



REPORT NO.

**117**

**PARLIAMENT OF INDIA**  
**RAJYA SABHA**

**DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE  
ON PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE**

**ONE HUNDRED SEVENTEENTH REPORT**  
**ON**  
**THE MEDIATION BILL, 2021**

**VOLUME II**

**MEMORANDA SUBMITTED BY INDIVIDUALS/EXPERTS/INSTITUTIONS**

*(Presented to Hon'ble Chairman, Rajya Sabha on 13<sup>th</sup> July, 2022)*

*(Forwarded to Hon'ble Speaker, Lok Sabha on 13<sup>th</sup> July, 2022)*



**Rajya Sabha Secretariat, New Delhi**  
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# PHD CHAMBER OF COMMERCE AND INDUSTRY

## The Mediation Bill 2021 Bill No. XLIII of 2021

### I. SHORT NOTE BY MR. SUDHANSHU BATRA, SENIOR ADVOCATE & MEDIATOR

#### **Point 1.**

Section 2 (1) and Section 3 (f) read as under :

2. (1) Subject to sub-section (2), this Act shall apply where mediation is conducted in India, and—

- (i) all or both parties habitually reside in or are incorporated in or have their place of business in India; or
- (ii) the mediation agreement provides that any dispute shall be resolved in accordance with the provisions of this Act; or
- (iii) there is an international mediation.

3. In this Act, unless the context otherwise requires,—

(f) "international mediation" means mediation undertaken under this Act and relates to a commercial dispute arising out of a legal relationship, contractual or otherwise, under any law for the time being in force in India, and where at least one of the parties, is—

- (i) an individual who is a national of, or habitually resides in, any country other than India; or
- (ii) a body corporate including a Limited Liability Partnership of any nature, with its place of business outside India; or
- (iii) an association or body of individuals whose place of business is outside India; or
- (iv) the Government of a foreign country;

**Concern** : These provisions excludes the applicability of the Bill to non-commercial international mediation. Disputes, where any one of the party resides in any country other than India and is of non-commercial nature cannot be mediated in view of either section 2 or section 3 of the Bill.

The Bill should be consistent with the requirements of Singapore Convention in respect of commercial international mediation since India is a signatory to the said convention.

#### **Point 2**

Section 7 (1) reads as under :

7. (1) A mediation under this Act shall not be conducted for resolution of any dispute or matter contained in the indicative list under the First Schedule:

Provided that nothing contained herein shall prevent any court, if deemed appropriate, from referring any dispute to mediation relating to compoundable offences or matrimonial offences connected with or arising out of civil proceedings between the parties:

Provided further that the outcome of such mediation shall not be deemed to be a judgement or decree of court referred to in sub-section (2) of section 28, and shall be further considered by the court in accordance with the law for the time being in force.

**Concern** : The indicative list excludes certain disputes which have otherwise been successfully resolved through the existing mechanism of Mediation.

Besides the above concern, the following provision of section 7 needs to be suitably amended for the following reasons:

The first proviso excludes non compoundable offence such as Section 498A IPC, which are otherwise quashed upon settlement between the parties to the dispute, in exercise of the powers of the court under section. 482 Cr.P.C. or Article 226 of the Constitution of Indian.

The second proviso renders the outcome of mediation as unenforceable and is vague inasmuch as it simply leaves it to be considered by the court. This will make the settlements which are legally tenable unenforceable, in certain cases.

### **Point 3**

Section 23 (1) reads as under :

23. (1) Subject to the other provisions of this Act, the mediator, mediation service provider, the parties and participants in the mediation shall keep confidential the following matters relating to the mediation proceedings, namely:—

- (i) acknowledgements, opinions, suggestions, promises, proposals, apologies and admissions made during the mediation;
- (ii) acceptance of, or willingness to, accept proposals made or exchanged in the mediation;
- (iii) documents prepared solely for the conduct of mediation or in relation thereto.

**Concern** : Confidentiality of proceedings in relation to (i) to (iii) of the above section, have been made applicable. In fact it should be made applicable to anything that transpires between the parties during the mediation process, as confidential. For instance, by qualifying documents “prepared solely for the conduct of mediation or in relation thereto”, as confidential, but those already in the power and possession of the

parties and disclosed in private session to the mediator as not begin confidential, is likely to create ambiguity and /or debatable.

#### **Point 4**

Section 24 reads as under :

24. (1) No mediator or participant in the mediation, including experts and advisers engaged for the purpose of the mediation and persons involved in the administration of the mediation, shall at any time be permitted, or compelled to disclose to any court or tribunal, or in any adjudicatory proceedings, by whatever description, any communication in mediation, or to state the contents or conditions of any document or nature or conduct of parties during mediation including the content of negotiations or offers or counter offers with which they have become acquainted during the mediation:

Provided that nothing in this section and section 23 shall protect from disclosure, information sought or provided to prove or dispute a claim or complaint of professional misconduct of mediator or malpractice based on conduct occurring during the mediation.

- (2) There shall be no privilege or confidentiality that will attach to—
- (a) a threat or statement of a plan to commit an offence punishable under any law for the time being in force;
  - (b) information relating to domestic violence or child abuse; and
  - (c) statements made during a mediation showing a significant imminent threat to public health or safety.

**Concern** : Although section 23 makes information as defined in the said provision as confidential but through section 24, the bill takes away the said aspect of confidentiality. Firstly, the proviso permits disclosure in the guise of “proving” or “disputing” the claim or complaint thereby takes away confidentiality altogether.

Sub section (2) of the above provision, also makes the information relating to domestic violence or child abuse commonly expressed by parties non confidential. This is likely to break the faith of the parties in the mediation process. Further, the phrase “public health or safety” is vague and will lead to multiplicity of litigation.

It would be in the interest of the mediation process to delete the proviso to sub section (1) and sub section(2) completely.

#### **Point 5**

Section 29 (2) runs as under :



29 (2) A mediated settlement agreement may be challenged only on all or any of the following grounds, namely:—

- (i) fraud;
- (ii) corruption;
- (iii) impersonation;
- (iv) where the mediation was conducted in disputes or matters not fit for mediation under section 7.

**Concern** : There is no need to provide for grounds to challenge a mediated settlement agreement. Fraud vitiates everything. In case, there is a settlement as a result of fraud, then by the operation of law such settlement shall be unenforceable. Therefore, to make fraud a ground for challenging a settlement agreement is likely to increase litigation of mediated settlement rather than putting to an end the disputes between the parties. Thus in case of fraud, the party can seek remedy under the general law. Further, fraud subsumes corruption and impersonation, the said provisions. The said grounds too become redundant. In case this provision is retained, it is likely to encourage parties to make allegations to invoke the said provision

### **Point 6**

34. (1) The Council shall consist of the following members, namely:—

- (a) a person of ability, integrity and standing having adequate knowledge and professional experience or shown capacity in dealing with problems relating to law, alternate dispute resolution, public affairs or administration to be appointed by the Central Government—Chairperson;
- (b) a person having knowledge and experience in law related to mediation or alternate dispute resolution mechanisms, to be appointed by the Central Government—Full-Time Member;
- (c) an eminent person having experience in research or teaching in the field of mediation and alternate dispute resolution laws, to be appointed by the Central Government—Full-Time Member;
- (d) Secretary to the Government of India in the Department of Legal Affairs, Ministry of Law and Justice or his representative not below the rank of Joint Secretary—Member, ex officio;
- (e) Secretary to the Government of India in the Department of Expenditure, Ministry of Finance or his representative not below the rank of Joint Secretary—Member, ex officio;
- (f) Chief Executive Officer—Member-Secretary, ex officio; and
- (g) one representative of a recognised body of commerce and industry, chosen by the Central Government—Part-Time Member.

**Concern** : Every member, except the Government officials, must be a trained mediator so as to be conversant with practical aspects of mediation.

**Point 7**

Section 44 (5) pertaining to community mediation reads as under :

- (5) The following persons may be included in the panel referred to in sub-section (4)—
- (a) persons of standing and integrity who are respectable in the community;
  - (b) any local person whose contribution to the society has been recognised;
  - (c) representative of area or resident welfare associations; and
  - (d) any other person deemed appropriate.

**Concern** : Every member must be a trained mediator so as to be conversant with practical aspects of mediation.

**Point 8**

Section 45 (4) reads as under :

(4) Any settlement agreement arrived at under this Chapter shall be for the purpose of maintaining the peace, harmony and tranquility amongst the residents or families of any area or locality but shall not be enforceable as a judgment or decree of a civil court.

**Concern** : Since the settlement agreement in community mediation is not enforceable as a decree of the civil court, it has no sanctity in law and defeats the very purpose of community mediations.

**Point 9**

First Schedule reads as under :

THE FIRST SCHEDULE  
(See section 7)  
DISPUTES OR MATTERS NOT FIT FOR MEDIATION

1. Disputes which by virtue of any law for the time being in force may not be submitted for mediation.
2. Disputes involving allegations of serious and specific fraud, fabrication of documents, forgery, impersonation, coercion.
3. Disputes relating to claims against minors, deities; persons with intellectual disabilities, under paragraph 2 of the Schedule and person with disability having high support needs [as defined in clause (t) of section 2] of the Rights of Persons with Disabilities Act, 2016 (49 of 2016); persons with mental illness as defined in clause (s) of sub-section (1) of section 2 of the Mental Healthcare Act, 2017 (10 of 2017); persons of unsound mind, in relation to whom proceedings are to be conducted under

Order XXXII of the Code of Civil Procedure, 1908 (5 of 1908); and suits for declaration of title against Government; declaration having effect of right in rem.

4. Disputes involving prosecution for criminal offences.

5. Settlement of matters which are prohibited being in conflict with public policy or is opposed to basic notions of morality or justice or under any law for the time being in force.

6. Complaints or proceedings, initiated before any statutory authority or body in relation to registration, discipline, misconduct of any practitioner, or other registered professional, such as legal practitioner, medical practitioner, dentist, architect, chartered accountant, or in relation to any other profession of whatever description, which is regulated under any law for the time being in force.

7. Disputes which have the effect on rights of a third party who are not a party to the mediation proceedings.

8. Any proceeding in relation to any subject-matter, falling within any enactment, over which the Tribunal constituted under the National Green Tribunals Act, 2010 (19 of 2010) has jurisdiction.

9. Any dispute relating to levy, collection, penalties or offences, in relation to any direct or indirect tax or refunds, enacted by any State legislature or Parliament.

10. Any investigation, inquiry or proceeding, under the Competition Act, 2002 (12 of 2003), including proceedings before the Director General, under that Act; proceedings before the Telecom Regulatory Authority of India, under the Telecom Regulatory Authority of India Act, 1997 (24 of 1997) or Telecom Disputes Settlement and Appellate Tribunal established under section 14 of that Act.

11. Proceedings before appropriate Commissions, and the Appellate Tribunal for Electricity, under the Electricity Act, 2003 (36 of 2003).

12. Proceedings before the Petroleum and Natural Gas Regulatory Board, and appeals therefrom before the Appellate Tribunal under the Petroleum and Natural Gas Regulatory Board Act, 2006 (19 of 2006).

13. Proceedings before the Securities and Exchange Board of India, and the Securities Appellate Tribunal, under the Securities and Exchange Board of India Act, 1992 (15 of 1992).

14. Land acquisition and determination of compensation under land acquisition laws, or any provision of law providing for land acquisition.

15. Any other subject-matter of dispute which may be notified by the Central Government.

**Concern** : As regards Item 2, mere allegation in a civil matter of serious and specific fraud, fabrication of documents, forgery, impersonation, coercion will make the matter unfit for mediation. There are a number of cases, where the allegations are made which cannot be proved or are compounded by the courts in exercise of the inherent powers of the court to quash such proceedings. In case such matters can't be mediated, settlements cannot be affected creating hindrances in settlements of the real disputes between the parties.

As regards Item 3, the law permits litigation qua minors, disabled, mentally ill persons etc. through a guardian ad litem or next friend, and so all disputes relating to claims

against them need not be made unfit for mediation. The courts should be empowered to allow such settlements which are not adverse to the interest of the minors and / or disabled persons.

As regards Item 4, no distinction has been made between compoundable and non-compoundable offences. The courts have in a number of cases quashed even non-compoundable cases by exercising its inherent powers, Moreover, the proviso to Section 7 is contradictory or at least creates an ambiguity/inconsistency.

As regards Item 6, many complaints or proceedings against chartered accountants, architects, lawyers etc., stem from civil or commercial transactions. There is no reason to treat such complaints or proceedings as unfit for mediation.

As regards Items 8 to 14, the discretion to set aside such proceedings, should be left with the court or tribunal and therefore such matters, in the facts and circumstances of the case, should be permitted to be referred to mediation.

### **Point 10**

Section 56 (1) and the Second Schedule read as under :

56. (1) Subject to the enactments mentioned in the Second Schedule, the provisions of this Act shall have overriding effect for conduct of mediation or conciliation notwithstanding anything inconsistent therewith contained in any other law for the time being in force, and any instrument having force of law.

#### SECOND SCHEDULE

(See section 56)

1. The Industrial Disputes Act, 1947 (14 of 1947).
2. The Brahmaputra Board Act, 1980 (46 of 1980).
3. The Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981 (50 of 1981).
4. The Family Courts Act, 1984 (66 of 1984).
5. The Legal Services Authorities Act, 1987 (39 of 1987).
6. The Maintenance and Welfare of Parents and Senior Citizen Act, 2007 (56 of 2007).
7. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (14 of 2013).
8. The Finance Act, 2016 (28 of 2016).
9. The Industrial Relations Code, 2020 (35 of 2020).

**Concern :** Item 1, 4, 6 and 7 of the Second Schedule should be deleted.

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## **II. NOTE BY MRS. LALIT MOHINI BHAT, ADVOCATE AND MEDIATOR**

Mediation is a service being provided to the disputing parties. The disputing parties may or may not have gone to the court, essentially the parties will retain the right to solve the problems by mutual consent. Therefore, choice and consent are part of the Mediation process from the beginning to the end.

There should not be undue focus on the technicalities of the process, rigid timelines, linking the location of Mediation with the Court Jurisdiction, etc. If one keeps in mind the process of Mediation, the policy of the Legislature should be to enable parties to fully realize the idea of an assisted settlement. Therefore, issues such as Jurisdiction, Registration, Mandatory Pre-Litigation, etc. as mentioned in the Bill will only limit the process of Mediation and render it counterproductive. The draft Mediation Bill in my opinion should focus on standards and qualifications which Mediators should possess, the kind of institutions which can create such standards both for Mediators and Mediation Institutions and facilitate training as well as assimilation of all kinds of professionals. These must not just include Retired Judges and Lawyers, but also other professionals like Chartered Accountants, Engineers, Human Resources Experts, Educational Administrators, Psychologists, etc. This is essential to ensure that Mediation as a movement is achieved at the grassroot level.

### **Point No.1**

#### **Section 6: Pre litigation Mediation**

6. (1) Subject to other provisions of this Act, whether any mediation agreement exists or not, any party before filing any suit or proceedings of civil or commercial nature in any court, shall take steps to settle the disputes by pre-litigation mediation in accordance with the provisions of this Act:

Provided that pre-litigation mediation in matters of commercial disputes of Specified Value shall be undertaken in accordance with the provisions of section 12A of the Commercial Courts Act, 2015, and the rules made thereunder.

(2) The provisions, of sub-section (1) shall be applicable to the tribunals notified by the Central Government or a State Government, as the case may be. (3) For the purposes, of sub-sections (1) and (2), unless otherwise agreed upon by the parties, a mediator,—

- (i) registered with the Council;
  - (ii) empanelled by a court annexed mediation centre;
  - (iii) empanelled by an Authority constituted under the Legal Services Authorities Act, 1987; and
  - (iv) empanelled by a mediation service provider recognised under this Act,
- shall conduct pre-litigation mediation.

(4) For conducting pre-litigation mediation under clauses (ii) and (iii) of sub-section (3), a party may request any person designated for this purpose by the High Courts, or an Authority constituted under the Legal Services Authorities Act, 1987, as the case may be.

(5) The courts and an Authority constituted under the Legal Services Authorities Act, 1987, shall maintain a panel of mediators for the purposes of pre-litigation mediation.

(6) Notwithstanding anything contained in sub-sections (1) and (2) and the Motor Vehicles Act, 1988, when an application for compensation arising out of an accident is made before the Claims Tribunal, if the settlement as provided for in section 149 of that Act is not arrived at between the parties, the Claims Tribunal shall refer the parties for mediation to a mediator or mediation service provider under this Act.

(7) Where the parties arrive at a settlement agreement under sub-section (6), it shall be placed before the Claims Tribunal for its consideration.

(8) If the parties do not reach to settlement agreement under sub-section (6), a failure report prepared by the mediator shall be forwarded to the Claims Tribunal, which has referred the matter for mediation, for adjudication.

## **CONCERNS**

a. It mandates Pre Litigation Mediation as a condition for filing any civil suit, etc. This element of compulsion goes against one of the fundamental tenets of Mediation i.e. Party's Consent, Autonomy and Informed Choice. Statutorily mandated process in all likelihood will result in failure in many cases.

b. Another concern with Pre Litigation Mediation is that the Party wishing to file a suit would have to ensure service of notice on the other party, if they experience the service of summons by the process of Court then it is to be taken as a precedent. The very act of informing the other party to participate in Mediation would be time

consuming, going beyond the period prescribed by Section 20 of the Bill. Therefore this will result in undue delay.

## **Point No.2**

### **Section 7: Disputes or matters not fit for mediation**

7. (1) A mediation under this Act shall not be conducted for resolution of any dispute or matter contained in the indicative list under the First Schedule:

Provided that nothing contained herein shall prevent any court, if deemed appropriate, from referring any dispute to mediation relating to compoundable offences or matrimonial offences connected with or arising out of civil proceedings between the parties:

Provided further that the outcome of such mediation shall not be deemed to be a judgement or decree of court referred to in sub-section (2) of section 28, and shall be further considered by the court in accordance with the law for the time being in force.

(2) If the Central Government is satisfied that it is necessary or expedient so to do, it may, by notification, amend the First Schedule.

## **COMMENT**

This Section is essential and should not be disturbed. Several matters in regard to which there cannot be settlement based on an agreement through a private process (such as tax disputes, disputes before regulatory bodies concerning telecom, electricity, competition, environment, etc have to be excluded from the purview of Mediation). For example, when a large company or corporation is sued for causing Pollution, there cannot be a settlement between a private litigant and the company because the issues concern general public interest and may affect the interest of lakhs of people.

## **Point No.3**

### **Section 10: Appointment of mediator**

(4) Upon receiving application under sub-section (3), the mediation service provider shall, within a period of 7 days, appoint

1. (i) the mediator as agreed by the parties; or

2. (ii) the mediator from the panel maintained by it, in case the parties are unable to reach agreement as to the appointment of mediator or mediator agreed by the parties refuses to act as a mediator.

(5) Where the mediator is appointed under clause (i) of sub section (4), the mediation service provider shall seek acceptance of appointment from the person so appointed as mediator within 7 days of the appointment.

(6) The person appointed under clause (i) of sub section (4) shall communicate his willingness within 7 days from the date of receipt of notice of such appointment under sub-section (5).

## **CONCERNS**

a. The timelines prescribed for appointment of Mediator and Communication of acceptance are unrealistic and short.

### **Point No.4**

#### **Section 15: Territorial Jurisdiction**

15. The Mediation under this Act shall take place within the territorial jurisdiction of the Court or Tribunal of competent jurisdiction to decide the subject matter of dispute.

Provided that on the mutual consent of the parties mediation proceedings can be conducted at any place outside the territorial jurisdiction referred to in this section.

## **CONCERNS**

a. The idea of linking the Mediation Process with territorial Jurisdiction restricts the process itself. It is possible for the parties to a dispute to arrive at a settlement anywhere regardless of where the original agreement is executed or the place where the dispute arose. By the same analogy the Mediation can take place anywhere. Therefore the concept of territorial Jurisdiction of a Court should not be a constraining concern.



## **Point No.5**

### **Mediated Settlement Agreement**

22. (1) A mediated settlement agreement means and includes an agreement in writing between some or all of the parties resulting from mediation, settling some or all of the disputes between such parties, and authenticated by the mediator:

Provided that the terms of the mediated settlement agreement may extend beyond the disputes referred to mediation.

Explanation.—A mediated settlement agreement which is void under the Indian Contract Act, 1872, shall not be deemed to be lawful settlement agreement within the meaning of mediated settlement agreement.

(2) Where a mediated settlement agreement is reached between the parties in regard to all or some of the disputes, the same shall be reduced in writing and signed by the parties.

(3) Subject to the provisions of sections 26 and 27, the mediated settlement agreement so signed—

(i) in case of institutional mediation, shall be submitted to the mediator, who shall, after authenticating the same and forward it with a covering letter signed by him, to the mediation service provider and also provide a copy to the parties;

(ii) in all other cases, shall be submitted to the mediator who shall, after authenticating the settlement agreement, provide a copy to all the parties.

(4) Subject to provisions of sections 26 and 27, where no agreement is arrived at between the parties, within the time period as provided under section 21, or where, the mediator is of the view that no settlement is possible,—

(i) the mediator shall submit a failure report to this effect to the mediation service provider in writing in case of institutional mediation;

(ii) in all other cases, the mediator shall prepare a failure report to this effect and provide a signed copy to all the parties:

Provided that the report referred under this sub-section shall not disclose the cause of failure of the parties to reach a settlement, or any other matter or thing referring to their conduct, during mediation.

(5) The parties, may, at any time during the mediation process, make an agreement with respect to any of the disputes which is the subject matter of mediation.

(6) Any mediated settlement agreement under this section shall also include a settlement agreement resulting from online mediation and duly signed by the parties by way of secure electronic signature or otherwise and authenticated by the mediator in the like manner.

(7) For the purposes of record, mediated settlement agreement arrived at between the parties, other than those arrived in a court or tribunal referred mediation or award of Lok Adalat or final award of Permanent Lok Adalat under section 21 or section 22E of the Legal Services Authorities Act, 1987, shall be registered with an Authority constituted under the Legal Services Authorities Act, 1987, in such manner as may be specified and such Authority shall issue a unique registration number to such settlements:

Provided that the mediated settlement agreement under this section shall be registered with such Authority situated within the territorial jurisdiction of the court or tribunal of competent jurisdiction to decide the subject matter of dispute:

Provided further that such registration shall not be mandatory till the time regulations under this sub-section are made.

Explanation.—For the removal of doubts, it is clarified that nothing contained in this sub-section shall affect the rights of parties to enforce the mediated settlement agreement under section 28 or challenge the same as provided under section 29.

(8) For the purposes of registration of mediated settlement agreement, in matters other than commercial disputes, wherein mediation is not conducted by a mediation service provider, the presence of parties to the mediated settlement agreement or their authorised representative shall be mandatory before the Authority referred to in sub-section (7).

(9) The registration referred to in sub-section (7) shall be made by the parties, mediator or mediation service provider within a period of one hundred and eighty days from the date of receipt of authorlicated copy of mediated settlement agreement:

Provided that mediated settlement agreement may be allowed to be registered after the expiry of period of one hundred and eighty days on payment of such fee as may be specified in consultation with the Authority referred to in sub-section (7).

## **CONCERNS**

a. The requirement of Registration of all Mediated Settlements by the concerned local District legal Services Authority is an unrealistic exercise. It imposes extremely difficult tasks on the District Legal Services Authority, which is already given the responsibility of administering legal aid, advice, various schemes, etc. by the national Legal Services Authority (NALSA) and State Legal services Authority.

b. The requirement of a compulsory registration of Mediated settlements is also contrary to the principles of confidentiality.

**Point No.6****CHAPTER X- PART II COMMUNITY MEDIATION****CONCERNS**

Sections 44 and 45, which deal with Community Mediation, should be completely deleted. This Part is at complete odds with the other provisions of the Bill because:

- a. It designates certain individuals as a part of the Mediation Process, regardless of whether they are qualified, trained or accredited.
- b. These provisions presuppose that the settlement arrived through such facilitators (as mentioned in Section 44(5), i.e. persons of standing and integrity who are respected in the community, any local person including a state awardee whose contribution to the society has been recognised by the State, A representative of an area/resident welfare associations, any other person deemed appropriate) would have the aptitude, patience and experience of acting in a neutral and unbiased manner. An agreement arrived at through Community Mediation may not be the result of a voluntary decision of both the parties but be the outcome of an imposed or handed down judgment.
- c. As a result, the designation of specific persons as Community Mediators without proper training, qualification, experience and certificate as mandated is contrary to the ethos of Mediation.

**Point No. 7****International Mediation**

Section 2(1)(iii) of The Mediation Bill 2021, Bill No. XLIII of 2021 (hereinafter referred to as the Draft Bill) states as under:

- “2.(1) Subject to sub-section (2), this Act shall apply where mediation is conducted in India, and—
- (iii) there is an international mediation.”

**CONCERN:**

On 07<sup>th</sup> August, 2019, India signed the United Nations Convention on International Settlement Agreements Resulting from Mediation (hereinafter referred to as “the Singapore Convention”) but still India has not ratified the same. As of 1<sup>st</sup> February 2022, the Convention has 55 signatories, of which only nine States have ratified the Convention.

The aforesaid Section clearly, makes the international mediations governable by the Draft Bill. The Draft Bill further mentions the international mediation under Section 3(f) wherein it defines the international mediation. Section 40(b) of the Draft Bill impresses upon the Mediation Council to endeavour to develop India to be a robust centre for domestic and international mediation. As such, the intent to include the international mediation under the present bill is very much apparent. However, the Draft Bill fails to state the law and the procedure to be followed in case of international mediations. Although, India has not ratified the Singapore Convention yet, the law pertaining to the International Mediation ought to be in consonance and on the lines of the Singapore Convention.

**SUGGESTIONS:**

1. That a Chapter dealing with the “*International Mediation*” be added in the Draft Bill;
2. The aforesaid chapter on “*International Mediation*” must be in consonance with the Singapore Convention except in a case where the reservations as provided under Article 8 of the Convention are warranted;
3. The Bill must contain specific provision recognizing its effort to bring the law to effect the Singapore Convention.

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ASSOCHAM Preliminary Comments / Suggestions on Mediation Bill, 2021 submitted to the Parliamentary Standing Committee on Personnel, Public Grievances, Law & Justice			
Sl. No.	Chapter/ Act and Clause / Section ( Please refer Mediation Bill)	Proposed Amendment / Comment/ Suggestion	Comments/ rationale and references, if any
1	Domestic Mediation	The first part of the Bill discusses and highlights domestic mediation and its applicability, procedure, and reach in India. Part I also provides for online mediation with statutory recognition.	
2	Chapter II Section 2-3	Discusses the scope and definition of concepts and terms conferred in the Act. Further, the extension of the Act to international mediations makes it possible to settle international disputes as well.	
3	Chapter III Section 4-9	Deals with the process of <b>Mediation</b> . Under this chapter the Act empowers the court to refer the parties to mediation distinguishing the matters that shall not qualify for mediation. The Act also stipulates the provision for interim relief to a party before the commencement of or during the continuation of mediation proceedings under this Part.	<b>Comment-</b> This chapter provides necessary importance, legality, and validity to the mediation <b>agreements</b> by way of mandatory prerequisites. However, providing for an interim relief during the pendency of mediation is pending, may hinder the spirit of mediation, as such much caution is required while incorporating and implementing such a provision.
4	Chapter IV Section 10-14	This chapter enlightens the procedures to be followed for the appointment of the mediator and the duties of the mediator. It is pertinent to note that it provides that the mediator can be appointed from	<b>Comments -</b> giving preference to the parties for appointment of mediator themselves shall make the process smooth, less expensive and less strenuous. However, the qualification of the

		any nationality and the parties to the dispute are given the liberty to appoint the mediator as per their choice.	mediator must be provided in the Act or the Rules framed thereunder, without which the quality of the mediation may get compromised.
5	Chapters V Section 15-27	Discusses about setting territorial jurisdiction, date of commencement, etc. for the benefit of the parties. These provisions renders code of civil procedure and Indian Evidence Act inapplicable to mediation. The time limit for completion of mediation is 90 days, which can be further extended to 90 days with the consent of the parties. The mediation settlement agreement is also made applicable to <a href="#">online mediation settlements</a> .	<b>Comments</b> – Setting a fixed timeline for concluding the process shall emerge as a major boon to its earnestness. Steps like online mediation shall render the mediation more viable for the stakeholders.
	Chapter V {Mediation Proceedings}	<p>Stay of Court Proceedings</p> <p>(1) Where any party to a mediation agreement, as provided under Section 5, institutes any proceedings before a court against any other party to that agreement in respect of any matter which is the subject of that agreement, any party to that agreement may apply to that court to stay the proceedings so far as the proceedings relate to that matter.</p> <p>(2) The court hearing the application may make an order, upon such terms or conditions as the court thinks fit, staying the proceedings so far as the proceedings relate to the matter.</p> <p>(3) The court may, in making an order under subsection (2), make such interim or supplementary orders as the court thinks fit for the purpose of preserving the rights of the parties.</p> <p>For the purposes of this section, a reference to a party includes a reference to any person claiming through or under a party.</p>	<p>The Purpose to insert this Section under the Chapter of Mediation Proceedings for the reasons mentioned hereunder-</p> <ol style="list-style-type: none"> <li>1. That when the dispute arising from the agreement, and thereby agreement provides a mechanism to resolve the dispute, it is pertinent to mention that if one of the parties approaches the court in reference to the dispute already acknowledged in the agreement and the same is referred to mediation then the aggrieved party shall approach the court to stay the proceedings. And thereafter court shall determine the conditions on which the stay has to be granted therefore, the purpose to execute a mediation agreement will get infructuous.</li> <li>2. The proposed amendment will certainly resist any parallel proceedings before the court and Mediation under this Act.</li> </ol> <p>Reference to Singapore Mediation Act,</p>
	Chapter V {Mediation Proceeding}	Suitable Amendment as schedule addition to in the form of schedule hereof the bill may be considered in relation to the Insolvency Bankruptcy Code, 2016	The Purpose to insert this Section under the Chapter of Mediation Proceedings for the reasons mentioned hereunder-

			<ol style="list-style-type: none"> <li>1. There are large number of petitions are being filed before NCLT and it has been observed that no settlement is permitted or encouraged by the Hon'ble NCLT and due to which it becomes difficult for the parties to settle. In furtherance to the afore, no mechanism is available for mediation under the IBC, 2017.</li> <li>2. In order to eradicate unnecessary litigation under IBC and it will in general adequacy to encourage Mediation between the parties in the proceedings before the IBC.</li> </ol> <p>During the initiation or before the admission of petition under section 7 or section 9 of IBC invariably parties seek multiple adjournments before NCLT citing some Mediation or Settlement under way.</p> <p>In the given situation considering the IBC as time bound process though beginning from the admission in order to stricter mechanism if any party seeks settlement or cite settlement as mediation Adjudicating Authority should not give indefinite time and by making it a time bound process of sixty days for such mediation.</p>
	Chapter V {Mediation Proceeding}	Mediation to be referred in the proceedings initiated under Real Estate (Regulation and Development) Act, 2016 — Subject to the other provisions of this Act, any proceedings initiated under Real Estate (Regulation and Development) Act, 2016, the Adjudicating Authority may refer the Parties to Mediation in the circumstances wherein it may be presumed that there is a scope of settlement between the parties.	<p>The Purpose to insert this Section under the Chapter of Mediation Proceedings for the reasons mentioned hereunder-</p> <ol style="list-style-type: none"> <li>1. The RERA Act, does not provide any mechanism to resolve the dispute between the Builder and home buyer and thereby It has been observed that the parties entering into a settlement agreement which has no safeguard for the parties to project the same as decree or judgement However, in this present bill, there is an attempt to provide a safeguard to the Settlement Agreement as provided under Section 28 which propound that the said agreement will construed as Decree or Judgment.</li> </ol> <p>The Present Bill eloquently provides a mechanism to conduct a mediation proceeding and however, in rise of the innumerable complaints in the RERA, the</p>

			requirement of settlement becomes essential therefore, this bill provides a detailed mechanism to adjudicate the mediation proceeding.
6	Chapter VI Section 28-31	This chapter addresses the status of the settlement agreement. The agreement can be challenged on grounds of fraud, corruption, gross impropriety, or impersonation within a period of 3 months. It also excludes the limitation period during the mediation.	<b>Comments</b> – Exclusion of period of mediation from the limitation period prescribed may emerge as a major boon for diverting the pendency from litigation to mediation. However, providing the grounds of fraud, impropriety or impersonation would be highly inappropriate while the parties themselves with their consent and free will would enter the settlement.
7	Chapter VII Section 32	This chapter states that online mediation shall take place in accordance with the provisions of the <b>information technology Act</b> . However, both the mediators and the parties under the chapter are duty-bound to maintain autonomy as well as confidentiality.	<b>Comments</b> – Online mode of mediation is the need of the hour , However, the issue of territorial jurisdiction shall be discussed by way of incorporating appropriate rules.
8	Chapter VIII Section 33-40	<b>Establishment of the mediation council of India by the central government</b> with head office in Delhi. This chapter discusses the composition of the mediation council of India, the functions to be performed by them, and the process and grounds for impeachment.	<b>Comments</b> – The establishment of a council shall make the mediation process more disciplined and responsible. However, putting so much regulations over mediation may ultimately lead to failure of the main purpose of mediation
9	Chapter IX Section 41-43	Discusses the recognition of the mediation service provider and mediation institutes and their function.	<b>Comments</b> – From a more or less and unorganized field, Mediation is now a complete organizational process with the involvement of the service providers and institutes. However, the functions of the institutes may need to be regulated at a micro-level with substantial infrastructural inputs.



10	Chapter X Section 44-45 <b>Community mediation</b>	The act provides for community mediation which is likely to affect the peace, harmony, and tranquillity amongst the residents or families of any area or locality. It also provides for the procedure to be adopted for community mediation.	
11	<b>International settlement agreements</b>	This part is dedicated towards international commercial settlement and Enforcement of <b>international commercial settlement agreements</b> resulting from mediation. By enabling the enforcement of international settlement agreements, a major boost is sought to establish the reliability and versatility of the Indian Justice dispensation system.	
		<b>SECTION SPECIFIC</b>	
	Section 2 {Definitions} – inclusion of definition under Section 2	Conflict Of Interest – the conflict of interest should be clearly defined in the Act itself, as definition in the Mediator shall not constitute pecuniary or any other interest in the subject matter of Mediation.	<ol style="list-style-type: none"> <li>1. The definition of the Conflict of interest in reference to the Mediation proceeding are essential to embrace the independence or impartiality of the Mediator.</li> <li>2. This will avoid unnecessary frivolous objection and litigation despite (consent) during the proceeding of mediation or subsequently.</li> </ol>
12	Section 3(E)	Introduces the Institutional Mediation	
13	Section 2(F)	Introduces the International Mediation but does not provide the basic requirements of international mediation	Definition/meaning of international mediation is not clear.
14	Section 3(H)	definition of mediator, but no qualification is prescribed.	Without a definite/fixed qualification of the mediator there is every likelihood of chaos in the whole process of appointment
15	Section 3 K	Introduces The Mediation Institute- This would expedite the process of mediation.	The Constitution of institute must be mentioned in the Rules in detail.

16	Section 3 L	Mediation Service Provider must Be Recognised By Council.	However, the commercial organisations such as ASSOCHAM which is having independent AICADR council which is in lines of UNCITRAL Model shall be recognised under institutional mediation.
17	Section 3 P	widened the definition of participants	
18	Section 5	mediation agreement must be in writing either in the form of agreement or a clause in the agreement.	It must be available to the parties to voluntarily agree for mediation
19	Section 6	makes it mandatory to go for pre litigation mediation.	It must not be mandatory act but a voluntary act on behalf of the parties
20	Section 7	clarify the matter on which the mediation can take place. indicative	
21	Section 8	Is akin to section 9 of arbitration act- it can be drafted like section 9 of arbitration act to bring some kind of seriousness to the mediation	
22	Section 10	Appointment of the mediator is prescribed .However no qualification is prescribed.  COMMENTS:-under section 10, the bill provides that qualification, experience, and accreditation of the foreign, as well as domestic mediator, would be determined by the council. the same should be decided in consultation with the judiciary or a body of specialized individuals. the same shall instill more faith in the parties towards the appointed expert. additionally, mediation shall become a viable career option for young professionals in the sector.	On the contrary, not mentioning the qualification may create chaos in the process of appointment and also may invite the bias decision by the council.
23	Section 11	criteria for empanelment must be given in the act.	it should have a mention about the all existing trained mediators
24	Section 20(1)	makes mandatory to attend at least first two session of mediation.	Making it mandatory would go against the constitution of India
25	Section 21	stipulates a period of 180 days for completion of mediation.	This would lead to delay in the process of mediation.

26	Section 22	introduces the resolution of some of the disputes if not all	<b>comments:-</b> section 22 talks about confidentiality to be maintained by the parties to the dispute as well as the mediator. However, the draft does not provide for any punishment/ liability or the consequences which shall be imposed on one who wilfully infringes the said section, thereby defeating the primary objective of the act of maintaining confidentiality.
26	Section 28	such agreements shall be final and binding on the parties and persons claiming under them and shall be enforceable in the same manner as judgements or decrees passed by a court.	
27	Section 29	one provision may be added (v) where the mediated settlement becomes unenforceable or inexecutable, should be ground for challenging the settlement comments:- under section 29, an application for challenging the mediated settlement agreement may not be made after three months have elapsed from the date on which the party making that application has received the copy of mediated settlement agreement under section 21(3) of this act. provided that if the court is satisfied that the applicant was prevented by "sufficient cause" from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter. the term "sufficient cause" for the delay in filing the challenge to the settlement agreement is ambiguous;	it is suggestible that the draft should include specific and clear grounds under which the settlement agreement can be challenged even after three months.
28	Section 29(2)	section 29(2) lays down four grounds of fraud, corruption, gross impropriety, and impersonation.	If the same is allowed , the whole <b>purpose of mediation would fail.</b>
22			

The Bill proposes amendments to the following legislations –

- i. Indian Contract Act, 1872 – Exception 1 to Section 28 (Agreements in restraint of legal proceedings) has been modified to include resolution of a dispute by mediation along with arbitration.
- ii. Arbitration and Conciliation Act, 1996 – Part III of the Act covering conciliation (Sections 61 to 81) has been substituted with one section which states that any reference to resolution of disputes through conciliation under any law in force shall be construed to mean a reference to mediation under the Mediation Act, 2021.
- iii. Code of Civil Procedure, 1908 – Section 89 has been modified to include a reference to the Mediation Act, 2021 and to provide for the interchangeable use of the terms 'conciliation' and 'mediation'.

Appropriate amendments have also been proposed to the Commercial Courts Act, 2015 and the Legal Services Authorities Act, 1987 to include references to the Mediation Act, 2021.

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Confederation of Indian Industry

## CII Views on Draft Mediation Bill, 2021

The Confederation of Indian Industry (CII) greatly acknowledge the contribution made by the Ministry of Law and Justice for promoting, encouraging and facilitating mediation in the country

CII greatly appreciate and welcome the Mediation Bill, 2021 (Bill No. XLIII of 2021) (“**Bill**”) as Alternate Dispute Redressal (ADR) offers an informal, simple, non-adversarial approach to resolve several types of disputes including civil, commercial and family disputes etc. The Bill is a welcome step as it intends to promote institutional mediation for resolution of disputes, enforce mediated settlement agreements, provide for a body for registration of mediators, to encourage community mediation and to make online mediation as an acceptable and cost-effective process and for matters connected therewith or incidental thereto.

CII has engaged with relevant stakeholders on the various aspects of the Mediation framework outlined in the Bill. Post consultation and deep deliberations, CII submit the comments received from the industry for your kind consideration.

Sr. No.	Bill Provision	Comments	Suggested amendment
1.	<p><b>Section 4</b> states:  <i>““Mediation” means a process, whether referred to by the expression mediation, pre-litigation mediation, online mediation, conciliation or an expression of similar import, whereby parties request a third person or persons (“the mediator”) to assist them in their attempt to reach an amicable settlement of the dispute.</i></p>	<p><b><u>Conceptual difference between mediation and conciliation:</u></b></p> <p>The definition of mediation in Section 4 of the Bill includes “conciliation”. The inclusion of ‘conciliation’ within the definition of mediation is problematic since the concepts of mediation and conciliation are fundamentally different (See <b>Annexure-A</b>). In conciliation, the conciliator plays a far more proactive role and is empowered to propose settlement terms [Section 67(4) of the Arbitration Act]. Section</p>	<p><b>Suggested Amendment No. 1:</b>  Deletion of Section 61 and the Sixth Schedule and deletion of the word “conciliation” from Section 4 as under-.</p> <p><i>““Mediation” means a process, whether referred to by the expression mediation, pre-litigation mediation, online mediation, <del>conciliation</del> or an expression of similar import, whereby parties request a third person or persons (“the mediator”) to assist them in their attempt to reach an amicable</i></p>



<p>Further, <b>Section 61</b> states:  <i>“The Arbitration and Conciliation Act, 1996 shall be amended in the manner specified in the Sixth Schedule.”</i></p> <p><b>Sixth Schedule</b> states:  <i>“In the Arbitration and Conciliation Act, 1996 (26 of 1996),—</i>  <i>(a) in section 43D,—</i>  <i>(i) in sub-section (1), the words “mediation, conciliation” shall be omitted;</i>  <i>(ii) in sub-section (2), in clauses (e), (f) and (i), the words “and conciliation” wherever they occur shall be omitted;</i></p> <p><i>(b) for sections 61 to 81, the following sections shall be substituted, namely:—61. Reference of conciliation in enactments.— (1) Any provision, in any other enactment for the time being in force, providing for resolution of disputes through conciliation in accordance with the provisions of this Act, shall be construed as reference to mediation as provided for under the Mediation Act, 2021.</i>  <i>(2) The Conciliation as provided for under this Act or the code of Civil</i></p>	<p>18 and 19 of the Bill do not contemplate such powers.</p> <p>The Bill, under Section 61 r/w the Sixth Schedule, further seeks to do away with the provisions on conciliation in the Arbitration and Conciliation Act, 1996 (“<b>Arbitration Act</b>”), while the Bill itself does not have separate provisions for conciliation. Instead, the Bill attempts to include conciliation within definition of mediation, which is misplaced. This would have the consequence of removing the concept of conciliation under Indian law.</p> <p>In some disputes, parties may prefer conciliation as opposed to or on the failure of mediation. The removal of conciliation provisions infringes on the principle of party autonomy whereby parties are free to choose their preferred medium of ADR.</p> <p>The Mediation Bill requires pre-litigation mediation for all disputes (other than limited exceptions). This by implication includes disputes with government companies and the government.</p> <p>From an ease of doing business perspective, it would be good to have a clear provision in the</p>	<p><i>settlement of the dispute.</i></p> <p><b>Alternatively, Suggested Amendment No. 2:</b>  Retain Section 4, Section 61 and the Sixth Schedule but incorporate provisions of Part III of the Arbitration Act in the Mediation Bill so as to retain the distinction between mediation and conciliation.</p>
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	<p><i>procedure shall be construed as mediation as defined in the Mediation Act, 2021.</i></p> <p><i>62. Saving.- Notwithstanding anything contained in section 61, any conciliation proceeding initiated in pursuance of sections 61 to 81 of this Act as in force before the commencement of the Mediation Act, 2021, shall be continued as such as if the Mediation Act, 2021 had not been enacted.”.</i></p>	<p>Mediation Act, 2021 which extends the mandate of pre-litigation mediation to government disputes specifically. Use of mediation for dispute resolution of government disputes ties in with the goals set out in the National Litigation Policy. It is important for the Government to formulate a framework to effect this mandate of the Mediation law.</p>	
2.	<p><b>Section 5(5)</b> of the Bill states:  <i>“The parties may agree to submit to mediation any dispute arising between them under an agreement whether entered prior to arising of dispute or subsequent thereto.”</i></p>	<p><b><u>Repeats Section 5(1):</u></b></p> <p>The contents of Section 5(5) are covered under Section 5(1) which states “...to submit to mediation all or certain disputes which have arisen or which may arise...”.</p>	<p>Deletion of Section 5(5) and proposed amendment to Section 5(1) as under:</p> <p><i>“(1) A mediation agreement shall be in writing, <b>whether executed prior to arising of dispute or subsequent thereto</b>, by or between parties and anyone claiming through them, to submit to mediation all or certain disputes which have arisen or which may arise between the parties.</i></p>
3.	<p><b>Section 8(1)</b> states:  <i>“If exceptional circumstances exist, a party may, before the commencement of, or during the continuation of,</i></p>	<p><b><u>Exceptional circumstances is vague:</u></b></p> <p>The expression “<i>exceptional circumstances exist</i>” is vague and open to various subjective</p>	<p>Proposed amendment to Section 8(1):  <i>“<del>If exceptional circumstances exist</del>, a party may, before the commencement of, or during the continuation of, mediation proceedings</i></p>

	<p><i>mediation proceedings under this Act, file suit or appropriate proceedings before a court or tribunal having competent jurisdiction for seeking urgent interim relief.”</i></p>	<p>interpretations. The retention of this expression carries the risk of courts adopting unreasonable/arbitrary/non-uniform standards and declining interim relief in fit cases.</p> <p><b><u>Harmonisation with Section 9 of the Arbitration Act:</u></b></p> <p>Section 8(1) of the Bill may be harmonised and made uniform with Section 9 of the Arbitration Act to the extent possible. As a result, Section 8(1) may:</p> <ol style="list-style-type: none"> <li>i. Be available after execution of the Mediated Settlement Agreement but before it is enforced. This would ensure that parties do not take advantage of mediation process and dispose of amount or subject matter of the dispute even after the Mediation Settlement has been executed.</li> <li>ii. Instead of mentioning a broad phrase like ‘<i>If exceptional circumstances exist</i>’, stipulate the various types of interim measures that may be obtained. This would remove any doubts as to the power of courts. This would also clarify what case the parties must make out for the grant of interim relief since the parameters under Section 9 of the Arbitration Act are well settled.</li> </ol>	<p><i>under this Act or at any time after the execution of the Mediated Settlement Agreement but before it is enforced in accordance with Section 28, file suit or appropriate proceedings before a Court or Tribunal having competent jurisdiction for seeking urgent interim relief, including:</i></p> <ol style="list-style-type: none"> <li><b>(a) the preservation, interim custody or sale of any goods which are the subject-matter of the dispute;</b></li> <li><b>(b) securing the amount in dispute in the mediation</b></li> <li><b>(c) the detention, preservation or inspection of any property or thing which is the subject matter of the dispute in mediation, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;</b></li> <li><b>(d) interim injunction or the appointment of a receiver; and</b></li> </ol>
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			<b><i>(e) such other interim measure of protection as may appear to the Court to be just and convenient, and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.</i></b>
4.	<b>Section 8(2)</b> states: <i>“The court or tribunal shall after granting or rejecting urgent interim relief, as the case may be, refer the parties to undertake mediation to resolve the dispute, if deemed appropriate.”</i>	<b><u>Deletion of the words “if deemed appropriate”:</u></b>  The words “if deemed appropriate” give discretion to the court or tribunal to refer the parties for mediation after granting or rejecting urgent interim relief. Parties <u>must</u> undertake mediation after grant or rejection of urgent interim relief and the same must not be left to the discretion of the court or tribunal. Retaining the words “if deemed appropriate” runs the risk of defeating the objective of Section 6(1) of the Bill ( <i>Pre-litigation mediation</i> ).	Section 8(2) may be amended as: <i>“The court or tribunal shall after granting or rejecting urgent interim relief, as the case may be, refer the parties to undertake mediation to resolve the dispute, <del>if deemed appropriate.</del>”</i>
5.	<b>Proviso to Section 10(1)</b> states: <i>“Provided that mediator of any foreign nationality shall possess such qualification, experience and accreditation as may be specified.”</i>	<b><u>Opposed to party autonomy:</u></b>  Section 10(1) is contrary to the cardinal principle of party autonomy. Parties to a collaborative ADR process such as mediation may be permitted to choose any mediator of foreign nationality without being unduly fettered by the qualifications that may be specified.	Deletion of Proviso to Section 10(1).

