although at times both terms are used respectively, in practice, they have different meanings.

That, of course, will vary with juristic and other contexts in the U.S, outside this jurisdiction though, conciliation and mediation are distinguished in practice whereby one treats conciliation as even including active facilitation whereby the conciliator makes active suggestions of remedies even to the point of stating terms while mediation merely brings parties together to enable their discussion without proposing any term. Other views are based on the distinction that when the third party is a layman, then it amounts to conciliation, whereas third party as a facilitator results in mediation. Some again argue that on the ground of the involvement of courts; if the third-party-assisted negotiation has ordered by the court in continuing the litigation then it becomes a mediation process, however if it is done pre litigation without the intervention of court then it becomes conciliation.

In India, under the Arbitration and Conciliation Act of 1996 and Section 89 of the Code of Civil Procedure (CPC), such difference is legally defined. The parties to a dispute conciliate voluntarily on agreeing to negotiations with the third-party conciliator appointed under section 64 of the Act resulting in an enforceable settlement under section 74. In the Indian set up, mediation involves court referral for third party assistance usually to mediation centres, where

the court retains control over the process. The role of a mediator in this is to help facilitate negotiation, and any agreed settlement reached will be brought before the court and then an order or decree made.

Conciliation broadly speaking is voluntary negotiation with a third party's facilitation, and in mediation, the process involves specifically a directive from a court in respect of a pending case. Both aim to resolve disputes outside of formal litigations but differences in processes, both legal and procedural, distinguish the mediation process from that of conciliation.

(E) Mediation and Lok-Adalat

Lok Adalat and mediation are the alternative dispute resolution mechanisms. Both processes aim to achieve amicable settlements with no intervention of judicial proceedings. In both processes, a neutral third party is appointed to facilitate discussions between disputing parties to find the core issues and try for a mutually agreeable solution. Mediation is a non-binding, flexible process where a mediator helps parties through structured negotiation. The mediator encourages the parties to open up on communication issues, helps parties to arrive at the deep cause for the dispute, and to arrive at possible solutions strictly with confidential treatment. There is also Lok Adalat, a statutory process set under the Legal Services Authority Act of 1987. Here a panel often composed of a judge and social worker guides the parties toward compromising. Unlike mediation, Lok Adalat sessions occur in a judicial court complex and do not have as much formality as the discussion is favoured over-analysis. The presiding officer, not the parties, controls the proceeding and outcomes are not private.

Both approaches draw on roots from India's traditional Panchayat system, whereby village elders helped settle local community conflicts. Lok Adalat's processes encourage cooperation and minimize adversarial conflict, which is highly beneficial when continued relationships are maintained, as in family or employment cases. Because the method is cooperative and non-adversarial, Lok Adalat also tends to result in reduced tensions and improved satisfaction with outcomes, maintaining long-term compliance by the parties involved.

(F) Online Dispute Resolution

Online dispute resolution is a process in which the use of technology is harnessed to facilitate parties in resolving disputes. The method through which conflicts are addressed in discussion, mediation, and arbitration forms on digital platforms available on a computer, laptop, tablets, and smart phones. ODR employs resources like video conferencing, audio and video recording, texting, voice calls, and video meetings on apps such as Google Meet, Zoom, or Duo. Such online means function through internet or mobile network links.

 [ISSN 2581-5369]

Online mediation is the latest trend within the legal world, being increasingly embraced by technology. Online mediation has the promise of becoming more efficient, accessible, and fairer. For an even society, we would address the legal challenges in online arbitration. This is actually the very combination AI and online mediation represents: a transformatory combination in the dispute resolution field. When AI is incorporated into virtual mediation platforms, processes are streamlined and effective to parties. It rapidly scans large data sets, which enables mediators to see patterns, commonalities, and resolutions. The quality of discussion improves. AI tools can rapidly review and interpret relevant documents, contracts, and legal texts. Time is saved while increasing the depth of understanding about the dispute. This AI-online mediation synergy promises much for the advancement of the dispute resolution process.

Online mediation, or ODR, is the new and fast-emerging strategy for processing disputes between parties having a geographical or logistical limitation to attend session's in-person. This new format allows neutral mediators to lead parties in dispute toward a settlement using internet-based tools including video conferencing software like Zoom, Microsoft Teams; shared online documentation; and secure communication channels. Pandemic COVID-19 served as a catalyst for this development as the legal industry adapted a new way of resolving disputes during the restrictions on in-person gatherings. Many practitioners and clients only came to acknowledge the convenience and cost-effectiveness of online mediation as the bar began to get used to it. So it would have been surprising if its adoption did not continue into a post-pandemic reality.