		<p><b><u>No rationale for such a provision:</u></b></p> <p>Such a provision is neither required nor accompanied by any rationale. No similar provision exists in the Arbitration Act. In fact, the Eighth Schedule, which stated qualifications for arbitrators, was omitted from the Arbitration Act after being criticised for its narrow ambit.</p>	
6.	<p><b>Section 11</b> states:  <i>“The mediation service provider shall, while appointing any person from the panel of mediators maintained by it, consider his suitability and the preference of the parties for resolving the dispute.”</i></p>	<p><b><u>Mediation Service Provider not to be bound by the parties’ views:</u></b></p> <p>It may be clarified that the Mediation Service provider will not be bound by the views of the parties while appointing a mediator from its panel.</p>	<p>Proposed amendment to Section 11:  <i>“The mediation service provider shall, while appointing any person from the panel of mediators maintained by it, consider his suitability and the preference of the parties, <b>without being bound by such preference</b>, for resolving dispute.”</i></p>
7.	<p><b>Section 12(2)</b> states:  <i>“During the mediation, the mediator shall, without delay, disclose to the parties in writing any conflict of interest, referred to in sub-section (1), that has newly arisen or has come to his knowledge.”</i></p>	<p><b><u>Time limit for disclosure:</u></b></p> <p>The use of the expression “without delay” is vague and subjective and may be interpreted differently by mediators. Therefore, it is recommended that a time limit (e.g., thirty days) may be specified to ensure that no conflicts of interest are disclosed belatedly.</p>	<p>Proposed amendment to Section 12(2):  <i>“During the mediation, the mediator shall, without delay, <b>and in any case not later than thirty days from the date on which circumstances that constitute conflict of interest may arise</b>, disclose to the parties in writing any conflict of interest, referred to in sub-section (1), that has newly arisen or has come to his knowledge.”</i></p>

8.	<p><b>Section 12(3)</b> states:  <i>“Upon disclosure under sub-section (1) or sub-section (2), the parties have the option to waive any objection if all of them express in writing, which shall be construed as the consent of parties.”</i></p> <p><b>Section 12(4)</b> states:  <i>“Upon disclosure under sub-section (1) or sub-section (2), if either party desires to replace the mediator, then, in case of:-</i></p> <p>(i) <i>institutional mediation, such party shall apply to the mediation service provider for termination of the mandate of mediator;</i></p> <p>(ii) <i>mediation other than institutional mediation, such party shall terminate the mandate of mediator.”</i></p>	<p><b><u>Time Limit for challenge:</u></b></p> <p>As per Section 12(4) of the Mediation Bill, a party may apply for termination of the mandate of the mediator upon disclosure of justifiable doubts as to his/her independence or impartiality or a conflict of interest.</p> <p>As it stands, there exists no time limit for making an application for termination of the mandate of the mediator. A time limit (e.g., thirty days) can be set for the parties to object to the appointment of the Mediator after becoming aware of circumstances under Section 12(1) and 12(2) of the Bill. This would ensure that challenges are not raised belatedly.</p> <p>Such time limits are envisaged even in international institutional mediation rules. For example, Article 5(3) of the ICC Mediation Rules, 2014 states:  <i>“...The Centre shall provide such information to the parties in writing and <b>shall fix a time limit for any comments</b> from them.”</i></p> <p><b><u>Application to courts under Section 12(4)(ii):</u></b></p> <p>Further, while Section 12(4)(i) of the Mediation</p>	<p>Proposed amendment to Section 12(4):  <i>“Upon disclosure under sub-section (1) or sub-section (2) if either party desires to replace the Mediator <b>within thirty days thereof</b>, then in case of:-</i></p> <p>(i) <i>institutional mediation, such party shall apply to the mediation service provider for termination of the mandate of mediator;</i></p> <p>(ii) <i>mediation other than institutional mediation, such party shall <del>terminate the mandate of mediator</del><b>apply to the court or tribunal of competent jurisdiction.</b>”</i></p>
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		<p>Bill permits a party in an institutional mediation to apply to the mediation service provider for termination of the mediator's mandate, Section 12(4)(ii) provides that in mediation other than institutional mediation, a party desiring replacement of the mediator shall terminate the mandate of mediator. The unilateral power under Section 12(4)(ii) can lead to parties abusing their power by terminating the mandates of mediators to frustrate the mediation. Therefore, it is advised that Section 12(4)(ii) be amended such that parties in mediation other than institutional mediations must apply to courts or tribunals of competent jurisdiction for termination of the mediator's mandate.</p>	
9.	<p><b>Section 13</b> states:  <i>"A mediation service provider may terminate the mandate of a mediator upon-</i>  ...  <i>(ii) the receipt of information about the mediator being involved in a matter of conflict of interest from participants or any other person; or"</i></p>	<p><b><u>The procedure used by the mediation service provider must be uniform and specified by law:</u></b></p> <p>For reference purposes, under the Arbitration Act, either the arbitral tribunal or the court decides a challenge to the appointment of an arbitrator. Under the Bill, since neither of these concepts are envisaged for institutional mediation, detailed procedure needs to be prescribed for deciding the termination of a mediator appointed in an institutional</p>	<p>Proposed amendment to Section 13:  <i>"A mediation service provider may, <b>in accordance with the procedure specified by the Council under clause (n) of Section 40,</b> terminate the mandate of a mediator upon-</i>  ...  <i>(ii) the receipt of information about the mediator being involved in a matter of conflict of interest from participants <del>or any other person;</del> or"</i></p>

		<p>mediation. Under this procedure, a committee needs to be constituted within the mediation service provider, comprising persons who are competent and qualified to decide the termination of the mediator.</p> <p><b><u>Any other person to be deleted:</u></b></p> <p>The use of the expression “<i>or any other person</i>” opens the possibility of interference in the mediation by non-parties to the mediation. ADR processes, including mediation, are inherently private and this interference by third parties ought not to be permitted.</p>	
10.	<b>New Provision</b>	<p><b><u>Corresponding amendment to Section 40:</u></b></p> <p>Pursuant to the amendment suggested to Section 13, a new clause may be added to Section 40 (<i>Duties and Functions of the Council</i>) to empower the Mediation Council of India to prescribe a detailed procedure for deciding the termination of a mediator appointed in an institutional mediation.</p>	<p>Clause (n) may be inserted in Section 40:</p> <p>“40. <i>The Council shall—</i>  .....  <b>(n) provide for procedure for termination of mandate of the mediator by the mediation service provider under Section 13, as also the composition of the committee of the mediation service provider constituted to decide such termination.</b>  .....”</p>
11.	<p><b>Section 22(7) states:</b>  “(7) <i>For the purposes of record, mediated settlement agreement arrived at between the parties, other</i></p>	<p><b><u>The registration requirement may be done deleted:</u></b></p> <p>Section 22(7) r/w Section 22(9) of the Bill</p>	<p>Deletion of Section 22(7) and Section 22(9).</p>

	<p><i>than those arrived in a court or tribunal referred mediation or award of Lok Adalat or final award of Permanent Lok Adalat under section 21 or section 22E of the Legal Services Authorities Act, 1987, shall be registered with an Authority constituted under the Legal Services Authorities Act, 1987, in such manner as may be specified and such Authority shall issue a unique registration number to such settlements.”</i></p> <p>Further, Section 22(9) states:  <i>“(9) The registration referred to in sub-section (7) shall be made by the parties, mediator or mediation service provider within a period of one hundred and eighty days from the date of receipt of authorized copy of mediated settlement agreement.”</i></p>	<p>imposes an onerous obligation upon parties, mediator or mediation service provider to register the mediated settlement agreement. This is also in conflict with the confidentiality obligation in Section 23 of the Bill. In any case, there are no consequences for such non-registration provided in the Bill.</p>	
12.	<p><b>New Provision</b></p>	<p><b><u>Appeal provision:</u></b></p> <p>A new provision may be inserted to provide that parties may prefer one appeal against orders.</p>	<p>A new provision on the lines of Section 37 of the Arbitration Act may be inserted as under:</p> <p><b><i>“Appealable orders.  (1) Notwithstanding anything contained in any other law for the time being in force, an appeal shall lie only from the following</i></b></p>

			<p><b>orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, or from an order of the Tribunal passing the order, namely:</b></p> <ul style="list-style-type: none"> <li><b>a. Refusing or granting interim relief under Section 8 of the Act;</b></li> <li><b>b. Refusing reference to mediation under Section 9 of the Act; and</b></li> <li><b>c. Accepting or dismissing the challenge to the mediated settlement agreement under Section 29 of the Act.</b></li> </ul> <p><b>(2) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.”</b></p>
13.	<b>Chapter X- Community Mediation</b>	<p><b><u>Key provisions are missing from Chapter X:</u></b></p> <p>Several key provisions from other chapters of the Bill do not find mention in Chapter X of the Bill dealing with community mediation. This will make community mediation less effective.</p> <p>List of such key provisions is as follows:</p> <ul style="list-style-type: none"> <li>i. Section 5 (Mediation Agreement);</li> <li>ii. Section 7 (Cases not fit for</li> </ul>	<p>Chapter X of the Bill may be amended to incorporate the applicable provisions of other chapters by reference as under by inserting a new provision, being Section 44(6):</p> <p><b>“The provisions of the other chapters of the Act, to the extent that they are applicable and not inconsistent therewith, shall apply mutatis mutandis to this Chapter X”</b></p>

		<p>mediation);</p> <p>iii. Section 8 (Interim relief by Court or Tribunal);</p> <p>iv. Section 9 (Power of Court or Tribunal to refer parties to mediation);</p> <p>v. Section 12 (Conflict of Interest and Disclosure);</p> <p>vi. Section 15 (Territorial Jurisdiction to undertake mediation);</p> <p>vii. Section 16 (Commencement of mediation);</p> <p>viii. Section 17 (Conduct of mediation);</p> <p>ix. Section 18 (Role of Mediator);</p> <p>x. Section 19 (Role of Mediator in other proceedings);</p> <p>xi. Section 20 (Withdrawal by parties from mediation);</p> <p>xii. Section 21 (Time-limit for completion of mediation);</p> <p>xiii. Section 22- (Mediated Settlement Agreement);</p> <p>xiv. Section 23 (Confidentiality);</p> <p>xv. Section 24 (Admissibility, Privilege against Disclosure);</p> <p>xvi. Section 25 (Termination of Mediation);</p> <p>xvii. Section 26 (Court annexed mediation);</p> <p>xviii. Section 27 (Mediation by Lok Adalat</p>	
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		<p>and Permanent Lok Adalat);</p> <p>xix. Section 28 (Status of Mediated Settlement Agreement);</p> <p>xx. Section 29 (Challenge to Mediated Settlement Agreement);</p> <p>xxi. Section 30 (Costs);</p> <p>xxii. Section 31 (Limitation);</p> <p>xxiii. Section 32 (Online mediation);</p>	
14.	<p><b>Section 44(3)</b> states:</p> <p><i>“In order to facilitate settlement of a dispute for which an application has been received under sub-section (2), the concerned Authority constituted under the Legal Services Authorities Act, 1987 or the District Magistrate or Sub-Divisional Magistrate, as the case may be, shall constitute panel of three mediators.”</i></p>	<p><b><u>The Legal Services Authority, DM or SDM may determine suitability for mediation:</u></b></p> <p>Upon receiving an application for community mediation, the concerned Authority constituted under the Legal Services Authorities Act, 1987, District Magistrate or Sub-Divisional Magistrate may first determine whether the dispute is fit to be submitted for mediation and then constitute the panel.</p>	<p>Proposed amendment to <b>Section 44(3)</b>:</p> <p><i>“In order to facilitate settlement of a dispute for which an application has been received under sub-section (2), the concerned Authority constituted under the Legal Services Authorities Act, 1987 or the District Magistrate or Sub-Divisional Magistrate, as the case may be, shall <b>after determining that the community dispute is fit to be resolved by mediation</b> constitute panel of three mediators.”</i></p>
15.	<p><b>Section 45(4)</b> states:</p> <p>Any settlement agreement arrived at under this Chapter shall be for the purpose of maintaining the peace, harmony and tranquillity amongst the residents or families of any area or locality but shall not be enforceable as a judgment or decree of a civil court.</p>	<p><b><u>Settlement agreements arising from community mediation should be enforceable:</u></b></p> <p>Section 45(4) of the Mediation Bill provides that any settlement agreement arrived at under this Chapter shall be for the purpose of maintaining the peace, harmony and tranquillity amongst the residents or families of</p>	<p>Deletion of Section 45(4).</p>

		any area or locality but shall not be enforceable as a judgment or decree of a civil court. Without an enforceable character, such settlement agreements will not be effective and therefore, this provision may be deleted.	
16.	<p><b>Section 53(2)(b)</b> states:  <i>“(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may make provision for—</i>  .....  <i>(b) qualification, experience and accreditation for mediators of foreign nationality under the proviso to sub-section (1) of section 10.”</i></p>	<p><b><u>Deletion of Section 53(2)(b):</u></b></p> <p>For the reasons stated above, we have suggested deletion of the Proviso to Section 10(1). Correspondingly, Section 53(2)(b) may be deleted.</p>	Deletion of Section 53(2)(b).
17.	<p><b>United Nations Convention on International Settlement Agreements Resulting from Mediation (“Singapore Convention”)</b></p> <p>India became a signatory to the Singapore Convention on 7 August 2019 but has not ratified the Singapore Convention yet.</p>	<p><b><u>Singapore Convention to be ratified:</u></b></p> <p>The Singapore Convention establishes a harmonized legal framework for the right to invoke international mediated settlement agreements as well as for their enforcement.</p> <p>Part III of the Draft Bill dated 29 October 2021 (“<b>Draft Bill</b>”) set out various provisions that gave effect to the Singapore Convention. These included:</p> <ul style="list-style-type: none"> <li>i. Definition of mediated settlement agreement to which the Singapore</li> </ul>	India to ratify the Singapore Convention at the earliest so that provisions of Part III of the Draft Bill may be reinstated in the Bill.

		<p>Convention applied;</p> <p>ii. Enforceability of such mediated settlement agreements;</p> <p>iii. Conditions for enforcement of such mediated settlement agreements;</p> <p>Part III of the Draft Bill has been deleted from the text of the current version of the Bill as India has not yet ratified the Singapore Convention.</p>	
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### Framework for Mediating Government Disputes

Settlements often become difficult due to reluctance of government officers to take a commercial approach to business disputes. Fear of retributive action haunts the government officials. To be mediation ready, the Government may consider the following framework of recommendations to empower government officials and enable decision making:

#### Towards Effective Participation

- Government to notify a clear list of subject heads and kinds of cases that may try mediation before going into arbitration or litigation.
- Government to issue specific direction to departments and government companies with large number of cases pending to encourage mediation as preferred form of dispute resolution.
- Government to encourage departments and government companies to open a window of mediation for all ongoing arbitrations. Failing mediation, parties can revert to arbitration proceedings for remaining unresolved issues, if any.
- Government to identify mediation service providers with robust codes of conduct and process rules to mediate government disputes.

- Government to identify a panel of independent subject matter experts for expert opinion required during mediations of government disputes.

### **Enabling Decision-Making**

- Threshold based Decision-Making - Departmental graded system with pecuniary limits empowering officials trained in mediation (Presenting Officer) to take decision to mediate and/or settle.
- Collective Decision – A departmental decision matrix (Dept. Committee) for collective decision by committee (trained in mediation) to mediate and/or settle. Prior evaluation by Dept. Committee and confidential indication to Presenting Officer(s) of range / terms of settlement. Ability of Presenting Officers to consult Dept. Committee as negotiations progress to recalibrate the range/terms.
- Participation at the Mediation - Government to outline criteria for each department on who will participate in a mediation. Appointment of nodal officer in every department. This criterion will at the very least identify (a) Minimum Officer level at every department with decision making power (b) minimum officer level from the management side of the project who would have a good understanding of the dispute. Representatives along with Legal counsel to participate in at least one (1) session with the mediator and the other side.
- Secretarial Oversight – Decision to settle to be vetted by a high-level committee (HLC). The HLC to have judicial (retired/sitting Supreme Court and High Court Judges) and administrative representation (trained in mediation). HLC can accept/reject the proposal of the Presenting Officers

### **Protection for Good-faith Actions**

- Good faith Exception – Good faith exception applicable to all bonafide decision taken by Presenting Officers in line with the framework and in conjunction with the Dept. Committee and HLC.
- Absolute Immunity – Absolute immunity to Presenting Officer(s), Dept. Committee and HLC for any settlement decision other than where there is evidence of bribe being given or disproportionate assets of participants to the mediation.
- Prior Sanction – Previous sanction of independent committee (IC) necessary for any prosecution relating to a settlement decision. Each government department to constitute an IC with retired judicial, administrative and subject matter representation.
- Limitation Period for Scrutiny – Any scrutiny to be initiated and completed within 12 months of a settlement decision. This is to ensure that the circumstances/ecosystem in which decisions were taken are largely

similar to the circumstances in which the scrutiny is conducted.

The edifice of Mediation stands on the pillars of confidentiality, party autonomy and time and cost effectiveness. All attempts to be made to preserve these precepts. Strict timelines to be prescribed and adhered to at all stages of implementing the framework.

- i. Specific mediation training to be organized to ensure **mediation readiness** of all participants of the framework (including Presenting Officers, Dept. Committee, HLC and IC).
- ii. Government to engage in extensive **training and awareness programs** for officers and departmental representatives. The training programs may cover
  - (a) understanding of interest-based negotiation process;
  - (b) role of each participant in the process
  - (c) the benefit of the process for their department
  - (d) some skill sets to participate effectively in a mediation.
- iii. Government to implement **pilot programs** to establish proof of concept and viability of mediation for government disputes.
- iv. Central and State Governments to promulgate **policies and protocols** to effectively use mediation for resolving government disputes. Government companies to establish internal processes for implementation.
- v. Government to mandatorily include **mediation clauses** in all government contracts and tenders.
- vi. Government to encourage **institutional mediation** for resolution of governmental disputes.

## ANNEXURE – A

### DIFFERENCE BETWEEN CONCILIATION AND MEDIATION

	<b>Conciliation</b>	<b>Mediation</b>
1.	Conciliator plays more proactive role and is empowered to propose settlement terms as per Section 67(4) of the Arbitration Act. Conciliator can propose potential solutions to the parties to resolve the dispute as an expert in the domain.	Mediator cannot propose settlement terms to the parties. Section 18 and 19 of the Bill do not confer such power to the mediator. No advisory role is played by the Mediator.
2.	Conciliator is more proactive and interventionist and plays role of evaluator and intervener.	Mediator plays the role of a facilitator.
3.	Under Section 65(1) and 65(2) of the Arbitration Act, Conciliator may request each party to submit a brief written statement describing the general nature of the dispute and the points at issue. Conciliator may also request each party to submit a further written statement of its position and the facts and grounds in support thereof, supplemented by any documents and other evidence that such party deems appropriate.	There is no provision of submitting written statements in mediation.
4.	Under Section 67(2) of the Arbitration Act, the conciliator shall be guided by principles of objectivity, fairness and justice, considering, among other things, the <u>rights and obligations of the parties</u> , the usages of the trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties.	Under Section 18(1) of the Bill, Mediator shall attempt to facilitate voluntary resolution of the dispute by the parties and communicate the view of each party to the other to the extent agreed to by them, assist them in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise and generating options in an attempt to resolve the dispute expeditiously, emphasising that it is the responsibility of the parties to take decision regarding their claims. Mediator is not required to be guided by the rights and obligations of the parties.

## Note on Mediation Bill 2021

### The Salient Features and Gaps of The Mediation Bill 2021

**The Mediation Bill, 2021** was introduced in **Rajya Sabha on December 20, 2021** where parties attempt to settle their dispute (outside courts) with the assistance of an independent third person (mediator). The Bill seeks to promote mediation (including online mediation) and provide for enforcement of settlement agreements resulting from mediation.

#### Salient features of the Bill include:

1. **Applicability:** The Bill will apply to mediation proceedings conducted in India where:
  - (i) all parties reside in, are incorporated in, or have their place of business in India,
  - (ii) the mediation agreement states that mediation will be as per this Bill, or
  - (iii) there is an international mediation (i.e., mediation related to a commercial dispute where at least one party is a foreign government, a foreign national/resident, or an entity with its place of business outside India). In these cases, if the central or state government is a party, the Bill will only apply to: (a) commercial disputes, and (b) other disputes as notified by such government.
  
2. **Pre-litigation mediation:** In case of civil or commercial disputes, a person must try to settle the dispute by mediation before approaching any court or certain tribunals as notified. Even if the parties fail to reach a settlement through pre-litigation mediation, the court or tribunal may at any stage of the proceedings refer the parties to mediation if they request for the same.
  
3. **Disputes not fit for mediation:** Disputes not fit for mediation include those:
  - (i) relating to claims against minors or persons of unsound mind,
  - (ii) involving prosecution for criminal offences,
  - (iii) affecting the rights of third parties, and
  - (iv) relating to levy or collection of taxes.

The central government may amend this list of disputes.

4. **Mediation process:** Mediation proceedings will be confidential. A party may withdraw from mediation after the first two mediation sessions. The mediation process must be completed within 180 days (even if the parties fail to arrive at an agreement), which may be extended by another 180 days by the parties. In case of court annexed mediation (i.e., mediation conducted at a mediation centre established by any court or tribunal), the process must be conducted in accordance with directions or rules framed by the Supreme Court or High Courts.
  
5. **Mediators:** Mediators only assist the parties to settle their dispute and cannot impose a settlement on them. Mediators may be appointed by:
  - (i) the parties by agreement, or

- (ii) a mediation service provider (an institution administering mediation). Mediators must disclose any conflict of interest that may raise doubts on their independence. Parties may then choose to replace the mediator.
6. **Mediation Council of India:** The central government will establish the Mediation Council of India. The Council will consist of a chairperson, two full-time members (with experience in mediation or ADR), **three ex-officio members (including Secretaries in the Ministries of Law and Justice and Finance)**, and **one part-time member (from an industry body)**. Functions of the Council include:
    - (i) registration of mediators, and
    - (ii) recognising mediation service providers and mediation institutes (providing training, education and certification of mediators).
  7. **Mediated settlement agreement:** Agreements resulting from mediation must be in writing, signed by the parties and authenticated by the mediator. Such agreements will be final, binding, and enforceable in the same manner as court judgments (except agreements arrived at after community mediation). Mediated settlement agreements (besides those arrived at in court referred mediation or by Lok Adalat or Permanent Lok Adalat) may be challenged only on grounds of: (i) fraud, (ii) corruption, (iii) impersonation, or (iv) relating to disputes not fit for mediation.
  8. **Community mediation:** Community mediation may be attempted to resolve disputes likely to affect the peace and harmony amongst residents of a locality. It will be conducted by a panel of three mediators (may include persons of standing in the community, and representatives of RWAs).
  9. **Interface with other laws:** The Bill will override other laws on mediation (except certain laws such as the Legal Services Authorities Act, 1987, and the Industrial Relations Code, 2020). The Bill also makes consequential amendments in certain laws (such as the Indian Contract Act, 1872, and the Arbitration and Conciliation Act, 1996).

### **Gaps and Suggestions**

Despite formulating cogent provisions that majorly tackle the immediate concerns surrounding the mediation process in the country, there are some factors that need in-depth deliberation.

Following suggestions can be incorporated in the bill to eliminate ambiguities and establish a well-rounded framework to guide mediation processes.

1. **Under Section 22:** talks about confidentiality to be maintained by the parties to the dispute as well as the mediator. However, the draft does not provide for any punishment / liability or the consequences which shall be imposed on one who wilfully infringes the said section, thereby defeating the primary objective of the act of maintaining confidentiality.
2. **Under section 29:** an application for challenging the mediated settlement agreement may not be made after three months have elapsed from the date on which the party making that application has received the copy of mediated settlement agreement under section 21(3) of this Act. Provided that if the Court is satisfied that the applicant was prevented by “**sufficient cause**” from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter. The term “**sufficient cause**” for the delay in filing the challenge to the settlement agreement is ambiguous; therefore, it is



suggestible that the draft should include specific and clear grounds under which the settlement agreement can be challenged even after three months.

3. **Under section 10:** the bill provides that qualification, experience, and accreditation of the foreign, as well as domestic mediator, would be determined by the council. The same should be decided in consultation with the judiciary or a body of specialized individuals. Additionally, mediation shall become a viable career option for young professionals in the sector.
  
4. **Vagueness:** A few provisions under the said Bill suffer from vagueness and require clarity. For example:
  - a) Explanation 1 to sub-section (1) of Section 2 states that “*if a party has more than one place of business, the place of business is that which has the closest relationship to the mediation agreement.*” The said explanation has been loosely worded and is vague in nature. The Bill does not clarify the contours of the term ‘closest relationship to the mediation agreement’. Such confusion can purport and give rise to numerous other litigations.
  
  - b) Even though the Bill has appreciably provided a list of disputes which may not be fit to be subject to a mediation proceeding, there is a compelling need to add certain tests, guidelines or criteria that may be adopted, in order to ascertain if the disputes are fit for subjecting it to mediation. Furthermore, there is an inconsistency plaguing the terminology used in **Under Section 7 of the Bill** which provides for the substantive provision relating to cases not fit for mediation, and **Schedule II of the Bill** provides the list of disputes not fit for mediation. **Section 7 states “that mediation under this Part shall not be conducted for resolution of any dispute...”, whereas Schedule II provides that it contains a list of “disputes which may not be fit for resolution through mediation under Part 1.”**
  
  - c) The Bill provides that a domestic mediated settlement may be challenged on the ground of ‘**gross impropriety**’, without making any endeavour to define the term or specify its contours. The lack of clarity may provide big freedom to the parties to resist the enforcement of a settlement agreement by bringing any and all challenges under the ground of ‘**gross impropriety**’.

## **Conclusion**

In conclusion, the bill does have its fair share of positive aspects. It is indeed a step in the right direction in terms of the recognition and promotion of mediation. The incorporation of law on mediation would not only help to build more confidence and trust in the mediation process, but also make it easier for businesses and commercial entities to resolve disputes in India. Additionally, the drafting committee must address the gaps and concerns mentioned above, with a view to making sure that when the Mediation Act is enacted, it contains clear and elaborate provisions that facilitate, in a practical sense, the ADR mechanism of mediation



## The Federation of Telangana Chambers of Commerce and Industry

(Formerly known as FTAPCCI)

ISO 9001:2015

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FTCCI/2021-22/293

February 10, 2022

Shri Goutam Kumar,  
Deputy Secretary  
Rajya Sabha Secretariat,  
NEW DELHI.

Respected Sir,

### SUBMISSIONS OF THE FEDERATION OF TELANGANA CHAMBERS OF COMMERCE AND INDUSTRY ON THE MEDIATION BILL, 2021

Sr. No.	Comment	Recommendation
-	<p>India is a signatory to the <b>United Nations Convention on international Settlement Agreements Resulting from Mediation (“Singapore Convention”)</b>. The earlier draft of the Mediation Bill published for public consultation incorporated provisions pertaining to the same. However, there were challenges with the language of those provisions.</p> <p>Instead of deleting the entire chapter on the Singapore Convention, Committee could have included a modified Part 2 in this draft.</p>	<p>Including a Part 2 in the Act that deals with international mediated settlement agreements under the Singapore Convention. The base draft could either be the Model Law or India could look at how the other 9 countries who have ratified the Singapore Convention have incorporated the provisions of the Singapore Convention in their law.</p>
Section 2 (s)	The term “Tribunal” is used in the	Definition of “Tribunal” to be

Tribunal	Bill but has not been defined. The earlier draft of the Mediation Bill that was published for public consultation incorporated a definition.	reinstated.
Section 4	A mediator needs to be neutral and should not have the ability to impose (directly or indirectly) a solution upon the parties. This needs to be clearly specified. Reference can be taken from the Singapore Convention which stipulates that the mediator to be <b><i>“lacking the authority to impose a solution upon the parties to the dispute.”</i></b>	Section 4 to be amended to state that the mediator be <b><i>“lacking the authority to impose a solution upon the parties to the dispute.”</i></b>
Section 7 read with First Schedule (Cases not fit for mediation)	<p>It is not uncommon that Parties may criminal allegations against each other in an otherwise seemingly civil dispute. In a real estate dispute, Parties allege fraud, criminal breach of trust, etc.</p> <p>Even in the matters that are pending before the various regulators (as specified in the First Schedule) not all of them would pertaining to issues of non-compliance of law and could also include private party disputes. E.g. a shareholder can file a complaint before SEBI for a delay in the Company not recording a transfer of shares. SEBI can exercise powers under the Companies Act, 2013 as well. Parties should be free to mediate on such matters</p>	There should be no restriction on mediating of matters in the First Schedule with the prior consent of the relevant regulator or to the extent the mediation is permitted in the underlying legislation.
Section 22 (7) (Registration)	<p>An arbitration award does not require registration. It is not clear as to why a process like mediation which is voluntary and has party autonomy has a stipulation for registration. One of the advantages of mediation is the fact that the Parties can keep the entire process confidential.</p> <p>Registration creates an</p>	This provision to be deleted.

	<p>unnecessary procedural formality that the parties in a dispute would need to comply with. The confidentiality of the parties is also a concern.</p>	
<p>Section 28 (Enforcement)</p>	<p>Section 28 (2) states that a mediated settlement agreement is enforceable as if it were a judgment or decree passed by a court.</p> <p>Per Section 3 (a) (ii) of the Singapore Convention places restrictions on enforcement of certain types of mediated settlement agreements when are enforceable as a judgment of a court.</p>	<p>Section 28 to be amended to provide an exclusion to international mediated settlement agreements so that they can be enforced under the Singapore Convention (whether in India or overseas)</p>
<p>Section 29 (3)</p>	<p>It is not uncommon that the terms of a mediated settlement agreement includes performance obligations that would continue for months or even years.</p> <p>If the parties to a mediated settlement agreement discover a fraud or corruption or even impersonation during the course of performance of the obligations under the mediated settlement agreement, they would lose the right to challenge the terms of the mediated settlement agreement since the limitation period would have expired.</p>	<p>Section 29 (3) to be amended to state that the limitation period, in the case of fraud, impersonation or corruption would be calculated from the date on which a party became aware of the same.</p>
<p>Section 34 (Council)</p>	<p>The constitution of the Council does not provide for regional representation of mediators.</p> <p>Further, there should also be a requirement that all the Council members be trained in mediation.</p>	<p>The provision be amended to include a requirement of training for all Council members.</p> <p>It is suggested that the Country be divided into 4-5 Zones and the Council include 1 mediator from each Zone. Within a Zone, there be equal opportunity for all States to have a mediator nominee by turns. The mediator nominee of a State to</p>

		be selected by the State Government in consultation with the Chief Justice of the relevant State.
New provision	The Bill is silent on mediators immunity.	To be included. Rule 22 of the Mediation and Conciliation Rules, 2004 of the Delhi High Court to be incorporated can be the base for such provision.

Sir, we request your good self to consider the above recommendations and amend the Mediation Bill, 2021 suitably.

Look forward for your positive consideration.

Yours sincerely,



K. Bhasker Reddy  
President, FTCCI



# Mediation Bill, 2021

## Suggestions and Comments



Centre for  
Mediation and Conciliation



**At the outset, we would like to thank the esteemed members of the honorable Parliamentary Standing Committee for giving us the opportunity to provide our suggestions to the draft of the Mediation Bill, 2021 (“Mediation Bill”).**

**The suggestions that are being presented today is the collective effort of members of the Centre for Mediation and Conciliation (“CMC”). The members of CMC come from diverse backgrounds and include mediators, lawyers, representatives of the industry, etc. Some of our members are part of other mediation organizations, such as Mediators India and they have brought the collective wisdom of their respective organizations, while putting together the views of CMC with respect to the Mediation Bill.**

**The suggestions being presented today are limited to key issues that we feel need to be addressed in the Mediation Bill. The changes to the draft Mediation Bill have been prepared by Mediators India, with inputs from several of the members of CMC and therefore CMC endorses the said draft Mediation Bill.**

# OVERVIEW OF THE CONCERNS THAT WE WOULD LIKE TO ADDRESS

- **Constitution of the Mediation Council;**
- **First Schedule (Excluded Matters);**
- **Singapore Convention;**
- **Period for Challenge;**
- **Jurisdiction;**
- **Registration;**
- **Termination, Immunity and Being called as a Witness;**
- **Mediator to lack authority to impose;**
- **Second Schedule (read with Section 56) - overriding effect;**
- **Amendment to other legislations (including Schedule 7, 8 and 9);**
- **Online Mediation;**
- **Community Mediation;**
- **Procedural delays**





# MEDIATION COUNCIL

- All the members of the Council should be knowledgeable in mediation and should understand the issues and concerns pertaining to mediation. This does not come through in the Mediation Bill.
- Further, the term should be long enough to ensure continuity and short enough to ensure that there are no legacy issues.

• *Suggestion: We suggest that the Council comprise of 9 (nine) members that includes 3 mediators. Further, we suggest that the Chairperson be appointed by the Central Government in consultation with the Chief Justice of India and the mediator members be appointed by the Chief Justice of India.*

• *Additionally, we suggest that the term of the members be reduced to 3 (three) years.*



# FIRST SCHEDULE

- Limitation of the powers of the Court to refer matters to mediation – In the current legal landscape, the Court has the power and discretion to refer any matter to mediation, depending on the facts and circumstances. However, the Mediation Bill empowers the Courts to do so only in compoundable matters.
- Parties tend to forum shop and criminal allegations and allegations of fraud, coercion etc are common even in civil / commercial disputes. Matters such as cheque bouncing, matrimonial matters (dowry harassment ), corporate-criminal matters (e.g. oppression mismanagement), civil-criminal matters (family disputes) would all be excluded from mediation if the First Schedule is not amended.
- *Suggestion: Parties be able to mediate on matters that are compoundable without requiring permission of the court.*
- *For other matters, the Bill to (i) enable an authority before whom a dispute is pending to refer the matter for mediation, either suo moto or upon joint application by the parties; and (ii) provide that any such mediated settlement agreement would need to be confirmed by the court and such court to have the power to strike down the mediated settlement agreement if the same is against public policy or is violative of the law.*
- Rights of a third party are provided for in the First Schedule. It is important that the rights of third parties (who are not mediating parties) are safeguarded.
- *Suggestion: A separate provision be incorporated for the same in Section 22 (5) and Section 28 and it be deleted from the First Schedule.*

# ENFORCEABILITY OF MEDIATED SETTLEMENT AGREEMENTS, WHERE MEDIATION PROCEEDINGS TAKE PLACE OUTSIDE INDIA

- The draft Mediation Bill, 2021 (“Mediation Bill”) only deals with mediations that are conducted in India. It does not apply to mediations that take place outside of India, but need to be enforced in India.
- India is a signatory to the United Nations Convention on International Settlement Agreements Resulting from Mediation (“Singapore Convention”) but is yet to ratify the same. To enable India to ratify the Singapore Convention and ensure that international mediated settlement agreements are enforceable under the Singapore Convention, India needs to have a law that would provide for such enforceability.
- *Suggestion: While some countries such as Singapore have two legislations (one for domestic mediation) and the other for enforceability of international mediated settlement agreements under the Singapore Convention, it is suggested that there be one legislation that deals with both (i) domestic mediation and enforceability of domestic mediated settlement agreements; and (ii) enforceability of mediated settlement agreements outside India (which includes both Convention and non-Convention Countries).*

## **ENFORCEABILITY OF INTERNATIONAL COMMERCIAL MEDIATED SETTLEMENT AGREEMENTS FOR MEDIATIONS CONDUCTED IN INDIA, UNDER THE SINGAPORE CONVENTION, IN A MEMBER STATE COUNTRY**

- Section 28 (2) - a mediated settlement agreement is enforceable as if it were a judgment or decree passed by a court. This would also be applicable to international commercial mediation that take place in India.
- Section 3 (a) (ii) of the Singapore Convention - the Singapore Convention does not apply to settlement agreements concluded during court proceedings that are enforceable as a judgment in the State of that court.
- Parties should not lose the benefit of the Singapore Convention only because the mediated settlement agreement is construed to be a judgment of a court in India.
- *Suggestion: It would be advisable that the legislation enables parties to a international commercial mediation that was conducted in India to have the same enforced under the Singapore Convention before the courts of other member countries, else India will lose out on being a hub for such mediations.*

# PERIOD OF CHALLENGE

- Section 29 (3) The period of limitation for challenge is 90 days (or the extension of 90 days) from the date of receipt of the mediated settlement agreement and not the actual cause of action.
- A mediated settlement agreement does not always include a one time payment / performance obligation. Very often, the obligations are spread over a period of time.
- Further, the mediated settlement agreement may be based on certain confirmations/ representations/ statements made by the parties.
- There appears to be an assumption that any fraud, corruption, gross impropriety or impersonation would come to the knowledge of the parties within such limited period.
- Per Section 19 of the Indian Contract Act, when consent to an agreement is caused by coercion, fraud or misrepresentation, it becomes voidable at the option of the party whose consent was so caused.
- The Supreme Court, in Mohd. Noorul Hoda v. Bibi Raifunnisa and Others (1996) 7 SCC 767 Prem Singh v. Birbal, AIR 2006 SC 3608, Mohinder Singh Verma v. J P S Verma, 2015 AIR(CC) 3043 – Limitation period to be computed for cancellation of a transaction on the ground of coercion, under influence or fraud to be computed under Article 59 of the Limitation Act (i.e. 3 years from the date of knowledge)
- ***Suggestion: The limitation period to be computed from the date on which a party becomes aware of the fraud, corruption, gross impropriety or impersonation. Further, the limitation period to be reconciled with those as provided under the Limitation Act.***



# JURISDICTION

- Parties are free to choose the choice of law as well as jurisdiction that would govern disputes with respect to contracts that they execute.
- In the case of online mediation, jurisdiction would also determine whether it is a domestic mediation or an international mediation.
- Further, disputes are not always under the exclusive territorial jurisdiction of any one court and in some disputes (e.g. infringement, there could be more than one territorial jurisdiction).
- Section 15 should not dilute the freedom and flexibility of the parties, especially where the parties have contractually agreed on the jurisdiction. Even in online mediation, the choice of jurisdiction as contractually agreed should be honoured.
- *Suggestion: Section 15 to be modified to retain the flexibility of the parties to determine the jurisdiction for the purpose of resolution of disputes.*

# REGISTRATION

- By creating a requirement for registration of all mediated settlement agreements, an unwarranted layer of bureaucracy and formality is being introduced. It is not clear if such registration would be at an additional cost to the parties (such as registration fees) and what would be the consequence of non-registration, since the legislation states that it does not impact the enforceability.
- It may be noted that under the Arbitration and Conciliation Act, 1996 neither an arbitration award nor a conciliation award require any registration.
- *Suggestion: All provisions pertaining to registration to be deleted. The Mediation Bill already includes creation of an electronic depository. In the alternate, one of more depositories can be created, where a mediated settlement agreement can be voluntarily and without any compulsion be electronically uploaded at the discretion of the Parties. A mediation institute/mediation service provider possessing prescribed infrastructure could also be recognized as a depository. A unique depository number can be created, which would be shared only with the Parties and the mediator.*
- *Adequate provisions to safeguard the confidentiality of the mediated settlement agreement and the process would need to be implemented as well.*

# TERMINATION; IMMUNITY AND BEING A WITNESS

- Termination: Section 13 – Mediation is a voluntary process. A party is free to terminate the mediation at any time and the parties are free to change the mediator by mutual agreement.
- *Suggestion: Therefore, the justification of ground for termination of a mediator or the need for giving a mediator a fair hearing is not required.*
- Immunity: The immunity provisions for a mediator are not adequate.
- *Suggestion: A provision similar to that set out in the Mediation and Conciliation Rules, 2004 of the Delhi High Court to be incorporated.*
- Mediator as a witness: Per Section 19 (2) of the Mediation Bill, the parties can mutually agree to require a mediator to be a witness in legal proceedings. The mediation proceedings are confidential and there could be third party rights, which may get impacted if a mediator is to be called upon as a witness.
- *Suggestion: This provision is to be deleted. A mediator should not be called as a witness under any circumstance, even with the consent of the parties.*



# MEDIATOR TO LACK AUTHORITY TO IMPOSE

- A mediator needs to be neutral and should not have the ability to impose (directly or indirectly) a solution upon the parties. The Singapore Convention requires the mediator to be “lacking the authority to impose a solution upon the parties to the dispute.” This is a fundamental requirement of mediation.
- However, these words are absent in the definition of mediation under the draft Bill.
- *Suggestion: To keep the sanctity of the process of mediation and ensure that a settlement is truly voluntary, the words as used in the Singapore Convention to be included in the definition of mediation in the draft Bill as well.*

# SECOND SCHEDULE (OVERRIDING EFFECT)

- Section 56 - Subject to the enactments mentioned in the Second Schedule, the Mediation Bill to have an overriding effect for conduct of mediation or conciliation. Central Government can amend the Second Schedule.
- Section 56 only deals overriding effect for conduct of the mediation or conciliation and does not deal with any provisions for enforceability of any mediated settlement agreements pursuant to such mediation or conciliation.
- The legislations in the Second Schedule are (i) The Industrial Disputes Act, 1947; (ii) The Brahmaputra Board Act, 1980; (iii) The Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981; (iv) The Family Courts Act, 1984; (v) The Legal Services Authorities Act, 1987; (vi) The Maintenance and Welfare of Parents and Senior Citizen Act, 2007; (vii) The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; (viii) The Finance Act, 2016; and The Industrial Relations Code, 2020.
- Not all of the above legislations have provisions for conduct of mediation or conciliation.
- *Suggestion: The legislations as mentioned above are reviewed to ensure that adequate provisions for (i) conduct of mediation or conciliation are provided; and (ii) enforceability of mediated settlement agreements are captured. By way of illustration, while the The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 provides for the Internal Committee to resolve a sexual harassment complaint by conciliation if so requested by the victim, it does not provide for any mechanism on how such conciliation shall be conducted (including whether or not, the Internal Committee can act as conciliators or does it need to be before a neutral third party). The said legislation also does not specify the implications of a breach of any settlement agreement.*
- *Further, Section 56 (1) to be revised to be amended to include enforceability of a settlement agreement to also be as per the Mediation Bill.*



# AMENDMENT TO OTHER LEGISLATIONS (SEVENTH, EIGHTH AND NINETH SCHEDULE)



Centre for  
Mediation and Conciliation

- Seventh Schedule (MSME Act) - Para 2 of the Seventh Schedule enables the Facilitation Council to either mediate the dispute itself or refer the same to a service provider. Further, if mediation fails, then per Para 4, the Facilitation Council has the power to arbitrate the matter as well. *Suggestion: The same body who mediates should not be entitled to arbitrate as well since they would have access to privileged information during the course of mediation.*
- Eighth Schedule (Companies Act) - Per Section 6, a party before filing any suit or proceedings of civil or commercial nature in any court, shall take steps to settle the disputes by pre-litigation mediation. While, the Mediation Bill stipulates that such pre-litigation mediation for commercial disputes of Specified Value would be undertaken in accordance with the provisions of section 12A of the Commercial Courts Act, 2015, it states that Section 6 would be applicable to only those tribunals that are notified by the Central Government or a State Government, as the case may be.
- The Mediation Bill, therefore does not contemplate application of Section 6 to matters before the NCLT/NCLAT unless the same is specifically notified. Per the Eighth Schedule, a party may seek reference of a matter to mediation or the NCLT/NCLAT may refer the matter for mediation.
- In a private mediation, the fees of the mediator would be as mutually agreed to between the parties. *Suggestion: Therefore, where there is a reference to mediation of a matter pending before the NCLT/NCLAT, the fees payable should be as mutually agreed between the Parties and the mediator.*
- Ninth Schedule (Commercial Courts Act) - The provisions of the Ninth Schedule limits the options of the parties to choose mediators. This is also in conflict with the provisions of Section 6 (3). *Suggestion: The choice of the parties with respect to choice of mediators with respect to commercial mediation to be as specified in Section 6 (3).*
- Others - The Mediation Bill does not make any amendments to the provisions of the Real Estate (Regulation and Development) Act, 2016 (“RERA”). Section 32 (g) of RERA requires the authority to take measures to facilitate amicable conciliation of disputes between the promoters and the allottees through dispute settlement forums set up by the consumer or promoter associations. No such mechanism has been provided, though some States have formed conciliation forums for such purpose. *Suggestion: It is suggested that the enforceability of the settlement agreements pursuant to such conciliation be enforceable as per the provisions of the Mediation Bill.*



# ONLINE MEDIATION

- Mediation is versatile and flexible and is also very informal. Mediation can be entire in physical mode or entirely remote (including online (video), text based (email, chat, etc), telephonic (audio calls)) or hybrid.
- Prescribing or over-prescribing the modalities and mechanisms that can be used for online mediation could take away the flexibility that is available with the parties in structuring the manner and process of mediation. By way of illustration: While a mediator may use encrypted electronic email, the parties may not (and they may not even be aware of what encrypted electronic email is). Even with video calls, access would depend on device as well as bandwidth.
- *Suggestion: Section 32 (2) be deleted and Section 32 (1) be limited to being an enabler without specifying the manner or mode of online mediation.*



# COMMUNITY MEDIATION

- Mediated Settlement Agreements arising out of community mediation also need to be enforceable. While, it may not be practical or sound for them to be measured with the same yardstick as civil or commercial mediations and be enforceable as a decree of the court, the Mediation Bill could allow the parties to approach the court to confirm the terms of the mediated settlement agreement and upon such confirmation, the mediated settlement agreement would be enforceable.
- Further, the Mediation Bill stipulates that community mediation can be undertaken only by 3 mediators who are empaneled by the Authority constituted under the Legal Services Authorities Act, 1987 or the District Magistrate or Sub-Divisional Magistrate. This takes away the right of the community members to appoint mediators of their choice in a community dispute.
- Further, grass-root mediation processes sometimes involves a larger number of people sitting as mediators. By limiting the number to 3, the community cultural / customary / freedom and flexibility is also limited.
- *Suggestion: The provisions of Chapter IX to be amended to (i) give the community members the choice of the mediators to be appointed; (ii) remove any limit on the number of mediators that may be appointed; and (iii) a mediated settlement agreement in a community mediation to be confirmed by a court for it to be enforceable as a judgment or decree of the court.*

# PROCEDURAL DELAYS

- While the intent of the Mediation Bill is noble, procedural delays in (i) referring a matter to pre-litigation mediation; (ii) appointment of a mediator, where the parties request the court to nominate a mediator; (iii) consent or confirmation of the court in confirming any mediated settlement agreement, would defeat the purpose of mediation and frustrate the parties.
- *Suggestion: The Mediation Bill to provide for timelines within which a court is to dispose matters pertaining to mediation.*



**QUESTIONS?**

**THANK YOU!**

**COMMENTS AND SUGGESTIONS ON  
THE  
DRAFT MEDIATION BILL 2021**

*Prepared by*

**CENTRE FOR ALTERNATE DISPUTE RESOLUTION  
(CADR)  
NATIONAL LAW UNIVERSITY DELHI**

**MARCH 22, 2022**



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## **INTRODUCTION**

**The Centre for ADR of the National Law University Delhi would like to express our heartfelt gratitude for the Parliamentary Committee on the Draft Bill to seek our comments on the Bill.**

**We are also very thankful to the Committee for accepting most of the suggestions which we had sent earlier in November 2021.**

**However, we have few concerns with the current Bill which we are submitting for your perusal.**

**In Part I, we submit few general comments on the Bill and in Part II we have provided section wise comments for the committee to consider.**

**The Honourable Vice Chancellor, Prof. (Dr.) S.K.D. Rao has convened a Faculty Seminar to discuss the Mediation Bill. The Directors from different Research Centres of NLU Delhi, involved in cutting edge research in niche areas, participated in the seminar and gave their valuable suggestions/comments on the Mediation Bill.**

**PART I**  
**GENERAL COMMENTS**

**I. Mandatory Pre-litigation Mediation**

1. It may be deleted because
  - a. Implementation of mandatory Pre-litigation mediation will put lot of pressure on the finances of the State.
  - b. Most of the countries provide for pre-litigation mediation in certain categories of disputes not in all civil cases.
  - c. It will add to the time and cost of litigation (if it is not offered free of cost).
  - d. It is difficult to have both/all the parties to participate in mediation at the pre-litigation stage.
2. If it has to be retained than
  - a. There must be specification of types of disputes or pecuniary limits for cases to go for mandatory pre-litigation mediation.
  - b. This provision can be introduced for a limited period of time.
  - c. There should be an active role of lawyers in these pre-litigation processes like in Italy.
  - d. We may instead of this, adopt few of the Pre-Action Protocols of England which can serve the purpose of cutting down time and cost of litigation. Mediation can be one of these Protocols.
  - e. We can instead introduce Pre-Litigation Judicial Settlement Conference or Pre-Trial Conference.
3. In case we delete pre-litigation mediation, than the Bill provides for Agreement to Mediate which is good step but we can also provide for stay of court proceedings in case of breach of an agreement to mediate like Section 8 of Singapore Mediation Act 2018.

**II. Confidentiality**

1. The mandatory requirement of registration and electronic depository of mediated settlement agreement is against the basic quality of mediation. None of the mediation laws, internationally, provide for mandatory registration or depository of settlement agreement.
2. Even if it has to be there than
  - a. It can be subject to party autonomy.
  - b. It can be specified that the registration will be similar to Wills and Power of Attorneys under the Registration Act.

**III. Exclusion of Disputes involving Government Bodies**

1. Under Section 2 (2) of the Bill, there is an exclusion of cases where government is a party. This is a cause of concern for us as government is the biggest litigator in our country and so like Singapore Mediation Act 2017 under section 5, the Act should be binding on government too. We feel there is no harm in giving a chance to mediation for settling disputes in which government is a party.

#### **IV. Exclusion of Court – Annexed Mediation and certain other mediations**

1. The Act does not create incentives to parties to opt for private mediations as there are very significant differences if parties go for private mediation and they undergo court annexed mediation programs.
2. Exclusion of court-annexed mediation and mediation under the Legal Service Authority Act does not serve the purpose of bringing a uniform law governing the practice of mediation.
3. Excluding court-annexed mediation would mean that mediation would continue to govern by different rules of different High Courts. For development of any system, there is a need of bringing uniformity. Also, the Rules of High Court governing mediation require serious reconsideration due to huge gap between the actual practice of mediation in Court-Annexed Mediation Centres and the provisions of the Rules<sup>1</sup>.
4. We can even include few matters related to tax, traffic challans, section 138 Negotiable Instruments Act, etc under Sec 6 and Sec. 7.

#### **V. Role of Legal Services Authority**

1. The purpose of creating Legal Service Authorities was completely different and the Bill has given the addition responsibility of administering mediation also to LSA. There is a need of some level of expertise which will be required for administering mediation services, if the country wants to maintain the quality of mediation services. Also, when the Bill recognises the Mediation Service Providers and also court annexed mediation Centre, etc., than there is no need of creating multiplicity of authorities to implement the mandate of the Act.
2. We may promote state funded mediation services like Delhi Dispute Resolution Society to administer mediation services.

#### **VI. List of Exclusions**

1. Exclusions are very widely worded. There is a scope of litigation on the issue of exclusions which is not the purpose of the Bill. For promoting use of mediation, the exclusions should be less and clearly stated.
2. There is a cause of concern as at what stage and who will decide whether the dispute comes under prohibited category or not, is it the mediator or the Mediation Service Provider or the court.

#### **VII. International Commercial Mediation (ICM)**

1. **Definition of the word “commercial” is different from the Singapore Convention.** Recently, few High Courts have passed some very contradictory judgments on the meaning of “commercial” (Investment disputes are not considered to be commercial disputes)<sup>2</sup>.

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<sup>1</sup> Ruhi Paul, “Need to Re – Look into the Rules Governing Mediation”, M.D.U, Vol. XIX, July 2017, ISSN:2230-746X

<sup>2</sup> *UOI v. Vodafone group PLC*, CS (OS) 383/2017 DHC

2. **List of exclusions:** The Act only provides for International Commercial Mediation. Online dispute resolution has worked wonderfully with consumer disputes. All of these disputes are excluded currently under the Bill whereas these kinds of international disputes - including personal disputes, disputes related to employment, succession, marriage and custody - often settled easily.
3. The Bill does not provide for enforcement of International mediated settlement agreement.

#### VIII. **Grounds Of Challenge**

1. No need of grounds of challenging the settlement agreement like Section 96 CPC provides no right of appeal against a consent decree. Agreement entered under section 89 will be final but agreement entered under Mediation Act can be challenged.
2. We need to clearly define accountability/duties of parties, how mediator has to conduct the process, Mediator's privilege, etc to avoid challenges in the court, else there will be lot of scope of judicial interpretation which will dilute the purpose of mediation as an alternative to courts and give rise to satellite litigation.
3. Fraud as a ground has been a ground of litigation in arbitration matters also<sup>3</sup>. Internationally, fraud cannot vitiate the arbitration agreement unless it is very specific and serious. So, we need to clarify what types of fraud would be a ground for challenge of settlement agreements.
4. The Bill doesn't provide for automatic stay (or no stay) of the enforcement of mediated settlement agreement in case of a challenge.

#### IX. **Community Mediation**

1. The long title of the Bill says that the Bill provides for enforcement of mediated settlement agreement but the same is not the case in community mediation.

#### X. **Consumer Mediation**

1. Under Section 38 of the Consumer Protection Act, the maximum time for disposal of a consumer complaint is 5 months. The Bill will increase the time of disposal of complaints.
2. Under Rule 7 of Consumer Protection (Consumer Disputes Redressal Commissions) Rules 2020, the maximum fee is Rs. 7500. The cost may also increase under the Bill.

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<sup>3</sup> A. Ayyasamy v. A. Paramasivam and Ors. (2016), Avitel Post Studios Limited and Ors. v. HSBC PI Holdings (Mauritius) Limited and Ors. (2020), Ameet Lalchand Shah v. Rishabh Enterprises (2018), Vidya Drolia v. Durga Trading Corporation (2021), etc.

**PART II**  
**SPECIFIC COMMENTS**

**SECTION WISE COMMENTS**

1. **Section 2(2)** – Disputes in which government is a party should be included (like Singapore Mediation Act) with some exclusions (if needed).
2. **Section 3(f)** - International mediation may be commercial as well as non-commercial (discussed above) as the Preamble to the Bill talks about mediation which is commercial or otherwise. Though the Singapore Convention only talks about commercial mediation but that doesn't mean that we can not include other types in our law.
3. **Section 6** – May be deleted or amended (as discussed in General Comments).
4. **Section 7** – If we refer to Schedule I,
  - a. Instead of Entry 1, we can just have list of disputes which are excluded.
  - b. in view of entry no.1 we can do away with entry no.5 (which has words like public policy, morality, etc) as it has already been a source of lot of litigation and repeated amendments under section 34/48 of the Arbitration Act of India.
  - c. In respect of entry 3, it is no needed to be completely excluded from mediation but we could add that such agreements have to be submitted to the court for approval and court has to ensure the best interest of the legally incapable person as is done under Order XXXII CPC.
  - d. Entry 7 doesnot make any sense as in mediation, all the parties which have some interest are considered to be party to the dispute and we do not have necessary party like in litigation. Even the definition of party in the Bill is wide enough.
5. **Section 8** – There should be some time limit within which to commence mediation process after the interim relief is granted by the court/tribunal like section 9 of the Arbitration Act.
6. **Section 9 (1)** – Under Section 89 CPC, the consent of parties is not needed for referring them to mediation.
7. **Section 10 (1)** – There can be a provision that in case sole mediator in International Mediation, the mediator may be of national other than the nationality of the parties to ensure neutrality.
8. **Section 13 (ii)** - there is no need to allow “any other person” to be able to challenge the mandate of a mediator.
9. **Section 20(1)** - Making 2 sessions mandatory is against the philosophy of mediation and it will just add up to the litigation time.
  - This may be needed for pre-
10. **Section 21**- There is no need of blanket rule of 6 months' time for mediation for all types of cases. We may say that maximum time is six months within which mediation has to be completed.

11. **Section 21(2)** – both clauses talk about 180 days. So, we think there is a typographical error in clause 2.
12. **Section 22** – Neither the Singapore Convention nor the Singapore Mediation Act 2017 provides for mandatory registration of settlement agreement. This is against the confidential nature of the proceedings. It should be depending upon the will of the parties whether they want to register the agreement or not.
13. **Section 22 (3)** – The phrase “failure report” may be deleted and instead it may be provided that the mediator may send the case back as not settled.
14. **Section 22 (8)** – Is not clear.
15. **Section 26** – There is no need to exclude court annexed mediation from the Bill due to reasons discussed above in general comments section.
16. **Section 26(4)** - It was never mandatory to submit the agreement to the court under Section 89 CPC in view of the confidentiality of the process. It was depending upon the will of the parties and if parties choose to submit the agreement than under Order XXIII CPC court could pass a consent decree.
17. **Section 29 (2)** - The ground of impersonation is vague and it is not clear what sort of and whose impersonation is being required here. Anyways, it can be included in fraud also. Also, the ground of fraud is also very vague and it can be main ground for challenging the agreements. The grounds are not in sync with the Mediation Convention or the Singapore Mediation Act.
18. **Section 29 (3)** – Time period is too short in cases of fraud as sometimes fraud is discovered much later. Even under Section 17 of the Limitation Act, time period start from the date of discovery of fraud or mistake or the date when parties could have discovered it. So, some such clause should be added here also.
19. **Section 30** – The fee should not be left at the discretion of parties as it can lead to exploitation in cases of imbalance of power between parties.
20. **Section 32** – There is a need to reframe the section as it is not clearly drafted. The language of the previous Bill was still better.
21. **Section 34** – For eligibility for the Council, expertise in Mediation should be mentioned as if experience in ADR is the criteria than experts in Arbitration will be selected as ADR in India still mean arbitration whereas Arbitration and Mediation is completely different from each other.
22. **Section 40** – Neither the Mediation Convention nor the Singapore Mediation Act provides for electronic depository of mediated settlement agreements. In view of confidentiality of the process, there is no need of making registration and digital depository mandatory. These should be voluntary and only for the purpose of enforcement of the settlement. Even most of the Arbitral Institutions doesn't publish the arbitral awards.
23. **Section 44 (2)** – Instead of DM and SDM, community mediation can be administered by mediation service providers or govt. mediation services like Delhi Dispute Resolution Society of Delhi. The

SDM and DM may refer such disputes to mediation but they may not be the appropriate authority to administer mediation services.

24. **Section 44 (5)** – It should be mandatory for these lay people to undergo mediation training programs before they could act as mediators.
25. **Section 45** – There is no need of having a panel of three mediators for all types of community disputes as having more mediators will make it less cost and time efficient.
26. **Schedule V** – We should not use mediation and conciliation as the purpose of this Bill is to put an end to the confusion between mediation and conciliation.

**Submitted by Centre for ADR**



**Prof. (Dr.) Ruhi Paul**  
**(Director, Centre for ADR, NLU Delhi)**

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## SCHOOL OF LAW

14.02.2022

To,  
Shri. Goutam Kumar  
Deputy Secretary  
Rajya Sabha Secretariat  
New Delhi – 110001  
[rs-memocpers@sansad.nic.in](mailto:rs-memocpers@sansad.nic.in)

*Reference:* Press Communique dated 28<sup>th</sup> January 2022 with the subject Department-Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice examining “*The Mediation Bill 2021*”

Dear Sir,

Greetings from UPES School of Law. We are a recognised Center for Legal Education under the UPES University situated in the State of Uttarakhand. Pursuant to the aforesaid public invitation to submit comments on the proposed “*The Mediation Bill 2021*”, our Alternate Dispute Resolution Society of the Law School would like to submit its views on the proposed Bill on behalf of School of Law, UPES, Dehradun.

Comments in Annexure 1 are submitted for kind consideration of the Hon’ble Members of the Parliamentary Standing Committee. Undersigned is a trained mediator from ICADR and has been instrumental in launching the 40 Hours mediation training for commercial mediators while working at IICA. More than hundred commercial mediators were trained many of which got empanelled under Section 442 of the Companies Act. It would be my pleasure to appear before the Hon’ble Committee as a witness to present my views on the Mediation Bill.

Thanking you for your kind consideration

Sincerely

**Dr. Vijay Kumar Singh**  
Professor & Dean  
School of Law, UPES Dehradun  
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9891500707

## ANNEXURE 1

At the outset, we would like to complement the Government for bringing in this much awaited Mediation Bill to be considered by the stakeholders. Mediation is emerging as one of the important dispute resolution mechanism which provides for a win-win solution for the parties at loggerhead. It provides for a treatment of dispute not at superficial level but goes deep into the iceberg to find out the warring interests and addresses the core of the dispute through a trained mediator.

The Bill has been well drafted to support institutional mediation and calls for appreciation, however, as it is said, there is always a scope of improvement, the Parliamentary Committee may like to consider and deliberate upon the following inputs:

Clause	Proposed	Comments
2(2)	<p>(2) The provisions of sub-section (1) shall not apply wherein one of the parties to the dispute is the Central Government or a State Government, or agencies, public bodies, corporations and local bodies, including entities controlled or owned by such Government, except where the matter pertains to a commercial dispute:                      Provided that nothing shall prevent the Central Government or a State Government from notifying, such kind of dispute, as it deems appropriate for such Government, for resolution through mediation under this Act, wherein such Government, or agencies, public bodies, corporations and local bodies including entities controlled or owned by them, is a party.</p>	<p>Govt. is considered to be the biggest litigant in the country. Courts have several times highlighted this issue to the extent that the Chief Justice of Calcutta High Court had said “90% of the litigation against the government could be avoided if the government functionary gave relief to the litigant at the stage of notice instead of dragging the litigation on.” Ministry of Law and Justice 2017 report shows 46% of the cases entering judicial system are coming from the Govt.</p> <p>The exclusion of this law wherein one of the parties to the dispute is the Central Govt., State Govt. etc. will be antithesis to the avowed objective of promoting mediation in dispute resolution. While the proviso provides for Govt. notifying the cases which would be appropriate for mediation. Ideally, the negative list shall be provided (as listed under First Schedule) and all other matters shall be available for resolution through mediation.</p> <p>In fact Government Departments must understand the virtues of this form of dispute resolution and promote it in its National Litigation Policy (rather it should be renamed as National Dispute Resolution Policy)</p>
4	<p>4. Mediation shall be a process, whether referred to by the expression mediation,</p>	<p>Using mediation and conciliation together may be confusing. These are terms with different purport. In Para 12</p>

	<p>pre-litigation mediation, online mediation, community mediation, <b>conciliation</b> or an expression of similar import, whereby party or parties, request a third person referred to as mediator or mediation service provider to assist them in their attempt to reach an amicable settlement of a dispute.</p> <p>Section 18 – Role of a mediator  <b>18.</b> (1) The mediator shall attempt to facilitate... exploring areas of compromise and generating options in an attempt to resolve the dispute expeditiously..."</p>	<p>of the <i>Afcons</i> decision actually a reference is drawn to Black’s Law Dictionary to say that ‘it is (mediation) also a synonym of the term conciliation’; however, it may be noted that the focus of the discussion in that para is not difference between mediation and conciliation. The focus is as to the difference between ‘judicial settlement’ and ‘mediation’. However, I feel nothing prevents a conciliator to adopt mediation as a technique. Conciliation is separately addressed in para 35 of <i>Afcons</i> decision. In fact, according to <i>Justice R.V. Raveendran</i> who wrote <i>Afcons</i>, there is a difference between mediation and conciliation in a degree of professional training, i.e. “where the conciliator is a professional trained in the art of mediation (as contrasted from a layman, friend, relative, well-wisher, or social worker acting as a conciliator), the process of conciliation is referred to as mediation. In cases where the third party assisting the parties to arrive at a settlement is not a trained professional mediator, the process is referred to as conciliation” [(2007) 4 SCC J23]</p> <p>Supreme Court in its Training Manual on Mediation has also differentiated between the terms.</p> <p>Role of the mediator may not include generating options in an attempt to resolve the dispute. The evaluative role of the mediator is limited to guiding the parties towards the options which parties generate unlike conciliation wherein the conciliator may propose solutions.</p>
2(1), 3(f)	International Mediation	<p>India has not yet ratified the United Nations Convention on International Settlement Agreements Resulting from Mediation – Singapore Convention</p> <p>Clause 10 – a person of any nationality may be appointed as a mediator... will there be any requirement of reciprocity as it is with the law professionals.</p> <p>Some more guidance is needed on this.</p>

15	Seat of Mediation: Territorial jurisdiction to undertake mediation	One of the major issues in arbitration related to the ‘seat’ and ‘venue’ of arbitration. The conduct of mediation (seat) shall be made territory neutral and statute shall not suggest that mediation shall be conducted within the territorial jurisdiction of the court or tribunal of competent jurisdiction to decide the subject matter of the dispute. The question of seat of mediation shall only be made relevant at the stage of registration of ‘ <i>mediated settlement agreement</i> ’. Refer 22(7) covers the same
20(2)	<b>Mandatory mediation</b> (2) Where any party fails to attend the first two mediation sessions without any reasonable cause which resulted in the failure of mediation, the court or tribunal, in subsequent litigation on the same subject matter between the parties, may take the said conduct of such party into consideration and impose such costs as deems fit.	Shall be reviewed especially some guidance on grounds on which such costs may be imposed and how much costs? excessive discretion may be subject to misuse or challenge before courts  Moreover the whole concept of mandatory mediation needs a review
22	(3) Subject to the provisions of sections 26 and 27, the mediated settlement agreement so signed— (i) in case of institutional mediation, shall be submitted to the mediator, who shall, after authenticating the same and forward it with a covering letter signed by him, to the mediation service provider and also provide a copy to the parties; (ii) in all other cases, shall be submitted to the mediator who shall, after authenticating the settlement agreement, provide a copy to all the parties	It shall be clarified who would submit to the mediator... parties? Or the mediator shall submit the mediated settlement agreement to the institutional mediation service provider...  Construction needs a review
22(7)	(9) The registration referred to in sub-section (7) shall be made by the parties, mediator or mediation service provider within a period of one hundred and eighty days from the date of receipt of <u>authorlicated</u>	A typo... shall read “ <i>authenticated copy</i> ”

	copy of mediated settlement agreement:	
24(1)	Provided that nothing in this section and section 23 shall protect from disclosure, information sought or provided to prove or dispute a claim or complaint of professional misconduct of mediator or malpractice based on conduct occurring during the mediation	However, such disclosure shall also be kept confidential by the Committee examining the professional misconduct and not made public
23	Confidentiality	Confidentiality forms a very important element for the practice of mediation. Narrowing the construct of confidentiality with specifying the matters which requires to be kept confidential in section 23 (1) may not be desirable. Just a statement that the whole mediation proceedings shall be kept confidential will be sufficient
24	(2) There shall be no privilege or confidentiality that will attach to— (a) a threat or statement of a plan to commit an offence punishable under any law for the time being in force; (b) information relating to domestic violence or child abuse; and (c) statements made during a mediation showing a significant imminent threat to public health or safety.	Will there be a duty upon the mediator to disclose such information made in clause (2) of 24  Reference 126 of the Evidence Act
29	<b>Challenge to mediation</b> (2) A mediated settlement agreement may be challenged only on all or any of the following grounds, namely:— (i) fraud; (ii) corruption; (iii) impersonation; (iv) where the mediation was conducted in disputes or matters not fit for mediation under section 7. (3) An application for challenging the mediated settlement agreement <i>shall not be made after ninety days have elapsed from the date on which the party making that application has received the copy of mediated settlement agreement</i> under sub-section (3) of section 22	The limitation of 90 days from the date on which the party making that application has received the copy of mediated settlement agreement shall be from the date on which the party making the application discovers that the mediated settlement agreement has been obtained through fraud, or by corruption or impersonation.  It is not necessary that these grounds gets found out within 90 days.

33	<p>33. (1) The Central Government shall, by notification, establish for the purposes of this Act, a Council to be known as the <b>Mediation Council</b> of India to perform the duties and discharge the functions under this Act</p>	<p>The mediation council shall be a professional body and adequate representation of professional mediators on the governing body of the Council</p> <p>Is there a necessity to have secretary, GOI department of expenditure ministry of finance?</p> <p>The Council shall have professional Advisory Boards to function in specified areas like recognition of mediation service providers / mediation institutes etc. on the lines of IBBI</p>
40	<p>Duties and Functions of the Council</p> <p>Advocacy as a specific duty/function</p>	<p>Advocacy and building a culture of pre-mediation for dispute resolution shall specifically be mentioned like the Competition Act</p> <p>example – Section 49(3) of the Competition Act – Competition Advocacy</p> <p>(3) The Commission shall take suitable measures<sup>23</sup> [***] for the promotion of competition advocacy, creating awareness and imparting training about competition issues. "(1) In formulating a policy on competition (including review of laws related to competition), the Central Government may make a reference to the Commission for its opinion on possible effect of such policy on competition and on receipt of such a reference, the Commission shall, within sixty days of making such reference, give its opinion to the Central Government, which may thereafter formulate the policy as it deems fit."</p>
42	<p>Mediation Service Providers - Functions</p>	<p>These entities would also act as Self-Regulatory Organisations and would bring in competition in providing service of mediation.</p> <p>There shall be a registration mechanism of Mediation Service Provider on the lines of Insolvency Professional Agencies under the IBC 2016</p>
44	<p>Community Mediation</p>	<p>The proposed Bill has not looked at the integration with the Gram Nyayalayas Act of 2008. Mediation would be very</p>

		useful in resolving disputes at the village level and would greatly contribute in bringing community harmony. Shall be looked into.
	Bringing members of Bar Council of India on Board	<p>In UK, because of the Court of Appeal judgment in <i>Halsey v Milton Keynes</i> [2004] EWCA (Civ) 576, legal advisers must ensure that they not only know about mediation but that they are able to and do advise their clients before and during litigation (including arbitration) whether to use mediation and, if so, when to do so. Equally legal advisers must be able to protect their clients (and themselves!) against an adverse cost order or suit if they decide not to try to resolve the dispute by mediation. I believe the major role in promoting mediation lies with the lawyers and judges. We need more champions of mediation in the Bar and Bench.</p> <p>Bar Council has already extended the support in mandating Mediation as a full-fledged course for lawyers. There shall be a formal integration by way of including a member of Bar Council in the proposed Mediation Council.</p>
	<p><b>Financial Memorandum</b></p> <p>10. It is estimated that the proposed law when passed would entail an expenditure of approximately twenty-one crores one lakh fifteen thousand thirty-six rupees in the first year, twenty crores ninety-nine lakhs nine thousand forty in the second year, twenty-three crores sixteen lakhs seven thousand one hundred ninety-four in the third year of establishment of Council as initial establishment expenses, including salaries and allowances and other remuneration of Chairperson, Full-Time Member, Part-Time Member and its officers and other employees.</p>	<p>Whether the machinery established under the Mediation Law is supposed to be self-sufficient after 3 years... if yes, statement to that effect</p>

Mediation is a “*swachh dispute resolution*” mechanism, in terms of providing a win-win solution and eradication of the root cause of dispute with a reasonably complete satisfaction to the parties. The key stakeholders of justice delivery system (majority of lawyers and judges) have a great role in holding back mediation in India other than the consumer’s lack of awareness. This is evident from the surveys which have shown that still majority of the legal practitioners would treat mediation, conciliation, arbitrations into the same class irrespective of their differences and peculiarities. Thus, virtues of mediation remain unexplained to the disputants. It is a violation of one of the six consumer rights, i.e. right to choose which can only be exercised by information and knowledge about mediation. This is just like a supermarket in which the cheaper items are kept higher on the shelf so that it does not immediately catch attention of the buyer; the best brands and products are kept in the middle to the eye-level. In the justice delivery supermarket, the options of dispute resolution are presented accordingly as arbitration on the middle of the shelf, followed by litigation and conciliation and mediation somewhere lying in the sack which only comes out when the consumer asks for it<sup>1</sup>.

**Prof. (Dr.) Vijay Kumar Singh**

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<sup>1</sup> JOINT SESSION with Dr. Vijay Kumar Singh,  
<https://indianmediationlaw.wordpress.com/2018/08/06/joint-session-with-dr-vijay-kumar-singh/>



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23-02-2022

To,  
Mr. Goutam Kumar  
Deputy Secretary  
Committee Section (PPG)  
Department-related to Parliamentary Standing Committee on  
Personnel, Public Grievances, Law and Justice  
Rajya Sabha Secretariat, Parliament of India

Dear Mr. Kumar

Subject: Vidhi Centre for Legal Policy's comments on the Mediation Bill, 2021.

With reference to your email dated 11 February, 2022, I am pleased to share with you Vidhi Centre for Legal Policy's comments on the Mediation Bill, 2021. I would like to thank you for the opportunity to share our recommendations on this important Bill, that will shape the mediation landscape in our country for the years to come.

Over the years, the Justice, Access and Lowering Delays in India (JALDI) Initiative at Vidhi has been actively engaging with the issue of promoting mediation in India and has published reports and papers on the same.

We have gone through the Bill thoroughly and before commenting on specific provisions, have outlined the principles which have guided our recommendations. We hope that the Standing Committee will find our suggestions useful.

I would also like to express our willingness to appear before the Standing Committee for tendering oral evidence.

I look forward to hearing from you.

Warm regards,

Deepika Kinhal  
Team Lead, JALDI and Senior Resident Fellow  
Vidhi Centre for Legal Policy

## Vidhi's Comments on Mediation Bill, 2021

Mediation is a time and cost-effective mode of dispute resolution which needs to be encouraged and promoted. [The Mediation Bill, 2021](#) (hereinafter '**Bill**') is a timely step in this direction. We hope that our recommendations will help make this Bill more effective and help achieve its stated objectives.

We are guided by the following key principles in commenting on the Bill:

1. **Clarity:** Clarity in the law means that the letter of the law conveys its intended meaning and the intent of the provisions are implementable. For instance, clear definitions for terms like "mediation", "domestic mediation" and "international mediation" will help reduce ambiguity in the application of the legislation. Further, clarity in the process for pre-litigation mediation (hereinafter '**PLM**') will ensure easier adoption and implementation.
2. **Confidentiality:** Confidentiality is a cornerstone of all mediation proceedings and outcomes. This needs to be prominently reflected across all provisions and under no circumstances can confidentiality be diluted.
3. **Party Autonomy:** Ensuring that parties have full autonomy to determine the course of mediation proceedings pertaining to their dispute is crucial to the success of mediation as a dispute resolution mechanism.
4. **Consistency:** There should be consistency within the provisions of the Bill and with other related legislations. The law should harmonise any conflicts with already existing legislations.
5. **Compliance with International Treaties:** It is important for any domestic law such as the Bill to conform to the requirements placed on India by virtue of being a signatory to an international convention. Since India is a party to the United Nations Convention on International Settlement Agreements Resulting from Mediation, 2018 (hereinafter '**Singapore Convention on Mediation**'), the provisions of the Bill should be consistent with the Singapore Convention on Mediation.

**Specific Suggestions on the Mediation Bill, 2021**

Clause	Issue	Recommendations	Suggested text
2. Application	In this clause, defining the terms “habitual resident” or “place of business” will bring greater clarity. The term “place of business” is a subject of high controversy in international taxation.	The terms “habitual resident” or “place of business” can be defined as per the definitions provided under <a href="#">the Foreign Exchange Management Act, 1999 (FEMA) which clearly defines a person resident in India and a person resident outside India.</a> This shall also resolve the new problem of companies incorporated in International Finance Service Centres of India (IFSC) which are technically incorporated in India but enjoy the privilege of a person resident outside India under FEMA.	Section 2(v) of <a href="#">FEMA</a> defines “person resident in India” while section 2(w) defines “person resident outside India”. Instead of "habitual resident" the term "person resident in India" as defined in Section 2(v) of <a href="#">FEMA</a> should be used. The new clause would thus read: “(1) Subject to sub-section (2), this Act shall apply where mediation is conducted in India, and— (i) all or both parties are persons resident in India or are incorporated in or have their business in India; or (ii) the mediation agreement provides that any dispute shall be resolved in accordance with the provisions of this Act; or (iii) there is an international mediation. Explanation I: “Place of business” will have the same meaning as Section 2(85) of the Goods and Services Act, 2017. Explanation I: “Person resident in India” will have the same meaning as Section 2(v) of the Foreign Exchange Management Act, 1999.”

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<p>3. Definitions (f)</p>	<p>This clause defines "international mediation" as "mediation undertaken under this Act and relates to a commercial dispute arising out of a legal relationship, contractual or otherwise, under any law for the time being in force in India, and where at least one of the parties, is— (i) an individual who is a national of, or habitually resides in, any country other than India; or (ii) a body corporate including a Limited Liability Partnership of any nature, with its place of business outside India; or (iii) an association or body of individuals whose place of business is outside India; or (iv) the Government of a foreign country."</p> <p>By limiting the definition of international mediation to only commercial disputes, the Bill creates a grey area for international disputes of non-commercial nature. For instance, custody disputes where one parent is resident in a foreign country or non-commercial disputes that have arisen under a foreign law.</p>	<p>There is a need to clarify what would happen to international disputes that are of a non-commercial nature. Further, like clause 2, this clause also uses the terms "place of business" and "habitually resides" without clearly defining what they mean. By defining and replacing these terms as suggested above, the possibility of litigation on the exact meaning of these terms could be limited.</p>	<p>Clause 3(f): "international mediation" means mediation undertaken under this Act and arising out of a legal relationship, contractual or otherwise, under any law for the time being in force in India, and where at least one of the parties, is— (i) an individual who is a national of, or habitually resides in, any country other than India; or (ii) a body corporate including a Limited Liability Partnership of any nature, with its place of business outside India; or (iii) an association or body of individuals whose place of business is outside India; or (iv) the Government of a foreign country."</p>
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<p>3. Definitions (l)</p>	<p>According to this clause, "mediation service provider" means a body or organisation that provides for the conduct of mediation under this Act and rules and regulations made thereunder, and <b>are</b> recognised by the Council.</p> <p>There is a grammatical error in this clause.</p>	<p>Replace "are" with "is".</p>	<p>"mediation service provider" means a body or organisation that provides for the conduct of mediation under this Act and rules and regulations made thereunder, and <b>is</b> recognised by the Council.</p>
<p>4. Mediation</p>	<p>The definition of Mediation used in the Bill is "a process, whether referred to by the expression mediation, pre-litigation mediation, online mediation, community mediation, conciliation or an expression of similar import, whereby party or parties, request a third person referred to as mediator or mediation service provider to assist them in their attempt to reach an amicable settlement of a dispute."</p> <p>This definition does not correspond to the definition under the Singapore Convention. The definition under the Singapore Convention clearly specifies that the mediator lacks the authority to impose a solution upon the parties to the dispute. This should</p>	<p>The definition of Mediation under Article 2(3) of the <a href="#">Singapore Convention</a> should be used after suitable modification (if required) for the Indian context. Since India is a signatory to the Convention dated 20 December, 2018, and the definition of mediation under it is an internationally recognised definition, it would be better to adopt that definition.</p>	<p>"Mediation" means a process, whether referred to by the expression mediation, pre-litigation mediation, online mediation, community mediation, conciliation or an expression of similar import, whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person or persons ("the mediator") lacking the authority to impose a solution upon the parties to the dispute.</p>

	<p>be reflected in the definition of mediation in the Draft Bill to emphasise the principle of party autonomy.</p>		
<p>6. Pre-Litigation Mediation (PLM)</p>	<p>This clause provides for mandatory PLM before filing any suit or proceedings of civil or commercial nature in any court. There are a number of issues with this provision. The push for mandatory PLM for “any suit or proceedings of civil or commercial nature in any court” would require a lot of capacity building of mediators and mediation service providers. At present, this capacity does not exist to make mediation mandatory for all such disputes.</p> <p>The clause does not provide for parties to opt-out of PLM even if there is a valid reason for it. This runs the risk of parties participating in PLM as a mechanical exercise thereby wasting the limited resources currently available for mediation.</p>	<ol style="list-style-type: none"> <li>1. Mandatory mediation should be introduced with a “soft” approach.</li> <li>2. The Bill should clearly state that parties can opt-out of PLM after the first session in this clause. While clause 20(1) provides for opting-out of mediation any time after the first two mediation sessions, it does not specifically deal with the constraints involved at the pre-litigation stage. The option to opt out immediately after the first two sessions could make parties voluntarily participate in PLM. The opt-out provision should form a part of clause 6.</li> <li>3. Making mediation mandatory before approaching the courts for relief is beset with certain challenges that should be accounted for. For instance, capacity building of mediators and mediation institutions is extremely important before mediation is made mandatory in India.</li> <li>4. Mandatory PLM should be introduced in a phased manner</li> </ol>	<p>Clause 6(1): “Subject to other provisions of this Act, whether any mediation agreement exists or not, any party before filing cases identified in Schedule __, on the basis of rules made in this regard by the Council and the Central Government from time to time, shall take steps to settle the disputes by pre-litigation mediation in accordance with the provisions of this Act:”</p>

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	Further, there is no clarity on the types of disputes that can be the subject of mandatory PLM making this an impractical proposition given the lack of trained mediators to cater to all varieties of cases that could be subjected to PLM.	<p>instead of introducing it with immediate effect for all civil and commercial disputes. As a starting point, the challenges faced in implementing PLM under the Commercial Courts Act, 2015 should be studied before mandating it across other case categories.</p> <p>5. The Bill should provide a list of types of disputes that can be subject to mandatory PLM in a Schedule.</p> <p>6. Access to justice concerns that arise in case of mandatory mediation need to be addressed, especially in cases where the parties are unwilling to mediate.</p>	
7. Disputes or matters not fit for mediation.	There is a spelling error in the second proviso of this clause.	Replace “judgement” with “judgment”.	The second proviso will thus read: “Provided further that the outcome of such mediation shall not be deemed to be a <b>judgment</b> or decree of court referred to in sub-section (2) of section 28, and shall be further considered by the court in accordance with the law for the time being in force.”
8. Interim relief by Court or Tribunal	This clause deals with urgent interim relief measures and sub-clause (2) says, “The court or tribunal shall after granting or rejecting urgent interim	The expression “if deemed appropriate” should be deleted.	Sub-clause (2): “The court or tribunal shall after granting or rejecting urgent interim relief, as the case may be, refer the

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	<p>relief, as the case may be, refer the parties to undertake mediation to resolve the dispute, <b>if deemed appropriate.</b>"</p> <p>The expression "if deemed appropriate" is unnecessary since opting out of mediation is an option vested in the parties.</p>		<p>parties to undertake mediation to resolve the dispute."</p>
<p>14. Replacement of mediator</p>	<p>The time period for appointment of a new mediator in both ad-hoc and institutional mediation is the same - 7 days since termination of the previous mediator.</p> <p>Given the practical constraints in appointing mediators in ad-hoc mediation, the time period for appointment of a new mediator may be extended to 14 days which may be extended to 30 days upon written agreement between the parties.</p>	<p>Under clause 14(ii), extend the time-period for appointment of new mediator from 7 day to 14 days, extendable to 30 days upon written agreement between the parties.</p>	<p>"14. Upon termination of the mandate of mediator— (i) in case of mediation other than institutional mediation under clause (ii) of sub-section (4) of section 12, the parties may, by mutual consent, appoint another mediator within a period of 7 days from such termination; and (ii) under section 13, the mediation service provider shall appoint another mediator from the panel maintained by it within 14 days, extendable to 30 days upon written agreement between the parties, from such termination."</p>
<p>15. Territorial jurisdiction to undertake mediation.</p>	<p>The clause deals with territorial jurisdiction to undertake mediation and provides that "Every mediation under this Act shall be undertaken within the territorial jurisdiction of the court or tribunal of competent</p>	<p>The clause should start by saying that "on the mutual consent of the parties, mediation proceedings can be conducted at any place". It can then add the point about territorial jurisdiction in case the parties fail to agree on a place. The</p>	<p>"15. On the mutual consent of the parties, mediation proceedings can be conducted at any place outside the territorial jurisdiction of the court or tribunal, or by way of online mediation.</p>



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	<p>jurisdiction to decide the subject matter of dispute: Provided that on the mutual consent of the parties, mediation may be conducted at any place outside the territorial jurisdiction of the court or tribunal, or by way of online mediation.”</p> <p>If the goal is to provide parties the freedom to mediate wherever they please, the first part of this clause seems to restrict this freedom.</p>	<p>provision should place primacy on providing freedom and flexibility to the parties.</p>	<p>If the parties fail to agree on a place, the mediation under this Act shall take place within the territorial jurisdiction of the Court or Tribunal of competent jurisdiction to decide the subject matter of dispute.”</p>
<p>20. Withdrawal by parties from mediation.</p>	<p>There is a grammatical error in this clause.</p>	<p>Add it after as in 20(2).</p>	<p>“20. (1) A party may withdraw from mediation at any time after the first two mediation sessions. (2) Where any party fails to attend the first two mediation sessions without any reasonable cause which resulted in the failure of mediation, the court or tribunal, in subsequent litigation on the same subject matter between the parties, may take the said conduct of such party into consideration and impose such costs as it deems fit.”</p>
<p>21. Time-limit for completion of mediation</p>	<p>The clause deals with the time limit for completion of mediation. It provides, “(1) Notwithstanding</p>	<p>Extension of a mediation beyond 180 days with the consent of the parties must be permitted.</p>	<p>“20. (1) Notwithstanding anything contained in any other law for the time being in force, mediation under this Act</p>

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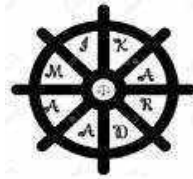
	<p>anything contained in any other law for the time being in force, mediation under this Act shall be completed within a period of one hundred and eighty days from the date fixed for the first appearance before the mediator.</p> <p>(2) The period for mediation mentioned under sub-clause (1) may be extended for a further period as agreed by the parties, but not exceeding one hundred and eighty days.</p> <p>There may be some complex cases where mediation may require more than 360 days and the parties should have the freedom to determine the same. Therefore, the period should be extendable as long as the parties to the mediation consent to it. This principle of party autonomy is not reflected in this clause.</p>		<p>shall be completed within a period of one hundred and eighty days from the date fixed for the first appearance before the mediator.</p> <p>(2) The period for mediation prescribed under sub-section (1) may be extended for a further period with the consent of parties.”</p>
<p>22. Mediated Settlement Agreement</p>	<p>This clause deals with Mediated Settlement Agreement. The expression “authenticated by the mediator” in clause 22(1) is not defined.</p> <p>Further, clause 22(4) addresses only situations of no agreement and no settlement. It is important to also</p>	<ol style="list-style-type: none"> <li>1. The expression “authenticated by the mediator” in clause 22(1) should be clearly defined to explain what would constitute authentication by the mediator.</li> <li>2. Situations of partial agreement or partial settlement should also be addressed by clause 22(4).</li> </ol>	<p>The text for this clause would have to be determined through further consultations.</p> <p>Replace “authorlicated” with “authenticated” in clause 22(9).</p>

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	address situations of partial agreement or partial settlement. There is a typographical error in clause 22(9) wherein “authenticated” is written as “authorlicated”.		
24. Admissibility and privilege against disclosure.	This provision does not mention parties to a mediation.	The word “party” should be added after “mediator or participant” in clause 24(1).	“23. (1) No mediator, <b>party</b> or participant in the mediation, including experts and advisers engaged for the purpose of the mediation and persons involved in the administration of the mediation, shall at any time be permitted, or compelled to disclose to any court or tribunal, or in any adjudicatory proceedings, by whatever description, any communication in mediation, or to state the contents or conditions of any document or nature or conduct of parties during mediation including the content of negotiations or offers or counter offers with which they have become acquainted during the mediation...”
29. Challenge to mediated settlement agreement	This clause deals with challenges to mediated settlement agreements. However, incapacity has not been included as one of the grounds for challenge.	Incapacity should also be added as a ground for challenge under clause 29(2) since incapacity is fatal to any agreement.	29(2) A mediated settlement agreement may be challenged only on all or any of the following grounds, namely:— (i) fraud; (ii) corruption; (iii) impersonation;

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			(iv) where the mediation was conducted in disputes or matters not fit for mediation under section 7; or (v) incapacity.
34. Composition of Council	This clause deals with the composition of the Mediation Council of India. Clause 34(1)(b) requires the said person to have expertise in mediation or ADR mechanisms. Providing for mediation “or” ADR mechanisms will still lead to the situation where someone without any expertise in mediation is appointed to the Council.	The law should ensure that any standard setting authority is truly independent in its constitution and functioning and composed of people with domain expertise. Clause 34(1)(b) should require the said person to have expertise in mediation <b>and</b> ADR mechanisms and not either of the two since there are vast variations in the requirements of mediation vis-a-vis arbitration.	34(1)(b) person having knowledge and experience in law related to mediation <b>and</b> alternate dispute resolution mechanisms, to be appointed by the Central Government –Full-Time Member;
44. Community mediation	This clause deals with community mediation. 44(5) provides who may be included in the mediation panel and does not specifically provide for inclusion of trained and qualified mediators from the community.	Clause 44(5) should explicitly provide that trained and qualified mediators from the community may also be included in the panel.	44(5) The following persons may be included in the panel referred to in sub-section (4)– (a) persons of standing and integrity who are respectable in the community; (b) any local person whose contribution to the society has been recognised; (c) representative of area or resident welfare associations; and (d) <b>Qualified mediators from the community.</b> (e) Any other person deemed appropriate.



# AMIKA

A Society for Alternative Dispute Resolution  
Mediators, Arbitrators, & Advocates  
Reg. No 416/2021

*(Registered under Section 3 of Societies Registration Act 2001 of Govt. of Telangana)*

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9676875789, 8096600333

**A Presentation on proposed Mediation Bill**

**Before**

**Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and  
Justice**

**29, March 2022, Parliament House, New Delhi**

# Definition: “ (j) Mediation Communication”

What is there?

"mediation communication" means communication made, whether in electronic form or otherwise, through—

- (i) anything said or done;
- (ii) any document; or
- (iii) any information provided,

What should be there?

**(iv) any letter or communication sent by the mediator or the mediation service provider or the court inviting a party to participate in the mediation.**

# Definition (k) “Mediation Institute”

## What is there?

"mediation institute" means a body, or organisation that provides training, continuous education and certification of mediators, and carries out such other functions under this Act;

## What should be there?

"mediation institute" means a body, a **registered society**, or an organisation that provides **mediation service**, training, continuous education, certification of mediators, **accreditation**, and carries out such other functions under this Act;

# Definition (l) “Mediation Service Provider”

What is there?

"mediation service provider" means a body or organisation that provides for the conduct of mediation under this Act and rules and regulations made thereunder, and are recognised by the Council;

What should be there?

"mediation service provider" means a body, **A registered society**, or organisation that provides for the conduct of mediation under this Act and rules and regulations made thereunder, and are recognised by the Council;



# Section 5: Mediation Agreement

Add this as 5(7)

5(7) A communication when sent by a mediation service provider inviting the other party for mediation on behalf of one or more parties to a dispute if received, acknowledged, and attended by the other party for the mediation, such communication shall constitute a mediation agreement.

# Section 6 “ Pre-Litigation Mediation”

## What is there?

(3) For the purposes, of sub-sections (1) and (2), unless otherwise agreed upon by the parties, a mediator,—

- (i) registered with the Council;
- (ii) empanelled by a court annexed mediation centre;
- (iii) empanelled by an Authority constituted under the Legal Services Authorities Act, 1987; and

## What should be there?

(3) For the purposes, of sub-sections (1) and (2), unless otherwise agreed upon by the parties, a mediator,—

- (i) registered with the Council; **OR**
- (ii) empanelled by a court annexed mediation centre; **OR**
- (iii) empanelled by an Authority constituted under the Legal Services Authorities Act, 1987; **OR**

# Section 22. Mediation Settlement agreement

What is there?

22(7) Registration of Mediation settlement agreement

What should be there?

22(7) Intimation of Mediation settlement agreements

Remove this and add ‘ An annual return of mediation cases taken up by the mediators/mediation service providers (containing names of the parties, date of commencement, date of closure of mediation, and result of mediation-settled or not settled) shall be submitted before 31<sup>st</sup> January of every year.

## Section 24 Admissibility and privilege against disclosure

What is there?

24 (1) No mediator or participant in the mediation, including experts and advisers engaged for the purpose of the mediation and persons involved in the administration of the mediation, shall at any time be permitted, or compelled to disclose to any court or tribunal,

What should be there?

24 (1) No mediator or participant in the mediation, including experts and advisers engaged for the purpose of the mediation and persons involved in the administration of the mediation, or **mediation service provider** shall at any time be permitted, or compelled to disclose to any court or tribunal, **or to any police authority**

# Section 26(3) Mediation Committee

## What is there?

The mediation committee shall, for the purposes of conducting mediation, in all courts, maintain a panel of mediators and in accordance with the practice directions or rules, by whatever name called, framed by the Supreme Court or the High Courts, as the case may be, and such mediators may also conduct mediation other than those referred by a court

## What should be there?

The mediation committee shall, for the purposes of conducting mediation, in all courts, maintain a panel of mediators and **mediation service providers** in accordance with the practice directions or rules, by whatever name called, framed by the Supreme Court or the High Courts, as the case may be, and such mediators and **mediation service providers** may also conduct mediation other than those referred by a court

# Section 40: Duties and Function of the Council

What is there?

40(h) recognize mediation institutes and mediation service providers and

What should be there?

*Explanation: Institutions in existence before commencement of this act shall be deemed to have been recognised by the council and the necessary certificate of recognition shall be given.*

# Section 41 Gradation of Mediation Service Providers

*This should be removed. The gradation will create a divide, and confuse disputants.*

# Section 44. Community Mediation

## What is there?

44(3) In order to facilitate settlement of a dispute for which an application has been received under sub-section (2), the concerned Authority constituted under the Legal Services Authorities Act, 1987 or the District Magistrate or Sub-Divisional Magistrate, as the case may be, shall constitute panel of three mediators

44(4) For the purpose of this section, the Authority or District Magistrate or the Sub-Divisional Magistrate, as the case may be, shall notify a permanent panel of mediators, which may be revised from time to time.

## What should be there?

44(3) In order to facilitate settlement of a dispute for which an application has been received under sub-section (2), the concerned Authority constituted under the Legal Services Authorities Act, 1987 or the District Magistrate or Sub-Divisional Magistrate, as the case may be, shall constitute panel of three mediators **or utilise the services of mediation service providers**

44(4) For the purpose of this section, the Authority or District Magistrate or the Sub-Divisional Magistrate, as the case may be, shall notify a permanent panel of mediators, **and/ or mediation service providers** which may be revised from time to time.

**44 (5) (e) any mediation service provider/mediation institution**



# Electronic depository

## What is there?

- ▶ Section 40 (m)
- ▶ Section 53 (n)

## What should be there?

- ▶ **Delete these to sub-sections.**  
**Maintenance of an electronic depository is against the principles of confidentiality.**

# The First Schedule

What is there?

4. Disputes involving prosecution for criminal offences

What should be there?

4. Disputes involving prosecution for criminal offences **excepting those falling under section 320 (1) of Criminal Procedure Code 1973 which do not require the permission of court for compounding.**

# Tenth Schedule

## What is there?

- ▶ Reference to mediation

## What should be there?

(i). No such reference is mandatory provided the parties mutually agree to go for mediation with a mediator or to a mediation service provider even before moving a district/state consumer forum/court/ national consumer disputes redressal commission.

# Special proceedings- Code of civil procedure

What is there?

What should be there?

Please add and amend as under

89(2) (e) **However, no such reference by court is mandatory if the parties mutually agree to settle their disputes through Arbitration, or , Mediation, or Conciliation**

**THANK YOU ALL**

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Our Ref No. APCAM/SEC/0425/2022  
25 February, 2022

**Deputy Secretary,  
Committee Section (PPG),  
Department-related Parliamentary Standing  
Committee on Personnel, Public Grievances,  
Law and Justice, Rajya Sabha Secretariat,  
Parliament of India, Room No. 415, Block – B,  
Parliament Annexe Extension Building,  
New Delhi 110001**

Dear Sir,

Ref: Email dated 17/02/2022 issued by the Dy. Secretary,  
Department-related Parliamentary Standing Committee  
on Personnel, Public Grievances, Law and Justice

Sub: Comments/views/suggestions on various provisions of  
the Mediation Bill.

At the outset, let me place my gratitude for accepting most of the suggestions that we had given by our earlier suggestions dated 28/09/2021 on the draft Mediation Bill dated 12/08/2021 and suggestions dated 15/11/2021 on draft Mediation Bill dated 29/10/2021.

We are thankful and obliged for giving us a further opportunity to put forward our views to be placed before the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice chaired by Shri. Sushil Kumar Modi, MP, Rajya Sabha, which will be examining the Mediation Bill.

We genuinely congratulate the efforts taken by the government in coming out with a comprehensive legislation on Mediation in India, which will pave the way not only for speedy resolution of disputes, but also ease of doing business in India.

As required by email referred above, please find below our comments on the Mediation Bill (No. XLIII of 2021) as introduced in the Rajya Sabha. We would also be happy to appear before the Committee for oral evidence.



## 1. Enforcement of International Mediated Settlement Agreement:

- 1.1 First, let me point out a grave error noticed in the present Mediation Bill, with respect to international Mediated Settlement Agreements (MSA), which was present in the draft Mediation Bills dated 12/08/2021 and 29/10/2021 and which is seen omitted in the present Bill.
- 1.2 As per the Statement of Objects and Reasons in the present Bill, one of the objectives [page 30, item viii] is to establish the Mediation Council of India, the object of which would be to promote mediation and to develop India as a robust centre for domestic and international mediation.
- 1.3 As per the Statement of Objects mentioned in the draft Bills dated 12/08/2021 and 29/10/2021, [page 4] the Act is made among other things to strengthen the legal framework on international dispute settlement, since India on 7th August 2019 became one of the first signatories to the United Nations Convention on Enforcement of International Settlement Agreements resulting from Mediation, also known as "The Singapore Convention".
- 1.4 And since UNCITRAL has brought a Model Law for giving effect to the Singapore Convention, it is considered expedient that India gives effect to the Singapore Convention by providing for provisions under a stand-alone mediation law for enforcement of international settlement agreements resulting from mediation.
- 1.5 So making a law enabling the provision for enforcement of international MSA's and for ratifying the Singapore Convention is one of the primary reasons for enacting the Mediation Bill. This provision was made available in the draft Mediation Bills dated 12/08/2021 and 29/10/2021 as Part-III. But unfortunately, this portion is seen omitted from the present Mediation Bill. The Singapore Convention was also included as Schedule-I in the earlier draft Bills, which is also seen omitted in this Bill.
- 1.6 Even though the provision for enforcement of international MSA and the schedule on Singapore Convention is omitted, still under section 2(1)(iii), the Bill specifies that the Act is applicable to international mediation. Without an enabling provision for enforcement of international MSA's, this section is redundant.
- 1.7 This omission will take away the benefit of India signing the Singapore Convention, as we will not have a procedural law for enforcing international MSA's as under the Singapore Convention and we will not be able to ratify the Convention.



- 1.8 In the draft Mediation Bills dated 12/08/2021 and 29/10/2021, International Mediation is put under a separate Part III. Putting it under different Part, may create lot of practical difficulties, for the following reasons:
- (i) The definitions come under Part-I, which will also be applicable for international mediation.
  - (ii) The process of mediation, appointment of mediator, status of Mediated Settlement Agreement (MSA), Online mediation, the role of Mediation Council of India and Mediation service Providers, which come under Part-I is also be applicable for international mediation.
  - (iii) In the present Bill dated 20/12/2021, the different Parts, like Part II for community mediation has been removed, and only one Part is made.
- 1.9 Therefore, the Chapter for Enforcement of International Commercial Settlement Agreements Resulting from Mediation has to be inserted as Chapter XI. The existing Chapter XI on Miscellaneous shall be renumbered as Chapter XII. Similarly the Singapore Convention has to be included as Schedule-I, and the existing Schedules I to X, shall be renumbered as Schedules II to XI.
- 1.10 This could be inserted as follows (taken from the draft Bill dated 29/10/2021):

CHAPTER XI  
ENFORCEMENT OF INTERNATIONAL COMMERCIAL SETTLEMENT  
AGREEMENTS RESULTING FROM MEDIATION

46. In this Chapter, unless the context otherwise requires, mediated settlement agreement means a settlement agreement on differences between persons arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India, made on or after the (date of ratification of Singapore Convention) in pursuance of an agreement in writing for mediation to which the Convention set forth in the First Schedule applies.

Provided that the provisions of this Chapter shall not apply to settlement agreements to which Union of India is a party, or to which any governmental agencies or any person acting on behalf of a governmental agency is a party.





47. (1) Subject to the provisions of section 49, Settlement Agreements shall be treated as binding for all purposes and shall be enforceable under this Chapter against the persons or any person claiming through or under them, as between whom it was made.

(2) The Settlement Agreement be relied upon by any of the said persons by way of defence, set-off or otherwise in any legal proceedings in India and any reference in this Chapter to enforce the International Commercial Mediated Settlement Agreement shall be construed and include reference to the same.

48. (1) The Party applying for the enforcement of a Settlement Agreement shall, at the time of the application, produce before the High Court -

- (a) the Settlement Agreement or a copy thereof duly attested by the institution that administered the mediation in any of the manner required by law of the country in which it was made; and
- (b) such other evidence as may be required by the High Court to prove that the Settlement Agreement is covered under the Convention.

(2) If the Settlement Agreement and other evidence to be produced in terms of sub-section (1) is in a foreign language, the parties seeking to enforce the Settlement Agreement shall produce a translation into English duly certified as correct by a diplomatic or consular agent of the country to which that party belongs; or certified as correct in such other manner as may be sufficient according to the law in force in India.

(3) Subject to sub-section (1) and (2) above, a party to an international settlement agreement may —

- (a) apply to the High Court to record the agreement as an order of court for the purposes of invoking the agreement in any court proceedings in India involving a dispute concerning a matter that the party to the international settlement agreement claims was already resolved by the agreement, in order to prove that the matter has already been resolved; or
- (b) in any proceedings in the High Court, —



- (i) to which the party to the international settlement agreement is a party; and
- (ii) which involves a dispute concerning a matter that the party claims was already resolved by the agreement,

apply to the High Court to take the agreement on record in the proceedings in order to prove that the matter has already been resolved.