A former Chicago Greenberg Traurig attorney recognized the value in online mediation and went on to found a New Era ADR-a start-up that focuses exclusively on virtual dispute resolution. Online Mediation and dispute resolution will allow people to save greatly on travelling costs, while saving costs of renting out the physical space where the physical face-to-face meetings are done. Parties in mediation can access from their homes, making them more engaged and happy.

In addition, ODR would minimize time lost in going to a place and back due to traffic and conflict on scheduling. Resolution will therefore be faster and more effective.

VII. MEDIATION ACT 2023 AND THE OTHER COUNTIES LEGISLATION ON MEDIATION

(A) Mediation Act, 2023 (India)

- Preliminary Litigation Mediation: All civil or commercial disputes mandatorily have to

be mediated before a court is approached.

- Institutional Framework: The Mediation Council of India regulates the practicing mediators and mediation institutions.
- Enforceability: Mediation agreements are enforceable in court like any other order.
- Confidentiality: Mediation proceedings are conducted behind a cloak of secrecy.
- Online and Community Mediation There exists formal recognition for online and community-based mediation practices.

(B) **Singapore Convention on Mediation (2019)**

- International Recognition: It defines a process of enforcing mediated settlement agreements across international borders.
- Global Reach: Since the legal claims mediated are enforceable and recognized, it supports international trade and commerce.

(C) **United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention)**

- Global Standards: This ensures there are international standards for reference, hence settlement agreements that are arrived at can be enforced across countries that participate.
- Cross-Jurisdictional Enforcement: It helps enforce a mediated settlement across the jurisdictions involved.

(D) **Mediation Act, 2023 (United States)**

- Voluntary Mediation: The mediation process is generally on a voluntary basis, rather than a condition of proceeding with litigation.
- Enforceability: The settlements made through mediation are capable of being enforced as court orders.
- Confidentiality: Such an aspect is given a heavy weightage, much like the Indian Act, in terms of confidentiality**.**

(E) **Mediation Act, 2023 (United Kingdom)**

- Voluntary Mediation: Mediation is promoted but remains non-obligatory before litigation.
- Enforceability: Mediation agreements are enforcing like court orders.

 [ISSN 2581-5369]

- Confidentiality: The Indian Act emphasizes confidentiality in the same manner.

Comparison

Mandatory Pre-Litigation Mediation: Another radical new feature introduced in the Mediation Act, 2023 is mandatory pre-litigation mediation, which is not so common many places in the world.

International Compatibility: While India has not ratified the Singapore Convention, the Act is compatible with international norms due to assimilations of online and community mediation practices.

Enforceability: Another hall mark of this legislation, characteristic of similar acts worldwide, is its enforceability of mediated settlement agreements, an essential characteristic in ensuring that agreements made during mediation are made with legal authority.

The Mediation Act, 2023 is a new landmark in the Indian legal system, placing mediation at a very frontline position as an effective and practical means to resolve disputes. The aim is to standardize settlement and conduct institutional support by setting clear guidelines, therefore streamlining the dispute resolution process and bringing about cooperation between conflicting parties.

VIII. MERITS AND DEMERITS OF MEDIATION

The four main advantages of mediation are the following:

- The parties can have control over the outcome.
- It helps to conserve relationships since it compels the parties to face reality; it treats people as reasonable adults and reduces hostilities, especially in relation to divorce cases.
- It is forward-looking, flexible, and creative. There is also the educational value associated with benefits to the parties of improving listening and communication skills.
- It doesn't mix public with private matters; it usually takes only two months instead of one year; and does not act based on emotional judgment in its financial decisions.

The Advantages or Benefits: Informal, Confidential, Private, Flexible, Less Adversarial, Inexpensive and Speedy, Impartial, Neutral, Fair, Workable and Practical, Preserves Relationships, Minimizes Possibility of Future Dispute, Relieves Pressure on the Legal System

(A) Demerits of Mediation

Mediation has some limitations and inherent disadvantages. It can happen only if both parties

 [ISSN 2581-5369]

mutually agree. Even under that condition, there is no guarantee of settlement or solution. Attaining a successful end requires maturity, understanding, tolerance, and cooperation from both sides. If one party refuses to be cooperative or becomes greedy then the process is sure to fail.

Mindset of Litigants

A number of factors also argue against mediation. Litigants tend to believe, or be led to believe, that they have a good case. It may then come from their own perception of the legal or factual situation or from advice from their counselor. For this reason, they may perceive mediation as compromising on their rights or claims and are less likely to embrace settlement.