*Explanation* – In this Chapter, “High Court” means the High Court having original jurisdiction to decide the questions forming the subject matter of the Settlement Agreement if the same had been subject matter of a suit on its original civil jurisdiction and in other cases, in the High Court having jurisdiction to hear appeals from judgments and decrees of Courts subordinate to such High Court.

**49.** (1) Enforcement of a Settlement Agreement may be refused at the request of the party against whom it is sought to be enforced only if that party furnishes to the High Court proof that –

- (a) parties to the Mediation Agreement were, under the law applicable to them, under some incapacity or the said Agreement was null and void, inoperative or incapable of being performed under the law to which the parties have subjected it; or failing any indication thereon, under the law of the country where the International Mediation Settlement Agreement is sought to be enforced; or
- (b) Is not binding, or is not final, according to its terms; or
- (c) Has been subsequently modified; or
- (d) The obligations in the settlement agreement have been performed or are not clear or comprehensible; or
- (e) Granting relief would be contrary to the terms of the settlement agreement; or
- (f) There was a serious breach by the mediator of standards applicable to the mediator or the mediation without which breach that party would not have entered into the settlement agreement; or



- (g) There was a failure by the mediator to disclose to the parties, circumstances that raise justifiable doubts as to the mediator's impartiality or independence and such failure to disclose had a material impact or undue influence on a party without which failure that party would not have entered into the settlement agreement.

Provided that, if decisions on the matters submitted to mediation can be separated from those not submitted, that part of the Settlement Agreement which contains settlement on matters submitted to Mediation shall be enforced;

(2) Enforcement of the Settlement Agreement may also be refused if the High Court finds –

- (a) the subject matter of disputes is not capable of settlement by mediation under the law of India; or
- (b) the Settlement Agreement was induced or effected by fraud or corruption; or
- (c) It is in contravention with the public policy of India.

*Explanation 1.* — For the avoidance of any doubt, it is clarified that a mediated settlement agreement is in conflict with the public policy of India, only if, —

- (i) the making of the settlement agreement was induced or affected by fraud or corruption; or
- (ii) it is in contravention with the fundamental policy of Indian law; or
- (iii) it is in conflict with the most basic notions of morality or justice.

**50.** Nothing in this Chapter shall prejudice any rights of any person under the Settlement Agreement or pending enforcement proceedings in India of any Settlement Agreement or of availing the said remedy as if this chapter had not been enacted.

- 1.11 Since in domestic mediation, the definition of court as under sub-section 3(c), in the Explanation, Commercial Courts are included, a similar Explanation has to be included in Section 48.



The Existing Explanation could be renumbered as Explanation 1 and a new Explanation 2 could be inserted as follows:

48. *Explanation 2* – Where such application has to be filed in a High Court, it shall be filed, heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.

- 1.12 There is no provision given in Chapter XI to challenge any orders passed by courts under this Chapter. A first appeal against any order is considered as a fundamental right.

So sufficient safeguard should be placed for a first appeal against such orders passed by courts.

Therefore a new section 51, can be added as follows:

**51.** (1) Notwithstanding anything contained in any other law for the time being in force, an appeal shall lie from the following orders (and from no others) to the Court authorized by law to hear appeals from original decrees of the Court passing the order, namely —

(i) Allowing or refusing to allow to enforce an international Mediated Settlement Agreement under Section 49.

(2) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.

- 1.13 Based on the above insertion of sections 46 to 51 in Chapter XI, existing Chapter XI (Miscellaneous) can be renumbered as Chapter XII and sections 46 to 65, can be renumbered as sections 52 to 71.

## 2. Section 3:

- 2.1 We are grateful for accepting our earlier suggestion to include the Explanation in sub-section 3(c) and insert a new sub-section 3(e).
- 2.2 Sub-section 3(l), defines “Mediation Service Provider”, which shall conduct mediation and have in place procedures and Rules. They should also have the requisite infrastructure to conduct mediation, as this would be a relevant requisite of a mediation centre. This also needs to be mentioned.



2.3 Sub-section 3(l) as of now, reads as follows:

3. (l) "Mediation Service Provider" means a body or organisation that provides for the conduct of mediation under this Act and rules and regulations made thereunder, and are recognised by the Council;

2.4 As such Sub-section 3(l), can be amended as follows:

3. (l) "Mediation Service Provider" means a body or organization that provides for the conduct of mediation and have in place procedures and Rules to govern the conduct of mediation in conformity with this Act and provide all facilities, secretarial assistance and infrastructure for the efficient conduct of mediations, and are recognised by the Council.

### 3. Section 4:

3.1 In Section 4, which defines mediation, the option of institutional mediation should also be included (especially when definition of "institutional mediation" is included in sub-section 3(e), accepting our earlier suggestion).

3.2 Many domestic and international agreements now contain dispute resolution clauses including Med-Arb or Arb-Med-Arb clauses of different institutions under their Rules. In arbitration, we have already made amendments to promote institutional arbitration. This should be followed in mediation also, otherwise there could be a conflict in policy.

3.3 Additionally, in section 4, an explanation could be included to clarify acceptance of mediation processes done under different hybrid processes to show that India recognizes the innovative mechanisms of hybrid resolution methods like Med-Arb and Arb-Med-Arb.

3.4 Section 4 as of now, reads as follows:

4. Mediation shall be a process, whether referred to by the expression mediation, pre-litigation mediation, online mediation, community mediation, conciliation or an expression of similar import, whereby party or parties, request a third person referred to as mediator or mediation service provider to assist them in their attempt to reach an amicable settlement of a dispute.



3.5 As such Section 4, can be amended as follows:

4. Mediation means a process, whether referred to by the expression mediation, pre-litigation mediation, institutional mediation, online mediation, conciliation or an expression of similar import, whereby parties request a third person or persons (“the mediator”) to assist them in their attempt to reach an amicable settlement of the dispute.

Explanation – This would also include a mediation process, which is part of any hybrid method, like Med-Arb Process or Arb-Med-Arb process.

#### 4. Section 6:

4.1 Sub-section 6(1) makes pre-litigation mediation mandatory. In such case, no party will be able to approach the court without taking steps for pre-litigation mediation.

4.2 The High Court of Chennai, while analysing the provision of mandatory pre-litigation mediation under the Commercial Courts Act, in a recent decision dated 17/08/2021 (Shahi Exports Pvt Ltd. Vs. Gold Star Line Limited & Others - C.S.No.669 of 2019) held that Section 12-A of the Commercial Courts Act, is not a mandatory provision. The right to access justice which is a Constitutional Right cannot be denied or deprived for not resorting to mediation. The litigant cannot be denied the doors of justice for directly approaching the Court without exploring the possibility of mediation. The intention of this Section is not to prevent access to justice or to aid anyone who refuses to subject himself to the judicial process.

4.3 It could be even more sceptical in case of a dispute which could affect peace, harmony and tranquility in a locality, where it could be settled through community mediation, as under Chapter X (Section 44). As per sub-section 22(1) mediation under this Act should be completed within a period of 180 days. So in such a dispute, the parties to a dispute could be prevented access to courts for 180 days, if such a mediation committee hold on to the dispute under the guise of mediation.

4.4 Since access to justice is a constitutional right, it would be better to make mediation voluntary and optional, and left to the choice of the party, otherwise there is a probability that the courts could interpret and dilute the rigidity of the section.

4.5 Sub-section 6(1) as of now, reads as follows:



6. (1) Subject to other provisions of this Act, whether any mediation agreement exists or not, any party before filing any suit or proceedings of civil or commercial nature in any court, shall take steps to settle the disputes by pre-litigation mediation in accordance with the provisions of this Act:

4.6 As such Sub-section 6(1), can be reworded as follows:

6. (1) Subject to other provisions of this Act, irrespective of the existence of any mediation agreement or otherwise, any party before filing any suit or proceeding in any Court or Tribunal, may take steps to settle the disputes by pre litigation mediation in accordance with the provisions of this Act.

## 5. Section 8:

5.1 Since Sub-section 8(1) is a provision for interim measures to be obtained from courts, either before the commencement of or during the continuation of mediation, the discretion of the court or tribunal to refer the parties back to mediation as under Sub-section 8(2) should not be there. The parties have approached only for an interim measure. The mediation should continue. Therefore, the words, "if deemed appropriate" in Sub-section 8(2) should be deleted.

5.2 Sub-section 8(2) as of now, reads as follows:

8. (2) The court or tribunal shall after granting or rejecting urgent interim relief, as the case may be, refer the parties to undertake mediation to resolve the dispute, if deemed appropriate.

5.3 As such Sub-section 8(2), can be amended as follows:

8. (2) The court or tribunal shall after granting or rejecting urgent interim relief, as the case may be, refer the parties to undertake mediation to resolve the dispute.

## 6. Section 9:

6.1 We are grateful for accepting our earlier suggestion to delete sub-section 9(4) which was there in the draft Bill dated 29/10/2021.



- 6.2 That suggestion was given specifically considering the impact of Singapore Convention. As per Article 1(3)(a) of the Singapore Convention, the Convention does not apply to Settlement agreements, (i) that have been approved by a court or concluded in the course of proceedings before a court; and (ii) that are enforceable as a judgment in the State of that court. So any Mediated Settlement Agreement made as part of a court proceeding or under a court annexed proceedings which has the status of a court judgment is excluded from the ambit of the Singapore Convention.
- 6.3 But in the present Bill, the ambit of the section to refer parties to mediation, in case they have come to court in spite of having a mediation agreement, is removed (which was there in the earlier draft Bill dated 29/10/2021). This will make mediation agreements or clauses in commercial contracts redundant. The relevance of agreement to mediate is also reflected in sub-section 16(a). Hence sub-section 9(1) of the draft Bill dated 29/10/2021 has to be reinstated.
- 6.4 The situation covered under the present sub-section 9(1) is already taken care under section 89 of the Civil Procedure Code. So it need not be included under this Act.
- 6.5 Sub-section 9(1) as of now, reads as follows:

**9.** (1) Notwithstanding the failure to reach any settlement under sub-section (1) of section 6, the court or tribunal may, at any stage of proceeding, refer the parties to undertake mediation, if a request to this effect is made by them.

- 6.6 As such Sub-section 9(1), can be amended as follows (reinstating sub-section 9(1) under draft Bill dated 29/10/2021):

**9.** (1) Notwithstanding anything contained in any other law for the time being in force, a Court or Tribunal, before which an action is brought in a matter which is the subject of an agreement to submit to mediation shall, if a party to such agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, refer the parties to mediation as per the provisions of this Act, unless it finds that *prima facie* no valid agreement exists, or there is good reason why, notwithstanding such agreement, the parties should not be referred to mediation.





6.7 Since under the Singapore Convention, Settlement agreements that are concluded in the course of proceedings before a court; and that are enforceable as a judgment in the State of that court, is outside the purview of Convention, it should be clarified that a reference under section 9, will not be deemed to be a reference in the course of a court proceedings. Otherwise, this will create an absurd situation, where in a contractual matter containing a mediation agreement, if a party files a matter before court ignoring the mediation agreement, and if the court refers the parties to mediation, then such MSA will be outside the scope of Singapore Convention. But the very same matter, if the parties proceed to go for mediation without intervention of court under Section 9, then such MSA will become enforceable under the Singapore Convention.

6.8 Hence, an Explanation could be added as follows:

**9. Explanation 1** – It is clarified that referring the parties to mediation under this Section shall not be considered as a mediation referred in a matter or proceedings pending before the court.

6.9 Moreover international mediation agreements can also be brought into the ambit of Section 9, since it also deals with international mediation. So an explanation can be included in the section as follows:

**9. Explanation 2** – It is clarified that this section is also applicable in case the court finds that the agreement to submit to mediation is with respect to an international mediation.

## 7. Section 12:

7.1 This section mentions about termination of the mandate of the mediator in both ad-hoc and institutional mediation. In the case of institutional mediation, the mediator is heard on termination as per section 13. But no such provision is made in the case of mediation other than institutional. When the parties terminate the mandate of the mediator in such ad-hoc mediation, they shall also intimate the mediator about the said fact. Otherwise the parties may unilaterally terminate and the mediator will be unaware of such termination.

7.2 Sub-section 12(4)(ii) as of now, reads as follows:

**12. (4) (ii)** mediation other than institutional mediation, such party shall terminate the mandate of mediator.



7.3 As such Sub-section 12(4)(ii), can be amended as follows:

**12.** (4) (ii) mediation other than institutional mediation, the parties shall terminate the mandate of mediator, after giving due notice to the mediator.

## 8. Section 17:

8.1 This section deals with the conduct of mediation by the mediator. Even though mediation is a party autonomy process, the mediator shall be on control of the process always to make sure that the mediation proceeding is conducted in a professional and disciplined manner, keeping the safety and security of the parties. This should be made clear in sub-section 17(1).

8.2 Sub-section 17(1) as of now, reads as follows:

**17.** (1) The mediator shall assist the parties in an independent, neutral and impartial manner in their attempt to reach an amicable settlement of their dispute.

8.3 As such Sub-section 17(1), can be amended as follows:

**17.** (1) The mediator shall assist the parties in an independent, neutral and impartial manner in their attempt to reach an amicable settlement of their dispute, but the mediator shall at all time be in control of the mediation process.

8.4 Similarly, sub-section 17(3) deals with the measures taken by the mediator for the conduct of mediation. As under sub-section 3(p), in the definition of participant, there is a mention about expert. This shall be included in this sub-section, where the mediator can take the assistance of an expert for assisting him in the process, subject to the consent of the parties.

8.5 Sub-section 17(3) as of now, reads as follows:

**17.** (3) The mediation process may include the mediator taking such measures as may be considered appropriate, taking into account the circumstances of the case, including meeting with parties or participants, jointly or separately, as frequently as deemed fit by the mediator, both in order to convene the mediation, and during the mediation for the orderly and timely conduct of the process and to maintain its integrity.



8.6 As such Sub-section 17(3), can be amended as follows:

**17. (3)** The mediation process may include the mediator taking such measures as may be considered appropriate, taking into account the circumstances of the case, including meeting with parties and/or participants, jointly and/or separately, as frequently as deemed fit by the mediator, both in order to convene the mediation, and during the mediation for the orderly conduct of the process and to maintain its integrity. The mediator can also seek the assistance of an expert, subject to the consent of the parties.

**9. Section 18:**

9.1 Sub-section 18(1), outline the role of the mediator in facilitating mediation. The section has used the terms “reducing misunderstandings” and “exploring areas of compromise”.

9.2 Misunderstanding is a negative connotation is advancing resolutions and compromise is a negative word which most of the commercial disputants disagree while settling a matter. So it would be better to change these words to a positive outlook.

9.3 Sub-section 18(1) as of now, reads as follows:

**18. (1)** The mediator shall attempt to facilitate voluntary resolution of the dispute by the parties and communicate the view of each party to the other to the extent agreed to by them, assist them in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise and generating options in an attempt to resolve the dispute expeditiously, emphasizing that it is the responsibility of the parties to take decision regarding their claims.

9.4 As such Sub-section 18(1), can be reworded as follows:

**18. (1)** The mediator shall attempt to facilitate voluntary resolution of the dispute(s) by the parties, and communicate the interest of each party to the other to the extent agreed to by them, assist them in identifying issues, advancing better understanding, clarifying priorities, exploring areas of settlement and generating options in an attempt to resolve the dispute(s), emphasizing that it is the responsibility of the parties to take decision which affect them.



**10. Section 19:**

10.1 We are grateful for accepting our earlier suggestion to insert section 19 in the Bill.

**11. Section 20:**

11.1 This section deals with the mediation process. Here the rights of parties should also be mentioned. Since mediation is a party-oriented process, the rights of parties have to be clearly mentioned.

11.2 As such the section can be amended as follows:

**20.** (1) Participation in mediation shall be voluntary at all times.

(2) A party may —

- (i) withdraw from the mediation at any time during the mediation,
- (ii) be accompanied to the mediation, and assisted by, a person (including a lawyer or consultant or advisor or expert) who is not a party, or
- (iii) obtain independent legal advice at any time during the mediation.

11.3 Existing sub-sections 20(1) and (2), can be renumbered as sub-sections 20(3) and (4).

**12. Section 21:**

12.1 Sub-section 21(2) deals with extension of time for mediation. Being a party autonomy process, the time limit of mediation should be left to the discretion of the parties. As per sub-section 21(1) a period of 180 days is prescribed for completion of mediation and as per sub-section 20(2) the parties can extend the period only for a further period of 180 days. In many complex commercial mediation more time may be required for an effective mediation for wholesome resolution of all disputes. So, if all the parties consent for extension of time, that option should be given to the parties. Otherwise the parties will be deprived of the option to resolve the dispute by way of mediation. There is no provision provided even for the parties to approach the court for extension of time if circumstances so warrant. But making the parties to go to court for extension, not only put additional backlogs to the courts, but also cause delay in the mediation process, as getting an order from the court will be a delayed process. Hence that option could be left to the parties themselves.



12.2 Similarly international mediation done in India under the agreed Rules of Mediation Service Providers (like national or international Mediation Institutes) will have separate time frame as under those Institutional rules. To promote institutional mediation, the time frame under such rules should be given effect to, at least in international mediation. An explanation for the said purpose needs to be included.

12.3 Sub-section 21(2) as of now, reads as follows:

**21. (2)** The period for mediation mentioned under sub-section (1) may be extended for a further period as agreed by the parties, but not exceeding one hundred and eighty days.

12.4 As such Sub-section 21(2), can be amended as follows:

**21. (2)** The period for mediation prescribed under sub-section (1) may be extended for such further period as required by the parties, by written consent of all parties.

Explanation — For the removal of doubts, it is hereby clarified that the time frame stipulated under this section shall not apply to international commercial mediation and in domestic mediation where parties have agreed for a procedure as per the rules of a mediation service provider.

### **13. Section 22:**

13.1 Sub-section 22(7) provides for registration of mediated settlement agreements and getting a unique registration number for such MSA.

13.2 The parties may sometimes want that the terms of settlement made in a MSA should be treated as confidential. If the parties require the MSA to remain confidential, it may not be fair to mandatorily ask them to file the MSA for registration. In such cases, the mediator and parties can fill up a format giving the details about the commencement and completion of mediation, the details of parties and mediator, before the jurisdictional court or tribunal and the unique registration number as under sub-section 22(7) can also be issued based on such filing.

13.3 This could be clarified as a proviso in sub-section 22(7), as follows, after the existing two provisos.



**22.** (7) Provided further that, if the parties require that the terms of the Mediated Settlement Agreement should remain confidential, they shall file a report with the details of the mediator, mediation service provider, parties, date of commencement of mediation and date of completion of mediation and the fact that the parties require the terms of Mediated Settlement Agreement to remain confidential.

**14. Section 23:**

14.1 Sub-section 23(3) gives confidentiality to mediation proceedings and stipulate that nothing relied on in mediation proceedings shall be relied on or produced before any courts or tribunals.

14.2 But this shall not deprive a person from relying on any evidence or document produced in mediation on the ground that it cannot be relied on since it was produced in mediation. This has to be clarified to avoid conflicting decisions by courts.

14.3 Hence a proviso can be added in sub-section 23(3), as follows:

**23.** (3) Provided that, the evidence produced or used in mediation that is otherwise admissible in any proceedings before a court or arbitration proceedings shall not be or become inadmissible or protected by privilege in such proceedings, solely because it was introduced into or used in mediation.

**15. Section 24:**

15.1 Sub-section 24(2) specifies the exceptions to privilege and confidentiality under mediation proceedings.

15.2 It should also cover instances where there is threat of psychological injury apart from physical injury. The section should also mention, what action could be made in case the confidentiality is breached.

15.3 Sub-section 24(2) as of now, reads as follows:

**24.** (2) There shall be no privilege or confidentiality that will attach to —  
(a) a threat or statement of a plan to commit an offence punishable under any law for the time being in force;



- (b) information relating to domestic violence or child abuse; and
- (c) statements made during a mediation showing a significant imminent threat to public health or safety.

15.4 As such Sub-section 24(2), can be amended as follows:

**24. (2)** Confidentiality or privilege shall not apply to a communication or records or notes, or both, where disclosure –

- (a) is necessary to prevent physical or psychological injury to a party;
- (b) reveal information relating to domestic violence or child abuse;
- (c) is necessary in the interests of preventing or revealing –
  - (i) the commission of a crime (including an attempt to commit a crime),
  - (ii) the concealment of a crime, or
  - (iii) a threat to a party.

(3) In case the Mediator or the Mediation Service Provider breaches the rules of confidentiality, independence and neutrality stipulated in this Act, then the damaged party may have recourse to such Mediator or Mediation Service Provider for imposition of administrative and disciplinary sanctions before the Mediation Council, and this shall not prejudice the civil and criminal liability thereof.

**16. Sections 28 and 29:**

16.1 Section 28 deals with enforcement of MSA and section 29 deals with challenge of MSA.

16.2 Providing separate procedures for challenge and enforcement of MSA would delay the ultimate result in mediation. Taking the experience from arbitration in India, where almost every arbitral awards are challenged before courts, such a procedure will delay the ultimate result of mediation. Once the matter goes to



court, delays are inevitable and the charm of going for mediation is lost. This will prompt parties to opt mediation in other countries, beyond the jurisdiction of courts in India. Again India will lose international mediation, in the same way we are losing international arbitration. So it would be better to have a single procedure, where the challenge could be integrated in the enforcement procedure.

16.3 Sections 28 and 29 as of now, reads as follows:

**28.** (1) A mediated settlement agreement resulting from a mediation signed by the parties and authenticated by the mediator shall be final and binding on the parties and persons claiming under them respectively and enforceable as per the provisions of sub-section (2).

(2) Subject to the provisions of section 29, the mediated settlement agreement shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908, in the same manner as if it were a judgment or decree passed by a court, and may, accordingly, be relied on by any of the parties or persons claiming through them, by way of defence, set off or otherwise in any legal proceeding.

**29.** (1) Notwithstanding anything contained in any other law for the time being in force, in any case in which the mediated settlement agreement is arrived at between the parties other than in court referred mediation or by Lok Adalat or Permanent Lok Adalat under the Legal Services Authorities Act, 1987, and is sought to be challenged by either of the parties, such party may file an application before the court or tribunal of competent jurisdiction.

(2) A mediated settlement agreement may be challenged only on all or any of the following grounds, namely:—

- (i) fraud;
- (ii) corruption;
- (iii) impersonation;
- (iv) where the mediation was conducted in disputes or matters not fit for mediation under section 7.

(3) An application for challenging the mediated settlement agreement shall not be made after ninety days have elapsed from the date on which the party making that application has received the copy of mediated settlement agreement under sub-section (3) of section 22:





Provided that if the court or tribunal, as the case may be, is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of ninety days, it may entertain the application within a further period of ninety days.

16.4 Integrating both sections 28 and 29, the new section 28, can be amended as follows:

**28.** (1) A mediated settlement agreement resulting from a mediation signed by the parties and authenticated by the mediator shall be final and binding on the parties and persons claiming under them respectively.

(2) A party relying on a Mediated Settlement Agreement shall apply to the Court for enforcement of the MSA, along with the following documents:

- (a) The signed copy of the Mediated Settlement Agreement; and
- (b) The Unique registration number given as under sub-section (7) of section 22.

(3) The Court may refuse to enforce the Mediated Settlement Agreement filed under sub-section (2), if the party against whom the enforcement is sought, furnishes proof that:

- (a) The Mediated Settlement Agreement is vitiated by:
  - (i) Fraud; or
  - (ii) Corruption; or
  - (iii) Gross impropriety; or
  - (iv) Impersonation.
- (b) The terms in the Mediated Settlement Agreement:
  - (i) Is null and void, illegal or inoperative or incapable of being performed under the laws of India; or
  - (ii) Has been subsequently modified or has been performed; or
  - (iii) Are not clear or comprehensible.
- (c) The subject matter of the dispute is not capable of settlement by mediation under the laws of India.



(4) Subject to the provisions of sub-section (3), where the court is satisfied that the mediated settlement agreement is enforceable under this section, it shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908, in the same manner as if it were a judgment and/or decree passed by a court, and may accordingly be relied on by any of parties or persons claiming through them, by way of defense, set off or otherwise in any legal proceedings.

(5) Notwithstanding anything contained in any other law for the time being in force, in any case in which the mediated settlement agreement is arrived at between the parties other than in court referred mediation or by Lok Adalat or Permanent Lok Adalat under the Legal Services Authorities Act, 1987, and is sought to be challenged by either of the parties, such party may file an application before the court or tribunal of competent jurisdiction.

**17. Section 29:**

17.1 There is no provision given in the Act to challenge any orders passed by courts. A first appeal against any order is considered as a fundamental right. So sufficient safeguard should be placed for a first appeal against such orders passed by courts.

17.2 Since the existing section 29 is integrated with section 28, as above, a new section 29 can be inserted.

17.3 As such Section 29, can be inserted as follows:

**29.** (1) Notwithstanding anything contained in any other law for the time being in force, an appeal shall lie from the following orders (and from no others) to the Court authorized by law to hear appeals from original decrees of the Court passing the order, namely —

- (i) Allowing or refusing to allow to enforce a Mediated Settlement Agreement under Section 28;
- (ii) Refusing to direct the parties to mediation under Section 9.

(2) No second appeal shall lie from an order passed in appeal under this Section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.



**18. Section 30:**

- 18.1 Section 30 deals with fee and cost of mediation. But no provision is mentioned for institutional mediation and how the fee and expenses are shared and what happens if one party fails to share the fee and cost.
- 18.2 This has to be clarified in this section.
- 18.3 Existing section 30 can be renumbered as sub-section 30(1) and the following sub-sections can be inserted.

**30.** (2) The mediator may fix the amount of the deposit or supplementary deposit, as the case may be, as an advance for the costs referred hereunder, which he expects will be incurred in respect of the mediation proceedings:

- (i) The fee and expenses of mediators;
- (ii) Any administration fees of the mediation service provider;
- (iii) Rentals or expenses of premises, etc.

Explanation 1 – In case of mediation other than institutional mediation, the mediator shall be entitled to such fee at the rate as specified by the Fee schedule prescribed by the Mediators Council of India.

Explanation 2 – In case of institutional mediation, the mediator shall be entitled to such fee at the rate specified in the Fee schedule prescribed by Rules of the Mediation Service Provider.

(3) The deposit referred to in sub-section (3) shall be payable in equal shares by the parties.

Provided that where one party fails to pay his share of the deposit, the other party may pay that share;

Provided further that where the other party also does not pay the aforesaid share, the mediator may suspend or terminate the mediation proceedings.

**19. Section 31:**

- 19.1 Section 31 provides for exclusion of the period of limitation during the process of mediation, if the mediation fails or if no settlement was possible.



19.2 But there could be such situations, where the settlement is made by the parties, but subsequently the court set-aside the MSA. This period also needs to be excluded, as otherwise it will result in the party having no remedy. A similar provision is provided in sub-section 43(4) of the Arbitration & Conciliation Act, where the period from the commencement of arbitration till the award is set-aside is excluded from the period of limitation.

19.3 Hence a sub-section can be added after sub-section 31(iv), as follows:

**31.** (v) setting aside of the Mediated Settlement Agreement by the court under sub-section (3) of section 28.

## 20. Section 40:

20.1 In the duties and performance of Mediators Council for the purpose of training on mediation; partnering with law firms are included. Mediation Service Providers, Mediation Institutes and Universities are appropriate, but Law firms who are not a specialised group on mediation should be omitted.

20.2 Sub-section 40(f) as of now, reads as follows:

**40.** (f) hold trainings, workshops and courses in the area of mediation in collaboration with mediation service providers, law firms and universities and other stakeholders, both Indian and international, and any other mediation institutes;

20.3 As such Sub-section 40(f), can be amended as follows:

**40.** (f) hold training workshops and courses in the area of mediation in collaboration with mediation institutes, mediation service providers and universities, both Indian and International; and

## 21. Section 44:

21.1 Chapter X deals with community mediation for resolution of disputes which are likely to affect peace, harmony and tranquility in any area or locality. Under sub-section 44(4), the Authority or District Magistrate shall create a permanent panel of mediators. As under Sub-section 3(h), "mediator" means a person who is appointed to be a mediator to undertake mediation, and includes a person registered as mediator with the Council. Similarly, mediation proceedings are specified in Chapter V.



21.2 But the mediator under Chapter X, need not to have such qualifications or requirements, even though the mediator is dealing with serious matters which affects peace and harmony. Overlooking the training and accreditation of mediators is against the whole scheme of the Act.

21.3 Sub-section 44(5) as of now, reads as follows:

**44.** (5) The following persons may be included in the panel referred to in sub-section (4) —  
(a) persons of standing and integrity who are respectable in the community;  
(b) any local person whose contribution to the society has been recognised;  
(c) representative of area or resident welfare associations; and  
(d) any other person deemed appropriate.

21.4 As such Sub-section 44(5), can be amended as follows:

**44.** (5) The following persons may be included in the panel referred to in sub-section (4) —  
(a) registered as mediator with the Council; and  
(b) persons of standing and integrity who are respectable in the community;  
(c) any local person whose contribution to the society has been recognised;  
(d) representative of area or resident welfare associations; or  
(e) any other person deemed appropriate.

## 22. Schedules:

22.1 As mentioned in 1.8 above, Singapore Convention has to be included as Schedule-I, and the existing Schedules I to X, can be renumbered as Schedules II to XI.

22.2 **Schedule-I** (To be renumbered as Schedule-II).

22.3 In this schedule disputes that cannot be referred to mediation is included. In clause 2, issues of fraud is discussed. In the case of fraud, even in arbitration, the Supreme Court of India in "Avitel Post Studioz Ltd. & Others Vs. HSBC Pi Holdings (Mauritius) Ltd." [CDJ 2020 SC 702], held that if the allegation of fraud is touching upon the internal affairs of the party inter-se and has no implication in the public domain, the arbitration clause need not be avoided and the parties can be relegated to arbitration. So allegation of serious fraud only should be taken as a ground for making the matter not fit for mediation.

22.4 Clause (2) as of now, reads as follows:



2. Disputes involving allegations of serious and specific fraud, fabrication of documents, forgery, impersonation, coercion.

22.5 As such Clause (2), can be amended as follows:

2. Disputes of serious and specific allegations of fraud, fabrication of documents or forgery, which has implication in public domain.

22.6 **Schedule-VI** (To be renumbered as Schedule-VII).

22.7 In this schedule, amendments to Arbitration & Conciliation Act is mentioned.

22.8 As per sub-section 61(1) of the Arbitration & Conciliation Act, conciliation could be done as otherwise provided by any law for the time being in force. That means many conciliations mentioned in many other enactments are untouched by the Conciliation mechanism provided under Part III of the Arbitration & Conciliation Act. Those conciliations should be left untouched by the Mediation Act also, until and unless a detailed study on the consequences and impact of the process is specifically studied. Otherwise it could open a floodgate of litigations.

22.9 So it would be safer to leave out such conciliations from the ambit of the Mediation Act. A Explanation could be added in Section 61, as follows:

61. Clarification – It is clarified that notwithstanding anything contained in section 61 any conciliation proceedings done as otherwise provided by any law for the time being in force other than under Part III of the Arbitration and Conciliation Act, 1996, shall be continued to be called as conciliation and not affected by the provisions of the Mediation Act, 2021.

22.10 Since the Mediation Council is being constituted under this Act, certain conflicting provisions made in the Arbitration Council of India under the Arbitration & Conciliation Act needs to be changed.

22.11 The following changes could be made in Part IA of the Arbitration & Conciliation Act, 1996:

22.12 In sub-section 43D(1), the word mediation should be removed. Amended sub-section would read as follows:



43D. (1) It shall be the duty of the Council to take all such measures as may be necessary to promote and encourage arbitration and other alternative dispute resolution mechanism and for that purpose to frame policy and guidelines for the establishment, operation and maintenance of uniform professional standards in respect of all matters relating to arbitration.

22.13 In sub-section 43D (e), (f) and (i), the word conciliation needs to be omitted.

(e) frame, review and update norms to ensure satisfactory level of arbitration;

(f) act as a forum for exchange of views and techniques to be adopted for creating a platform to make India a robust centre for domestic and international arbitration;

(i) conduct examination and training on various subjects relating to arbitration and award certificates thereof.

22.14 **Schedule-IX** (To be renumbered as Schedule-X).

22.15 In this schedule, amendments to Commercial Courts Act is mentioned.

22.16 Amendment should be made in Section 10 which deals with "Jurisdiction in respect of arbitration matters". It should be renamed as "Jurisdiction in respect of arbitration and mediation matters".

22.17 A new Section can be inserted as 10A as follows:

Section 10A – Where the subject-matter of a mediation is a commercial dispute of a Specified Value and --

(1) If such mediation is an international mediation, all applications or appeals arising out of such mediation under the provisions of the Mediation Act, 2021 that have to be filed in a High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.

(2) If such mediation is other than an international mediation, all applications or appeals arising out of such mediation under the provisions of the Mediation Act, 2021 that have to be filed on the original side of the High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.



(3) If such mediation is other than an international mediation, all applications or appeals arising out of such mediation under the provisions of the Mediation Act, 2021 that would ordinarily lie before any principal civil court of original jurisdiction in a district (not being a High Court) shall be filed in, and heard and disposed of by the Commercial Court exercising territorial jurisdiction over such mediation where such Commercial Court has been constituted.

### 23. Statement of Objects and Reasons:

- 23.1 As stated in 1.1 above, the Mediation Act is made primarily for the purpose promoting the use of mediation in international commercial disputes and to ratify the Singapore Convention, of which India is a signatory.
- 23.2 This was clearly mentioned in the Statement of Objects in the draft Bills dated 12/08/2021 and 29/10/2021. But unfortunately it is omitted in the present Bill. This will have to be included in the Statement of Objects, as that is one of the key objectives in introducing a comprehensive law on Mediation.
- 23.3 Therefore a new paragraph 3 has to be inserted, as follows and the existing paragraphs 3 and 4, shall be renumbered as 4 and 5.

4. Whereas the United Nations Commission on International Trade And Law (UNCITRAL) has adopted the United Nations Convention on International Settlement Agreements resulting from Mediation, also known as "The Singapore Convention", on 20 December 2018 and India on 7 August 2019 became one of the first signatories to the said Convention. To strengthen the legal framework on international dispute settlement and to give effect to the Singapore Convention, a standalone mediation law for enforcement of international settlement agreements resulting from mediation is required.

- 23.4 An additional objective to the above effect needs to be added as (x) in paragraph 4, as follows:

(x) to recognise and facilitate enforcement of international Mediated Settlement Agreements in India.





## 24. General suggestion:

- 24.1 In legislative drafting masculine pronoun was commonly used in the English language to signify the non-specific “he or she”, based on the premise that the norm of humanity is male. This has been used for over 150 years in English language legislative texts. The interpretation provides that references to male persons include female persons.
- 24.2 Gender neutrality is important when writing about people because it is more accurate — not to mention respectful — and is consistent with the values of equality recognized. The need to deal equally with men and women highlights the desirability of drafting using gender-neutral language. Laws that exclude references to the female gender do not promote gender equality.
- 24.3 The Mediation Act being one with a futuristic vision, the gender-equality language could be used in this Act and a person could be referred as “she” or “her” to redress the imbalance.

## ABOUT APCAM

Asia Pacific Centre for Arbitration & Mediation (APCAM) is a unique concept developed for the first time in the world, where an international ADR centre is formed jointly by approximately 9 arbitration and mediation centres from Asia Pacific countries, with centres available in those countries. Many new countries have shown interest and will be joining soon, making the presence of APCAM in most of the Asia-Pacific countries.

APCAM centres are now available in India, Australia, Malaysia, Hong Kong, Indonesia, Thailand, Nepal and South Korea. APCAM is managed by an experienced governing board comprising of renowned professionals from all countries. APCAM also have an Advisory Board comprising of eminent persons from various parts of the world, which include Mr. Justice M.N. Venkatachaliah, Former Chief Justice of India, Mr. Justice Madan B. Lokur, Former Judge, Supreme Court of India, Mr. Justice Tun Zaki Bin Mohammed Azmi, Former Chief Justice of Malaysia, Prof. Hon. Clyde Croft AM SC, Former Judge, Supreme Court of Australia, Mr. Rimsky *Yuen Kwok-keung* GBM, SC, JP, Former Secretary for Justice of Hong Kong Special Administrative Region, Prof. Dr. Mieke Komar, Former Justice, Supreme Court of the Republic of Indonesia, Mr. Phongthep Thepkanjana, Former Deputy Prime Minister and Chief Judge, Thailand, Mr. Justice Keshari Raj Pandit, Former Chief Judge, High Court of Nepal, Hon'ble Mr. Justice Ambeng



Kandakasi, Deputy Chief Justice, National and Supreme Court of Papua New Guinea, Prof. Justice Chang-fa Lo, Former Justice, Constitutional Court of ROC (Taiwan) and Mr. Justice O-Gon Kwon, Former Judge, International Criminal Tribunal, UN General Assembly and Chair of the Judicial Policy Management Committee, Supreme Court of Korea.

APCAM is registered in India as a non-profit organisation and the initial Secretariat for two years will be in India. APCAM being a premier organisation with centres in 10 Asia Pacific countries and registered in India, can create an impact in making India a centralised Asia-Pacific hub for international mediation and arbitration.

Regards

Anil Xavier  
Chairman, Asia Pacific Centre for Arbitration & Mediation

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## **SUGGESTIONS FOR THE MEDIATION BILL, 2021**

Certain key purposes that require to be achieved through the draft law under consideration are:

- I) Upholding *Party Autonomy* – this will have a major contribution in promoting mediation.
- II) Assuring *Confidentiality* of the process as well as the outcome.
- III) Enabling *Capacity Building* of professional service providers and skilled mediators.
- IV) *Creating an Ombud's office***
- V) Benefits of *Conciliation***
- VI) *Enforcement* of MSAs
- VII) Making India an international ADR hub for disputes involving private parties as well as State entities.

The Bill has by now been reviewed and commented upon by several individuals, groups and entities. However, keeping in mind the aforementioned expected goals, some suggestions are shared hereunder:

### **I(A) *Party Autonomy:***

Considering that it is the parties who have to live with the outcome of mediation, whether successful or not, it must be ensured that parties themselves attend the mediation proceedings, express their interests and underlying concerns to each other and, with the assistance of the mediator, work out a settlement on their own.

Presently, parties are sometimes represented by their lawyers who, due to their duty to defend their clients' rights, are not in a position to persuade the other side in a way that their own client's interests can be secured.

Also, the impersonality of the lawyer's approach considerably lowers the quality of relationship that the parties can otherwise have and enhance should they be sitting, expressing, hearing, deliberating and negotiating with each other in person.

Additionally, there is sometimes a concern whether a lawyer would really be keen or comfortable to allow the mediation to start and continue beyond the minimum mandatory requirement, when his/her acumen can be better used in a court of law to fight for the client's rights, which not only increases the billable hours, but also gives greater job satisfaction, because that is what the lawyer is trained for – an adversarial role.

Disputes can be best resolved when both sides are sitting with a singular purpose – to unearth, express and achieve their respective *interests*, not when they (or even one of them) are more focused on the *rights*, which is likely when a lawyer is representing a party.

Keeping the above in mind, the following provision is suggested for inclusion at an appropriate place in the draft Bill:-

*Representation during mediation proceedings:*

*Appearance before the Mediator in Mediation Proceedings shall be by:-*

- (i) Party in person*
- (ii) Authorized representative, who is on the pay-roll of the entity (company, organisation, etc) which is a party;*
- (iii) A relative of a party disabled from attending in person;*  
*or*
- (iv) Such person who is not connected in any way to the legal representatives of that party in any legal proceedings.*

**I (B)** It must be clarified whether the duration for completion of the mediation process (be it 180 days or 360 days) provided under clause 21 of the Bill, shall override:

- (i) Private agreements for mediation;
- (ii) Institutional clauses for mediation;  
and
- (iii) High Courts' Rules for mediation.

## **II) Confidentiality:**

Parties in conflict, often do not want to even be seen in that position, leave alone be found litigating or mediating. And they certainly do not want to make public the real issues which require to be addressed.

Also – and for the same reason - once having reached a settlement, they may not want to reveal how they have resolved the conflict, as the terms of settlement would probably reveal what really was dispute all about.

Sometimes, the parties may be convinced to come to the *talking table* simply because they have been assured of the confidentiality of the process and outcome thereof. Even in normal course, unless essential for the purpose of enforcement, parties are not comfortable to see their MSA go beyond themselves.

These being the ground realities, and especially considering that **confidentiality** is one of the pillars of the process of mediation, it is imperative to delete the provisions contained in Clauses 22 (7), (8) & (9), requiring registration of *mediated settlement agreements* (MSAs).

## **III) Capacity building:**

Insistence **must** be placed on training - and continued, periodical training - of the mediators (including the '*deemed mediators*'), the mediation service providers, lawyers as well as the trainers of the training institutes providing the mediation trainings.

The mediation service providers must be given the maximum autonomy, with minimal interference, so as to allow them to provide the optimum service to their constituents, who have preferred to use their services based on the Rules respectively established by them.

Efforts, hence, to standardise these services of the mediation service providers should be approached with caution, keeping in mind the principle of **party autonomy**.

## **IV) Creating an Ombudsman's Office:**

Mediation being a confidential process, it is essential that whatever anybody says in the mediation room, stays in the mediation room. However sometimes issues do emerge due to a recalcitrant party/lawyer, which may put the mediator in an ethical

dilemma and in fact such act, if not addressed appropriately, may scuttle the whole mediation process. It is hence necessary to establish an ***Office of an Ombudsman***. This will enable mediators to raise any such issues directly with the Ombuds' Office so that the same can be redressed confidentially.

Such Ombuds' Office should be established in/by all the High Courts' mediation centres who should be authorized to take up complaints from mediators doing Court Annexed as well as private (ad hoc or institutional) mediations.

**V) Benefits of Conciliation:**

One reason why parties are not able to settle better and sooner is that they do not have the capacity to discern dispassionately enough to be able to take decisions. Being caught in conflict, they are not able to see beyond the self-set notions of options & limitations about themselves as well as of the other side. In such scenario, the parties are greatly aided by some fresh perspective. This can be achieved by what is known as a "***mediator's proposal***". This provision is available under Section 67 (4) of the *Arbitration & Conciliation Act, 1996*. Considering that this Bill, on enactment, shall be withdrawing this benefit afforded to the parties (vide Clause 61, read with the Sixth Schedule), it is suggested that this provision be incorporated in the present Bill, with all the requisite stipulations and safeguards. An appropriate place would be at and as Clause 18 (2), by renaming the current Clause 18(2) as Clause 18 (3).

In fact, our mediation rules at IIAC are titled as " Mediation & Conciliation Rules" keeping in mind that parties can then have the benefit, inter alia of a "mediator's proposal", should they agree to Conciliation instead of Mediation.

One issue that needs to be clarified under the Bill is whether the stipulation of the duration of the Mediation process under the act would be overriding

- a) Private Agreements between parties;
  - b) The Institutional clauses adopted by parties in their agreements;
  - and
  - c) Provision of any law
- requiring or mandating a shorter duration.

**VI) Enforcement:**

Considerable provisions have been made in the Bill in this regard and suggestions for additional provisions would have been made by other reviewers of the Bill.

However, it would seem appropriate to:

- (a) add the ground of '*misrepresentation*' to the provisions contained in Clause 29 (2);
- (b) Add the following words at the end of Proviso to Clause 29 (3): "...from the cessation of such cause."

**VII) Making India an international ADR hub:**

The one and only way of making any service popular is to make it user friendly. This means the access to the service is easy, little fuss is involved in using it (no regulatory interruption, intervention or interference), standards of high quality are maintained so as to afford consistency, expectations are met and there are no uncomfortable surprises along the way or at the end of the journey.

Keeping this in mind, it is imperative to delete all such provisions as seek to formally regulate the essentially informal process of mediation and its outcome. What is really required – and has so far been looked past – is to have vigorous training and clear guidelines for the nurturing of good mediators, mediation service providers and training institutes. Rest shall follow.



**BANGALORE INTERNATIONAL MEDIATION,  
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(India's Premier Comprehensive Institutional ADR Centre)

*By Courier*

**PARLIAMENTARY STANDING COMMITTEE  
(COMMITTEE ON PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE)  
Room No. 415, Block – B  
PARLIAMENT OF INDIA  
RAJYA SABHA SECRETARAIT  
PHA Extn. Building  
New Delhi – 110001**

12/01/2022

**Subject: Mediation Bill - Comments And Suggestions. A Collective Representation from the Mediators of: Bangalore International Mediation, Arbitration and Conciliation Centre (BIMACC), Bangalore Mediation Centre (BMC) Karnataka State Mediators and Mediators of Bangalore Chamber of Industry and Commerce (BCIC)**

Dear Hon'ble Parliamentarians,

Greetings on behalf of the Bangalore International Mediation, Arbitration and Conciliation Centre (BIMACC), India's largest Institutional Not-for-Profit Global ADR Centre.

BIMACC in collaboration with the mediators of Bangalore Mediation Centre (BMC) and the mediators of Bangalore Chamber of Industry and Commerce (BCIC) is pleased to share with you that we held several discussions on the draft Mediation Bill 2021 on 9.11.2021 and 13.11.2021. The Mediators have successfully compiled close to 50 suggestions and changes that should be incorporated in the draft Mediation Bill 2021 after considering the views and opinions of Bangalore's best mediators, academicians and business professionals

I believe that considering the views of the mediators is critical and would set the tone for the series of discussions held by the Hon'ble Parliamentary Standing Committee.

I am pleased to enclose the comments and suggestions of the mediators for your needful action

Sincerely,

**Justice S. R. Bannurmath  
Vice President BIMACC  
Former Chairperson, Maharashtra State Human Rights Commission  
Former Chief Justice, High Court of Kerala  
Former Judge, High Court of Karnataka**

Encl: As mentioned above



**DATE:12/01/2022**

**TO,**

**PARLIAMENTARY STANDING COMMITTEE  
(COMMITTEE ON PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE)  
RAJYA SABHA SECRETARAIT  
PARLIAMENT OF INDIA  
Room No. 415, Block – B  
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New Delhi – 110001**

**MEDIATION BILL - COMMENTS AND SUGGESTIONS**

**A COLLECTIVE REPRESENTATION**

**FROM THE MEDIATORS OF:**

**BANGALORE INTERNATIONAL MEDIATION, ARBITRATION AND  
CONCILIATION CENTRE (BIMACC),**

**BANGALORE MEDIATION CENTRE (BMC)**

**KARNATAKA STATE MEDIATORS**

**AND**

**MEDIATORS OF BANGALORE CHAMBER OF INDUSTRY AND COMMERCE  
(BCIC)**

Karnataka has a pride of place in the practice of Mediation in India. Out of more than 10,000 accredited mediators of India, over 2500 reside and practice mediation in Karnataka. This representation expresses their concerns, reservations and suggestions.

We are very pleased to hear that the bill has been referred to the Parliamentary Standing Committee for Personnel Public Grievances, Law and Justice. It is a humble request to consider this representation, as well as invite representatives of the eminent mediation institutions and other stakeholders for discussion.

Our objective is for India to have a workable ADR Code without giving room for challenging its validity and clearly define and differentiate the different forms of alternative dispute resolution mechanisms so as to ensure that there is utmost clarity about the role and

*San*

characteristics of these mechanisms, and at the same time making India a hub to propagate affordable and accessible ADR.

1. Section 2 of the bill should include all the mediation proceedings which happen in or from India and either in the physical or online mode.
2. *"Explanation 1: If a party has more than one place of business, the place of business is that which has the closest relationship to the mediation agreement."* as provided under Section 2 should be removed as it is a very ambiguous explanation and there is no clarity as to what constitutes to be the "closest relationship" and not defining the same might result in ambiguity.
3. The definition of the term "Court" as provided by Section 3(b) of the bill has omitted the inclusion of High Courts and Supreme Court. We believe that the same should be included within the definition of "court" so as to widen the scope and ambit of mediation proceedings and also increase the accessibility of mediation as a form of dispute resolution mechanism.
4. The definition of "International Mediations" in Section 3(c) should not only include commercial disputes but also cover all kinds of disputes so as to widen the scope of mediation.
5. The definition of mediation in Section 3(d) should be replaced with *"Mediation means the process mediation as referred to in section 4, with such variations, adaptations as may be necessitated due to cultural social, language, economic and similar factors and included by then prevalent global practices and precepts and developments."*
6. *The following explanation under section 5 should be added. Explanation: Mediation shall not include other Alternative dispute resolution practices of Arbitration, Arb-Med, Med-Arb, Arb-Med-Arb, Med-Ab-Med, Conciliation, Arb-Con, Con-Arb, Neutral Evaluation, Collaborative Settlement, Lok Adalat, Judicial Settlement, Mentoring and Conflict Management."*

The above Explanation is necessary. The various ADR options cannot be brought into the scope of this Bill. This bill fails to address the hybrid ADR process, which is

widely being practiced not only abroad, but also in India. **We strongly recommend a National ADR Code instead of a stand-alone Mediation law, i.e., present Bill.**

7. The definition of the term "Mediator" in Section 3(e) should also include **INSTITUTIONS** and all the mediators should compulsorily possess the requisite training and qualification before the take part in mediation proceedings just so as to ensure that they are competent to mediate the dispute and also to gain the confidence of both the parties.
8. The definition of Mediation Communication in Section 3(g) should also include:  
"(iv) any audio or video recording of the mediation process or any part thereof that has been specifically consented to or permitted in writing by all parties to the Mediation"
9. The term "Institutional mediation" in Section 3(i) should include an explanation which reads as *"the term Institutional mediation includes Lok Adalats and Permanent Lok Adalats constituted under the National Legal Services Authorities Act 1987 or mediation centre annexed to court, tribunal and such other bodies as may be specified by the Council by way of regulations"*.  
The non-inclusion of Lok Adalat is a dangerous clause as the proposed Council will usurp the powers of the Supreme Court, High court and subordinate courts which render Lok Adalat Services. The Legal Services Act provides that in the event there is no settlement, the process becomes adjudicatory, and the Award is passed.
10. "Observers" within the definition of participants as per Section 3(l) should be deleted as that will affect the confidentiality of the process and might prevent the parties for choosing mediation as a dispute resolution mechanism.
11. The term "party" in Section 3(m) should include any statutorily appointed person whose dispute is being or has been mediated, and should also include legal heirs, legal representatives, their successors-in-interest, and where the context permits, assignees.
12. The definition of "regulations" in Section 3(p) should be changed to: "**Regulations**" means regulations made by the Council after following the process of prior

**public consultations including with all stakeholders of and in the mediation process.**

13. Ad-hoc mediation under Section 3(r) should be renamed as **“non-institutional mediation”** and should be defined as mediation which is not administered by any mediation institution providing mediation service tribunal.
14. The Bill provides for restricted intervention by Courts and Tribunals such as interim reliefs and reference to mediation proceedings. However, this approach should be uniformly followed throughout India with sensitization and training programs to judges on the proposed Mediation legislation.
15. The definition of Mediation Process at Section 4 should be changed to **“Mediation Process means a mediation proceeding whether referred to by the expression mediation, pre-litigation mediation, online mediation, or an expression of similar import, whereby mediator or mediators either appointed by the parties or by an Institutional Mediation Centre, assists the parties in their attempt to reach an amicable settlement of the dispute. The mediator or mediators shall be a third person or persons, independent of the respective parties and remain neutral throughout the process”**.
16. Mediation Agreement at Section 5(3) should include: **(c) Any pleadings in a suit or any other judicial any judicial or quasi-judicial proceedings before any Court, Tribunal, Forum in which existence of or reference to a mediation agreement is alleged by one party and not specifically denied by the other in such pleading.** The Mediation Agreement should also specify the name or names of the Mediator or name the Institutional Mediation Centre which may appoint a mediator to mediate upon the dispute in which event such named mediator Mediator is unwilling to act as Mediator. In such an event, the parties may agree to appoint another mediator or the Institution may appoint another mediator.
17. Section 9 could curtail the power to refer cases to mediation— A case before any Court or Tribunal should be referred to mediation if it does not fall within the categories laid out in Schedule II, even if there is no mediation clause in an agreement . Moreover, if

there is a mediation clause, there is an *intent to settle*, thus, there should not be any restrictive action by advocates to thwart a potential settlement and preventing the courts from referring the parties to mediation.

18. Under Chapter 3 Section 10, Foreign mediators should be registered with the Council and there should be no discrimination between the domestic and foreign mediators. If foreign mediators are not required to be registered, then registration of Indian mediators should not be insisted as there is no reasonable ground for drawing a distinction between the two.
19. Under Chapter 4 Section 15, the mediation proceedings should not be restricted within the territorial jurisdiction of India but there should be a provision for online mediation too. Registration of settlements should not be mandatory. There are many settlements in mediation where the parties would require privacy and confidentiality and the proceedings are not to be made public. This holds true especially in the case of matrimonial disputes, partnership disputes, technology transfer disputes. It goes against the principles of confidentiality. It will be burdensome on the courts / legal service authorities to handle the registrations. Instead, an option is to be given to register with sub-registrar, ROC, Registrar of Companies or with any Institutional Mediation Centre, by paying a nominal fee. The bill should also make a provision for stamp duty.
20. Section 15(2) : In case the mediated settlement agreement is reached between the parties as specified under sub-section (2) of section 21 then the same should be signed by all parties to the Mediation, Counsel of any for the Parties and the Mediator/s and thereafter registered by either of the parties with the designated authority within the territorial jurisdiction of the Court or Tribunal of competent jurisdiction to decide the subject matter of dispute in accordance with the sub-section (7) of Section 21.
21. As far as the commencement of Mediation Proceedings as provided under Section 16 there should be clarity as to what the position is if only one of the parties appears and what exactly constitutes the 'commencement date' and how should the date be

determined.

22. Section 17(3): The mediation process shall at all times be guided by the principles of objectivity and fairness and protect the voluntariness, confidentiality, and self-determination of the parties, and the standards for professional, ethical conduct specified by the Council. The emphasis must be on the non-evaluative process. Replacing the word mediator with the mediation process would expand the scope for the partial and fully automated mediation process to be developed by the principles of mediation.
23. Section 17(4): The mediation process should take into account the nature, financial position, power imbalance, and all other similar circumstances of the parties, the nature of the dispute, the urgency of a resolution case, including meeting with parties and/or participants, jointly and/or separately, as frequently as deemed fit by the mediator, both to convene the mediation, and during the mediation and to prescribe a code of conduct for observance of the parties for the orderly conduct of the process and to maintain its integrity, neutrality and impartiality.
24. Section 18: The mediator should involve himself/herself in i. Identifying issues, ii. reducing misunderstandings, iii. clarifying priorities, iv. exploring areas of possible agreement compromise and generating options in an attempt to resolve the dispute(s) v. emphasizing that it is the responsibility of the parties to take final decisions in the matter of resolution and its terms. This modification eliminates the scope for Mediator's Proposal and will ensure that mediation is party centric and a party driven process.
25. Section 19: Before commencement of the mediation process the parties should be informed expressly that
  - (i) the mediator's role is restricted to only facilitate the process of decision making.
  - (ii) the parties retain autonomy regarding participation in Mediation.
  - (iii) the decision to resolve the dispute and its terms is within the control of the parties arriving at a decision to resolve the dispute(s)
  - (iv) that confidentiality of all communications in Mediation as defined in Section 2(g) and details or contents of Mediation proceedings shall be preserved against

unauthorized disclosure but if mediation agreement and communication exchanged between the parties during the course of the mediation proceedings are to be confidential, this may stop the parties from approaching the court and the parties will be unable to draw the attention of the court to such an agreement or consent, hence an explanation should be added under Section 19 which reads as *“Provided a party may place before a court or tribunal or quasi-judicial authority the existence of Mediation Agreement or communication expressing consent for mediation for the purpose of referring the dispute for mediation only”*.

(iv) that the Mediator is not empowered to he may not impose any settlement nor give any legal advice, suggestions for settlement or guarantee that assurance that the mediation will result in a settlement

(v) that the subject matter of dispute or the non-confidential information disclosed during mediation may be used only for training and quality assessment purposes or for collection of relevant data without expressly or impliedly revealing the identity of parties or violating the principle of confidentiality.

19(2) : The Mediation process and the Mediator shall adhere to the OPT OUT principle namely that , a party may withdraw from the mediation at any time without assigning any reason and the Mediator shall not be entitled to compel any party to continue or participate in mediation.

26. Section 21(6): As far as digital signature is concerned; the practicality of digital signature should be duly weighed and issues related to data protection should be considered. There should also be clarity as to the period for which the data should be stored and how and when it should be disposed of.
27. Section 21(7) should make the registration optional, with the sub-registrar or an Institutional Mediation Centre.
28. Under Section 22, the term “exceptions” should be clearly defined. Confidentiality should also extend to documents, communication or information that parties to the mediation mention/state as being confidential, the terms of the settlement.

29. Section 22(4) and Section 23(1) will require amendment of the Evidence Act and Civil Procedure Code.

30. Section 24: The term "Declaration" as provided under Section 24 should be clearly defined. It may need to be included in the definition clause. There should be clarity regarding :

- a. How and where is this declaration to be made?
- b. Is this also protected by confidentiality and against compulsory disclosure?
- c. Is this declaration subject to challenge by parties?
- d. Can a Mediator Suo moto or at the request of one or more of the parties revoke this declaration?
- e. Will the ninety days period get automatically extended if the Mediation is reopened upon revocation of the declaration.

Section 24(c) should be changed as follows: *"On the date of a written communication by letter or through electronic means by a party or parties to the mediation addressed to the mediator/or service provided /Institution and all the other parties to the Mediation stating that the party issuing the communication is opting out of mediation and it should be received by the Mediator irrespective of whether such communication has been received by the other parties to the Mediation*

*Provided that the parties have attended and participated in at least one mediation session before issuance of such communication.*

*Provided further that upon receipt of the communication referred to in ( c) above the Mediator shall be entitled at his/her discretion and if found feasible, to make an attempt, after understanding the cause or reasons for withdrawal from Mediation, to clarify any apprehensions or doubts of the withdrawing party regarding Mediation and attempt to persuade the party to remain and participate in the Mediation process without violating the principle of voluntariness and/or right of Opting out."*

31. Section 25 has been deleted in the Bill; however, it pertains to a depository of mediation settlement agreements, which is also referred to in section 42(g), this contradiction should be avoided.



32. Lok Adalat and Permanent Lok Adalats do not conduct mediation but the process is conciliation. If parties do arrive at a settlement the Permanent Lok Adalat adjudicates the dispute. Hence Section 27 should be deleted.
33. Under Section 29(2), clarity should be laid regarding who can commit fraud, corruption and impersonation. There should also be clarity about whether it applies to the parties or extends to the mediator as well.
34. Under Section 29(3), a proviso should be added which reads as **“Provided further that if the Court finds the application to be frivolous or without merit, or if the allegations in the application are held to be unproved, the applicant shall be liable to pay exemplary costs to the other parties to the mediation settlement, not less than 10% of the value involved in settlement or Rs. 10,000 whichever is higher.”**
35. Under Section 32, Online Mediation should be when the parties and the mediator voluntarily agree to participate, not in a designated venue, but remotely by each one of them using an appropriate electronic communication device – be it computers, laptops, tablets, or mobile phones, conducting or such other devices that would enable live video and audio transmission via, internet-enabled by a common user application. and internet
- Clause 2 should be deleted as there are no technical experts in the Council, so we should leave it to the parties, mediators and the Institutions.
- Clause 3 is vague as Confidentiality has not been defined in the bill.
36. The Bill envisages the establishment of a Mediation Council of India (MCI) in Chapter 7 of Part I, on the lines of the proposed Arbitration Council of India as per the 2019 Amendment Act to Arbitration & Conciliation Act, 1996. MCI which is tasked with grading institutional mediation service providers such as BMC, BIMACC and conducting training programs, and is also responsible for the registration of qualified mediators in India. This may serve similar to the Bar Council of India. This could improve the quality of trained mediators in India but could also lead to the monopoly of only a few established mediators. MCI which is been given a lot of autonomy and

- powers to regulate mediation in India, without any checks and balances. There is no mechanism to consider the views and concerns of the stakeholders. This could create a conflict of interest in cases where the government is a party to the mediation. There should be a branch office in every state as mediation is an efficacious process and powers should not be centralised.
37. Every member, be it a judge or otherwise has to undergo training as a mediator. Mere knowledge is not enough. Five Representatives each from all professional bodies who would be potential users of mediation and mediators like, Mediation Institutes, Chambers of Commerce, Bar Council, CA, CS, Engineers, Doctors should be included in the Mediation Council of India.
38. All foreign mediators should also be mandated to register. All qualified mediators of NALSC, Bangalore Mediation Centre, BIMACC, CAMP and other Institutes should be deemed as registered mediators. Mediators and Institutes should not be asked to seek renewal.
39. Under Chapter 8 on 'Mediation Service Providers' and 'Mediation Institutes,' detailed clarity should be provided in the Bill itself on the following concerns: Who is qualified to grade the mediation institutions in accordance with the proposed Mediation Council of India; How does grading help in the long run; and how does the grading body eliminate bias/prejudice in the grading process?
40. Under Part II on Community Mediation, 'Environment threats' should be added, and it should be clarified if community mediation includes religious and communal issues. There should be more women mediators and representatives in this Part at least so that the diversity deficit in community mediations is addressed efficiently.
41. Under Part III, Chapter 1 on International Commercial Settlement Agreements – Singapore Convention, many provisions of the convention need to be debated well in the Parliament as a few of its provisions can pose serious security threats to India. Some of the provisions can encourage transactions that are prohibited under law, money laundering, and drug trafficking etc.

42. Under Section 55, there is no scope for considering the views of actual mediation practitioners or users and a solution for the same should be formulated.
43. Under Section 58(2), the inconsistencies should be eliminated and regulations before being enforced should be open for comments and views of concerned stakeholders. There is also a reference to the depository which was deleted (Section 25).
44. Under Section 59, every Rule and regulation must be subjected to a pre-decisional hearing, calling for public comments and views, so that all stakeholders are heard before policy decisions are taken.
45. By adding the Singapore Mediation Convention as an Annexure/Schedule to the bill, it may create an impression that the Government of India has ratified it. If this bill is passed with the convention as an Annexure/Schedule, it should not be a deemed ratification of the Convention, though India has only signed the Convention. Section 49 should provide further clarity in this regard.
46. Family disputes, online consumer disputes are excluded under the Singapore Convention (Schedule I), however, this Bill does not address such disputes.
47. The Singapore Convention (Schedule I) does not apply to the settlement reached through court-annexed mediation, deemed decrees, and deemed awards. Whereas the Bill talks about mediation settlements are deemed to be decrees. The Singapore Convention does not authorize the mediator to give solutions. Whereas the bill equates conciliation with mediation. These contradictions should be noted and rectified.
48. Under Schedule I, Article 5, the competent authority needs to ensure that the settlement is not collusive and anti-national. FEMA violations and Money laundering can occur when there is collusion. There is no mechanism to prevent such collusive settlements.
49. Under Schedule II, under Part 1, provisions – (vii) and (viii), (ix) and (x) should be deleted. Disputes in such areas can be easily resolved through mediation. Especially

IPR disputes which does not fall within the exclusive jurisdiction of appropriate forums and tribunals.

50. Under Schedule IV - Conciliation and Mediation are different concepts and they should be clearly differentiated and defined with the help of a definition clause in order to prevent confusion and avoid interchangeability. A Conciliator need not be a trained mediator and a conciliator can make proposals for settlement. These amendments will scuttle thousands of settlements that happen through conciliation with the help of family heads, community and religious leaders, and trade forums. Providing clarity in this regard would save a potential misinterpretation and misapplication of provisions in the Arbitration & Conciliation Act, 1996 and the present draft Bill. Furthermore, there should be clarity on the fact that mediation is a non-evaluative process, whereas conciliation is an evaluative process.

51. Negotiable Instruments Act and Insolvency and Bankruptcy Code should be brought within the ambit of this Bill to refer the relevant disputes from forums such as the Commercial Courts and National Company Law Tribunals.

The Mediators fraternity appeals to the Parliamentary Standing Committee on Personnel, Public Grievances, Law And Justice to consider deferring the Mediation Bill and consider the concerns and suggestions from all the stakeholders.

Mr. Thiruvengadam, Senior Advocate, International Mediator and Honorary Director of BIMACC will be pleased to clarify any of the above issues .



**Justice S. R. Bannurmath**

Vice President BIMACC

Former Chairperson, Maharashtra State Human Rights Commission

Former Chief Justice, High Court of Kerala

Former Judge, High Court of Karnataka

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Sl. No.	Clause /Sub-clause Number	Suggestions/ Observations	Rationale
1.	<p><b>Clause 3 (k)</b></p> <p>"mediation institute" means a body or organisation that provides training, continuous education and certification of mediators and carries out such other functions under this Act.</p>	<p>To recognize Institute of Company Secretaries of India (ICSI) as “Mediation Institute”.</p>	<p>ICSI is a premier professional body established under The Company Secretaries Act, 1980. It is under the administrative control of the Ministry of Corporate Affairs.</p> <p>ICSI has already delved into developing and regulating Registered Valuers by establishing its wholly owned subsidiary viz. ICSI Registered Valuers Organisation (ICSI RVO) and is further delved in developing and regulating the Insolvency Professionals by establishing another wholly owned subsidiary viz. ICSI Institute of Insolvency Professionals (ICSI IIP).</p> <p>Both these Organizations have been actively involved in educating, training and promoting</p>

			<p>the members by holding training workshops, issuance of different publications such as handbooks, magazines, journals, etc. and by launching and conducting various courses in their respective areas.</p> <p>Further, ICSI has taken several initiatives for the capacity building of members as mentioned below:</p> <ul style="list-style-type: none"> <li>• The Post Membership Qualification course on Arbitration is offered to the members of ICSI to familiarize them with legal framework of arbitration, arbitration procedures, and arbitration practice. This course has coverage relating to drafting of arbitration and other clauses in commercial contracts, international arbitration, limited liability and related aspects, arbitration procedure, arbitration agreement, appearances and arguments, strategic elements in arbitration clauses, execution of arbitral award, appeals etc. A copy of the brochure is attached as <b>Annexure 1.</b></li> </ul>
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			<ul style="list-style-type: none"> <li>• Three days residential training program on the Arbitration in Commercial disputes have been offered to the members with the aim to upgrade and upskill their knowledge in the area of Arbitration. The copy of the brochure is attached as <b>Annexure 2.</b></li> <li>• <b>Madhyastha Ek Vikalp:</b> a series of professional training and capacity building programs in Arbitration. A copy of the brochure is enclosed as <b>Annexure 3.</b></li> <li>• Regular workshops and training programmes on Arbitration and Conciliation with special focus on conduct of arbitral proceedings, appearances and arguments, mock arbitral tribunal and making arbitral award, etc. are conducted across various locations by Chapters and Regional Councils of the ICSI.</li> <li>• Special issue on the subject 'Arbitration' in Chartered Secretary, the monthly journal</li> </ul>
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			of the ICSI and a dedicated monthly newsletter on Arbitration & Alternative Dispute Resolution Mechanism brought out by ICSI.
2.	<p><b>Clause 3 (l)</b></p> <p>"mediation service provider" means a body or organisation that provides for the conduct of mediation under this Act and rules and regulations made thereunder, and are recognised by the Council;</p> <p>Explanation I.—For the purposes of this clause, mediation service provider includes an Authority constituted under the Legal Services Authorities Act, 1987, or mediation centre annexed to a court, tribunal or such other forum as may be specified.</p> <p>Explanation II.—An Authority constituted under the Legal Services Authorities Act, 1987, or mediation centre annexed to a court or tribunal or such other forum shall be deemed to be a mediation service provider</p>	To recognize Institute of Company Secretaries of India (ICSI) as “Mediation Service Provider”.	<p>ICSI has nationwide presence having its headquarters at New Delhi, a <b>Centre for Corporate Governance, Research and Training at Navi Mumbai, a Centre of Excellence</b> at Hyderabad and four Regional Offices at New Delhi, Chennai, Kolkata and Mumbai and 72 Chapters spread all over India and five overseas centres at Australia, UAE, USA, UK and Singapore.</p> <p>Clause 42 of the Mediation Bill, 2021 provides the various functions performed by the mediation service provider.</p> <p><b>The ICSI through its subsidiaries viz. ICSI IIP and ICSI RVO, is already providing various services like maintaining panel of Insolvency Professionals and Registered Valuers empanelled with these subsidiaries, which are providing services to the India Inc. Further the subsidiaries are</b></p>



	<p>recognised by the Council.</p>		<p><b>also imparting various training programmes, accreditation etc. in the respective field.</b></p> <p>ICSI is in a position to provide all facilities, secretarial assistance and infrastructure for the efficient conduct of mediation. Further, ICSI is actively engaged in maintaining and enhancing governance framework in the corporate sector of India Inc. and has dynamic presence in partnering with the Government in its varied initiatives towards achievement of national goals of good governance.</p> <p><b>Hence, ICSI can provide all the necessary requirements as prescribed in the bill to act as mediation service provider.</b></p>
<p>3.</p>	<p><b>Clause 10 (1)- Appointment of Mediator</b></p> <p>Unless otherwise agreed upon by the parties, a person of any nationality may be appointed as a mediator.</p> <p>Provided that mediator of any foreign nationality shall</p>	<p>To consider the Qualification of Company Secretary to be eligible for being appointed as mediator.</p>	<p>The Council of ICSI at its meeting held on March 24-25, 2006 passed a resolution pursuant to the powers granted under Clause (f) of sub-section (2) of Section 2 of The Company Secretaries Act, 1980 permitting Company Secretaries in practice to “Act as an arbitrator, mediator or conciliator for</p>

	<p>possess such qualification, experience and accreditation as may be specified</p>		<p>settlement of disputes or being on the panel of arbitrators or representing in arbitration, mediation or conciliation matters.”</p> <p><b>Company Secretaries have been recognised for being empaneled as Mediator or Conciliator under Section 442 of the Companies Act, 2013 read with Rule 4(g) of the Companies (Mediation and Conciliation) Rules, 2016, notified by Ministry of Corporate Affairs, Government of India.</b></p> <p>The Consumer Protection Act, 2019 allows Company Secretaries having experience of at least five years in mediation or conciliation and the Company Secretaries with at least fifteen years’ experience to be empaneled as mediator with a consumer mediation cell [Section 75 of the Consumer protection Act, 2019 read with Regulation 3 of the Consumer Protection (Mediation) Regulations, 2020.</p> <p>Company Secretaries in Practice</p>
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			<p>have been recognized to provide representation services under host of legislations including TRAI Act, 1997, Trade Marks Act, 1999, Companies Act, 2013, Competition Act, 2002, SEBI Act, 1992, Insolvency and Bankruptcy Code etc. and are acting as extended arms of the regulatory and quasi-judicial mechanism.</p> <p>The Company Secretary is the professional who is widely acclaimed for his understanding of contractual law, corporate law, constitutional law, principles of natural justice, equity, common and customary laws, securities law, industrial law inter alia not only from a legal perspective but also from a management and technical perspective. Company Secretaries have been spearheading several complex corporate litigation matters before Hon'ble NCLT as Counsels / Authorized Representatives. Company Secretaries' proximity and experience of working with top management of large organizations</p>
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			<p>has also inculcated sense of business understanding apart from the legal knowledge.</p> <p>Company Secretaries are governed by the Code of Conduct contained in the Company Secretaries Act, 1980 and is, therefore, subject to disciplinary jurisdiction of the Institute.</p> <p>The curriculum of Company Secretaryship Course covers the detailed study of the laws impacting mediation and conciliation viz.</p> <ol style="list-style-type: none"> <li>i. The Indian Contract Act, 1872</li> <li>ii. The Limited Liability Partnership Act, 2008</li> <li>iii. The Arbitration and Conciliation Act, 1996</li> <li>iv. The Securities Contracts (Regulation) Act, 1956</li> <li>v. The Constitution of India</li> <li>vi. The Civil Procedure Code, 1908</li> <li>vii. The Law of Torts</li> <li>viii. The Limitation Act, 1963</li> <li>ix. The Indian Evidence Act,</li> </ol>
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			<p>1872</p> <p>x. Foreign Direct Investments – Regulations &amp; FDI Policy</p> <p>xi. Overseas Direct Investment</p> <p>xii. External Commercial Borrowings (ECB)</p> <p>xiii. The Benami Transactions (Prohibition) Amendment Act, 2016</p> <p>xiv. The Specific Relief Act, 1963</p> <p>xv. The Sale of Goods Act, 1930</p> <p>xvi. The Partnership Act, 1932</p> <p>xvii. The Negotiable Instrument Act, 1881</p> <p>xviii. Drafting of agreements, documents and deeds</p> <p>xix. Pleadings</p> <p>xx. Appearances &amp; Art of Advocacy</p> <p>xxi. Shareholders' Democracy &amp; Rights</p> <p>xxii. Corporate Disputes</p> <p>xxiii. Fraud under Companies Act and IPC</p> <p>xxiv. Misrepresentation &amp; Malpractices</p> <p>xxv. Defaults, Adjudication,</p>
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			<p>prosecutions and penalties under the Companies Act, Securities Laws, FEMA, COFEPOSA, Money Laundering, Competition Act, Labour Laws &amp; Tax Laws</p> <p>xxvi. Relief and Remedies.</p>
4.	<p><b>Clause 8- Interim relief by court or tribunal</b></p> <p>(1) If exceptional circumstances exist, a party may, before the commencement of, or during the continuation of, mediation proceedings under this Act, file suit or appropriate proceedings before a court or tribunal having competent jurisdiction for seeking urgent interim relief.</p> <p>(2) The court or tribunal shall after granting or rejecting urgent interim relief, as the case may be, refer the parties to undertake mediation to resolve the dispute, if deemed appropriate.</p>	<p>This clause does not provides for right of appeal from any judicial decision that may be taken by the court or tribunal.</p>	<p>Right of appeal before any judicial/quasi-judicial body is integral to fair procedure and principles of natural justice even if the right of appeal itself is a creation of statute.</p>
5.	<p><b>Clause 20 (1)- Withdrawal by parties from mediation</b></p>	<p>Clause 20 and Clause 25 of the Bill requires unwilling parties to stay in mediation for at</p>	<p>This would imply that a party, who is unwilling to mediate but</p>

<p>A party may withdraw from mediation at any time after the first two mediation sessions.</p> <p><b>Clause 25 (c) and (d)- Termination of mediation</b></p> <p>The mediation proceedings under this Act shall be deemed to terminate—</p> <p>(c) on the expiry of seven days from the date of the second mediation session, where a party fails to appear before the mediator consecutively for the first two mediation sessions, and the mediator has not received any communication from such party; or</p> <p>(d) on the date of the communication by a party or parties in writing, addressed to the mediator and the other parties to the effect that the party wishes to opt out of mediation.</p> <p>Provided that the parties shall have to attend at least two mediation sessions before</p>	<p>least two mediation sessions.</p> <p>These clauses need to be re-considered.</p>	<p>has to tide over two mediation sessions, may have to wait for several months before being allowed to approach courts or tribunals.</p> <p>Unwilling parties in such cases will try to persuade the court/tribunal of its “exceptional circumstances” for the grant of “urgent interim relief” under Clause 8 (Interim relief by court or tribunal) of the proposed Bill or they might resort to the remedies under Article 227 to the High Court and under Article 136 to the Supreme Court.</p> <p>Under such circumstances, proposed provisions might not help in reducing the pendency of cases or delays in the dispensation of justice.</p>
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	giving such communication.		
6.	<p><b>Clause 22 (7)- Mediated Settlement Agreement</b></p> <p>For the purposes of record, mediated settlement agreement arrived at between the parties, other than those arrived in a court or tribunal referred mediation or award of Lok Adalat or final award of Permanent Lok Adalat under section 21 or section 22E of the Legal Services Authorities Act, 1987, shall be registered with an Authority constituted under the Legal Services Authorities Act, 1987, in such manner as may be specified and such Authority shall issue a unique registration number to such settlements.</p>	<p>Once the agreement is registered, the same is in public domain and no longer remain confidential. Hence, the clause leads to ambiguity and needs clarification.</p>	<p>The requirement of registration of settlement agreement, and thereby putting its terms in the public domain even if it is for the purposes of record only may disincentive mediation as it might go against the confidentiality requirements of mediation proceedings which lie at the core of the mediation proceedings.</p>

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**Mediation Bill, 2021**  
**(Recommendation to the Parliamentary Standing Committee)**

Date: February 10, 2022

Comments from: CAMP Arbitration and Mediation Practice Pvt. Ltd.

Sr. No	Section / Clause	Text in the Mediation Bill, 2021	CAMP Comments
1.	Sec 6 (3) (iii)	(iii) empaneled by an Authority constituted under the Legal Services Authorities Act, 1987; and	<p>We recommend replacing the word “and” with “<b>or</b>”, as requirements are not cumulative in nature.</p> <p><b>Recommended Text:</b>            (iii) empaneled by an Authority constituted under the Legal Services Authorities Act, 1987; <b>or</b></p>
2.	Sec 6 (5)	(5) The courts and an Authority constituted under the Legal Services Authorities Act, 1987, shall maintain a panel of mediators for the purposes of pre-litigation mediation.	<p>We recommend adding the words “and mediation service provider” after “mediators”. This allows for reference to mediators empaneled with private mediation service providers (registered with the council), besides ad-hoc mediators.</p> <p><b>Recommended Text:</b>            (5) The courts and an authority constituted under the Legal Services Authorities Act, 1987, shall maintain a panel of mediators and <b>mediation service providers</b> for the purposes of pre-litigation mediation.</p>
3.	Sec 8 (1)	If <b>exceptional circumstances</b> exist, a party may, before the commencement of, or 30 during the continuation of, mediation proceedings under this Act, file suit or appropriate proceedings before a court or tribunal having competent jurisdiction for seeking urgent interim relief	<p>We recommend that the “exceptional circumstances” be clearly listed out in the Rules that will follow the legislation, to avoid unnecessary applications without any merit, filed under this section.</p>

Sr. No	Section / Clause	Text in the Mediation Bill, 2021	CAMP Comments
4.	Sec 8 (2)	8 (2) The court or tribunal shall after granting or rejecting urgent interim relief, as the case may be, refer the parties to undertake mediation to resolve the dispute, if deemed appropriate.	<p>We recommend that “if deemed appropriate” be replaced by “<b>unless otherwise deemed not appropriate</b>”.</p> <p><b>Recommended Text:</b> 8 (2) The court or tribunal shall after granting or rejecting urgent interim relief, as the case may be, refer the parties to undertake mediation to resolve the dispute, <b>unless otherwise deemed not appropriate</b>.</p>
5.	Sec 15	Every mediation under this Act shall be undertaken within the territorial jurisdiction of the court or tribunal of competent jurisdiction to decide the subject matter of dispute:	Sec 15 identifying territorial jurisdiction to conduct a mediation is prescriptive. We recommend this clause be <b>deleted</b> , since in cases where parties don’t have consensus on mediator or mediation service provider, this section may discourage courts from referring cases to mediation service providers in India, who have their offices outside the territorial jurisdiction of the court.
6.	Sec 16 r/w Sec 20	<p>16. The mediation proceedings with respect to a particular dispute shall be deemed to 20 have commenced—</p> <p>(a) where there is an existing agreement between the parties to settle the dispute through mediation, the day on which a party issues notice to the other party or parties for mediation and settlement of their disputes; or</p> <p>(b) in other cases –</p> <p>(i) on the day the parties have agreed to appoint a mediator of their choice for mediation and</p>	<p>We recommend clarity on the timeline for mediation service providers to conduct the two initial sessions.</p> <p>Additionally, we recommend clarity on how to file Sec 20 report on non-starter mediations. By non-starter mediation, we mean mediations that fail to commence, either due to no response from the responding party or due to a negative response (rejection) to the invitation to mediate.</p>

Sr. No	Section / Clause	Text in the Mediation Bill, 2021	CAMP Comments
		<p>settlement of disputes between them; or</p> <p>(ii) on the day when one of the parties applies to a mediation service provider for settlement dispute through mediation by appointment of a mediator.</p> <hr/> <p>20. (1) A party may withdraw from mediation at any time after the first two mediation sessions.</p> <p>(2) Where any party fails to attend the first two mediation sessions without any reasonable cause which resulted in the failure of mediation, the court of tribunal, in subsequent litigation on the same subject matter between the parties, may take the said conduct of such party into consideration and impose such costs as deem fit.</p>	
7.	Sec 19 (a)	<p>Unless otherwise agreed by the parties, –</p> <p>(a) the mediator shall not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceedings in respect of a dispute that is the subject matter of the mediation proceedings.</p>	<p>We recommend that this provision be <b>deleted</b> completely, as we believe it is not ethically correct for the same neutral to engage in an adversarial process, after having been confided with by the parties in a collaborative process in the same case.</p>
8.	Sec 19 (b)	<p>Unless otherwise agreed by the parties, –</p> <p>(b) the mediator shall not be presented by the parties as a</p>	<p>Confidentiality and Privilege are effectively covered under Sections 23 and 24 of the Act. We recommend that Sec 19 (b) be <b>deleted</b> to avoid Mediators being involuntary</p>

Sr. No	Section / Clause	Text in the Mediation Bill, 2021	CAMP Comments
		witness in any arbitral or judicial proceeding.	summoned to court for matters not covered u/s 24 of the Act. Additionally, as per current language, mediator shall be presented as witness if agreed to by the parties which contradicts Sec 24
9.	Sec 20 (1)	A party may withdraw from mediation at any time after the <b>first two mediation sessions</b>	We suggest a clarification in the Rules on what constitutes a “mediation sessions”. 1 hour? 1 day?
10.	Sec 23 (4)	<i>Explanation</i> — For the removal of doubts, it is hereby clarified that nothing contained in this section shall apply to the mediated settlement agreement where its disclosure is necessary for the purpose of registration, implementation, enforcement and challenge	We recommend that the word “registration” be <b>deleted</b> .  Mediated Settlement Agreements for the purpose of registration must be held as confidential to build trust and confidence amongst parties in dispute.  <b>Recommended Text:</b> <i>Explanation</i> — For the removal of doubts, it is hereby clarified that nothing contained in this section shall apply to the mediated settlement agreement where its disclosure is necessary for the purpose of implementation, enforcement and challenge
11.	Sec 28 (2)	Subject to the provisions of section 29, the mediated settlement agreement shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908, in the same manner as if it were a judgment or decree passed by a court, and may, accordingly, be relied on by any of the parties or persons claiming through them, by way of defence, set off or otherwise in any legal proceeding.	Sec 28(2) precludes applicability of the Singapore Convention under Sec 3 (a) (2) of the Convention for international mediations conducted in India.  Section 3(a) (2) of the Singapore Convention states that “This Convention does not apply to Settlement agreements that are enforceable as a judgment in the State of that court”.  Sec 28 (2) of this Mediation Bill provides that the “mediated settlement agreement shall be enforced ...in the same manner as if it

Sr. No	Section / Clause	Text in the Mediation Bill, 2021	CAMP Comments
			<p>were a judgement or decree passed by a court....”</p> <p>Inapplicability of the Singapore Convention will greatly impact the conduct of international mediations in India.</p> <p>We recommend amending the language by adding “Provided that settlement agreements arrived at in international mediation would be binding &amp; enforceable under the United Nations Convention on International Settlement Agreements Resulting from Mediation 2019.”</p>
12.	34 (1) (b)	a person having knowledge and experience in law related to mediation or alternate dispute resolution mechanisms, to be appointed by the Central Government— Full-Time Member;	<p>We recommend that it is important to have a mediation expert on the council. In its current form an ADR expert i.e., an arbitrator could be appointed to fill the requirement of this clause.</p> <p><b>Recommended Text:</b></p> <p>“a person having knowledge and experience in the practice of mediation, to be appointed by the Central Government – Full-Time Member;”</p>
13.	Section 44 (5)	The following persons may be included in the panel referred to in sub-section (4)—	<p>We recommend adding a fifth option as below...</p> <p><b>“e) mediation service provider”</b></p>
14.	Schedule IV In the Code of Civil Procedure	Section 89 (b) refer the parties to mediation, to the court annexed mediation centre or to any other mediator, as per the option of the parties, in accordance with the provisions of the Mediation Act, 2021; or	<p>We recommend adding the words <b>“or mediation service providers”</b> before “as per the option of the parties...”</p> <p><b>Recommended Text:</b></p>

Sr. No	Section / Clause	Text in the Mediation Bill, 2021	CAMP Comments
			Section 89 (b) refer the parties to mediation, to the court annexed mediation centre or to any other mediator, <b>or mediation service provider</b> , as per the option of the parties, in accordance with the provisions of the Mediation Act, 2021; or
15.	Schedule X  In the Consumer Protection Act, 2019,	37. Reference to mediation —The District Commission or State Commission or the National Commission, as the case may be, shall either on an application by the parties, at any stage of proceedings refer the disputes for settlement by mediation under the Mediation Act, 2021	We recommend that the word “ <b>or suo moto</b> ” be added between “parties” and “at any stage...” as the intent is to give the tribunal an option to take the initiative in referring suitable cases to mediation.  <b>Recommended Text:</b> Reference to mediation —The District Commission or State Commission or the National Commission, as the case may be, shall either on an application by the parties, <b>or suo moto</b> , at any stage of proceedings refer the disputes for settlement by mediation under the Mediation Act, 2021

## Comments on the Mediation Bill, 2021 submitted to the Standing Committee on Personnel, Public Grievances, Law and Justice

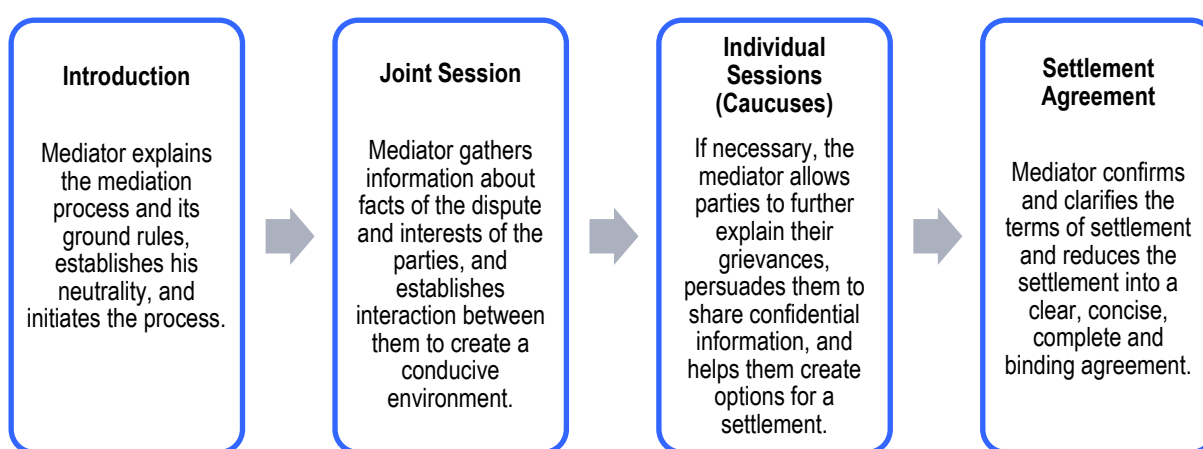
We wish to draw the attention of the Committee to the following matters:

1. The Bill mandates pre-litigation mediation for civil and commercial disputes. It also makes participation in mediation (for at least two mediation sessions) mandatory on a party who may be unwilling to mediate the dispute. Courts may impose costs on parties failing to attend the first two mediation sessions without reasonable cause. Making it mandatory to go through mediation may go against the voluntary nature of the mediation process.
2. There are two issues related to international mediation:
  - i. The Bill applies to international mediations conducted in India only if they relate to commercial disputes. It is not clear why it does not apply to such mediations in case of non-commercial disputes (for instance, matrimonial, family or employment disputes).
  - ii. As per the Bill, in case of international mediations conducted in India, settlement agreements will be enforceable in the same manner as a decree or judgment of a court. However, this does not apply to settlements arising out of international mediations conducted abroad.
3. The Mediation Council of India will be established to regulate the profession of mediators. However, the Bill does not provide for representation of mediators on the Council. This is unlike other professional regulators such as the Bar Council of India. Further, it is not clear why the Council must take approval from the central government before issuing regulations in discharge of its functions.
4. The Bill provides that mediators eligible to conduct pre-litigation mediation must meet certain conditions. They must be registered with the Mediation Council, and empanelled by a court annexed mediation centre, a mediation service provider, **and** a Legal Services Authority (National, State, or District). That is, they must be registered/empanelled at all four places. It is unclear why satisfying any one of these conditions is not sufficient for such mediators.

## 1. Background and need for the Bill

Alternate dispute resolution (ADR) refers to means by which disputes are settled outside the traditional court system. In India, modes of ADR include arbitration, negotiation, mediation, and Lok Adalats. Mediation is a voluntary process in which parties attempt to settle their dispute with the assistance of an independent third person (the mediator).<sup>1</sup> A mediator does not impose a solution on the disputing parties but creates a conducive environment in which parties can resolve their dispute. The mediation process is flexible and depends on the choice of parties, and there are no strict or binding rules of procedure.<sup>1</sup>

**Figure 1: Outline of a general mediation process**



Source: Mediation and Conciliation Project Committee, Supreme Court of India; PRS.

Mediation as a mode of ADR has several benefits. The non-adversarial nature of mediation helps preserve ongoing business or personal relationships between disputing parties.<sup>2</sup> The parties have control over the mediation in terms of its scope and outcome. The issues to be resolved through mediation can be expanded during the process, which may result in parties settling related/connected cases between them besides the main dispute they set out to mediate.<sup>2</sup> The mediation process is speedy, economical, voluntary, and confidential.<sup>1</sup> In mediation, parties can accept creative and non-conventional remedies, regardless of their rights and obligations.<sup>2</sup> Since parties arrive at the settlement consensually, they are more likely to comply with it. Unlike litigation, there is no appeal or revision in a mediated case and disputes are settled with finality.<sup>1</sup> Thus, mediation reduces the case burden on courts.

At present, various Indian laws provide for mediation as a method of dispute resolution. For instance, the Code of Civil Procedure, 1908 confers courts with the discretion to refer cases to mediation.<sup>3</sup> Table 1 lists some of the major laws pertaining to mediation in India.

Broadly, mediation may be a private mediation (for instance, under a contract having a mediation clause), a court referred mediation, or mediation as provided for under a specific



statute (such as the Consumer Protection Act, 2019, or the Companies Act, 2013).<sup>4,5</sup> Certain other Indian laws also provide for conciliation as a mode of dispute resolution. For instance, the Industrial Relations Code, 2020 (though not yet in force) provides for the appointment of conciliation officers for settling industrial disputes.<sup>6</sup> The Industrial Disputes Act, 1947 (which the 2020 Code seeks to replace) also contained similar provision for conciliation proceedings by such officers.<sup>7</sup> The Supreme Court (2010) has noted that the terms ‘mediation’ and ‘conciliation’ are synonymous.<sup>8</sup>

**Table 1: Illustrative list of existing Indian laws related to mediation**

Applicable law	Section(s)	Provision
The Code of Civil Procedure, 1908	Section 89 read with Order X, Rule 1A	Court may refer a dispute before it to certain ADR mechanisms (including arbitration, conciliation, and mediation). This is known as court referred mediation.
The Arbitration and Conciliation Act, 1996	Part III (Conciliation) (i.e., Sections 61-81)	Governs conciliation of disputes arising out of a legal relationship (whether contractual or not). These provisions are used to conduct private mediations in India.
The Commercial Courts Act, 2015	Section 12A	Persons seeking to file a suit with regard to a commercial dispute are first required to initiate pre-institution mediation of the dispute. The only exception is if the person intends to seek urgent interim relief under the Act.
The Consumer Protection Act, 2019	Sections 37, 49, and 59 read with Chapter V	The Consumer Disputes Redressal Commission (whether District, State, or National) may refer parties to settle their dispute by mediation, if they consent to the same.
The Micro, Small and Medium Enterprises (MSME) Development Act, 2006	Section 18	To resolve disputes over the amount due to be recovered in case of delayed payments to micro and small enterprises, either party may make a reference to the Micro and Small Enterprises Facilitation Council (MSEFC). MSEFC will itself conduct conciliation or refer the dispute for conciliation to an institution providing ADR services.

Sources: Respective Acts; PRS.

Presently, there are no uniform qualifications prescribed for mediators in India. Private institutions offering mediation services and mediation centres established by courts or tribunals (known as court annexed mediation centres) prescribe different qualifications for mediators empanelled with them. In 2005, the Supreme Court had approved certain model rules for court referred mediation, which specified the persons eligible to be enlisted in the panel of mediators.<sup>9</sup> These include: (i) retired judges of the Supreme Court, High Courts and certain other courts (such as district courts), (ii) lawyers with at least 15 years’ experience of practicing before the Supreme Court, High Courts or district courts, (iii) experts or other professionals with at least 15 years’ experience, (iv) retired senior bureaucrats, or (v) institutions which are experts in mediation as recognised by High Courts.<sup>9</sup> These model rules have since been adopted with modifications by most High Courts.<sup>2</sup>

Different High Courts (eg., Delhi High Court) have their own rules governing court annexed mediation under their jurisdiction.<sup>10</sup> Statistics pertaining to court annexed mediation are available for a few mediation centres in the country. Table 2 presents data on court referred mediation at mediation centres annexed to certain High Courts.

Comprehensive data on all kinds of mediation conducted in India (such as private mediation) is not available.

The Mediation Bill, 2021 seeks to promote ADR by institutional mediation, since dispute resolution in India is time consuming at present.<sup>11</sup> So far, India does not have a comprehensive, standalone legislation governing mediation. The Bill aims to promote mediation by mandating pre-litigation mediation in civil and commercial disputes, and providing a mechanism for enforcing mediated settlement agreements. It establishes the Mediation Council of India, whose functions include registering mediators, grading mediation service providers, and conducting workshops and courses on mediation.<sup>11</sup> It also makes amendments to certain laws (such as the Arbitration and Conciliation Act, 1996) to incorporate the international practice of using the terms ‘conciliation’ and ‘mediation’ interchangeably. Lastly, the Bill also seeks to make online mediation an acceptable and cost-effective process, and encourage community mediation.

**Table 2: Data pertaining to mediation centres annexed to certain High Courts**

High Court	Period	Cases referred	Cases settled	% settled
Gujarat	2008-2019	2,094	378	18%
Karnataka	2007-2020	77,839	40,854	52%
Madras <sup>+</sup>	2005-2021	25,318	4,086	16%
Patna	2008-2019	6,146	1,452	24%
Punjab and Haryana <sup>#</sup>	2008-2017	12,080	2,346	19%

Note: <sup>+</sup>Sum of cases at the mediation centres annexed to the Madras and the Madurai benches. <sup>#</sup>Centre at Chandigarh. Sources: Websites of respective Mediation Centres; PRS.

## 2. Mandatory mediation and pre-litigation mediation

**[Bill, Clause 6]** (1) *Subject to other provisions of this Act, whether any mediation agreement exists or not, any party before filing any suit or proceedings of civil or commercial nature in any court, shall take steps to settle the disputes by pre-litigation mediation in accordance with the provisions of this Act [...]*

(2) *The provisions, of sub-section (1) shall be applicable to the tribunals notified by the Central Government or a State Government, as the case may be. [...]*

**[Bill, Clause 10]** [...] (2) *The parties shall be free to agree upon the name of mediator and the procedure for their appointment.*

(3) *If the parties do not reach any agreement on a matter referred to in sub-section (2), then the party seeking initiation of mediation shall make an application to a mediation service provider for the appointment of a mediator. [...]*

**[Bill, Clause 16]** *The mediation proceedings with respect to a particular dispute shall be deemed to have commenced—*

(a) *where there is an existing agreement between the parties to settle the dispute through mediation, the day on which a party issues notice to the other party or parties for mediation and settlement of their disputes; or*

(b) *in other cases—*

(i) *on the day the parties have agreed to appoint a mediator of their choice for mediation and settlement of disputes between them; or*

(ii) *on the day when one of the parties applies to a mediation service provider for settlement of disputes through mediation by appointment of a mediator.*

**[Bill, Clause 20]** (1) *A party may withdraw from mediation at any time after the first two mediation sessions.*

(2) *Where any party fails to attend the first two mediation sessions without any reasonable cause which resulted in the failure of mediation, the court or tribunal, in subsequent litigation on the same subject matter between the parties, may take the said conduct of such party into consideration and impose such costs as deems fit.*

**[The Code of Civil Procedure, 1908, Section 89(1)]** *Where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of a possible settlement and refer the same for:—*

(a) *arbitration;*

(b) *conciliation;*

(c) *judicial settlement including settlement through Lok Adalat; or*

(d) *mediation.*

*[The Commercial Courts Act, 2015, Section 12A(1)] A suit, which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of pre-institution mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.*

*[The Family Courts Act, 1984, Section 9(1)] In every suit or proceeding, endeavour shall be made by the Family Court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist and persuade the parties in arriving at a settlement in respect of the subject-matter of the suit or proceeding and for this purpose a Family Court may, subject to any rules made by the High Court, follow such procedure as it may deem fit.*

### **Issue: Requiring unwilling parties to mandatorily mediate disputes may go against the voluntary nature of mediation**

Clause 6(1) of the Bill states that before filing a civil suit, a party “shall” take steps to settle the dispute by pre-litigation mediation. Thus, the Bill mandates pre-litigation mediation in every civil and commercial dispute, even if one party is not willing to go through the mediation process. Where no mediation agreement exists and parties are unable to agree on appointing a mediator of their choice, mediation proceedings commence when one party applies to a mediation service provider to appoint a mediator. This implies that a party can unilaterally set the mediation process in motion, even if the opposite party does not agree to mediate the dispute. A party can withdraw from mediation only after the first two mediation sessions. If the party fails to attend the first two mediation sessions without reasonable cause, a court or tribunal may impose costs on them during the litigation of the dispute. This, in effect, means that all mediation proceedings initiated under the Bill are mandatory on the opposite party, at least until the first two mediation sessions. The question is whether mandating pre-litigation mediation is appropriate.

Mediation is a voluntary dispute resolution process.<sup>1</sup> Mediators cannot impose a settlement on the parties. Unlike traditional litigation or arbitration, where the process involves adjudication of a dispute, mediation involves a mutual resolution of the dispute with the consent of the parties. Therefore, mandatory mediation as under the Bill may be contrary to the voluntary nature of mediation. Further, mandating mediation may not lead to its uptake as an ADR mechanism. Parties who are unwilling to mediate may attend two mediation sessions as a procedural formality and not in good faith with the object to settle the dispute.