Absence of Incentive

Litigation, once commenced, little incentivizes an Indian to take mediation. Litigating would have already spent almost the lion's share of litigant expenses for his case. Also, litigating in Indian courts incurs almost meager litigation costs, including courts' fees that range around a few rupees in most courts. Almost in all cases reaching trial phase hardly has a motive left for settlement. Unlike countries like the USA, UK, and Australia where costs can shoot up at trial and are recoverable against a losing party, cost recovery against an unsuccessful litigant in India is minimal. In the absence of a prospect of recovery of high costs at the end of the trial, the litigant himself does not have the incentive to settle the dispute earlier.

Reluctant Of Advocates

Because some advocates fear the loss of fees, settlement of cases can be unpopular with such advocates. Probably the threat of an appeal is going to whip the shillelagh out of a case far more than a settlement without trial. Probably because of this, many lawyers have abhorred settlement in general. This change will go only so far, however, until the legal community makes negotiated settlements integral parts of ADR. Therefore, there is a dire need to educate lawyers as well as the litigants of the benefits of ADR methods, especially mediation.

IX. CONCLUSION

There should be a settlement agreement between the parties by the end of the mediation process. If one party fails to meet its obligations under this agreement, there will be a need for the other party to pursue an execution process, similar to enforcing a court decree or award.

Negotiation, one of the most frequently experienced forms of communication, takes place day in and day out—much more often than we might appreciate, and sometimes even unconsciously. It is the art by which an agreement is negotiated to settle a dispute, always between

 [ISSN 2581-5369]

communicating parties who are also discussing actively. Although negotiation is a part of life, it's still one of the most effective, yet little-used tools for conflict resolution.

It's at this juncture, in the creation of mediation as a recognized process of alternative dispute resolution in India, that the Mediation Act marks an important step. As the COVID-19 pandemic has highlighted, speedy, effective, and cost-effective justice is necessary. This act attempts to formalize mediation and induce the usage of mediation both in domestic as well as international disputes. The act covers a vast spectrum of cases and applies to persons within India as well as extends its scope to international commercial disputes with foreign entities.

It reflects a concern for maintaining a balance between the voluntary participation by judicial oversight and ensuring confidentiality and protection of communications of parties. Important provisions relate to the formation of the Mediation Council of India, protocols on mediated settlement agreements, and roles for mediation service providers, thus giving a structured framework.

However, it does not provide for any statutory backing of mediated settlements conducted outside India, something that is increasingly a globalized task. Ratification of the Singapore Convention will help bridge this gap while strengthening India's stature in cross-border dispute resolution. The Act also lacks specific guidelines governing interim orders besides clear principles to appoint mediators-something which the Arbitration and Conciliation Act details for arbitration. Hopefully, future provisions of the Mediation Act would fill these loopholes and will strengthen India's mediation framework even more.

(A) Suggestions

- **Mandatory Mediation**: Facilitate Mandatory Mediation Make mandatory mediation requirements clearer so that parties are indeed engaging with it. That could include clear criteria regarding when mediation is appropriate and when an exception applies.
- **Complement Mediator Training**: Since a qualified mediator is lacking, provide for thorough training and certifying programs so mediators can be prepared to deal with a wide range of disputes.
- **Cross-Border Enforcement**: Strengthen cross-border enforcement provisions of mediated agreements for purposes of international standards and to be able to resolve disputes between parties that are resident in different countries.

 [ISSN 2581-5369]

- **Expand Scope**: Harmonize the exclusions in the First and Second Schedules of the Act so as to expand mediation to more diverse categories of disputing litigants including minors, deities, and individuals afflicted with intellectual disabilities.
- **Ensure Respect Fundamental Rights**: mandatory pre-litigation mediation respects the fundamental rights for accessing justice.
- **Digitization**: Online mediation will enhance access and efficiency, especially for parties located remotely.
- **Support Community Mediation:** Invest in community mediations toward resolving local disputes decongesting the formal judicial systems.
- **Public Awareness Campaigns:** Implement campaigns to increase the knowledge of people about the advantages of mediation and where they can acquire such services.
- **Reward Mediation:** Reward parties who opt for mediation instead of litigation, such as waiving of court charges or that the procedure will be expedited for parties that agree on mediation.
- **Use Advanced Technologies:** Use advanced technologies, like AI, to complement legal procedures, thus making mediation procedures efficient.

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 [ISSN 2581-5369]

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 [ISSN 2581-5369]