On the other hand, requiring parties to mandatorily participate in mediation also has certain benefits. Such mandatory mediation has been adopted both in India and in other

jurisdictions, to varying degrees (for instance, in some countries, mediation is compulsory only for certain kinds of disputes). Mandatory pre-litigation mediation may address the issue of pendency and slow disposal rate in courts.<sup>12</sup>

In India, under the Code of Civil Procedure, 1908, a court may refer parties to certain ADR mechanisms including mediation. The Supreme Court (2010) has held that unlike arbitration, consent of all parties is not required for referring a case to mediation.<sup>8</sup> As per the Mediation Training Manual of India (prepared by the Mediation and Conciliation Project Committee of the Supreme Court), the absence of consent for referring a case to mediation does not affect the voluntary nature of the mediation process.<sup>2</sup> This is because parties are only required to participate in the mediation process, and they retain the freedom to agree or not agree to a settlement and to decide the terms of such settlement.<sup>9</sup>

The Commercial Courts Act, 2015 provides for parties to attempt mediation before initiating a suit in case of commercial disputes.<sup>13</sup> Unlike the 2021 Bill, the 2015 Act does not impose any cost on parties if they fail to attend the mediation proceedings. The question whether pre-institution mediation under the 2015 Act is mandatory or not is presently pending before the Supreme Court of India.<sup>14</sup>

The Family Courts Act, 1984 requires the family court to assist and persuade the parties to arrive at a settlement.<sup>15</sup> The Supreme Court (2013) interpreted this requirement as mandating mediation as an avenue to be exhausted in matrimonial disputes.<sup>16</sup>

The NITI Aayog (2021) noted that the ‘opt-out model’ of mandatory pre-litigation mediation has been successfully implemented in countries such as Italy, Brazil and Turkey.<sup>12</sup> Under this model, parties are required to attend initial mediation sessions to understand the benefits of the mediation process and explore possible settlement, after which they may opt out of the process. The NITI Aayog observed that the success of the opt-out model in Italy is attributable to the minimal mediation fee prescribed, and the parties’ ability to opt out of the process at any stage without the fear of sanctions.<sup>12</sup> This has resulted in upscaling the mediation process in Italy and reducing the case burden on the judiciary. On the other hand, in certain countries such as Romania, compulsory pre-litigation mediation without adequate incentives has reduced the mediation process to a mere formality before parties approach the courts and, in fact, acts as a barrier in access to courts.<sup>12</sup>

In Australia, there is a statutory mandate to attempt mediation before going to court in family law proceedings, with certain exceptions (such as cases of family violence and child abuse).<sup>17</sup>

Courts in Australia have wide discretionary powers to order mediation without the parties' consent on a case-by-case basis.<sup>18,19,20</sup> In England, courts have imposed costs against parties who have unreasonably refused to mediate.<sup>21,22</sup> Factors to be considered when determining whether a party's refusal to mediate is unreasonable include: (i) nature of dispute, (ii) merits of the case, (iii) the extent to which other settlement methods have been attempted, (iv) disproportionately high cost of ADR, and (v) prospects of success of the ADR process.<sup>21</sup>

The NITI Aayog (2021) noted that a framework for mandatory pre-litigation mediation in India must be planned keeping in mind the number of mediators available.<sup>12</sup> It recommended gradually rolling out mandatory pre-litigation mediation in a phased manner, first for certain categories of disputes and then eventually to cover a wide range of disputes. It observed that the expansion in the classes of such disputes should see a corresponding increase in capacity in terms of mediators and dispute resolution centres.<sup>12</sup>

### 3. Gaps in applicability of the Bill

*[Clause 2(1)] Subject to sub-section (2), this Act shall apply where mediation is conducted in India, and—*

*(i) all or both parties habitually reside in or are incorporated in or have their place of business in India; or*

*(ii) the mediation agreement provides that any dispute shall be resolved in accordance with the provisions of this Act; or*

*(iii) there is an international mediation.*

*[Clause 3(f)] “international mediation” means mediation undertaken under this Act and relates to a commercial dispute arising out of a legal relationship, contractual or otherwise, under any law for the time being in force in India, and where at least one of the parties, is—*

*(i) an individual who is a national of, or habitually resides in, any country other than India; or*

*(ii) a body corporate including a Limited Liability Partnership of any nature, with its place of business outside India; or*

*(iii) an association or body of individuals whose place of business is outside India; or*

*(iv) the Government of a foreign country;*

*[Clause 28(2)] Subject to the provisions of section 29, the mediated settlement agreement shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908, in the same manner as if it were a judgment or decree passed by a court, and may, accordingly, be relied on by any of the parties or persons claiming through them, by way of defence, set off or otherwise in any legal proceeding.*

#### **Issue: The Bill does not apply to international mediation conducted in India relating to non-commercial disputes**

The Bill applies to international mediations (i.e., where at least one party is a foreign party) conducted in India *only* if they relate to commercial disputes.<sup>11</sup> It does not apply to international mediation pertaining to non-commercial disputes (for instance, matters of employment, and matrimonial and family disputes). It is unclear why the Bill creates this distinction between commercial and other disputes for international mediation. There is no such distinction under the Bill in case of domestic mediation. Note that similar laws on mediation in other countries (such as Singapore and Germany) do not restrict their application to only a certain class of disputes.<sup>23,24</sup>

**Issue: The Bill does not provide for enforcement of settlement agreements resulting from international mediation conducted outside India**

The Bill applies to international mediation where mediation is conducted in India. However, there may be instances involving an Indian party where the mediation is conducted abroad. In such cases, the problem arises with the enforcement of settlement agreements in India. The Bill provides that mediated settlement agreements are enforceable in the same way as a judgment or decree of a court. This does not cover settlement agreements resulting from international mediation conducted outside India.

The Singapore Convention on Mediation provides a framework for cross-border enforcement of settlement agreements resulting from international mediation.<sup>25,26</sup> On August 7, 2019, India became a signatory to this Convention, but has not yet ratified it.



#### 4. Mediation Council of India

*[Clause 33(1)] The Central Government shall, by notification, establish for the purposes of this Act, a Council to be known as the Mediation Council of India to perform the duties and discharge the functions under this Act.*

*[Clause 34(1)] The Council shall consist of the following members, namely:—*

*(a) a person of ability, integrity and standing having adequate knowledge and professional experience or shown capacity in dealing with problems relating to law, alternate dispute resolution, public affairs or administration to be appointed by the Central Government—Chairperson;*

*(b) a person having knowledge and experience in law related to mediation or alternate dispute resolution mechanisms, to be appointed by the Central Government—Full-Time Member;*

*(c) an eminent person having experience in research or teaching in the field of mediation and alternate dispute resolution laws, to be appointed by the Central Government—Full-Time Member;*

*(d) Secretary to the Government of India in the Department of Legal Affairs, Ministry of Law and Justice or his representative not below the rank of Joint Secretary—Member, ex officio;*

*(e) Secretary to the Government of India in the Department of Expenditure, Ministry of Finance or his representative not below the rank of Joint Secretary—Member, ex officio;*

*(f) Chief Executive Officer—Member-Secretary, ex officio; and*

*(g) one representative of a recognised body of commerce and industry, chosen by the Central Government—Part-Time Member.*

*[Clause 40] The Council shall—*

*(a) endeavour to promote domestic and international mediation in India through appropriate guidelines; [...]*

*(c) lay down the guidelines for the continuous education, certification and assessment of mediators by the recognised mediation institutes;*

*(d) provide for manner of registration of mediators and renew, withdraw, suspend or cancel registration on the basis of conditions as may be specified;*

*(e) lay down standards for professional and ethical conduct of mediators under sub-section (2) of section 17; [...]*

*(h) recognise mediation institutes and mediation service providers and renew, withdraw, suspend or cancel such recognition;*

*(i) specify the criteria for recognition of mediation institutes and mediation service providers; [...]*

*(k) lay down standards for professional and ethical conduct of the mediation institutes and mediation service providers; [...]*

*(n) perform any other function as may be assigned to it by the Central Government.*

**[Clause 53]** *(1) The Council may, with the previous approval of the Central Government, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act.*

*(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may make provision for— [...]*

*(c) standards for professional and ethical conduct of mediators under sub-section (2) of section 17; [...]*

*(l) conditions for registration of mediators and renewal, withdrawal, suspension or cancellations of such registrations under clause (d) of section 40;*

*(m) criteria for recognition of mediation institutes and mediation service providers under clause (i) of section 40; [...]*

*(o) manner for grading of mediation service provider under section 41;*

*(p) such other functions of mediation service provider under clause (f) of section 42;*

*(q) duties and functions to be performed by mediation institutes under section 43; and*

*(r) any other matter in respect of which provision is necessary for the performance of functions of the Council under this Act.*

The Bill provides that the central government will establish the Mediation Council of India. The Council will consist of: (i) a chairperson, (ii) two full-time members (with experience in mediation or ADR), (iii) three ex-officio members (including Secretaries in the Ministries of Law and Justice, and Finance), and (iv) one part-time member (from an industry body). Functions of the Council include: (i) registering mediators, (ii) recognising mediation service providers (institutions administering mediations) and mediation institutes (providing training, education, and certification of mediators), (iii) grading of mediation service providers, and (iv) laying down standards for professional conduct of mediators, mediation service providers, and mediation institutes.

### **Issue: The Bill does not provide for representation of mediators on the Council**

Key functions of the Mediation Council relate to certification, assessment and registration of mediators, and laying down standards for their professional and ethical conduct. The Council will, thus, regulate the profession of mediators. Unlike other statutory bodies for regulating professionals (such as lawyers, chartered accountants, and doctors), which necessarily comprise persons having considerable experience or practicing in the relevant field, this Bill

does not require a mediator to be a member of the Council.<sup>27,28,29</sup> While the two full-time members are required to have knowledge or experience pertaining to mediation or ADR laws, they may not necessarily be accredited mediators. It is also not clear why the Secretary, Department of Expenditure has been made a member of the Council.

**Issue: Rationale for central government approval before issuing regulations is unclear**

The Mediation Council will consist of seven members appointed by the central government. The Bill envisages the Council as a body that will carry out certain functions to help promote mediation in India. Under the Bill, the Council is empowered to issue regulations on various matters. In fact, the Council will discharge its major functions by issuing regulations. For instance, regulations may: (i) lay down professional standards for mediators, (ii) provide the conditions for registration of mediators and recognition of mediation institutes and mediation service providers, and (iii) prescribe the manner for grading mediation service providers.

The Council is required to take approval from the central government before issuing any regulations. It is not clear why such prior approval is required. It may be argued that the Council will only play a nominal role if it requires prior central government approval for discharging its essential functions. Note that no such previous approval for issuing rules and regulations is required by the National Medical Commission (which regulates the education and profession of doctors) and the Bar Council of India (except when prescribing qualifications in law which will be recognised for admitting non-citizens as advocates).<sup>27,29</sup> On the other hand, regulations made by the respective Councils of the Institute of Chartered Accountants of India (ICAI) and the Institute of Company Secretaries of India (ICSI) are subject to the approval of the central government.<sup>28,30</sup>

## 5. High qualification threshold for mediators in pre-litigation mediation

*[Clause 6] (1) Subject to other provisions of this Act, whether any mediation agreement exists or not, any party before filing any suit or proceedings of civil or commercial nature in any court, shall take steps to settle the disputes by pre-litigation mediation in accordance with the provisions of this Act:*

*Provided that pre-litigation mediation in matters of commercial disputes of Specified Value shall be undertaken in accordance with the provisions of section 12A of the Commercial Courts Act, 2015, and the rules made thereunder.*

*(2) The provisions, of sub-section (1) shall be applicable to the tribunals notified by the Central Government or a State Government, as the case may be.*

*(3) For the purposes, of sub-sections (1) and (2), unless otherwise agreed upon by the parties, a mediator, —*

*(i) registered with the Council;*

*(ii) empanelled by a court annexed mediation centre;*

*(iii) empanelled by an Authority constituted under the Legal Services Authorities Act, 1987; and*

*(iv) empanelled by a mediation service provider recognised under this Act,*

*shall conduct pre-litigation mediation [...]*

The Bill mandates parties to attempt mediation before opting for litigation, in case of civil and commercial disputes. Unless the parties agree otherwise, this pre-litigation mediation can only be conducted by a mediator who meets the following conditions: (i) registration with the Mediation Council of India, (ii) empanelment by a court annexed mediation centre, (iii) empanelment by a recognised mediation service provider, and (iv) empanelment by an Authority constituted under the Legal Services Authorities Act, 1987. The mediator has to satisfy *all* these conditions. It is not clear why satisfying any one of these conditions is not sufficient for a mediator to conduct pre-litigation mediation. For instance, a mediator registered with the Council but not empanelled by a court annexed mediation centre or a recognised mediation service provider will not be eligible to conduct pre-litigation mediation.

- <sup>1</sup> ‘Mediation’, Mediation and Conciliation Project Committee, Supreme Court of India, <https://main.sci.gov.in/pdf/mediation/Brochure%20-%20MCPC.pdf>.
- <sup>2</sup> Mediation Training Manual of India, Mediation and Conciliation Project Committee, Supreme Court of India, <https://main.sci.gov.in/pdf/mediation/MT%20MANUAL%20OF%20INDIA.pdf>.
- <sup>3</sup> Section 89, Code of Civil Procedure, 1908, <https://www.indiacode.nic.in/bitstream/123456789/2191/1/a1908-05.pdf>.
- <sup>4</sup> The Consumer Protection Act, 2019, <https://egazette.nic.in/WriteReadData/2019/210422.pdf>.
- <sup>5</sup> Section 442, The Companies Act, 2013, <https://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf>.
- <sup>6</sup> Sections 43 and 53, The Industrial Relations Code, 2020, <https://egazette.nic.in/WriteReadData/2020/222118.pdf>.
- <sup>7</sup> Sections 4 and 12, The Industrial Disputes Act, 1947, <https://www.indiacode.nic.in/bitstream/123456789/15191/1/a1947-14.pdf>.
- <sup>8</sup> Afcons Infrastructure Ltd. vs. Cherian Varkey Construction Co. Pvt. Ltd., Supreme Court of India, Civil Appeal No. 6000 of 2010, July 26, 2010, <https://main.sci.gov.in/jonew/bosir/orderpdf/1129534.pdf>.
- <sup>9</sup> Salem Advocate Bar Association vs. Union of India, (2005) 6 SCC 344, Supreme Court of India, August 2, 2005, [https://districts.ecourts.gov.in/sites/default/files/bSalem\\_Advocate\\_Bar\\_vs\\_Union\\_Of\\_India.pdf](https://districts.ecourts.gov.in/sites/default/files/bSalem_Advocate_Bar_vs_Union_Of_India.pdf).
- <sup>10</sup> Delhi High Court Mediation and Conciliation Rules, 2004, Samadhan, Delhi High Court Mediation and Conciliation Centre, <https://dhcmediation.nic.in/uploads/public/notice/Delhi-High-Court-Mediation-Centre-Rulespdf-3cc4aa71a12f46bf61b8b8a12ae4e21d.pdf>.
- <sup>11</sup> The Mediation Bill, 2021, <https://legallaffairs.gov.in/sites/default/files/mediation-bill-2021.pdf>.
- <sup>12</sup> Designing the Future of Dispute Resolution: The ODR Policy Plan for India, NITI Aayog, October 2021, <https://www.niti.gov.in/sites/default/files/2021-11/odr-report-29-11-2021.pdf>.
- <sup>13</sup> Section 12A, The Commercial Courts Act, 2015, [https://legislative.gov.in/sites/default/files/A2016-4\\_1.pdf](https://legislative.gov.in/sites/default/files/A2016-4_1.pdf).
- <sup>14</sup> Patil Automation Pvt. Ltd. vs. Rakheja Engineers Pvt. Ltd., Supreme Court of India, Special Leave Petition (Civil) No. 014697 of 2021 (pending).
- <sup>15</sup> Section 9, The Family Courts Act, 1984, [https://legislative.gov.in/sites/default/files/A1984-66\\_0.pdf](https://legislative.gov.in/sites/default/files/A1984-66_0.pdf).
- <sup>16</sup> K. Srinivas Rao vs. D.A. Deepa, (2013) 5 SCC 226, Supreme Court of India, February 22, 2013, <http://cja.gov.in/TJO/K.%20Srinivas%20Rao.pdf>.
- <sup>17</sup> Section 60I, Family Law Act 1975 (Australia), <https://www.legislation.gov.au/Details/C2020C00374>.
- <sup>18</sup> The Civil Procedure Act 2005 (New South Wales, Australia), <https://legislation.nsw.gov.au/view/html/inforce/current/act-2005-028#pt.4>.
- <sup>19</sup> Rule 50.07, The Supreme Court (General Civil Procedure) Rules 2015 (Victoria, Australia), <https://content.legislation.vic.gov.au/sites/default/files/2020-07/15-103sra035%20authorised.pdf>.
- <sup>20</sup> Rule 319, The Uniform Civil Procedure Rules 1999 (Queensland, Australia), <https://www.legislation.qld.gov.au/view/pdf/inforce/current/sl-1999-0111>.
- <sup>21</sup> Halsey vs. Milton Keynes General NHS Trust, Court of Appeal (England), [2004] 4 All ER 920.
- <sup>22</sup> Dunnett vs. Railtrack plc, Court of Appeal (England), [2002] 2 All ER 850.
- <sup>23</sup> The Mediation Act, 2017 (Singapore), <https://sso.agc.gov.sg/Act/MA2017>.
- <sup>24</sup> Mediation Act (Germany), July 21, 2021, [https://www.gesetze-im-internet.de/englisch\\_mediationsg/englisch\\_mediationsg.html#:~:text=\(1\)%20The%20mediator%20shall%20disclose,the%20parties%20explicitly%20agree%20thereto](https://www.gesetze-im-internet.de/englisch_mediationsg/englisch_mediationsg.html#:~:text=(1)%20The%20mediator%20shall%20disclose,the%20parties%20explicitly%20agree%20thereto).
- <sup>25</sup> United Nations Convention on International Settlement Agreements Resulting from Mediation, United Nations Commission on International Trade Law (UNCITRAL), March 2019, [https://uncitral.un.org/sites/uncitral.un.org/files/singapore\\_convention\\_eng.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/singapore_convention_eng.pdf).
- <sup>26</sup> Convention Text, Singapore Convention on Mediation, last accessed on January 20, 2022, <https://www.singaporeconvention.org/convention/text>.
- <sup>27</sup> The Advocates Act, 1961, <http://www.barcouncilofindia.org/wp-content/uploads/2010/05/Advocates-Act1961.pdf>.

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<sup>28</sup> The Chartered Accountants Act, 1949,

[https://www.mca.gov.in/Ministry/pdf/CA\\_AmendmentAct\\_2011\\_07092016.pdf](https://www.mca.gov.in/Ministry/pdf/CA_AmendmentAct_2011_07092016.pdf).

<sup>29</sup> The National Medical Commission Act, 2019, <https://egazette.nic.in/WriteReadData/2019/210357.pdf>.

<sup>30</sup> The Company Secretaries Act, 1980,

[https://www.mca.gov.in/Ministry/actsbills/pdf/The\\_Companies\\_Secretaries\\_Amendment\\_Act\\_2006.pdf](https://www.mca.gov.in/Ministry/actsbills/pdf/The_Companies_Secretaries_Amendment_Act_2006.pdf).

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## AARNA LAW COMMENTS ON THE MEDIATION BILL 2021 ("THE BILL")

### A. Summary

This document outlines Aarna Law's comments on the Draft Mediation Bill dated 29 October 2021. Section B of this document outlines comments being made on the sections appearing under Part I of the Bill. Section C of this document outlines comments being made on matters listed under Schedule II of the Bill.

### B. Part I- Domestic Mediation

#### a) Section 4

Definition of "Mediation". Definition to include the word 'neutral'- consider saying *"...whereby parties request a neutral third person or persons ("the mediator" ...)*. Additionally, consider redrafting the definition to introduce more clarity as- *"Mediation" means a process whereby parties request a neutral third person or persons ("the mediator") to assist them in their attempt to reach an amicable settlement of the dispute, whether such a process is referred to by the expression mediation, pre-litigation mediation, online mediation, conciliation or an expression of similar import."*

#### b) Section 5(5)

Consider modifying the sub-section to begin with- *"Subject to the provisions of this Act, the parties to a dispute may..."*. This is suggested considering the conditions stipulated in section 7.

#### c) Section 6(1)

- Mandating mediation "before filing any suit or proceeding in any Court or Tribunal" is expansive and generic. Nature of suits may be specified (with a view to pilot the process initially) or an exception may be carved out (for example, service matters, PMLA proceedings (for attachment), etc.) for pre-litigation mediation.

- Both the definition<sup>1</sup> and the section are silent on the requirements to benefit by the mediation process for it to qualify as “Pre-litigation mediation”.

d) Section 8(1)

The term “exceptional circumstances” is vague. Instead consider saying- *“For the purposes of preserving the subject-matter of dispute being mediated, a party may, before the commencement...”*.

e) Section 9(1)

The expression “... in a matter ... to mediation” may simply be altered to say “dispute”. Parties’ dispute may be consistently referred throughout the document. Additionally, the expression “...good reason why, notwithstanding such agreement, the parties should not be referred to mediation” is vague, ambiguous and likely to cause confusion and may also lead to abuse of the provision in the guise of “good reason”. Appeal remedy thereof may be extensively used.

f) Section 9(2)

Since section 6(1) mandates mediation prior to “filing any suit or proceeding in any Court or Tribunal”, section 9(2) is redundant. Consider introducing more clarity on the procedure.

g) Section 10(1)

The word “neutral” may be added to state *“...a neutral person of any nationality...”*

h) Section 10(4)(ii)

Consider changing “appointment of mediator” to *“choice of mediator”*; “mediator agreed by the parties” to *“person agreed by the parties”* to state- *“...unable to reach agreement as to the choice of mediator or person agreed by the parties refuses to act as a mediator...”*. A person who is being considered, becomes a mediator only upon the parties so agreeing and appointing them. Prior to such appointment, they are merely nominees (as is in the case of arbitration).

i) Section 15(2)

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<sup>1</sup> Section 3(ii), The Draft Mediation Bill, 2021.



The section conflicts with the Indian Registration Act. If the settlement agreement is treated as an order of a Court, mandating registration would not arise (unless in exceptional case like partition disputes).

j) Section 16

Mediation proceedings should be deemed as commenced from date of request.

k) Section 20

Consider eliminating time-limit for completion of mediation. A time-limit would lead to unnecessary complications in complex matters that may take longer but may be settled through mediation. In case of party-opted mediation, either party has the choice to opt out and end the mediation process<sup>2</sup>. In other cases (Court or Tribunal directed mediation), the mediator may terminate the mediation by declaration<sup>3</sup>. Either way, the process will reach a logical end without a statutory time-limit.

l) Section 22(1)(iii)

Consider adding "*during the course of mediation for mediation*".

m) Section 23(1) proviso

Please rectify the typographical error in the second line to say "... *protection from disclosure of information...*".

n) Section 23(3)

Consider adding "*public order*" to "*public health or safety*" under section 23(3)(c). Additionally, consider adding matters relating to "*sovereignty of India and national security*".

o) Chapter 7

➤ The setting up of a "Mediation Council of India" as a regulatory body will lead to over regulation of the process of mediation, which is meant to be an autonomous, party-driven process. The Chapter colors the Bill with an urban-centric approach and burdens the mediation process with more procedure.

➤ Under the existing Bill, the Council will determine the qualification and experience of mediators, among other matters and will also "register"

<sup>2</sup> Section 24(1)(c), The Mediation Bill, 2021

<sup>3</sup> Section 24(1)(b), The Mediation Bill, 2021

mediators<sup>4</sup>. This materially curtail party autonomy to appoint their choice of person as mediator. Additionally, it will also curtail the mediator-pool that will be available to parties, especially in the event pre-litigation mediation remains mandatory.

- The maintenance of an electronic depository by the Council is detrimental to confidentiality that is key to the mediation process. A depository is largely unnecessary as mediation is not aimed as adjudication of rights. Settlement agreements resulting from the mediation process will not serve as precedents, nor will they have persuasive value.
- Consider eliminating the Council or substituting it with a more consultative (and not regulatory) body. Consider making space for industry representation on this consultative body, which is currently absent from the Council<sup>5</sup>.

C. Part I Schedule II - Disputes which may not qualify for resolution through Domestic Mediation

a) Section 7 (1) of the Bill read with Schedule II provides a list of matters which are said to be unfit for mediation. Sufficient legal jurisprudence exists for guidance on the use of mediation in different types of disputes and determination of whether a matter qualifies for mediation may only be determined on a case-to-case basis. Granting blanket exemption to certain categories from being mediated upon defeats the purpose of a law designed for promoting mediation, especially since mediation is not a process for adjudication of rights, but a process for settlement of disputes.

b) While speaking for complete deletion of Section 7 read with Schedule II from the Bill at the first instance, we speak for specific deletion of below points from Schedule II:

Schedule II	
Title	Rephrase to say, " <i>Disputes which may not qualify for resolution through Mediation under Part I</i> ".
Point (ii) and (xv)	As the biggest litigant in the country, the expectation from the government is to lead by example in using alternative dispute

<sup>4</sup> Section 42(2)(c), The Draft Mediation Bill, 2021

<sup>5</sup> Section 36(1), The Draft Mediation Bill, 2021

	<p>resolution processes to settle disputes and ease the burden on the Courts. It is highly incongruent that suits for declaration of title against government should be exempted from mediation. This will severely undermine the objective and purpose that the Bill seeks to achieve.</p>
Point (ii)	<p>Point (ii) of Schedule II takes away the right of minors, deities, persons with intellectual disabilities, persons with disability having high support needs, persons with mental illness, and persons of unsound mind, to participate in the mediation process, which is a voluntary, non-adversarial dispute resolution process designed to ensure autonomy of involved parties. Instead, they are being forced to resort to adversarial methods to access legal remedy. This could exacerbate existing systemic inequalities including access to legal representation which would have also financial repercussions. This goes against the spirit of the Rights of Persons with Disabilities Act, 2016<sup>6</sup>.</p>
Point (iv)	<p>Matters "in conflict with public policy or is opposed to basic notions of morality or justice" is a very wide and ambiguous category to qualify for specific exclusion from mediation.</p>
Point (vii)	<ul style="list-style-type: none"> <li>➤ The Patent Act, 1970 allows for revocation of patents either by filing a petition or by raising a counterclaim in a suit for infringement of the patent.<sup>7</sup></li> <li>➤ In the latter cases, the suit and counterclaim, shall be transferred to the High Court for decision<sup>8</sup>. It is incongruent to extend blanket exclusion to all infringement claims where a counterclaim for revocation of the patent is filed.</li> <li>➤ Consider allowing for a prima facie examination of the counterclaim for revocation of the patent by the High Court for the specific purposes of ruling out mediation under Point (vii).</li> </ul>

<sup>6</sup> Section 12 and 13, The Rights of Persons with Disabilities Act, 2016

<sup>7</sup> Section 64, The Patent Act, 1970

<sup>8</sup> Section 104, The Patent Act, 1970

Point (xii)	The Electricity Act, 2003, allows for the use of alternative dispute resolution (arbitration) under multiple provisions <sup>9</sup> . The rationale behind prohibiting mediation under a proposed Mediation Act is not fully clear.
Point (xiii)	The Petroleum and Natural Gas Regulatory Board Act, 2006, subjects the power and jurisdiction of the Petroleum and Natural Gas Regulatory Board to an arbitration agreement by the parties <sup>10</sup> . The rationale behind prohibiting mediation under a proposed Mediation Act remains unclear.
Point (xvi)	Determining whether a matter/dispute qualifies for mediation or not should be left to the wisdom of the parties and the Courts (in exceptional cases).

<sup>9</sup>Sections 79(F), 86(f), 106(3) and 158, The Electricity Act, 2003

<sup>10</sup>Sections 12(a) and 24(1), The Petroleum and Natural Gas Regulatory Board Act, 2006

## COMMENTS ON THE DRAFT MEDIATION BILL, 2021

By Samvad Partners

11 FEBRUARY 2022

Section No.	Comment	Recommendation
-	Schedule I of Lok Sabha Draft contained <b>United Nations Convention on International Settlement Agreements Resulting from Mediation</b> but the same was removed from the Rajya Sabha Draft. However, the United Nations Convention is important as it serves as the basis for the principles of mediation and India has signed the	Can include provisions pertaining to enforcement of the United Nations Convention under a separate Schedule/Part. Alternatively, a separate law (modelled on the Singapore enactment or the Model law) for enforcement of the international mediated settlement agreements under the United Nations

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	same.	Convention.
Section 2 (s) Tribunal	<p>“Tribunal”</p> <p>The Definition of Tribunal not included in the Rajya Sabha draft but defined in Lok Sabha Draft as follows:</p> <p>“Tribunal means a tribunal constituted under any special law including an arbitral tribunal to hear the dispute in first instance but does not include an appellate tribunal.”</p>	<p>The definition could be included in the Rajya Sabha draft to say “Tribunal means a tribunal constituted <b><u>under any law</u></b> including an arbitral tribunal to hear the dispute in first instance but does not include an appellate tribunal.”</p>
Section 4	<p>A mediator needs to be neutral and should not have the ability to impose (directly or indirectly) a solution upon the parties. The Singapore Convention requires the mediator to be “<b><i>lacking the authority to impose a solution upon the parties to the dispute.</i></b>” These words are absent in the definition of mediation under the draft Bill. To keep the sanctity of the process of mediation and ensure that a settlement is truly voluntary, the words as used in the Singapore Convention to be included in the definition of mediation in the draft</p>	<p>Section 4 to clarify that the mediator be “<b><i>lacking the authority to impose a solution upon the parties to the dispute.</i></b>”</p>

	Bill as well.	
Section 7 read with First Schedule (Cases not fit for mediation)	<p>The list provided under the First Schedule is too wide, and most are best left out. While the draft legislation does provide for the Courts having the power to refer parties for mediation in compoundable matters, it does not give the courts a power to refer parties to mediation in other matters.</p> <p>Parties tend to forum shop and criminal allegations are common even in a civil / commercial dispute. Matters such as cheque bouncing, matrimonial matters, corporate-criminal matters (e.g. oppression mismanagement), civil-criminal matters (family disputes) would be excluded from mandatory pre-litigation and any reference to mediation would require the court to refer the matter to mediation.</p>	The First Schedule to be amended as Annexure 1.
Section 22 (7) (Registration)	By creating a requirement for registration of all mediated settlement agreements, an unwarranted layer of bureaucracy and formality is being	This provision to be deleted.

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	<p>introduced. It is not clear if such registration would be at an additional cost to the parties (such as registration fees) and what would be the consequence of non-registration, since the legislation states that it does not impact the enforceability.</p> <p>It may be noted that under the Arbitration and Conciliation Act, 1996 neither does an arbitration award nor a conciliation award require any registration.</p>	
<p>Section 28 (Enforcement)</p>	<p>Per Section 28 (2), a mediated settlement agreement is enforceable as if it were a judgment or decree passed by a court. This would also be applicable to international commercial mediation that take place in India.</p> <p>Per Section 3 (a) (ii) of the Singapore Convention, the Singapore Convention does not apply to settlement agreements that are enforceable as a judgment in the State of that court.</p>	<p>A proviso to be added to subsection (2) of section 28 to the effect that the section will not apply to mediated settlement agreements covered by this Part. Suggested language for such proviso is as follows:</p> <p><i>Provided that the provisions of Section 28 (2) of this Act shall not be applicable to an international mediated settlement agreement covered under the Singapore Convention save and except</i></p>

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	<p>The parties to the mediation should not lose the benefit of the Singapore Convention only because the mediated settlement agreement is construed to be a judgment of a court in India. Therefore, where parties to a mediated settlement agreement would like to exercise their option to enforce it under the Singapore Convention, they should not be limited by the language of Section 28 (2).</p>	<p><i>where the parties to an international mediated settlement agreement have excluded the applicability of the Singapore Convention for the purpose of enforceability of the international mediation settlement agreement under this Act.</i></p>
<p>Section 29 (3)</p>	<p>The period of limitation for challenge is 90 days from the date of receipt of the mediated settlement agreement and not the actual cause of action, which can be extended by a further period of 90 days by the court/tribunal. There appears to be an assumption that any fraud, corruption, gross impropriety or impersonation would come to the knowledge of the parties within such limited period of 90 days (extendable to a maximum of 180 days).</p>	<p>Section 29 (3) to be amended as:</p> <p><i>“An application for challenging the mediated settlement agreement shall not be made after ninety days have elapsed from the date on which the party making that application <b>(i) in the case of fraud, corruption or impersonation, becoming aware of the same; and (ii) in any other case,</b> has received the copy of mediated settlement agreement under sub-section (3) of section</i></p>

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		22.”
Section 34 (Council)	While the provision provides for some of the Council members to have knowledge of mediation, it does not require the same for all. It is imperative that all the Council members undergo (if no already undergone) a basic training in mediation.	Sub-section (5) to be inserted as follows:  <i>“The Chairperson, the Full Time Member, the Part Time Member, the Secretaries and the Chief Executive Officer” shall all have undertaken a training in mediation from a mediation service provider/institution recognized under the Act.”</i>
Section 45	This provision gives an option for the Report to be submitted by using the word “may”. The provision reads as follows:  “(3) In every case where a settlement agreement is arrived at through mediation under this Act, the same may be reduced into writing with the signature of the parties and authenticated by the mediator, a copy of which he provided to the parties and in cases where no settlement agreement is arrived at, a failure	Can be replaced with:  “(3) In every case where a settlement agreement is arrived at through mediation under this Act, the same <del>may be</del> <b>shall be</b> reduced into writing with the signature of the parties and authenticated by the mediator, a copy of which <b>is to be</b> provided to the parties and in cases where no settlement agreement is arrived at, a failure report <del>may be</del> <b>shall be</b> submitted by the mediator to the Authority

	report may be submitted by the mediator to the Authority or the District Magistrate or the Sub-Divisional Magistrate, as the case may be, and to the parties.”	or the District Magistrate or the Sub-Divisional Magistrate, as the case may be, and to the parties.”
New provision	Several enactments on mediation provide for immunity of mediators. However, the same is not incorporated in the Bill.	A new provision on mediators immunity to be included. Rule 22 of the Mediation and Conciliation Rules, 2004 of the Delhi High Court to be incorporated can be the base for such provision.

THE FIRST SCHEDULE

(See section 7)

DISPUTES OR MATTERS NOT FIT FOR MEDIATION

1. Disputes which by virtue of any law for the time being in force may not be submitted for mediation.

~~2. Disputes involving allegations of serious and specific fraud, fabrication of documents, forgery, impersonation, coercion.~~

3. Disputes relating to claims against minors, deities; persons with intellectual disabilities, under paragraph 2 of the Schedule and person with disability having high support needs [as defined in clause (t) of section 2] of the Rights of Persons with Disabilities Act, 2016 (49 of 2016); persons with mental illness as defined in clause (s) of sub-section (1) of section 2 of the Mental Healthcare Act, 2017 (10 of 2017); persons of unsound mind, in relation to whom proceedings are to be conducted under Order XXXII of the Code of Civil Procedure, 1908 (5 of 1908); and suits for declaration of title against Government; declaration having effect of right *in rem*, **save and save and except with the permission of the relevant Court.**

4. Criminal Offences that are not compoundable, **save and except with the permission of the relevant Court.**

5. Settlement of matters which are prohibited being in conflict with public policy ~~or is opposed to basic notions of morality or justice~~ **or is in violation or contravention of** under any law for the time being in force.

6. Complaints or proceedings, initiated before any statutory authority or body in relation to registration, discipline, misconduct of any practitioner, or other registered professional, such as legal practitioner, medical practitioner, dentist, architect, chartered accountant, or in relation to any other profession of whatever description, which is regulated

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under any law for the time being in force, **save and save and except with the permission of the statutory authority or body or the relevant Court.**

~~7. Disputes which have the effect on rights of a third party who are not a party to the mediation proceedings.~~

8. Any proceeding in relation to any subject-matter, falling within any enactment, over which the Tribunal constituted under the National Green Tribunals Act, 2010 (19 of 2010) has jurisdiction **to the extent the same is not permissible under the National Green Tribunals Act, 2010.**

9. Any dispute with the concerned statutory authority, body or regulator relating to levy, collection, penalties or offences, in relation to any director indirect tax or refunds, enacted by any State legislature or Parliament, **to the extent the same is not permissible under the relevant applicable law.**

10. Any investigation, inquiry or proceeding, under the Competition Act, 2002 (12 of 2003), including proceedings before the Director General, under that Act; proceedings before the Telecom Regulatory Authority of India, under the Telecom Regulatory Authority of India Act, 1997 (24 of 1997) or Telecom Disputes Settlement and Appellate Tribunal established under section 14 of that Act, **save and save and except with the permission of the statutory authority or body or the relevant Court.**

11. Proceedings before appropriate Commissions, and the Appellate Tribunal for Electricity, under the Electricity Act, 2003 (36 of 2003) **to the extent the same is not permissible under the Electricity Act, 2003.**

12. Proceedings before the Petroleum and Natural Gas Regulatory Board, and appeals therefrom before the Appellate Tribunal under the Petroleum and Natural Gas Regulatory Board Act, 2006 (19 of 2006) **to the extent the same is not permissible under the Petroleum and Natural Gas Regulatory Board Act, 2006.**

13. Proceedings before the Securities and Exchange Board of India, and the Securities Appellate Tribunal, under the Securities and E

**SAMVĀD:**  
PARTNERS

ADVOCATES

exchangeBoardofIndiaAct,1992(15of1992) **to the extent the same is not permissible under the SecuritiesandExchangeBoardofIndiaAct,1992.**

14. Landacquisitionanddeterminationofcompensationunder landacquisitionlaws,oranyprovisionoflawprovidingforlandacquistion **to the extent the same is not permissible under applicable law.**

15. **Any other subject-matter of dispute which may be notified by the Central Government.**

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**WRITTEN RECORD OF THE FEEDBACK SUBMITTED BY DAKSH TO THE  
HON'BLE PARLIAMENTARY STANDING COMMITTEE ON THE DRAFT  
MEDIATION BILL, 2021**

**(A) SUBMISSIONS REGARDING PRE- LITIGATION MEDIATION**

The concept of mandatory mediation is provided under the head “Pre-Litigation Mediation” defined in Section 3(r) read with Section 6.

Section 3(r) reads as follows:

*"pre-litigation mediation" means a process of undertaking mediation, as provided under section 6, for settlement of disputes prior to the filing of a suit or proceeding of civil or commercial nature in respect thereof, before a court or notified tribunal under sub-section (2) of section 6;"*

Section 6 reads as follows:

*“Subject to other provisions of this Act, whether any mediation agreement exists or not, any party before filing any suit or proceedings of civil or commercial nature in any court, shall take steps to settle the disputes by pre-litigation mediation in accordance with the provisions of this Act..”*

Section 3(r) read with Section 6 elaborates that “Pre-Litigation Mediation” is a process whereby the disputes are settled through mediation prior to filing a suit in a court or a tribunal of competent jurisdiction. A list of disputes that cannot be mediated are provided in First Schedule. Section 3(r) read with Section 6 allows for civil and commercial disputes to go through the process of Pre-Litigation Mediation.

The concept of Pre-Litigation Mediation needs to be re-examined before being thrust on the parties as a default mechanism. **We request the Hon’ble Committee to reconsider the application of Pre-Litigation Mediation for reasons explained herein below:**

**(1) Pre-Litigation Mediation increases costs for the litigants:**

Section 20 states as follows:

*(1) A party may withdraw from mediation at any time after the first two mediation sessions.*

*(2) Where any party fails to attend the first two mediation sessions without any reasonable cause which resulted in the failure of mediation, the court or tribunal, in subsequent litigation on the same subject matter between the parties, may take the said conduct of such party into consideration and impose such costs as deems fit.*

Section 20 (1) mandates that for disputes that are worthy of mediation, the parties will have to sit through two rounds of mediation before bringing the case to be adjudicated by a judge. Section 20 (2) contemplates imposing costs on parties who don't attend the two mediation sessions.

A voluntary mediation session will allow parties to participate in the first two sessions with an intent to settle. Making mediation mandatory using Pre-Litigation Mediation will mean parties who are not interested in settling will have to pay for the two mediation sessions and for court adjudication in the event that they move the case before a court.

(2) **Cost sanction under Section 20(2) should be removed** - It is coercive to impose costs on parties for failure to mediate and it takes away the parties' rights to participate in a proceeding of their choice (i.e., mediation or court process).

(3) **Pre-Litigation Mediation may lead to increase in time taken to resolve a dispute** – Section 20 mandates that for disputes that are worthy of mediation, the parties will have to sit through two rounds of mediation before bringing the case to be adjudicated by a judge. This will significantly impact the time taken to adjudicate their dispute.

(4) **Pre-Litigation Mediation and impact on rule of law, precedents** – The list of disputes under First Schedule that should be mediated covers disputes that might fall under the ambit of nascent areas, for example technology disputes which are still evolving. It is very difficult for legislators to decide which areas should and should not be mediated because no one can foresee the developments in law. Mandatory Pre-Litigation Mediation subsumes the rights of parties in deciding what is best for their case.

**We recommend Pre-Litigation Mediation be re-examined for the following reasons:**

- Making mediation mandatory using Pre-Litigation Mediation will mean parties who are not interested in settling will have to pay for the two mediation sessions. They will then additionally incur legal and court related expenses for filing the case, in the event that mediation fails. This will significantly increase costs for the litigants.
- Using cost sanctions to enforce Pre-Litigation Mediation can result in stripping away of the rights of litigants to fully participate in the justice system. We recommend removing the cost sanctions under Section 20(2).
- The parties who do not want to mediate but are forced to due to Pre-Litigation Mediation will end up in courts after a considerable time period as they have sat through two sessions of mediation. This will significantly impact the time taken to adjudicate their dispute and add to the delays in the court system.
- Mediating all civil and commercial disputes will not provide room for applying the law to the merits of the case when it is necessary to do so in some disputes.



- Instead of mandating Pre-Litigation Mediation, the process of introducing mediation as a viable option will gain more from allowing lawyers, parties to choose the best course of option as suitable for their circumstances. This also allows for some issues to be outlined before prematurely deciding that all civil and commercial cases should be mediated.

**We recommend Monitoring Pre- Litigation Mediation:**

- We suggest that it is important that all Pre-Litigation Mediation cases are recorded in the existing eCourts system under Pre-Litigation Mediation category. This will enable the tracking of these proceedings with CNR numbers if they are moved to court adjudication. This allows better monitoring of the progress of Pre-Litigation Mediation cases and evaluation of the impact of mediation on judicial delays.

**(B) SUBMISSIONS REGARDING CAPACITY AND INFRASTRUCTURE**

**Capacity**

*2(h) "mediator" means a person who is appointed to be a mediator to undertake mediation, and includes a person registered as mediator with the Council.*

*10. (1) Unless otherwise agreed upon by the parties, a person of any nationality may be appointed as a mediator:*

*Provided that mediator of any foreign nationality shall possess such qualification, experience and accreditation as may be specified.*

If Pre-Litigation Mediation on the scale envisaged by the Bill is to be implemented effectively there is a need for establishing standards for training and certification of mediators. Once Pre-Litigation Mediation is made mandatory it is necessary that there be sufficient number of trained mediators to meet the demand.

**We recommend that:**

- The qualification, experience and accreditation described in the proviso to section 10(1) for foreign mediators should be applicable to domestic mediators too.
- The different kinds of mediators envisaged i.e. those registered with the Council, empanelled by a court annexed mediation centre, empanelled by an Authority constituted under the Legal Services Authorities and empanelled by a mediation service provider recognised under this Act and community mediators need to have basic training about the law and skills for mediation. Mediators not only need training on skills needed for the mediation process like empathy, patience, understanding relational dynamics and the ability to re-frame issues and imagine solutions but also in the technical aspects of the subject matter of the dispute. E.g. if the dispute is a regarding a patent then the mediator should be familiar with patent law and the technical aspects of the patent in dispute.

- A scientific study of mediators and mediation capacity be carried out and its findings discussed amongst all stakeholders before adopting a phase wise implementation approach.

### **Community mediation**

44. (1) *Any dispute likely to affect peace, harmony and tranquility amongst the residents or families of any area or locality may be settled through community mediation with prior mutual consent of the parties to the dispute.*

(2) *For the purposes of sub-section (1), any of the parties shall make an application before the concerned Authority constituted under the Legal Services Authorities Act, 1987 or District Magistrate or Sub-Divisional Magistrate in areas where no such Authority has been constituted, for referring the dispute to mediation.*

(3) *In order to facilitate settlement of a dispute for which an application has been received under sub-section (2), the concerned Authority constituted under the Legal Services Authorities Act, 1987 or the District Magistrate or Sub-Divisional Magistrate, as the case may be, shall constitute panel of three mediators.*

(4) *For the purpose of this section, the Authority or District Magistrate or the Sub-Divisional Magistrate, as the case may be, shall notify a permanent panel of mediators, which may be revised from time to time.*

(5) *The following persons may be included in the panel referred to in sub-section (4)—*

- (a) persons of standing and integrity who are respectable in the community;*
- (b) any local person whose contribution to the society has been recognised;*
- (c) representative of area or resident welfare associations; and*
- (d) any other person deemed appropriate*

(6) *While making panel referred to in sub-section (4) the representation of women or any other class or category of persons may be considered.*

(6) *While making panel referred to in sub-section (4) the representation of women or any other class or category of persons may be considered*

45. (1) *Any community mediation shall be conducted by the panel of three mediators referred to in sub-section (3) of section 44 who shall devise suitable procedure for the purpose of resolving the dispute.*

(2) *The mediators shall endeavour to resolve disputes through community mediation and provide assistance to parties for resolving disputes amicably.*

(3) *In every case where a settlement agreement is arrived at through mediation under this Act, the same may be reduced into writing with the signature of the parties and authenticated by the mediator, a copy of which he provided to the parties and in cases where no settlement agreement is arrived at, a failure report may be submitted by the mediator to the Authority or the District Magistrate or the Sub-Divisional Magistrate, as the case may be, and to the parties.*

*(4) Any settlement agreement arrived at under this Chapter shall be for the purpose of maintaining the peace, harmony and tranquility amongst the residents or families of any area or locality but shall not be enforceable as a judgment or decree of a civil court.*

*(5) The provisions of sub-sections (7) and (8) of section 22 shall, mutatis mutandis apply, in relation to the registration of mediated settlement agreement under this section.*

Community mediation as recommended in Chapter X may be unnecessary if there are enough qualified mediators available whom parties can approach with disputes. It may be dangerous for the state to recognise community mediators who are neither trained in mediation skills nor in law and the principles of justice. Such informal dispute resolution fora already exist in the form of community elders, khap panchayats, etc. Given their informal status they sometimes end up applying traditions and customs rather than the law and perpetuating already existing divisions and inequalities in society. Caution should be exercised before giving such individuals and institutions legal status without any checks and balances on their functioning.

**We recommend that:**

- Empirical interdisciplinary studies be carried out in this area to identify types of disputes/litigants/geographical areas where this might be appropriate.
- Even if the results of such studies show that community mediation is appropriate in certain kinds of disputes, such mediators should be trained in legal principles and mediation skills.
- Other provisions relating to the conduct of mediation and the settlement should apply to community mediation.

**(C) SUBMISSION REGARDING UNIFYING THE ARBITRATION AND MEDIATION COUNCILS**

Chapter VIII (Clauses 33 to 40) proposes to set up a Mediation Council of India to carry out the following important activities:

- (a) endeavour to promote domestic and international mediation in India through appropriate guidelines;
- (b) endeavour to develop India to be a robust centre for domestic and international mediation;
- (c) lay down the guidelines for the continuous education, certification and assessment of mediators by the recognised mediation institutes;
- (d) provide for manner of registration of mediators and renew, withdraw, suspend or cancel registration on the basis of conditions as may be specified;
- (e) lay down standards for professional and ethical conduct of mediators under sub-section (2) of section 17;

- (f) hold trainings, workshops and courses in the area of mediation in collaboration with mediation service providers, law firms and universities and other stakeholders, both Indian and international, and any other mediation institutes;
- (g) enter into memoranda of understanding or agreements with domestic and international bodies or organisations or institutions;
- (h) recognise mediation institutes and mediation service providers and renew, withdraw, suspend or cancel such recognition;
- (i) specify the criteria for recognition of mediation institutes and mediation service providers;
- (j) call for any information or record of mediation institutes and mediation service providers;

These activities are similar to the one envisaged for the Arbitration Council of India proposed to be set up under Section 43D(2) of the The Arbitration and Conciliation (Amendment) Act, 2019 to carry out the following activities in relation to arbitration:

- (a) frame policies governing the grading of arbitral institutions;
- (b) recognise professional institutes providing accreditation of arbitrators;
- (c) review the grading of arbitral institutions and arbitrators;
- (d) hold training, workshops and courses in the area of arbitration in collaboration of law firms, law universities and arbitral institutes;
- (e) frame, review and update norms to ensure satisfactory level of arbitration and conciliation;
- (f) act as a forum for exchange of views and techniques to be adopted for creating a platform to make India a robust centre for domestic and international arbitration and conciliation;
- (g) make recommendations to the Central Government on various measures to be adopted to make provision for easy resolution of commercial disputes;
- (h) promote institutional arbitration by strengthening arbitral institutions;
- (i) conduct examination and training on various subjects relating to arbitration and conciliation and award certificates thereof

Given the significant overlap in the nature of function envisaged for these 2 institutions, we suggest that they be housed under a single institution, albeit as departments/divisions within it. This will not only provide uniformity in operation but also optimise spending of public funds.

**We recommend that :**

- The Arbitration Council of India be renamed as ‘The Arbitration and Mediation Council of India’.
- References to the Mediation Council of India in Chapter VIII of the Mediation Bill 2021 be replaced by ‘The Arbitration and Mediation Council of India’

To  
Sh. Gautam Kumar  
Deputy Secretary

Dear Sir,

There are some important aspects in the Bill which I wish to highlight for your perusal wherein clarifications and redrafting is required. A number of concerns expressed earlier have been taken care of in the changes made in the Bill from the earlier draft which had been circulated for comments. I would like to submit as under for your kind consideration:-

1. Chapter I deals with Domestic Mediation. Sec2(1)(iii) provides that International Commercial Mediation as defined in Section3(f) will come under this Part where it is conducted in India.

U/s Section 28, the Mediation Settlement Agreement will have the status of a judgment or decree of a court.

Under Article 1(3) of the Singapore Convention

The same does not apply to :

(a) Settlement Agreements (i) That have been approved by a court or concluded in the course of proceedings before a court; and (ii) That are enforceable as a judgment in the State of that court ;

b) Settlement agreements that have been recorded and are enforceable as an arbitral award.

Since the proposed Act deems an international mediation settlement agreement to also be a decree of the court, the same would not be enforceable under the Singapore Convention. Therefore, conducting an International Mediation in India may deprive the parties of the benefit of the Singapore Convention, and parties would then prefer to have the Mediation conducted out of India. We will lose the opportunity to make India a robust hub for International Commercial Mediation which has been envisaged whilst drafting the Bill. It would therefore be better to treat International Mediation separately, and not under Domestic Mediation.

2. **Section 3(c)** : As per the definition given “Court” means principle Civil Court of original jurisdiction in a District Court in every district and other 5 Hon’ble High Courts having Original jurisdiction.

The definition for “Court” needs a clarification by adding “Any Court established in India as per the provisions of law, to try any such cases-civil or Criminal in nature, to enable reference of Criminal matters to mediation as well as extending the ambit to enable matters such as those under Section 138 Negotiable Instruments Act.

Presently the Bill is silent qua the remedy available for conducting Mediation in Compoundable Criminal matters or Matrimonial cases.

This grey area in the present Bill needs to be clarified as otherwise, the same will lead to complications whilst referring matters under Criminal law and other such matters to be resolved via the process of Mediation.

3. **Section 3(l)Explanation:** Here the, Court annexed Centres have been bought under the definition of Service Providers in the Bill.

These centers have their own Panel of Mediators and the Settlements are subject to confirmation by the courts. They are enforceable as such. This aspect needs to be clarified.

4. **Chapter 3 Section 6** : If, as per this section, all the matters are to be referred for Pre-Litigation Mediation, are there enough

trained Mediators ? How are the Mediators on the Panel of different service Providers to be recognized ?

5. **Section 10(2)** : In this section, it needs to be clarified that appointment of Mediator/s needs to be by a written agreement.

Furthermore clarification is required that written consent becomes immaterial in cases of mandatory Mediation whether Civil or compoundable Criminal cases.

Since Pre-Litigation is sought to be made mandatory, opting out, if unreasonable, needs to be penalized with costs in subsequent proceedings.

6. **There has been a dichotomy created in the practice of Mediation** – this needs to be clarified as there cannot be two different types of Mediation one under the Mediation Council and the other under the provisions of Legal Services Authority Act, 1987 and the rules or regulations made there under. The role of the Legal Services and LokAdalat has to be de-hors the Mediation Council and more specific.

7. **Chapter 6 Section. 28(2):** This section needs clarifications as to how the Settlement Agreement will get the status of a Civil Decree, particularly in Criminal matters – whether the Criminal Procedure Code is to be amended by adding a Section to Compoundable offences viz. Section 320(A). Also the Mediation Bill may need to make a provision, that the Settlement Agreements executed in Mediation, concerning the criminal matters, by way of Pre-Litigation Mediation, or Court referred Mediation will have the same effect and status of the Award which may be passed as per Section 21, of the Legal Services Authorities Act.

This aspect needs clarification as to how a Settlement agreement be drawn and whether any stamp duty payable for the execution of a Settlement Agreement, by a Mediator. The aspect of Stamp Duty payable is very important otherwise it will create confusion and lead to further litigation.

8. **Chapter 8 Composition of the Mediation Council of India**

It has no provision for mediators or mediation organizations. There is no requirement mentioned for full-time members to have any Mediation experience. The composition does not suit a professional body but is more aligned to being a governmental regulator. This is a concern for virtually all Mediators and Mediation organizations.

Besides, there is no mention in the Bill about the constitution of one Mediation Authority in every State in India, which would perform the daily affairs within the state including awareness programmes and trainings which would communicate with the Central body, and be under the regulation and control of the Mediation Council of India.

**Section 36(1):** As a matter of practical smooth functioning the Bill should bring about an addition and divide the entire nation into 4-5 zones and bring into the Council one-member each from the Mediators Fraternity of that zone for the proper development of the Mediation movement.

The need of training and awareness programs in each State should be decided by the State Mediation Council in consultation with the Central Body. Matters in relation to the Mediation process including the quality, experience, expertise, retirement, panel and number of Mediators should be kept under the ambit of functions of the State Body. The State Mediation Council shall function as per the Regulations made by the State under the direct control of the Mediation Council of India.

9. **CHAPTER X : COMMUNITY MEDIATION**

There is no definition or clarification given qua the Community

mediation or the structure of the same or qualifications of Mediators on the Panel. Community Mediation is a mechanism to provide for conducting Mediation for conflicts at grass root levels. For the smooth functioning of the Community Mediation Centers, the State Mediation Authority can appoint one State Community Mediation Coordinator for the State, preferably an accredited Mediator/Mediator Trainer of State Mediation Authority. That person would be responsible for looking after the activities and programs conducted by the Community mediation Centres or the Social Sponsored Organization across the State. The details of Honorarium, the register to be maintained by the SSosetc may be added in the Rules to the bill and make sufficient changes for the establishment and working of the Community Mediation Centres.

10. Criminal Procedure Code and Family Courts Act 1984 are required to be appended to the Bill. The Authorities under The Legal Services Authority Act, 1987 have been constituted for providing legal aid under that Act. Entrusting various powers under the provisions of this Bill may not be in consonance with the provisions of the Act nor the infrastructure is available with them to carry out further intendment of this Bill.

11. **FIRST SCHEDULE**

a) **Exclusive in Schedule I.**

The list of exclusions is quite large. Quite often in litigation there are allegations of fraud, etc. However, many cases do settle without the need to go into such charges. Apologies and retractions also take place. The tendency in adversarial litigation is to use very strong language and cast the net wide; this should not prevent such cases to try mediation.

As regards claims of minors, deities, disabled persons, etc. The CPC provides for the court to safeguard their interests. This is preferable rather than foregoing the benefits of settlement.

Re: being in conflict with public policy, this should preferably come under the section providing for grounds on which the court would reject a settlement. Regarding affecting third parties this should be focused on the settlement and the power given to the court to determine the issue. Third Parties can always be requested to join the proceedings.

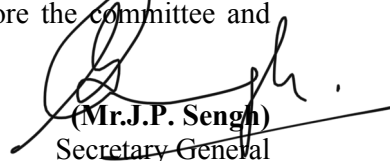
Telecom disputes between service provider's intermediaries, etc. are amenable to mediation.

Therefore, First Schedule should be looked at carefully.

I earnestly request you to kindly consider this Representation.

It will be an honour to appear personally before the committee and explain our points of view.

Kind regards,



(Mr. J.P. Sengh)  
Secretary General

For Maadhyam International Council  
for Conflict Resolution

**Dr. Aman M. Hingorani, Advocate-on-Record, Supreme Court of India;  
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**Views on 'The Mediation Bill 2021'**

S.No.	Provision	Comments	Suggestions
1.	Sections 4, 18	The definition of "mediation" is incomplete. Mediation is inter-alia defined in Section 4 to be a process "whereby party or parties, request a third person referred to as mediator or mediation service provider to assist them in their attempt to reach an amicable settlement of a dispute." The global practice, as reflected in the Singapore Convention, is to specify in the definition of mediation itself that the mediator lacks the authority to impose a settlement upon the parties. Section 4 contains no such provision. Rather, Section 18 of the Bill, while requiring the mediator to emphasise that it is the responsibility of the parties to decide and to inform them that he only facilitates in arriving at the decision, goes on to state that the mediator is to inform the parties that he "may not" impose any settlement.	Section 4 should categorically declare that the mediator and the mediation service provider lack the authority to impose a settlement upon the parties.
2.	Sections 6, 8, 20, 25	<p>Section 6 of the Bill provides for mandatory pre-litigation mediation even if parties do not agree to mediate, and blocks their access to the courts and tribunals across the board for all kinds of cases (except those categories of disputes excluded in the First Schedule which are dealt with later) till they first resort to mediation.</p> <p>Section 20 and Section 25 of the Bill force such unwilling parties to stay in mediation for at least two mediation sessions, and threaten the party who fails to attend the first two mediation sessions "without reasonable cause" with the possibility of costs in subsequent litigation for such "conduct".</p> <p>This, translated in actual practice, would imply that a party, who is unwilling to mediate but has to tide over two mediation sessions,</p>	<p>Pre-litigation mediation should be offered as an option to only those who are willing to mediate, along the lines provided in Sections 62 and 76 of the Arbitration and Conciliation Act, 1996.</p> <p>Consequential changes should be made in the</p>



	<p>may have to wait for several months before being allowed to approach courts or tribunals.</p> <p>Section 8(1) of the Bill provides that “(i)f exceptional circumstances exist, a party may, before the commencement of, or during the continuation of, mediation proceedings under this Act, file suit or appropriate proceedings before a court or tribunal having competent jurisdiction for seeking urgent interim relief.”</p> <p>The position that emerges is that the Bill proposes to block the access of the party unwilling to mediate to courts and/or tribunals to seek redressal of his or her grievances till he or she undergoes at least two mediation sessions, while permitting the party at the same time to initiate litigation before courts and/or tribunals to seek “urgent interim relief” by pleading “exceptional circumstances”. Such a proposal is inexplicable at several levels.</p> <p><i>Firstly</i>, the blocking of access of the party unwilling to mediate to courts as well as tribunals for relief is constitutionally vulnerable. A citizen is entitled to have access to an adjudicatory body for redressal of his or her grievance. Further, the Bill cannot, directly or indirectly, control the action of the courts or interfere with judicial jurisdiction in such manner so as to take cases out of the settled course of adjudication. Such law would amount to depriving the courts of their legitimate jurisdiction under the principle of separation of powers.</p> <p><i>Secondly</i>, it defies comprehension as to how such drastic provisions will help in reducing the pendency of cases or delays in the dispensation of justice, since an aggrieved party will invariably initiate litigation hoping to persuade the court/tribunal of its “exceptional circumstances” for the grant of “urgent interim relief”. Needless to add, such litigation will, in all likelihood, be pursued through constitutional remedies under Article 227 to the High Court, and then under Article 136 up to the Apex Court, more so, in light of the</p>	<p>sections mentioned.</p>
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		<p>uncertainty as to what constitutes “exceptional circumstances”.</p> <p><i>Thirdly</i>, no right of appeal has been provided by the Bill from any judicial decision that may be taken by the court or tribunal under Section 8, rendering this provision constitutionally vulnerable as well – after all, at least one right of appeal on facts is, in current jurisprudence, integral to fair procedure and natural justice even if the right of appeal itself is a creation of statute.</p> <p><i>Fourthly</i>, the provision of mandatory pre-litigation mediation not only runs the risk of being viewed by an unwilling party as being condescending, but also fails to appreciate that a given case, otherwise fit for mediation, may not be right nor ripe for mediation at that stage.</p> <p><i>Fifthly</i>, such provision destroys the principles of self-determination, party autonomy and voluntariness that are the essence of mediation. Rather, mediation will be reduced to an empty formality at least as far as parties who are unwilling to mediate are concerned – it will become just an additional layer to be crossed for being allowed access to courts/tribunals. Added to that would be the waste of precious time, energy, money, resources and infrastructure needed to hold meaningless mediation proceedings. Far from “mainstreaming” mediation, such provisions have the potential of irreparably damaging and discrediting the mediation movement itself.</p>	
3.	Section 7 & First Schedule	<p>Section 7 provides that mediation shall not be conducted for resolution of any dispute or matter contained in the First Schedule. The First Proviso enables the court to refer disputes to mediation relating to compoundable offences or matrimonial offences connected with or arising out of civil proceedings between the parties.</p> <p>However, it is Section 498A Indian Penal Code, 1860, a non-compoundable offence, that is the most common offence in</p>	<p>The First Proviso to Section 7 should be clarified to the effect that it does not preclude the court from referring the parties to mediation in a dispute where Section 498A</p>

		<p>matrimonial disputes. In the event of settlement, the proceedings in relation to such offence gets invariably quashed by the High Court exercising its power under Section 482 Code of Criminal Procedure, 1973.</p> <p>Further, the list in the First Schedule inter-alia involves at S. No. 2 “disputes involving allegations of serious and specific fraud, fabrication of documents, forgery, impersonation, coercion”. These kinds of allegations are particularly routine in commercial, contractual and company disputes – a large chunk of matters typically referred to mediation.</p> <p>The list also includes at S. No. 4 “disputes involving prosecution for criminal offences”. But then, there is a distinction between cases involving heinous criminal offences like murder and rape, and cases relating to criminal offences like cheque bouncing and electricity theft. While mediation cannot be conducted in the former category of cases, it can certainly be conducted in the latter.</p>	<p>IPC has been invoked.</p> <p>S.No. 2 in the list in the First Schedule should be deleted so as to make those category of disputes amenable to mediation.</p> <p>S.No. 4 in the list in the First Schedule should be reworded to exclude only disputes involving prosecution for heinous criminal from the purview of mediation.</p>
4.	Section 18	<p>While defining the role of the mediator in Section 18(1), there is no mention of the use of restorative justice practices.</p> <p>Further, Section 18(2) is loosely worded inasmuch as it states that the mediator “may not” impose any settlement.</p>	<p>The role of the mediator should include the use of restorative justice practices to bring closure to the trauma associated with the conflict.</p> <p>The provision should clearly state that the mediator “shall not” impose any settlement.</p>
5.	Section 21	<p>In light of Sections 26, 28 read with Sections 22 and 7, the Bill essentially appears to govern private mediation (whether by an individual or an institution) as distinct from court annexed mediation.</p>	<p>Section 21 should be deleted.</p>

		<p>If that be the position, there is no reason for Section 21 to mandate a time limit to complete mediation at all. There could indeed be cases that entail parties to, say, alienate property in adverse market conditions or to carry out extensive construction, and the time required for such action may exceed the stipulated time limit – a maximum of 360 days. If parties wish to mediate or keep mediation pending for more than a year and if the mediator is glad to do so, there can be no objection to the continuation of mediation.</p>	
6.	Sections 22, 26, 27, 7	<p>As a consequence of the decision of the Supreme Court in <i>Afcons Infrastructure Ltd. Vs. Cherian Varkey Construction Co. (P) Ltd</i> ((2010) 8 SCC 24), a mediator in a court annexed mediation would be deemed to be a Lok Adalat under the Legal Services Authorities Act 1987, complete with the powers of a civil court in terms of Section 22 of that Act, including though not limited to, the summoning and enforcing attendance of any witness and examining him or her on oath; the discovery and production of any document; the receiving of evidence on affidavit; the requisitioning of any public record or document or copy thereof from any court or office and so on so forth. And all mediation proceedings would be deemed to be judicial proceedings within the meaning of those provisions of the Indian Penal Code, 1860 that, for instance, deal with punishment for false evidence or for intentionally insulting or causing interruption to a public servant in judicial proceedings. Further, every mediator would be deemed to be a civil court for the purpose of the provisions of the Code of Criminal Procedure, 1973 pertaining to prosecution for contempt of lawful authority of public servant, or for offences specified in Section 22.</p> <p>Such a proposition runs counter to every conceivable principle of mediation. Instead to correcting such regrettable state of affairs, the Bill perpetuates it by treating court annexed mediation on a different footing in light of Sections 26, 28 read with Sections 22 and 7.</p>	<p>The Bill should not distinguish between mediations conducted privately or on reference by the court or with a compromise or settlement (award) arrived at before the Lok Adalat. Section 26, 27 and the Second Proviso to Section 7 should accordingly be deleted. Suitable provisions should be incorporated to the effect that in a court referred mediation, the litigation would stand disposed of in terms of the mediated settlement agreement without there being a need to send the agreement back to the referring court. The</p>

		<p>The further consequence of treating court annexed mediation on a different footing is the conferral of varying legal status to a settlement agreement, depending on whether it was arrived at in a private matter or court-referred matter. The former can be enforced like a court decree by virtue of Section 28(2) of the Bill, while the latter would have to be placed before the referring court which is to then record its terms and dispose of the case by applying the principles of Order 23 Rule 3 of the Code of Civil Procedure 1908, that inter alia deal with compromise applications. A mediated settlement agreement logically should enjoy the same legal status and consequences, regardless of whether it was arrived at in a private matter or court-referred matter.</p>	<p>parties could be given liberty to apply to the referring court for refund of Court Fee, if so desired.</p>
7.	Section 22	<p>The Bill requires in Section 22 the registration of the mediated settlement agreement (other than those arrived at in a court or tribunal referred mediation, or awards under the Legal Services Authorities Act, 1987) with an authority constituted under the 1987 Act. Such provision would not negate the settled proposition that confidentiality extends also to the settlement agreement except for the purposes of its enforcement. An incentive for, say, MNCs or celebrities to settle in mediation is that the settlement terms are kept away from public gaze. The requirement of registration of settlement agreement, and thereby putting its terms in the public domain even if it is for the purposes of record only, dis-incentivizes mediation. Again, the Bill is silent on the consequences of the settlement agreement not being registered or on the rationale for putting the responsibility of the registration on the mediator.</p>	<p>Registration of mediated settlement agreements should be made optional for the parties, and should be allowed only if all parties give written consent in this regard. The mediator should have no role with respect to the question of registration.</p>
8.	Section 24	<p>Proviso to Section 24(1) states that nothing in this section “shall protect from disclosure, information sought or provided to prove or dispute a claim or complaint of professional misconduct of mediator or malpractice based on conduct occurring during the mediation.”</p>	<p>The Bill should correct this position and delete all exceptions to the principle of confidentiality.</p>

		<p>But then, should there be professional misconduct of the mediator or malpractice during the mediation, it is open to the party to immediately terminate the mediation. Surely an allegation of misconduct or malpractice during the mediation does not warrant removing the confidentiality attached to mediation.</p> <p>Section 24(2) provides that “(t)here shall be no privilege or confidentiality that will attach to (a) a threat or statement of a plan to commit an offence punishable under any law for the time being in force; (b) information relating to domestic violence or child abuse; and (c) statements made during a mediation showing a significant imminent threat to public health or safety.”</p> <p>Again, “a threat or statement of a plan to commit an offence” or “statements showing a significant imminent threat to public health or safety” – howsoever vague and omnibus as these expressions are – should entail immediate termination of mediation by the mediator rather than being a ground to do away with confidentiality or privilege.</p> <p>As regards lack of confidentiality or privilege with respect to information relating to domestic violence or child abuse, given the wide connotation of the terms “domestic violence” and “child abuse” and the fact that these would factor in most family and matrimonial matters as also guardianship and custody cases, it is doubtful that, in the absence of confidentiality or privilege, a given party would agree to even discuss, let alone address, issues of domestic violence or child abuse. These provisions of the Bill render mediation as an unattractive alternative to resolve such disputes which ironically constitute a large chunk of matters typically referred to mediation.</p> <p>The Supreme Court in its decision in <i>Perry Kansagra Vs. Smriti Madan Kansagra</i> (2019 SCC Online SC 211) took the view that the principle of confidentiality would not apply in matters concerning custody or guardianship</p>	
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		<p>issues since the court, in discharge of its role as <i>parens patriae</i> to determine the custody or guardianship of a child, should have access to all material relating to the child, including child counsellor reports in mediation touching upon the home environment of the parties, their personalities and their relationship with the child. This view, however, overlooks the perspective of the parties in mediation. It is the cloak of confidentiality and privilege that persuades a party, even in custody or guardianship disputes, to lower its defences, express its fears and apprehensions and eventually shift from its vigorously stated position towards a settlement. Parties are in fact encouraged to disclose even incriminatory information in mediation for the purpose of addressing underlying interests and concerns. A party may see no reason as to why mediation should become a forum to gather expert opinion or be converted into a discovery process for the court merely because the court has to perform its own role to determine the custody or guardianship of the child. Mediation depends on the goodwill and consent of the parties and a party might choose not to mediate at all, rather than risk a subjective, if not one-sided, report being given by a mediator (or by a child counsellor who participated in the mediation) to the judge who would be deciding that case on merits. More so, if the incriminatory information disclosed by a party for the purpose of mediation could find its way to the judge and be used against that party. A party could be reluctant to even bring the child to the mediator or counsellor, and should there be judicial directions to do so, it would only add to the undesirable element of compulsion in mediation with consequential loss of faith and trust of that party in the process.</p>	
9.	Section 29	<p>Section 29, while permitting a mediated settlement agreement to be challenged on the grounds like fraud, corruption, impersonation, provides that the application to challenge the agreement shall not be made after 90 days have elapsed from the date on which the party making that application has received a copy of the settlement agreement.</p>	<p>Firstly, there is no rationale for having a provision to challenge a mediated settlement agreement. If</p>

		<p>The Section further provides that if the court or tribunal is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of 90 days it may entertain the application within a further period of 90 days.</p> <p>Hence, should a party discover just after six months of receiving a copy of the mediated settlement agreement that it had been induced to sign the settlement agreement, say, by fraud, the party is precluded by law from challenging the same. Such provision contravenes the elementary rule that fraud not only vitiates but also unravels everything, and that the product of fraud can be disregarded as being null and void at any time, even in collateral proceedings. And where a statutory period of limitation has been prescribed to move the Court against fraudulent action, the said limitation invariably begins from the date of the discovery of fraud – and not from the occurrence of some pre-determined event like the receiving of a copy of the settlement agreement.</p>	<p>there has indeed been, say, fraud, the aggrieved party can seek the remedy before the civil court akin to that of challenging a consent decree on the ground of fraud. Secondly, should there be a provision, then limitation should run from discovery of fraud. Further, grounds like corruption and impersonation are instances of fraud, and need not be specified separately.</p>
10.	Section 45	<p>Section 45(4) provides that the settlement agreement in community mediation “shall be for the purpose of maintaining peace, harmony and tranquillity amongst the residents or families of any area or locality but shall not be enforceable as a judgement or decree of a civil court”. Such lack of enforceability of the settlement agreement will dis-incentivise the very purpose of having the mediation.</p>	<p>Settlement agreement in community mediation should be enforceable as a court decree. Alternatively, the Bill should confer at least some advantages of taking recourse to community mediation.</p>
11.	Fourth Schedule	<p>The proposed Section 89 to be substituted in the Code of Civil Procedure, 1908 does not specify that the reference to mediation (or for that matter, arbitration) should be only with the consent of the parties. The Supreme Court held, in its decision in <i>Afcons Infrastructure Ltd. Vs. Cherian Varkey Construction Co. (P) Ltd</i> ((2010) 8 SCC 24), in context of the Arbitration and Conciliation</p>	<p>The proposed Section 89 in the Fourth Schedule should clearly state that the reference to arbitration or mediation or to the Lok Adalat</p>



		Act, 1996, that the consent of the parties is required before the court can refer them to arbitration or conciliation. Since mediation is now treated to be the same as conciliation by virtue of Section 4 of the Bill and since Schedule VI to the Bill proposes to substitute the provisions related to conciliation in the 1996 Act with the provisions of the Bill, the consent of the parties is necessary for making the reference. The same is the position with respect to the compromise or settlement (award) arrived at before the Lok Adalat in terms of Section 20 of the Legal Services Authorities Act, 1987. The requirement of consent is in line with the principles of self-determination, party autonomy and voluntariness that are so integral to mediation.	can only be made with the consent of the parties.
12.	-	The Bill dilutes the confidentiality principle of mediation. Rule 20(2) of the Civil Procedure Mediation Rules examined by the Supreme Court in its decision in <i>Salem Advocate Bar Assn. Vs. Union of India</i> ((2005) 6 SCC 344) inter-alia stipulates that “when a party gives information to the mediator subject to a specific condition that it be kept confidential, the mediator shall not disclose that information to the other party”. Section 70 of the Arbitration and Conciliation Act 1996 puts the same prohibition on the conciliator. There is no such provision in the Bill. The requirement in Section 18 of the Bill that the mediator shall communicate “the view of each party to the other to the extent agreed to by them” is no substitute for these provisions.	The Bill should contain an express provision to the effect that when a party gives information to the mediator subject to a specific condition that it be kept confidential, the mediator shall not disclose that information to the other party.
13.	-	The Bill is silent regarding the provisions to govern international mediation relating to non-commercial disputes, since Section 3(f) confines “international mediation” to mediation relating to a commercial dispute arising out of a legal relationship, contractual or otherwise, under Indian law and where at least one of the parties is a foreign national or resident, or a body corporate or association having foreign place of business.	The Bill should cover the entire field of international mediations.
14.	-	The Bill does not have provisions specifically dealing with the Singapore Convention (The	The Bill should address the

		United Nations Convention on International Settlement Agreements Resulting from Mediation).	Singapore Convention.
15.	-	<p>Online mediation is not necessarily confined to the conducting of mediation in a virtual setting.</p> <p>In today's digital world, parties to a smart contract can provide for automated mediation and enforcement of settlement agreement, which would pre-empt differences between the parties in the future on the existence or validity of the agreement to go for mediation or enforcement of the settlement agreement. Parties could incorporate into the smart contract itself (a) their consent to go for mediation, (b) the mechanism for nominating a mediator or opting for institutional mediation, (c) the giving of pre-determined access to the mediator to the smart contract in order to enable him or her to code/insert the settlement agreement (should there be one) into the blockchain, which would automatically lead to the transfer of assets or monies of one party to another on the blockchain in terms of such settlement agreement.</p> <p>There is no clarity as to whether or not the Bill, while providing for online mediation, even intends to cover such areas.</p>	<p>The Bill should indicate whether or not online mediation covers automated mediation and enforcement of settlement agreement, and if so, appropriate provisions should be incorporated in the Bill. This would require further debate and discussion in light of the ramifications for other statutes.</p>

New Delhi  
 Dated : 30 January 2022

**AMAN  
 MOHIT  
 HINGORANI**

Digitally signed by AMAN MOHIT HINGORANI  
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**Proposed amendments / changes in the Draft Mediation Bill by Delhi Dispute Resolution Society (Regd.) Department of Law & Justice of Govt. of NCT, Delhi**

**Proposed amendments / changes in the Draft Mediation Bill by Delhi Dispute Resolution Society (Regd.) Department of Law & Justice of Govt. of NCT, Delhi**

	<b>THE MEDIATION BILL, 2021</b>	<b>Line 1</b>	<b>Remarks / Proposed Changes</b>
	An Act to promote, encourage and facilitate mediation especially institutional mediation for resolution of disputes commercial and otherwise, enforce domestic and international mediation settlement agreements, provide for a body for registration of mediators, to encourage community mediation and to make online mediation as an acceptable and cost effective process and for matters connected therewith or incidental thereto	1.	
	Whereas the practice of mediation for resolving a wide range of disputes has gained popularity worldwide over the last few decades amongst individuals, corporate users, governments, judiciary, lawyers etc.	2.	
	And whereas it is accepted that the use of mediation results in better resolution, fosters collaborative problem solving, reduces the burden on the courts, is cost and time effective, and preserves relationships amongst disputants, and enhances social harmony and economic growth of society	3.	
	Whereas India has a long history of consensual dispute resolution and has in recent years made rapid advances in the use of structured mediation, especially in the court annexed mediation schemes of the Supreme Court, High Courts and Subordinate courts.	4.	
	Whereas the United Nations Commission on International Trade And Law (UNCITRAL) has adopted UNCITRAL model law on International Commercial Mediation	5.	

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	and United Nations Convention on International Settlement Agreements resulting from Mediation, on 20 December 2018.		
	Whereas to strengthen the legal framework on international dispute settlement, India on 7th August 2019 became one of the first signatories to the United Nations Convention on Enforcement of International Settlement Agreements resulting from Mediation, also known as "The Singapore Convention".	6.	
	And whereas UNCITRAL has brought a Model Law for giving effect to the Singapore Convention, it is considered expedient that India gives effect to the Singapore Convention by providing for provisions under a standalone mediation law for enforcement of international settlement agreements resulting from mediation.	7.	
	And whereas a robust and effective mediation system greatly enhances the ease of doing business in India thus improving the country's attractiveness as a destination for foreign investment and collaboration.	8.	
	And whereas there is a strong need for a comprehensive uniform legislation for mediation in India which will cover the multiple aspects of its practice, encourage mediation including community mediation, and provide the platform of mediation for settling a wide range of disputes including domestic and cross-border commercial disputes, matrimonial, and other personal disputes.	9.	
	And whereas it is also expedient to enact legislation to give mediation settlements the status of an order, judgment and decree besides establishing the Mediation Council of India and provide for recognition of	10.	

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	mediation service providers.		
	Be it enacted by Parliament in the Seventy-Second Year of the Republic of India as follows:-	11.	
Short title, extent and commencement	<b>1.</b> (1) This Act may be called the Mediation Act, 2021.	12.	
	(2) The provisions of this Act shall come into force on such date(s) as the Central Government may, by notification(s) in the official gazette, appoint and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming in to force of that provision.	13.	
	(3) It extends to the whole of India.	14.	
	<b>PART I DOMESTIC MEDIATION CHAPTER 1 Applicability and Definitions</b>	15.	
Applicability	<b>2.</b> (1) This Part shall apply where mediation is conducted in India and	16.	
	(i) all or both parties habitually reside in or are incorporated in or have their business or residence in India; or	17.	
	(ii) the parties agree that this Act (or any other domestic law or procedure thereunder providing for mediation) will apply to the mediation; or	18.	
	(iii) is an international mediation as defined in this Part.	19.	
	<i>"Explanation I:</i> If a party has more than one place of business / residence, the place of business / residence is that which has the closest relationship to the subject matter in dispute."	20.	
	(2) A mediated settlement agreement made under this Part shall be considered a domestic mediated settlement agreement.	21.	
Definitions	<b>3.</b> In this Part unless the context otherwise requires:	22.	

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	(a) "Council" means the Mediation Council of India established under section 35 of this Act.	23.	
	(b) (i) "Court" for the purpose of mediation under this Part means the Court, Tribunal, Forum of competent jurisdiction in a district, and includes the High Court and Commercial Courtshaving jurisdiction to decide the disputes forming the subject matter of mediation if the same had been the subject matter of a suit or proceedings, provided, if the subject matter of th mediation is commercial dispute of a Specified Value as under the Commercial Courts Act, 2015, Court shall be such Commercial Court as speicified under the said Act.  (ii) in the case of international mediation. the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the mediation if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of[ courts subordinate to that High Court."	24.	To bring uniformity in the Court related procedures of Arbitration and Mediation, the definition of Court is to include Commercial Courts, as well in Section 3(b) and accordingly suitable changes will be required to be made in Schedule VI, relating to amendments in Commercial Courts Act. Therefore, a proviso can be added in this section.  In Schedule VI the required changes in the Commercial Courts Act will be indicated.
	(c) "International Mediation" means a mediation undertaken under this Act and relates to a commercial or any other dispute arising out of legal relationships contractual or otherwise under the law in force in India and where at least one of the parties, at the time of conclusion of that agreement, is-	25.	Without words "or any other", the definition is incomplete, as dispute arising not only out of commercial relationship, but otherwise also would fall in definition of International Mediation
	(i) an individual who is a national of, or habitually resides in, any country other than India; or	26.	
	(ii) a body corporate including Limited Liability Partnership of any	27.	

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	nature, with its place of business outside India; or		
	(iii) an association or body of individuals whose place of business is outside India; or	28.	
	(iv) the Government of a foreign country.	29.	
	<i>Explanation-</i> If a party has more than one place of business / residence, the place of business / residence is that which has the closest relationship to the to the subject matter in dispute.”	30.	
	(d) “Institutional Mediation” means a mediation conducted by a mediation service provider on the parties agreeing to resolve their disputes by it and under its rules.	31.	“Added definition of Institutional Mediation”
	(e) “Mediation” means mediation as referred to in section 4.	32.	
	(f) "Mediator" means an individual who is appointed to be a mediator to undertake mediation and includes a person registered as mediator with the Council.	33.	
	<i>Explanation:</i> Where more than one mediator is appointed for a mediation, reference to a mediator under this Act is a reference to all the mediators.	34.	
	(g) “Mediation agreement” means mediation agreement as referred to in section 5	35.	
	(h) "Mediation Communication", whether made electronically or otherwise, means (i) anything said or done; (ii) any document prepared; or (iii) any information provided, for the purposes of or in relation to or in the course of mediation and includes a Mediation Agreement or a Mediated Settlement Agreement.	36.	
	(i) "Mediation Institutes" means a body or organization or Institute, established, recognized and registered by Center or State Government or any	37.	

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	other authority, that provides training and continuous education and certification of mediators and carry out such other functions as may be specified by the Council by way of regulations.		
	(j) "Mediation Service Provider" means an institute, body or organization that provides for the conduct of mediation and has in place all required facilities and infrastructure as also procedures and Rules to govern the conduct of mediation in conformity with this Act and are recognised by the Council.	38.	
	<i>Explanation:</i> the term mediation service provider includes Lok Adalats and Permanent Lok Adalats constituted under the National Legal Services Authorities Act, 1987 or mediation centre annexed to Court, Tribunal, and such other bodies recognized as Mediation Institutes by Centre or State Government or any other authority, as may be specified by the Council by way of regulations.	39.	Mediation Institutes established by Centre or any State Government or any other authority, which are providing mediation services are also to be covered in the definition of Mediation Service Provider
	(k) "Mediated Settlement Agreement" means settlement agreement as referred to in sub-section (1) of section 21.	40.	
	(l) "Online mediation" means online mediation as referred to in section 32.	41.	
	(m) "Participants" means persons other than the parties who participate in the mediation and includes advisors, consultants and counsel, and any technical experts and observers.	42.	
	(n) "Party" means a party to a mediation agreement or mediation proceedings whose agreement or consent is necessary to resolve the dispute and includes their successors.	43.	
	(o) "Pre litigation Mediation" means a process of undertaking mediation, as provided under section 6 of this Act,	44.	



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	for settlement of disputes before the filing of a suit or proceedings of any nature in respect thereof, before the Court, Tribunal or any other authority of competent jurisdiction.		
	(p) "Prescribed" means prescribed by the Rules under this Act.	45.	
	(q) "Regulations" means regulations made by the Council.	46.	
	(r) "Secure Electronic Signature" with reference to online mediation means electronic signatures as provided for under section 15 of the Information Technology Act 2000 (Act no. 21 of 2000)	47.	
	(s) <i>Private mediation</i> " means a mediation which is not administered by any mediation service provider and includes mediation by individual mediation practitioners.	48.	The word "ad hoc" suggests negative connotation.  The proposed change in the existing also clarifies that mediation service provided by individual practitioner is also recognized under the Act.
	(t) "Tribunal" means a tribunal constituted under any special law including an arbitral tribunal to hear the dispute in first instance but does not include an appellate tribunal.	49.	
Mediation	<b>CHAPTER 2 MEDIATION</b>	50.	
	4. "Mediation" means a process, whether referred to by the expression mediation, pre-litigation mediation, online mediation, conciliation or an expression of similar import, whereby the parties are assisted by neutral third person ("the mediator") to assist them in their attempt to reach an amicable settlement of the dispute. <b>Explanation</b> – The mediation defined under this section will also include a process which is a part of any hybrid	51.	The proposed change clarifies the definition of mediation. It is not always that on the request of the parties the mediator is appointed.  Since many domestic and international agreements contain dispute resolution

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	ethod like Med-Arb, Arb-Med-Arb process.		clauses including Med-Arb or Arb-Med-Arb, of different institutions under their rules, explanation is required to clarified mediation under different hybrid processes to demonstrate that India recognizes these internationally accepted mechanisms of hybrid resolutions.
Mediation Agreement	5. (1) Mediation Agreement means an agreement in writing, by or between parties or any one claiming through them, to submit to mediation all or certain disputes which have arisen or which may arise in respect of any relationship whether contractual or otherwise.	52.	
	(2) A mediation agreement may be in the form of a mediation clause in a contract or in the form of a separate agreement.	53.	
	(3) Mediation Agreement is in writing, if it is contained in or recorded as: (a) Any document signed by the parties; (b) An exchange of communications/letters including through electronic and digital means as provided for by the Information Technology Act, 2000. (c) Any pleadings in a suit or any other proceedings in which existence of mediation agreement is alleged by one party and not denied by the other; (d) Reference in any agreement containing a mediation clause would constitute a mediation agreement if the agreement is in writing and the reference is such as to make the	54.	

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	mediation as part of the Agreement.		
	(5) The parties to a dispute may agree to submit to mediation any dispute arising between them under an agreement whether executed prior to arising of dispute or subsequent thereto.	55.	
	(6) A mediation agreement in case of international mediation shall refer to an agreement for resolution in matters of disputes referred to in clause (c) of section 3.	56.	
Pre litigation Mediation and Settlement	6. (1) Subject to other provisions of this Act, irrespective of the existence of any mediation agreement or otherwise, any party before filing any suit or proceeding in any Court or Tribunal or other forum or authority may, take steps to settle the disputes by pre litigation mediation in accordance with the provisions of this Act.	57.	Resorting to mediation at pre-litigation stage cannot be mandatory but optional because: <ol style="list-style-type: none"><li>1. as every case may not be suitable for mediation. Making mandatory for every case may result in futile exercise and wastage of time and delay the matter.</li><li>2. As right to access to Court of Law, which is a constitutional right is provided under section 9 CPC.</li><li>3. As no one can be denied or deprived of their right to access the Civil Court for not resorting to</li></ol>

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			mediation.
	(2) Unless otherwise agreed upon by the parties, a mediator registered with the Mediation Council of India or a Court Annexed Mediation Center or a Mediation Service Provider recognized under the provisions of this Act are authorized to conduct pre-litigation mediation.	58.	
Cases not fit for mediation	7. (1) Mediation under this Part shall not be conducted for resolution of any dispute in relation to matters listed in Schedule-II of this Act.	59.	
	(2) If the Central Government is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, amend the Second Schedule and thereupon the Second Schedule shall be deemed to have been amended accordingly.	60.	
	(3) A copy of every notification proposed to be issued under subsection (2), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by the both Houses of Parliament.	61.	
Interim relief by Court or Tribunal		62.	There is no need of this section. It overlaps the remedy provided in Section 9(2).

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			<p>Such reliefs are independent of mediation and are available under specific laws, such as CPC and Arbitration and Conciliation Act, etc.</p> <p>Parties will attempt to resort remedy from the Court, which will impact the requirement of good faith participation in mediation and/or will create mistrust with other party. And resultantly the other party will discard the mediation. There should not be court intervention during the ongoing mediation.</p>
		63.	
Power of Court or Tribunal to refer parties to mediation	9. (1) Notwithstanding anything contained in any other law for the time being in force, a Court or Tribunal or Authority, before which an action is brought in a matter which is the subject of an agreement to submit to mediation shall, if a party to such agreement or any person claiming through or under him, so applies, refer the parties to mediation as per the provisions of this Act, unless it finds that <i>prima facie</i> no valid agreement exists.	64.	<p>This Section requires a lot of changes.</p> <p>The mediation being flexible could be resorted to at any stage of the ongoing litigation, there should not be time limit for mediation in the pending litigation. It will not be possible for the Court to evaluate good reason for not referring to mediation. Subjective opinion of Court may lead to litigation in this regard.</p>

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	<p>(2) If the Court or Tribunal directs the parties to go through the process of mediation, it may pass suitable interim orders to protect the interest of the parties.</p> <p><b>Explanation –</b></p> <ol style="list-style-type: none"> <li>1. A direction to the parties to go through the process of mediation shall not impose any obligation on them to come to a settlement in the mediation.</li> <li>2. It is clarified that this section is also applicable in case the Court finds that the agreement to submit to mediation is with respect to an international mediation.</li> </ol>	65.	Existing Sub-Section (3) is made Explanation 1 of the Sub-section (2) and a new Explanation 2 has been added.
	<p>(3) The Court may, while directing the parties to mediation or during the continuation of such referred mediation under this part, on an application filed by a party for seeking urgent interim relief, in special circumstances, grant the same or reject, as the case may be.</p>	66.	Existing Sub-section (3) will become explanation to Sub-Section (2). And a new, Sub- Section 9(3), as proposed will be required to be added.
	<p>(4) The settlement arrived at under this Section shall have the same status and effect as if it was an order, judgment or decree of a Court or Tribunal or Authority and shall be thereupon executable as such.</p>	67.	
	<p><b>CHAPTER 3</b> <b>MEDIATOR</b></p>	68.	
Appointment of mediator	<p>10. (1) Unless otherwise agreed by the parties, a person of any nationality may be a mediator.</p> <p>Provided that mediator of any foreign nationality shall possess such equivalent qualification, experience and accreditation as may be specified for domestic mediators by the Council by way of regulations.</p>	69.	
	<p>(2) The parties are free to agree on a procedure for appointing the mediator</p>	70.	

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	or mediators.		
	(3) If the parties reach no agreement on a procedure referred to in sub-section (2), then the party seeking to initiate mediation shall make an application to a mediation service provider for the appointment of a mediator.	71.	
	(4) Upon receiving application under sub-section (3), the mediation service provider shall appoint (i) the mediator from the panel maintained by it, in case the parties are unable to reach agreement as to the appointment of mediator or mediator agreed by the parties refuses to act as a mediator.	72.	It is because of this agreement on appointment of mediator that one party makes application under sub-section 3, and therefore, there would be no agreement between the parties on the appointment of mediator. Service provider cannot appoint mediator outside its panel of mediators, as it would not be able to ensure ethics of such Mediator.
	(5) Where the mediator is appointed under clause (i) of sub section (4), the mediation service provider shall seek acceptance of appointment from the person so appointed as mediator within 7 days of the appointment.	73.	
	(6) The person appointed under clause (i) of sub section (4) shall communicate his willingness within 7 days from the date of receipt of notice of such appointment under sub-section (5).	74.	
Preference	11. The mediation service provider shall, while appointing any person from the panel of mediators maintained by it, consider his suitability and views of the parties for resolving the subject-matter of dispute.	75.	

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Conflict of Interest and Disclosure	12. (1) When a person is appointed as a mediator, that person shall, prior to the commencement of the mediation, disclose in writing to the parties about any circumstances or potential circumstances, personal, professional or financial, that may constitute conflict of interest or that is likely to give rise to justifiable doubts as to such mediator's independence or impartiality in the conduct of the mediation process.	76.	
	(2) From the time of appointment and during the mediation proceeding, the mediator shall, without delay, disclose to the parties in writing any conflict of interest that has newly arisen or come to his knowledge as stated in sub-section (1).	77.	
	(3) Upon disclosure under sub-section (1) or (2), the parties have the option to waive any objection and the same shall be construed as the consent of parties to continue with the same mediator and if he is willing to so continue.	78.	It is unlikely that the parties will express waiver of objection in writing.
	(4) Upon disclosure under sub-section (1) or (2), if all or any party objects to the continuation of the Mediator, then in case of:- (i) institutional mediation, the mediation service provider, may proceed to terminate the mandate of the mediator; or (ii) <i>private</i> mediation, the objecting party or parties will be free to terminate the mandate of mediator, after giving due notice to the mediator.	79.	It is unlikely that all parties will agree to replace the mediator, therefore, the proposed changes are to be made and the Section can be re-drafted as proposed.  Giving of notice to mediator before termination is essential as it goes with the natural justice and provisions of Section 13.
Termination of mandate of mediator	13. (1) A mediation service provider, may terminate the mandate of a mediator: (i) upon the receipt of application	80.	



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	<p>from the party(ies) under clause (i) of sub-section (4) of section 12; or</p> <p>(ii) upon the receipt of information about the mediator being involved in a matter of conflict of interest from participants or any other person; or.</p> <p>(iii) Where he withdraws from office for any reason.</p> <p>Provided that termination under clause(i) and (ii) shall be effected only if, after giving a hearing to the mediator, mediation service provider finds that there is a justifiable doubt as to the mediator’s independence or impartiality and that the same has been brought to the notice of parties and the parties agrees to replace the mediator.</p>		
	(2) Upon the receipt of information under clause (ii) of sub-section (1), the parties have the option to waive any objection and the same shall be construed as the consent of parties to continue with the same mediator and if he is willing to so continue.	81.	It is unlikely that the parties will express waiver of objection in writing.
Replacement of mediator	<p>14. Upon termination of mediator-</p> <p>(i) in case of <i>private</i> mediation under clause (ii) of subsection (4) of section 12, the parties may, by mutual consent, appoint another mediator within a period of 7 days from such termination; and</p> <p>(ii) in case of institutional mediation under section 13 the mediation service provider shall appoint another mediator from the panel maintained by it within 7 days from such termination.</p>	82.	
	<b>CHAPTER 4 MEDIATION PROCESS</b>	83.	
<b>Territorial</b>	15.	84.	As this Chapter deals

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<b>Jurisdiction</b>	(1) The Mediation under this Act shall take place within the territorial jurisdiction of the Court or Tribunal of competent jurisdiction to decide the subject matter of dispute.  Provided that on the mutual consent of the parties mediation process can be conducted at any place outside the territorial jurisdiction referred to in this section.		with mediation process, it is necessary to define the mediation process at the outset.
	(2) In case the mediated settlement agreement is reached between the parties as specified under sub-section (2) of section 21 then the same shall be registered within the territorial jurisdiction of the Court or Tribunal of competent jurisdiction to decide the subject matter of dispute in accordance with sub-section (7) of section 21.  Provided, that, if the parties require that the terms of the mediated settlement agreement should remain confidential, they shall file a report with the details of the mediator, mediation service provider, parties, the date of the commencement of mediation and date of settlement agreement and the fact that the parties require the terms of such settlement to remain confidential.	85.	The proposed proviso is essential as the parties may want the terms of the settlement to remain confidential and be reluctant to file the Mediated Settlement Agreement for registration. The parties may furnish the required details before the jurisdictional Court, Tribunal and the unique registration number as under Section 21(7) can also be issued based on such filing.
Commencement of mediation	16. The mediation process under this part with respect to a particular dispute shall be deemed to have commenced from the date fixed for the first appearance of the parties before the mediator.	86.	Mediation is a process not a proceeding.
Conduct of mediation	17. (1) Mediation under this Act, whether institutional or <i>ad-hoc</i> , shall be conducted in accordance with the provisions of this Act.	87.	This Section relating to conduct of mediation process requires various stages as proposed and drafted.
	(2) The mediator shall assist the	88.	

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	parties in an independent, neutral and impartial manner in their attempt to reach an amicable settlement of their dispute, but the mediator shall at all times be in control of the process.		
	(3) The mediator shall at all times be guided by the principles of objectivity and fairness and protect the voluntariness, confidentiality, and self-determination of the parties, and the standards for professional, ethical conduct specified by the Council.	89.	
	(4) The mediator shall inform the parties expressly that he only facilitates in arriving at a decision to resolve the dispute(s) and that he may not impose any settlement nor give any assurance that the mediation will result in a settlement. (5) (i) Participation in mediation by the parties shall be voluntary at all times, and subject to other provisions of this Act a party may withdraw from mediation at any time; (ii) a party may be accompanied to the mediation and assisted by any person, including a lawyer, consultant, adviser or expert, who is not a party; and/ or (iii) a party may obtain independent legal advice at any time during the mediation. (6) The mediation process may include the mediator taking such measures as may be considered appropriate, taking into account the circumstances of the case, including meeting with parties and/or participants, jointly and/or separately, as frequently as deemed fit by the mediator, both in order to convene the mediation, and during the mediation for the orderly conduct of the process and to maintain its integrity.	90.	Section 19(1) and (2) which provides for “parties alone responsible for taking decision” are better suited to be part of the “mediation process” under Section 17. Hence, they are, with required changes, being moved as Section 17(4) and (5) respectively. Consequently, existing Section 17(4), (5), (6) will be renumbered as 17(6), (7) and (8) respectively. And a new sub-section 17(9) is proposed to be added which is essential for gathering the required and relevant information by the mediator.
	(7) The mediator shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence	91.	

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	Act, 1872 (1 of 1872), but he shall be, in a given case, free to seek assistance of an expert on the subject, under intimation to the parties.		
	(8) The mediator with the consent of the parties shall determine the language or languages to be used in the mediation process.	92.	
	(9) At any stage of mediation, the Mediator may request a party to submit to him such additional information as he deems necessary and appropriate.	93.	This is proposed addition and is essential for gathering the required and relevant information by the mediator.
Role of Mediator	18. While conducting mediation as per Section 17, the mediator shall attempt to facilitate voluntary resolution of the dispute(s) by the parties, and communicate the view of each party to the other to the extent agreed to by them, assist them in identifying issues, advancing better understanding s, clarifying priorities, exploring areas of possible settlement and generating options in an attempt to resolve the dispute(s), emphasizing that it is the responsibility of the parties to take decision which affect them.	94.	These words are added to remind the mediator about his conducting the mediation following the features and characteristics enumerated in Section 17. Misunderstanding is a negative connotation. And, Compromise is also a negative word and is assumed as forcing the party to compromise. Therefore, “misunderstanding” and “compromise” are not used in mediation.
Parties alone responsible for taking decision.	19.	95.	Re-numbered and moved as Section 17(4) and (5) with the proposed changes.
		96.	
Time-limit for completion of mediation	20. (1) Notwithstanding anything contained in any other law for the time being in force, mediation under this Act shall be completed within a period of ninety days from the date of commencement of mediation.	97.	Though time limit is ideal, but the mediation being party autonomy process, the time limit should be left to the

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			<p>discretion of the parties with the consent of the mediator. In many complex commercial and family matters, more time may be required for effective mediation and holistic resolution of all disputes. Therefore, if the parties consent to extension, and it is necessitated and deemed fit by the mediator, they may have the option to extend. Rigid timeline may deprive the parties to resolve the disputes, there being no provision for seeking extension from the court under any circumstance. Even otherwise. Approaching the court for extension would further delay the process. Likewise, international mediation done in India, under the agreed rules of mediation service providers, have separate time frames under their institutional rules. Therefore, an explanation can be added to sub-section 2, as proposed.</p>
	(2) The period for mediation prescribed under subsection (1) may	98.	

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	<p>be extended for for such further period, as may be necessitated, with the consent of parties.</p> <p><b>Explanation</b> – for the removal of doubts, it is hereby clarified that the time frame stipulated under this section shall not apply to international mediation and domestic mediation where parties have agreed for a procedure as per the rules of the mediation service provider.</p>		
Fee of mediation	<p>20A(1) The Mediator may fix the fee in consultation with the parties and their counsel, being guided by the complexity of the matter and the time likely to be taken in the mediation process.</p>	99.	<p>The proposed addition is relevant for transparency and the information of the parties about the fee etc. that may be payable by them.</p>
	<p>(2) The Mediator may fix the amount of initial deposit or supplementary deposit, as the case may be, as an advance for the costs referred hereunder:</p> <ul style="list-style-type: none"> <li>a. Fee and expenses of Mediator and Associate, if any</li> <li>b. Administrative and Secretarial expenses</li> <li>c. Rental and other miscellaneous expenses etc.</li> </ul>	100.	
	<p>Explanation (i) in case of institutional mediation, the mediator’s fee shall be at the rate specified in the Rules of Mediation service provider.</p> <p>Explanation (ii) unless otherwise agreed by the parties differently, in case of private mediation the mediator fee shall be at the rate as specified by the fee schedule prescribed by Mediation Council of India.</p>	101.	

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	(3) The deposit of fee referred to in sub-section (i) and (ii) shall be payable in equal share by the parties. Provided, that where one party fails to pay his share of the fee, the other party may be called upon to pay his share: provided further that where the other party also does not pay the aforesaid share, the mediator may suspend or terminate the mediation proceedings.		
Mediated Settlement Agreement	21. (1) “Mediated Settlement Agreement” means and includes an agreement or interim agreement in writing between some or all of the parties resulting from mediation, settling some or all of the disputes between such parties, and authenticated by the mediator. Provided that the terms of the mediated settlement agreement may extend beyond the disputes referred to mediation. <i>Explanation.</i> — A mediated settlement agreement which is void under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful settlement agreement within the meaning of mediated settlement agreement.	102.	
	(2) Where a Mediated Settlement Agreement referred to in sub-section (1) is reached between the parties in regard to all the issues or some of the issues, the same shall be reduced in writing and signed by the parties.	103.	
	(3) Subject to provisions of section 26 and 27, the agreement of the parties so signed (i) in case of institutional mediation shall be submitted to the mediator who shall, after authenticating the settlement agreement, forward the same with a covering letter signed by him, to the mediation service provider and also	104.	

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	<p>provide a copy of the same to the parties.</p> <p>(ii) in all other cases, shall be submitted to the mediator who shall, after authenticating the settlement agreement, provide a copy of the mediated settlement agreement to all the parties .</p>		
	<p>(4) Subject to provisions of section 26 and 27, where no agreement is arrived at between the parties, within the time period specified in section 20 or where, the mediator is of the view that no settlement is possible, -</p> <p>(i) The Mediator shall submit a report to this effect to the mediation service provider in writing in case of institutional mediation.</p> <p>(ii) In all other cases the mediator shall prepare a report to this effect and provide a signed copy to all the parties.</p> <p>Provided that the report referred to in clause (i) or (ii) above shall not disclose the cause for failure of the parties to reach a settlement, or any other matter or thing referring to their conduct, opinions and proposal etc. made during the mediation.</p>	105.	Confidentiality is the basic feature of mediation.
	<p>(5) The parties, may, at any time during the mediation process, make an interim or partial agreement with respect to any of the issues forming part of the subject matter of the mediation.</p>	106.	
	<p>(6) Any mediated Settlement Agreement under this section shall also include a settlement agreement resulting from online mediation and duly signed by the parties by way of secure electronic signature or otherwise and authenticated by the mediator in the like manner.</p>	107.	
	<p>(7) For the purpose of record, mediated settlement agreement</p>	108.	By making registration



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	<p>arrived at between the parties other than those arrived in Court annexed mediation centres or under section 21 and 22E of the Legal Services Authorities Act, 1987 shall be registered with the Authorities constituted under the Legal Services Authorities Act, 1987 and such Authorities shall issue a unique registration number to such settlements as specified by regulations to be made by the Authorities.</p> <p>Provided that the mediated settlement agreement reached between the parties under sub-section (2) shall be registered within the territorial jurisdiction of the Court or Tribunal of competent jurisdiction to decide the subject matter of dispute, as under Section 15.</p>		<p>compulsory, an unwanted bureaucratic layer is being introduced. Further, it will also create confusion as regards the authority and the fee etc for registration. As non-registration will not impact the enforceability, people will avoid registration and make this provision redundant.</p> <p>In the alternative we can have more depositories where mediated settlement could be voluntarily registered/ uploaded electronically.</p> <p>In any case, if we are to retain registration, consequent upon the changes in Section 15(2), this proposed proviso is essential.</p>
	<p>(8) Registration referred to in sub-section (7) shall be made by either of the parties, mediator or mediation service provider within a period of ninety days from the date of receipt of copy of mediated settlement agreement:</p> <p>Provided that mediated settlement agreement may be registered after expiry of period of ninety days on payment of such fee as may be specified by the Authorities by way of regulations, as under Section 15(2).</p> <p>(9) A mediated settlement agreement, resulting from a mediation under this</p>	109.	<p>Consequent upon the changes in Section 15(2), this proposed proviso is essential.</p> <p>The status of</p>

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	part, signed by the parties, and authenticated by the mediator shall be final and binding on the parties and persons, claiming under them, and subject to the provisions under Section 29, it shall be enforced in accordance with the provisions of Code of Civil Procedure, 1908, in the same manner as if it were a judgment and/ or a decree passed by the court and may accordingly be relied on by any of parties or persons claiming through them, by way of defense, set off or otherwise in any legal proceedings.		mediated settlement agreement (as mentioned in exiting Section 28(1) and (2), can be brought under Section 21(9), which deals with all aspects of mediator settlement agreement.
Confidentiality	22. (1) Subject to the exceptions provided in this Act, the mediator, the parties and participants in the mediation shall keep confidential the following matters relating to the mediation proceedings:	110.	
	(i) acknowledgements, opinions, suggestions, promises, proposals, apologies and admissions made during the mediation;	111.	
	(ii) acceptance of or willingness to accept proposals made or exchanged in the mediation;	112.	
	(iii) documents prepared solely for the purpose of mediation.	113.	
	(2) Notwithstanding anything contained in any other law for the time being in force, the mediator, the mediation service provider and the parties to the mediation agreement shall maintain confidentially of all mediation proceedings except mediated settlement agreement.	114.	
	(3) There shall be no audio or video or stenographic recording of any part of mediation proceeding by anyone, except the terms relating to outcome of mediation settlement with the	115.	Mediation being entirely confidential, there cannot be any recording. In recording

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	consent of the parties.		confidentiality cannot be maintained and secured. This subsection as exists, can be re-drafted as proposed:
	<p>(4) No party to the mediation shall in any proceedings before a Court or Tribunal, rely on or introduce as evidence any information or communication set forth in clauses (i) to (iii) of subsection (1), including any information in electronic form, or verbal communication and the Court or Tribunal shall not take cognizance of such information or evidence.</p> <p>Provided that evidence or information that is otherwise admissible or subject to discovery in proceedings will not become inadmissible or protected from discovery solely by reason of its disclosure or use in a mediation.</p>	116.	
Admissibility, Privilege against Disclosure	<p>23. (1) No mediator, party or participant in the mediation, including experts and advisors engaged for the purpose of the mediation and persons involved in the administration of the mediation, shall at any time be permitted, or compelled to disclose to any Court or Tribunal, or in any adjudicatory proceedings by whatsoever description, any communication in mediation, or to state the contents or conditions of any document or nature or conduct of parties during mediation including the content of negotiations or offers or counter offers with which they have become acquainted during the mediation.</p> <p>Provided that nothing in this section</p>	117.	<p>The privilege against disclosure is required to be given to not only the mediator, but also the parties and participants.</p> <p>Therefore, Section 23(1) is amended as proposed.</p>

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	and section 22 shall protect from disclosure information sought or provided to prove or dispute a claim or complaint of professional misconduct or malpractice based on conduct occurring during the mediation.		
	(2) The provisions of this section will not prevent the mediator from compiling or disclosing general information concerning matters that have been subject to mediation, for research, reporting or training purposes, if the information does not expressly or indirectly identify a party or participants or the specific disputes in the mediation.	118.	
	(3) There is no privilege or confidentiality that will attach to:	119.	
	(a) a threat or statement of a plan to commit an offence punishable under law;	120.	
	(b) information relating to domestic violence or child abuse; and	121.	
	(c) statements made during a mediation showing a significant imminent threat to public health or safety.	122.	
Termination of Mediation	24. (1) The mediation proceedings under this part shall terminate:	123.	
	(a) On the date of signing and authentication of the Mediated Settlement Agreement; or	124.	
	(b) By a declaration of the mediator, after consultation with the parties, to the effect that further efforts at mediation are no longer justified, on the date of the declaration; or,	125.	
	(c) On the date of the communication by a party or parties to the mediation in writing, addressed to the mediator and the other parties to the effect that the party wishes to opt out of mediation.  Provided that the parties have to	126.	

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	attend at least one mediation session before giving such communication.		
	(a) On completion of time period as provided under section 20 without parties reaching any settlement agreement.	127.	
Depository of mediated settlement agreements.	<b>25. Deleted</b>	128.	
Court annexed mediation	26. For the purpose of court annexed mediation the procedure of conducting mediation shall be such as may be determined under the practice directions or rules framed by the Supreme Court or the concerned High Courts.	129.	
Mediation by Lok Adalat and Permanent Lok Adalat	27. Mediation conducted by Lok Adalat and Permanent Lok Adalat shall be in accordance with the provisions of Legal Services Authorities Act, 1987 and the rules or regulations made thereunder.	130.	
	<b>CHAPTER 5 STATUS OF MEDIATED SETTLEMENT AGREEMENT</b>	131.	
	28.	132.	These stand shifted to Section 21(9).
Challenge to mediated settlement agreement	29. (1) Notwithstanding anything contained in any other law, in any case in which the mediated settlement agreement is arrived between the parties and is sought to be challenged by either of the parties, he may apply to the Court or Tribunal or other Authority of competent jurisdiction before which the subject-matter of dispute or other proceeding would lie.	133.	
		134.	
	(2) The Court may refuse to execute the Mediation Settlement, if the party against whom enforcement is sought, furnishes proof that:  (i) The Mediated Settlement Agreement is vitiated by;	135.	There will be presumption of mediated settlement agreement being validly entered into, unless sproved otherwise. The onus

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	(a) Fraud; or (b) Corruption; or (c) Gross impropriety; or (d) Impersonation.		to challenge Meditated Settlement Agreement would be on the party against whom the settlement is sought to be enforced.
	(ii) The terms of Mediated Settlement Agreement (a) are null and void, illegal or inoperative or incapable of being performed under the laws of India or (b) has been subsequently modified or performed or (c) are not clear and comprehensible or (d) are against the public policy	136.	
	(iii) The subject matter of the dispute is not capable of settlement by mediation under the laws of India	137.	
	(4) An application for challenging the mediated settlement agreement may not be made after six months have elapsed from the date on which the party making that application has received the copy of mediated settlement agreement under section 21(3) of this Act.  Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of six months it may entertain the application within a further period of thirty days, but not thereafter.  Further, provided that if the Settlement Agreement has been completely acted upon by the parties or accepted by the Court or the Tribunal or the Authority under Section 21(7) and 21(9) of the Act,	138.	The additional proviso is essential. If the settlement agreement has been acted upon as stated in proposed

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	there would not lie challenge on any ground whatsoever.		additional proviso, there cannot lie challenge. If challenge is allowed for indefinite period, there would never be finality to the settlement.
Costs	30. Unless otherwise agreed by the parties all costs of mediation, including the fees of the mediator and the charges of the mediation service provider shall be borne equally by the parties.	139.	
Exclusion of limitation	31. Notwithstanding anything contained in the Limitation Act, 1963 or in any other law for the time being in force, in computing the period of limitation specified for any proceedings in respect of which a mediation has been undertaken under this Part, the period from the date of commencement of mediation under section 16 until (i) termination of the mandate of mediator under clause (ii) of sub-section (4) of section 12 in case of <i>ad-hoc</i> mediation; or (ii) termination of the mandate of mediator under sub-section (1) of section 13 in case of institutional mediation; or (iii) submission of report under sub-section (4) of section 21 shall be excluded.	140.	
	<b>CHAPTER 6 ONLINE MEDIATION</b>	141.	
Online mediation	<b>32.(1)</b> Online Mediation means conducting mediation including pre-litigation mediation as defined in this Act by the use of applications and computer networks, but not limited to an encrypted email service, secure chat rooms and conferencing by video or audio mode or both.	142.	

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	<p>(2) The process of online mediation shall be in such manner as may be specified by the Council by way of regulations, in the light of provisions of Information Technology Act, 2000.</p> <p>(3) The conduct of online mediation shall be in circumstances, which ensure that the essential elements of integrity of proceedings and confidentiality are maintained at all times and Mediator may take such appropriate steps in this regard as the circumstances may require to achieve such end.</p> <p>(4) All provisions of this Act shall apply to online mediation proceedings.</p>		
Use of online mediation	<b>33.</b> Online mediation may be resorted to either wholly or in part at any stage of mediation process with the written consent of the parties.	143.	
Service and production of documents	<b>34.</b> Mediation communications in the case of online mediation shall, unless otherwise specified by Council by way of regulations, be as provided by the provisions of the Information Technology Act 2000 or any other law for the time being in force and shall ensure the basic principles of party autonomy and confidentiality.	144.	
	<b>CHAPTER 7 MEDIATION COUNCIL OF INDIA</b>	145.	
Establishment and Incorporation of Mediation Council of India	<b>35. (1)</b> The Central Government shall, by notification in the Official gazette, establish for the purposes of this Act, a Council to be known as Mediation Council of India to perform duties and discharge functions specified under this Act.	146.	
	(2) The Council shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire,	147.	



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	hold and dispose of property, both moveable and immovable, and to enter into contract, and shall, by the said name, sue or be sued.		
	(3) The head office of the Council shall be at Delhi or at such other place as may be notified by the Central Government.	148.	
	(4) The Council may, in consultation with the Central Government, establish offices at other places in India and abroad.	149.	
	(5) The Council in consultation with the Central Government and State and Union Territory Governments to establish State level Mediation Councils in the States and Union Territory depending, upon their need and requirement and all these State Mediation Councils will act and function under the overall supervision of the Council.	150.	As it will be difficult for the Central Council to oversee and manage all activities for the entire country, State Level Mediation Councils will be required to be established.
Composition of the Mediation Council of India	<b>36.</b> (1) The Council shall consist of the following members:	151.	At appropriate places under this section it can be added that: <i>Chairperson, full time member, part-time member, secretaries and the chief executive officers shall be knowledgeable in ADR and particularly mediation.</i>
	(a) A person who has been, a Judge of the Supreme Court or, Chief Justice of a High Court or, a Judge of a High Court or an eminent person, having special knowledge and experience in the conduct or administration of mediation, to be appointed by the Central Government-Chairperson;	152.	
	(b) a person having knowledge and experience in law related to alternate dispute resolution mechanisms, to be	153.	

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	appointed by the Central Government-Full Time Member;		
	(c) an eminent academician having experience in research and teaching in the field of mediation and alternate dispute resolution laws, to be appointed by the Central Government- Full Time Member;	154.	
	(d) Secretary to the Government of India in the Department of Legal Affairs, Ministry of Law and Justice or his representative not below the rank of Joint Secretary-Member, <i>ex officio</i> ;	155.	
	(e) Secretary to the Government of India in the Department of Expenditure, Ministry of Finance or his representative not below the rank of Joint Secretary- Member, <i>ex officio</i> ; and	156.	
	(f) Chief Executive Officer-Member-Secretary, <i>ex officio</i> .	157.	
	(2) The Chairperson and Members of the Council, other than <i>ex officio</i> Members, shall hold office as such, for a term of four years from the date on which they enter upon their office and shall be eligible for re-appointment:  Provided that no Chairperson or Member, other than <i>ex officio</i> Member, shall hold office as such after he has attained the age of seventy years in the case of Chairperson and sixty-seven years in the case of Member.	158.	
	(3) The salaries, allowances and other terms and conditions of the Chairperson and Members referred to in clauses (b) and (c) of sub-section (1) shall be such as may be prescribed by the Central Government.	159.	
Vacancies, etc., not to invalidate	<b>37.</b> No act or proceeding of the Council shall be invalid merely by	160.	

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proceedings of Council.	<p>reason of—</p> <p>(a) any vacancy or any defect, in the constitution of the Council;</p> <p>(b) any defect in the appointment of a person acting as a Chairperson or Member of the Council; or</p> <p>(c) any irregularity in the procedure of the Council not affecting the merits of the case.</p>		
Resignation of Members.	<p><b>38.</b> The Chairperson or the Full-time Member may, by notice in writing, under his hand addressed to the Central Government, resign his office:</p> <p>Provided that the Chairperson or the Full-time Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is earlier.</p>	161.	
Removal of Chairperson or Member.	<p><b>39.</b> (1) The Central Government may, remove a Chairperson or Member from his office if he—</p> <p>(a) is an undischarged insolvent; or</p> <p>(b) has engaged at any time, during his term of office, in any paid employment without the permission of the Central Government; or</p> <p>(c) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or</p> <p>(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Chairperson or Member; or</p> <p>(e) has so abused his position as to render his continuance in office prejudicial to the public interest; or</p>	162.	

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	has become physically or mentally incapable of acting as a Chairperson or Member.		
	Provided that where a Chairperson or Member is proposed to be removed on any ground, he shall be informed of charges against him and given an opportunity of being heard in respect of those charges.	163.	
Appointment of experts and constitution of Committees thereof.	<b>40.</b> The Council may, appoint such experts and constitute such Committees of experts as it may consider necessary to discharge its functions on such terms and conditions as may be specified by the regulations.	164.	
Secretariat of the Council	41. (7) There shall be a Chief Executive Officer of the Council, who shall be responsible for day-to-day administration of the Council.	165.	
	(2) The qualifications, appointment and other terms and conditions of the service of the Chief Executive Officer shall be such as may be specified by regulations by the Council.	166.	
	(3) The Chief Executive Officer shall discharge such functions and perform such duties as may be specified by the regulations.	167.	
	(4) There shall be a Secretariat to the Council consisting of such number of officers and employees as may be prescribed by the Central Government.	168.	
	(5) The qualifications, appointment and other terms and conditions of the service of the employees and other officers of the Council shall be such as may be specified by Council by way of regulations.?’.	169.	
Duties and Functions of the Mediation Council of India	<b>42.</b> (1) The Council shall have the powers and functions, as provided in sub-section (2), for the purposes of this Act.	170.	
	(2) For the purposes of performing	171.	

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	<p>the duties and discharging the functions under this Act, the Council shall -</p> <p>(a) endeavor to develop India to be a robust centre for domestic and international mediation;</p> <p>(aa) endeavor to promote domestic and international mediation in India through appropriate policies and guidelines.</p> <p>(b) frame regulations and guidelines for the conduct of mediation;</p>		
	<p>(c) perform the following functions with regard to Mediators:</p> <p>(i) frame policies and lay down norms, qualification and experience for accreditation of mediators as may be specified by regulations ;</p> <p>(ii) lay down the guidelines for the continuous education, certification and assessment of mediators by the recognised mediation institutes;</p> <p>(iii) lay down norms for registration of mediators.</p> <p>(iv) register mediators and renew, withdraw, suspend or cancel such registrations on the basis of conditions as may be specified in the regulations;</p> <p>(v) lay down by way of regulations standards for professional ethical conduct of mediators;</p>	172.	
	<p>(d) perform the following functions with regard to training and education of mediators:</p> <p>(i) hold training workshops and courses in the area of mediation in collaboration with mediation service providers, law firms and universities both Indian and International, and any other mediation institutions; and</p>	173.	

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	(ii) enter into MoUs/ agreements with domestic and international bodies or organisations or institutions in this regard;		
	(e) perform the following functions with regard to Mediation Institutions and Mediation Service Providers: (i) recognition of Mediation Institutions and Mediation Service Providers and renew, withdraw, suspend or cancel such recognition ; (ii) specify the criteria for recognition of Mediation Institutions and Mediation Service Providers; (iii) lay down norms for the grading of Mediation Service Providers; (iv) call for any information or record of Mediation Institutions and Mediation Service Providers; (v) lay down standards for professional ethical conduct of the Mediation Institution, and Mediation Service Provider;	174.	
	(f) publish such information, data, research studies and such other information as may be required;	175.	
	(g) To maintain an electronic depository of the mediated settlement agreements made in India and for such other records related thereto in such manner as may be specified by the regulations.	176.	
	(h) perform any other act or function as may be decided by the Central Government or in furtherance of the objectives of the Act.	177.	
	<b>CHAPTER 8 MEDIATION SERVICE PROVIDER AND MEDIATION INSTITUTES</b>	178.	
Mediation Service	<b>43.</b> The mediation service provider recognised by the Council as per the	179.	

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Providers	provisions of this Act shall be graded by the Council in accordance with the Regulations made by it in this behalf.		
Functions of Mediation Service	<b>44.</b> The Mediation Service Providers shall perform the following functions, namely - (a) Accreditation of mediators and maintain panel of mediators. (b) to provide the services of mediator for conduct of mediation. (c) to provide all facilities, secretarial assistance and infrastructure for the efficient conduct of mediations. (d) to promote good professional and ethical conduct amongst mediator. (e) Registration of mediated settlement agreement in accordance with the provisions of section 21. (f) Such other functions as may be provided by the Council by way of regulations.	180.	Since Section 25 is deleted.
Mediation Institutes	<b>45.</b> The Council shall recognise Mediation Institutes in accordance with the regulations made by it in this behalf.	181.	
Functions of Mediation Institutes	<b>46.</b> The Mediation Institutes shall function as per the regulations made by the Council.	182.	
	<b>PART II COMMUNITY MEDIATION</b>	183.	
Community mediation	<b>47.</b> (1) Any difference, conflict or dispute likely to affect peace, harmony and tranquility as enumerated in Schedule, but limited thereto, amongst the individuals, groups, organisations, residents or families of any area or locality may be settled through community mediation.	184.	The breadth of services appropriate for community mediation will be large and Schedule will only be illustrative of those services. A new Schedule can be added at appropriate place for
	(2) In order to facilitate settlement of a dispute under sub-section (1), following authorities shall have	185.	SDMs, and DMs are not the competent or eligible officers,

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	<p>power to notify panel of mediators which may be revised from time to time as per need:</p> <p>(i) The State Legal Service Authority, District Legal Service Authority or Taluka Legal Service Authority, as the case may be;</p> <p>(ii) For the purpose of settling the disputes through community mediation, the Mediation Institute or Mediation Service Provider if any, established by Center or State Government or other Authority, may constitute a panel of mediators.</p>		<p>being unaware of the concept, philosophy and characteristics of mediation. Mediation requires special aptitude and training of skills and techniques, which these officers do not possess. They are otherwise overburdened with their works. Constitution of panel of good mediators by them is extremely impossible.</p> <p>The powers need to be given to Mediation Service Provider established by Central Government or State Governments or any other authority to constitute of panels of mediators.</p>
	<p>(3) The following persons may be included in the panel notified pursuant to sub-section (2);</p> <p>(a) Lawyers or person having legal educational background.</p> <p>(b) persons of standing and integrity who are respected in the community.</p> <p>(c) Any local person including a state awardee whose contribution to the society has been recognised by the State</p> <p>(d) Representative of area/resident welfare associations.</p> <p>(e) Any other person deemed appropriate.</p>	186.	<p>The community disputes invariably have legal issues. It is experienced that people with legal background can address such issues adequately.</p>
	<p>(4) While making panel pursuant to sub-section (3) the representation of</p>	187.	



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<p>Establishment and Maintenance of Community Mediation Service Provider</p>	<p>women of above qualification, may also be considered.</p> <p><b>47A.</b> Every State Government and Union Territory shall establish and maintain community mediation service provider and/ or community mediation institute in its respective jurisdiction, with the headquarter at its Capital. Further establishments in other areas of the State and/ or Union Territory may be formed on as needed basis. These establishments will be governed by the mediation rules as may be framed by those mediation services providers/ institutes, having regard to the provisions contained in this Act.</p>		
<p>Procedure for Community mediation</p>	<p><b>48.</b> (1) The mediator(s) shall conduct the mediation as for as possible in accordance with the provisions of the this Act and shall endeavor for resolving disputes through community based mediation and provide assistance to parties for resolving disputes amicably.</p>	<p>188.</p>	
	<p>(2) Any community based mediation shall be conducted by sole a panel of community mediators who shall devise suitable procedure for the purpose of resolving the dispute.</p>	<p>189.</p>	
	<p>(3) In every case where a mediated settlement agreement is arrived at through mediation the same may be recorded in writing with signature of the party or parties and authenticated by the mediator(s) and in other cases a failure report may be submitted to the authorities under Section 47(2), as the case may be.</p>	<p>190.</p>	
	<p>(4) The mediated settlement agreement signed by the parties and authenticated by the Mediators shall be dealt in the manner as provided under sub-section (7) of section 21 of this Act.</p>	<p>191.</p>	

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	<b>PART III ENFORCEMENT OF INTERNATIONAL COMMERCIAL SETTLEMENT AGREEMENTS RESULTING FROM MEDIATION</b>	192.	
	<b>CHAPTER 1 INTERNATIONAL COMMERCIAL SETTLEMENT AGREEMENTS-THE SINGAPORE CONVENTION</b>	193.	<p>Since we have used words Mediated Settlement Agreement in Section 49, we may amend in all sections the "Settlement Agreement" to "Mediated Settlement Agreement".</p> <p>There being no provision to challenge any order passed by the Courts under this part, and first appeal being a fundamental right, a provision is needed under this part providing first appeal against such orders passed by the Courts. Therefore, a new section as 52A has been proposed.</p>
Definitions	<b>49.</b> In this Part, unless the context otherwise requires, "mediated settlement agreement" means an settlement agreement on differences between persons arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India, made on or after the (date of ratification of UNISA) in pursuance of an agreement in writing for mediation to which the Convention set forth in the First Schedule applies.	194.	
	Provided that the provisions of this	195.	

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	Part shall not apply to settlement agreements to which Union of India is a party, or to which any governmental agencies or any person acting on behalf of a governmental agency is a party.		
International Mediation Settlement Agreement	50. (1) Subject to the provisions of section 52 settlement Agreements shall be treated as binding for all purposes and shall be enforceable under this Part against the persons or any person claiming through or under them, as between whom it was made.	196.	
	(2) The Settlement Agreement be relied upon by any of the said persons by way of defence, set-off or otherwise in any legal proceedings in India and any reference in this Part to enforce the International Commercial Mediation Settlement Agreement shall be construed and include reference to the same.	197.	
Enforcement	<b>51.</b> (1) The Party applying for the enforcement of a Settlement Agreement shall, at the time of the application, produce before the High Court - (a) the Settlement Agreement or a copy thereof duly attested by the institution that administered the mediation in any of the manner required by law of the country in which it was made; and (b) such other evidence as may be required by the High Court to prove that the Settlement Agreement is covered under the Convention.	198.	As this Section 51(1) deals with jurisdiction of court for enforcement of international settlement agreement, to comply with the objective of commercial courts act, suitable insertion is to be made as Explanation 2
	(2) If the Settlement Agreement and other evidence to be produced in terms of sub-section (1) is in a foreign language, the parties seeking to enforce the Settlement Agreement shall produce a translation into English duly certified as correct by a diplomatic or consular agent of the country to which that party belongs;	199.	

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	or certified as correct in such other manner as may be sufficient according to the law in force in India.		
	(3) Subject to sub-section (1) and (2) above a party to an international settlement agreement may — apply to the High Court to record the agreement as an order of court for the purposes of invoking the agreement in any court proceedings in India involving a dispute concerning a matter that the party to the international settlement agreement claims was already resolved by the agreement, in order to prove that the matter has already been resolved; or	200.	
	(b) in any proceedings in the High Court,— (i) to which the party to the international settlement agreement is a party; and (ii) which involves a dispute concerning a matter that the party claims was already resolved by the agreement, apply to the High Court to take the agreement on record in the proceedings in order to prove that the matter has already been resolved.	201.	
	<i>Explanation –</i> (1) In this Part, "High Court" means the High Court having original jurisdiction to decide the questions forming the subject matter of the Settlement Agreement if the same had been subject matter of a suit on its original civil jurisdiction and in other cases, in the High Court having jurisdiction to hear appeals from judgments and decrees of Courts subordinate to such High Court. (2) Where such application has to be filed in High Court, it shall be filed, heard and disposed by the	202.	

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	Commercial Division, where such Commercial Division has been constituted.		
Conditions For Enforcement of Settlement Agreement	<p><b>52.</b> (1) Enforcement of a Settlement Agreement may be refused at the request of the party against whom it is sought to be enforced only if that party furnishes to the High Court proof that-</p> <p>(a) parties to the Mediation Agreement were, under the law applicable to them, under some incapacity or the said Agreement was null and void, inoperative or incapable of being performed under the law to which the parties have subjected it; or failing any indication thereon, under the law of the country where the International Mediation Settlement Agreement is sought to be enforced ; or</p> <p>(b) Is not binding, or is not final, according to its terms; or</p> <p>(c) Has been subsequently modified; or</p> <p>(d) The obligations in the settlement agreement have been performed or are not clear or comprehensible; or</p> <p>(e) Granting relief would be contrary to the terms of the settlement agreement; or</p> <p>(f) There was a serious breach by the mediator of standards applicable to the mediator or the mediation without which breach that party would not have entered into the settlement agreement; or</p> <p>(g) There was a failure by the mediator to disclose to the parties, circumstances that raise justifiable doubts as to the mediator's impartiality or independence and such failure to disclose had a material impact or undue influence on a party without which failure that party</p>	203.	

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	would not have entered into the settlement agreement;  Provided that, if decisions on the matters submitted to mediation can be separated from those not submitted, that part of the Settlement Agreement which contains settlement on matters submitted to Mediation shall be enforced;		
	(2) Enforcement of the Settlement Agreement may also be refused if the High Court finds –  (a) the subject matter of disputes is not capable of settlement by mediation under the law of India; or (b) the Settlement Agreement was induced or effected by fraud or corruption (c) It is in contravention with the public policy of India;	204.	
	<i>Explanation 1.</i> —For the avoidance of any doubt, it is clarified that a mediated settlement agreement is in conflict with the public policy of India, only if,— (i) the making of the settlement agreement was induced or affected by fraud or corruption; or (ii) it is in contravention with the fundamental policy of Indian law; or (iii) it is in conflict with the most basic notions of morality or justice.	205.	
Appealable Orders  Saving	<b>52A.</b> (1) Notwithstanding anything contained in any law for the time being in force, any appeal shall lie form the following orders only to the Court competent to hear appeals from original decrees of the court passing the	206.	

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	<p>order allowing or refusing to allow enforcement of an International Mediated Settlement Agreement under Section 52.</p> <p>(2) No second appeal shall lie from an order passed in the appeal under this Section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.</p> <p><b>53.</b> Nothing in this Part shall prejudice any rights of any person under the Settlement Agreement or pending enforcement proceedings in India of any Settlement Agreement or of availing the said remedy as if this chapter had not been enacted.</p>		
	<b>PART IV MISCELLANEOUS</b>	207.	
Mediation Fund	<p><b>54.</b> (1) There shall be a fund to be called 'Mediation Fund' (hereinafter referred to as 'Fund') for the purposes of promotion, facilitation and encouragement of mediation under this Act. The fund shall be administered by the Council.</p>	208.	
	<p>(2) There shall be credited to the fund the following, namely:</p> <p>(a) grants made by the Central Government or the State Government for the purposes of the Fund;</p> <p>(b) amounts deposited by persons as contributions to the Fund;</p> <p>(c) amounts received in the Fund from any other source;</p> <p>(d) interest on the above or other income received out of the investment made from the Fund.</p>	209.	
	<p>(3) The accounts of the Council shall be audited by the Comptroller and Auditor General of India and any expenditure incurred by him in connection with such audit shall be</p>	210.	

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	payable by the Council to the Comptroller and Auditor-General of India.		
Power of the Central Government to Issue Directions	<b>55.</b> (1) Without prejudice to the foregoing provisions of this Act, the Council shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time :  Provided that the views of the Council shall be taken into consideration before any direction is given under this sub-section.	211.	
	(2) The decision of the Central Government whether a question is one of policy or not shall be final.	212.	
Protection of Action taken in Good Faith	<b>56.</b> No suit, prosecution or other legal proceedings shall lie against the Government of India or any of its officer, or the Chairperson, Member or Officer of the Council or the Mediator, Mediation Institutes, Mediation Service Providers which is done or is intended to be done in good faith under this Act or the rules or regulations made there under.	213.	
Power to make rules	<b>57.</b> (1) The Central Government may, by notification in the official gazette, make rules for carrying out the provisions of this Act.	214.	
	(2) In particular, and without prejudice to the generality of the foregoing power, such rules may make provision for— (a) the terms and conditions and the salaries and allowances payable to the Chairperson and Fulltime Members under section 36(3); (b) the number of officers and employees of the Secretariat of the Council under section 41(4); (c) any other matter in respect of which provision is to be made	215.	



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	under this Act.		
Power to make Regulations	<b>58.</b> (1) The Council may, with the previous approval of the Central Government, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act.	216.	
	(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may make provision for— (a) Bodies that may be specified mediation service provider under 3 (i). (b) Specify qualification, experience and accreditation for mediators of foreign nationality under section 10(1). (c) Maintenance of Depository of mediated settlement agreements under section 25. (d) Specify manner of process of conducting online mediation under section 32. (e) Mediation communication under section 34. (f) Terms and conditions of Committees of experts under section 40. (g) qualifications, appointment and other terms and conditions of the service of the Chief Executive Officer under section 41(2). (h) Functions of Chief Executive Officer under section 41(3). (i) the qualifications, experience, method of selection and the functions of the employees and other officers of the Council under section 41(5). (j) Manner of conduct of mediation under section 42(2)(b). (k) frame policies and lay down norms, qualification and experience for accreditation of mediators under section	217.	

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	<p>42(2)(c)(i).</p> <p>(l) Specify conditions for registration of mediators and renewal, withdrawal, suspension or cancellations of such registrations under section 42(2)(c)(iv).</p> <p>(m) lay down standards for professional ethical conduct of mediators under section 42(2)(c)(v).</p> <p>(n) Norms for grading of mediation service provider under section 43.</p> <p>(o) Recognition of mediation institutes under section 45.</p> <p>(p) Functions to be performed by mediation institutes under section 46.</p> <p>(q) any other matter in respect of which provision is necessary for the performance of functions of the Council under this Act.</p>		
Rules and Regulations to be laid before Parliament	<p><b>59.</b> Every rule and regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.</p>	218.	
Power to remove difficulties	<p><b>60.</b> (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by</p>	219.	

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	order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to it to be necessary for removing the difficulty:  Provided that no such order shall be made under this section after the expiry of a period of three years from the date of commencement of this Act.		
	(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.	220.	
Act not in derogation.-	<b>61.</b> The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law providing for mediation for the time being in force.	221.	
Appointed Dates, Repeal and Savings	<b>62.</b> This Act shall not apply to, or in relation to, any mediation commenced before the coming into force of this Act.	222.	
Amendment to Indian Contract Act, 1872	<b>63.</b> The Indian Contract Act, 1872, shall be amended in the manner specified in the Schedule III appended to this Act.	223.	
Amendment to Arbitration and Conciliation Act, 1996	<b>64.</b> The Arbitration and Conciliation Act, 1996 shall be amended in the manner specified in the Schedule IV appended to this Act.	224.	
Amendments to the Code of Civil Procedure, 1908	<b>65.</b> The Code of Civil Procedure, 1908 shall be amended in the manner specified in the Schedule V appended to this Act.	225.	
Amendments to the Commercial Courts Act, 2015	<b>66.</b> The Commercial Courts Act, 2015 shall be amended in the manner specified in the Schedule VI appended to this Act.	226.	
Amendments to the Legal Service Authorities Act, 1987	<b>67.</b> The Legal Service Authorities Act, 1987 shall be amended in the manner specified in the Schedule VII appended to this Act.	227.	
	<b>SCHEDULE I</b>	228.	

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	<p style="text-align: center;">United Nations Convention on International Settlement Agreements Resulting from Mediation (See Section 49) <b>Preamble</b></p> <p><i>The Parties to this Convention,</i></p> <p><i>Recognizing</i> the value for international trade of mediation as a method for settling commercial disputes in which the parties in dispute request a third person or persons to assist them in their attempt to settle the dispute amicably,</p> <p><i>Noting</i> that mediation is increasingly used in international and domestic commercial practice as an alternative to litigation,</p> <p><i>Considering</i> that the use of mediation results in significant benefits, such as reducing the instances where a dispute leads to the termination of a commercial relationship, facilitating the administration of international transactions by commercial parties and producing savings in the administration of justice by States,</p> <p><i>Convinced</i> that the establishment of a framework for international settlement agreements resulting from mediation that is acceptable to States with different legal, social and economic systems would contribute to the development of harmonious international economic relations,</p> <p><i>Have agreed</i> as follows:</p>		
	<p style="text-align: center;"><b>Article 1. Scope of application</b></p> <p><b>1.</b> This Convention applies to an agreement resulting from mediation and concluded in writing by parties to resolve a commercial dispute</p>	229.	

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	<p>(“settlement agreement”) which, at the time of its conclusion, is international in that:</p> <p>(a) At least two parties to the settlement agreement have their places of business in different States; or</p> <p>(b) The State in which the parties to the settlement agreement have their places of business is different from either:</p> <p>(i) The State in which a substantial part of the obligations under the settlement agreement is performed; or</p> <p>(ii) The State with which the subject matter of the settlement agreement is most closely connected.</p>		
	<p>2. This Convention does not apply to settlement agreements:</p> <p>(a) Concluded to resolve a dispute arising from transactions engaged in by one of the parties (a consumer) for personal, family or household purposes;</p> <p>(b) Relating to family, inheritance or employment law.</p>	230.	
	<p>3. This Convention does not apply to:</p> <p>(a) Settlement agreements:</p> <p>(i) That have been approved by a court or concluded in the course of proceedings before a court; and</p> <p>(ii) That are enforceable as a judgment in the State of that court;</p> <p>(b) Settlement agreements that have been recorded and are enforceable as an arbitral award.</p>	231.	
	<p style="text-align: center;"><b>Article 2. Definitions</b></p> <p>1. For the purposes of article 1, paragraph 1:</p> <p>(a) If a party has more than one place</p>	232.	

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	<p>of business, the relevant place of business is that which has the closest relationship to the dispute resolved by the settlement agreement, having regard to the circumstances known to, or contemplated by, the parties at the time of the conclusion of the settlement agreement;</p> <p>(b) If a party does not have a place of business, reference is to be made to the party's habitual residence.</p>		
	<p>2. A settlement agreement is "in writing" if its content is recorded in any form. The requirement that a settlement agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference.</p>	233.	
	<p>3. "Mediation" means a process, irrespective of the expression used or the basis upon which the process is carried out, whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person or persons ("the mediator") lacking the authority to impose a solution upon the parties to the dispute.</p>	234.	
	<p style="text-align: center;"><b>Article 3. General principles</b></p> <p>1. Each Party to the Convention shall enforce a settlement agreement in accordance with its rules of procedure and under the conditions laid down in this Convention.</p>	235.	
	<p>2. If a dispute arises concerning a matter that a party claims was already resolved by a settlement agreement, a Party to the Convention shall allow the party to invoke the settlement agreement in accordance with its rules of procedure and under the conditions laid down in this Convention, in order to prove that the</p>	236.	

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	matter has already been resolved.		
	<p style="text-align: center;"><b>Article 4. Requirements for reliance on settlement agreements</b></p> <p>1. A party relying on a settlement agreement under this Convention shall supply to the competent authority of the Party to the Convention where relief is sought:</p> <p>(a) The settlement agreement signed by the parties;</p> <p>(b) Evidence that the settlement agreement resulted from mediation, such as:</p> <p style="padding-left: 40px;">(i) The mediator's signature on the settlement agreement;</p> <p style="padding-left: 40px;">(ii) A document signed by the mediator indicating that the mediation was carried out;</p> <p style="padding-left: 40px;">(iii) An attestation by the institution that administered the mediation; or</p> <p style="padding-left: 40px;">(iv) In the absence of (i), (ii) or (iii), any other evidence acceptable to the competent authority.</p>	237.	
	<p>2. The requirement that a settlement agreement shall be signed by the parties or, where applicable, the mediator is met in relation to an electronic communication if:</p> <p>(a) A method is used to identify the parties or the mediator and to indicate the parties' or mediator's intention in respect of the information contained in the electronic communication; and</p> <p>(b) The method used is either:</p> <p style="padding-left: 40px;">(i) As reliable as appropriate for the purpose for which the electronic communication was generated or communicated,</p>	238.	

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	in the light of all the circumstances, including any relevant agreement; or (ii) Proven in fact to have fulfilled the functions described in subparagraph (a) above, by itself or together with further evidence.		
	3. If the settlement agreement is not in an official language of the Party to the Convention where relief is sought, the competent authority may request a translation thereof into such language.	239.	
	4. The competent authority may require any necessary document in order to verify that the requirements of the Convention have been complied with.	240.	
	5. When considering the request for relief, the competent authority shall act expeditiously.	241.	
	<b>Article 5. Grounds for refusing to grant relief</b> 1. The competent authority of the Party to the Convention where relief is sought under article 4 may refuse to grant relief at the request of the party against whom the relief is sought only if that party furnishes to the competent authority proof that: (a) A party to the settlement agreement was under some incapacity; (b) The settlement agreement sought to be relied upon: (i) Is null and void, inoperative or incapable of being performed under the law to which the parties have validly subjected it or, failing any indication thereon, under the law deemed applicable by the competent authority of the Party to the Convention where relief is sought under article 4; (ii) Is not binding, or is not final,	242.	



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	<p>according to its terms; or</p> <p>(iii) Has been subsequently modified;</p> <p>(c) The obligations in the settlement agreement:</p> <p>(i) Have been performed; or</p> <p>(ii) Are not clear or comprehensible;</p> <p>(C) Granting relief would be contrary to the terms of the settlement agreement;</p> <p>(d) There was a serious breach by the mediator of standards applicable to the mediator or the mediation without which breach that party would not have entered into the settlement agreement; or</p> <p>(f) There was a failure by the mediator to disclose to the parties circumstances that raise justifiable doubts as to the mediator's impartiality or independence and such failure to disclose had a material impact or undue influence on a party without which failure that party would not have entered into the settlement agreement.</p>		
	<p>2. The competent authority of the Party to the Convention where relief is sought under article 4 may also refuse to grant relief if it finds that:</p> <p>(a) Granting relief would be contrary to the public policy of that Party; or</p> <p>(b) The subject matter of the dispute is not capable of settlement by mediation under the law of that Party.</p>	243.	
	<p><b>Article 6. Parallel applications or claims</b></p> <p>If an application or a claim relating to a settlement agreement has been made to a court, an arbitral tribunal or any other competent authority which may affect the relief being sought under article 4, the competent authority of the Party to the</p>	244.	

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	Convention where such relief is sought may, if it considers it proper, adjourn the decision and may also, on the request of a party, order the other party to give suitable security.		
	<b>Article 7. Other laws or treaties</b> This Convention shall not deprive any interested party of any right it may have to avail itself of a settlement agreement in the manner and to the extent allowed by the law or the treaties of the Party to the Convention where such settlement agreement is sought to be relied upon.	245.	
	<b>Article 8. Reservations</b> 1. A Party to the Convention may declare that: (a) It shall not apply this Convention to settlement agreements to which it is a party, or to which any governmental agencies or any person acting on behalf of a governmental agency is a party, to the extent specified in the declaration; (b) It shall apply this Convention only to the extent that the parties to the settlement agreement have agreed to the application of the Convention.	246.	
	2. No reservations are permitted except those expressly authorized in this article.	247.	
	3. Reservations may be made by a Party to the Convention at any time. Reservations made at the time of signature shall be subject to confirmation upon ratification, acceptance or approval. Such reservations shall take effect simultaneously with the entry into force of this Convention in respect of the Party to the Convention concerned. Reservations made at the time of ratification, acceptance or approval of this Convention or accession thereto, or at the time of making a declaration under article 13	248.	

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	shall take effect simultaneously with the entry into force of this Convention in respect of the Party to the Convention concerned. Reservations deposited after the entry into force of the Convention for that Party to the Convention shall take effect six months after the date of the deposit.		
	4. Reservations and their confirmations shall be deposited with the depositary.	249.	
	5. Any Party to the Convention that makes a reservation under this Convention may withdraw it at any time. Such withdrawals are to be deposited with the depositary, and shall take effect six months after deposit.	250.	
	<b>Article 9. Effect on settlement agreements</b> The Convention and any reservation or withdrawal thereof shall apply only to settlement agreements concluded after the date when the Convention, reservation or withdrawal thereof enters into force for the Party to the Convention concerned.	251.	
	<b>Article 10. Depositary</b> The Secretary-General of the United Nations is hereby designated as the depositary of this Convention.	252.	
	<b>Article 11. Signature, ratification, acceptance, approval, accession</b> 1. This Convention is open for signature by all States in Singapore, on 7 August 2019, and thereafter at United Nations Headquarters in New York.	253.	
	2. This Convention is subject to ratification, acceptance or approval by the signatories.	254.	
	3. This Convention is open for accession by all States that are not signatories as from the date it is open for signature.	255.	

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	4. Instruments of ratification, acceptance, approval or accession are to be deposited with the depositary.	256.	
	<b>Article 12. Participation by regional economic integration organizations</b> 1. A regional economic integration organization that is constituted by sovereign States and has competence over certain matters governed by this Convention may similarly sign, ratify, accept, approve or accede to this Convention. The regional economic integration organization shall in that case have the rights and obligations of a Party to the Convention, to the extent that that organization has competence over matters governed by this Convention. Where the number of Parties to the Convention is relevant in this Convention, the regional economic integration organization shall not count as a Party to the Convention in addition to its member States that are Parties to the Convention.	257.	
	2. The regional economic integration organization shall, at the time of signature, ratification, acceptance, approval or accession, make a declaration to the depositary specifying the matters governed by this Convention in respect of which competence has been transferred to that organization by its member States. The regional economic integration organization shall promptly notify the depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.	258.	
	3. Any reference to a “Party to the Convention”, “Parties to the Convention”, a “State” or “States” in this Convention applies equally to a	259.	

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	regional economic integration organization where the context so requires.		
	4. This Convention shall not prevail over conflicting rules of a regional economic integration organization, whether such rules were adopted or entered into force before or after this Convention: (a) if, under article 4, relief is sought in a State that is member of such an organization and all the States relevant under article 1, paragraph 1, are members of such an organization; or (b) as concerns the recognition or enforcement of judgments between member States of such an organization.	260.	
	<b>Article 13. Non-unified legal systems</b> 1. If a Party to the Convention has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may amend its declaration by submitting another declaration at any time.	261.	
	2. These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends.	262.	
	3. If a Party to the Convention has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention: (a) Any reference to the law or rule of procedure of a State shall be construed as referring, where appropriate, to the law or rule of procedure in force in the relevant territorial unit;	263.	

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	<p>(b) Any reference to the place of business in a State shall be construed as referring, where appropriate, to the place of business in the relevant territorial unit;</p> <p>(c) Any reference to the competent authority of the State shall be construed as referring, where appropriate, to the competent authority in the relevant territorial unit.</p>		
	<p>4. If a Party to the Convention makes no declaration under paragraph 1 of this article, the Convention is to extend to all territorial units of that State.</p>	264.	
	<p style="text-align: center;"><b>Article 14. Entry into force</b></p> <p>1. This Convention shall enter into force six months after deposit of the third instrument of ratification, acceptance, approval or accession.</p>	265.	
	<p>2. When a State ratifies, accepts, approves or accedes to this Convention after the deposit of the third instrument of ratification, acceptance, approval or accession, this Convention shall enter into force in respect of that State six months after the date of the deposit of its instrument of ratification, acceptance, approval or accession. The Convention shall enter into force for a territorial unit to which this Convention has been extended in accordance with article 13 six months after the notification of the declaration referred to in that article.</p>	266.	
	<p style="text-align: center;"><b>Article 15. Amendment</b></p> <p>1. Any Party to the Convention may propose an amendment to the present Convention by submitting it to the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the Parties to the Convention with a request that they</p>	267.	

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	indicate whether they favour a conference of Parties to the Convention for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the Parties to the Convention favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations.		
	2. The conference of Parties to the Convention shall make every effort to achieve consensus on each amendment. If all efforts at consensus are exhausted and no consensus is reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the Parties to the Convention present and voting at the conference.	268.	
	3. An adopted amendment shall be submitted by the depositary to all the Parties to the Convention for ratification, acceptance or approval.	269.	
	4. An adopted amendment shall enter into force six months after the date of deposit of the third instrument of ratification, acceptance or approval. When an amendment enters into force, it shall be binding on those Parties to the Convention that have expressed consent to be bound by it.	270.	
	5. When a Party to the Convention ratifies, accepts or approves an amendment following the deposit of the third instrument of ratification, acceptance or approval, the amendment shall enter into force in respect of that Party to the Convention six months after the date of the deposit of its instrument of ratification, acceptance or approval.	271.	
	<b>Article 16. Denunciations</b> 1. A Party to the Convention may	272.	

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	denounce this Convention by a formal notification in writing addressed to the depositary. The denunciation may be limited to certain territorial units of a non-unified legal system to which this Convention applies.		
	2. The denunciation shall take effect 12 months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation shall take effect upon the expiration of such longer period after the notification is received by the depositary. The Convention shall continue to apply to settlement agreements concluded before the denunciation takes effect. DONE in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.	273.	
	<b>SCHEDULE II [Refer section 7] DISPUTES WHICH SHALL NOT BE FIT FOR RESOLUTION THROUGH MEDIATION UNDER PART 1</b> (i) Disputes of serious and specific allegations of fraud, fabrication of documents, forgery, impersonation, coercion. (ii) Disputes relating to claims against minors, deities, persons with intellectual disabilities, [under clause (2) of the schedule and persons with disability having high support needs (as defined in Section 2 (t)] of the Rights of Persons with Disabilities Act, 2016, persons with mental illness, as defined by Section 2 (s) of the Mental Health Care Act, 2017, persons of unsound mind, in relation to whom proceedings are to be conducted under Order 32 Code of Civil Procedure, 1908 and suits for	274.	



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	<p>declaration of title against government.</p> <p>(iii) Disputes involving prosecution for non- compoundable criminal offences except with the permission of the court.</p> <p>(iv) Disputes matters which are prohibited under any law or is in conflict with public policy or is opposed to basic notions of morality or justice;</p> <p>Complaints or proceedings, initiated before any statutory authority or body, in relation to registration, discipline, misconduct of any practitioner, or other registered professional, of whatever description, such as legal practitioner, medical practitioner, dentist, architect, chartered accountant, or any in relation to any other profession, which is regulated by provisions of law.</p> <p>Disputes which have the effect on rights of a third party who are not a party to the mediation proceedings.</p> <p>Any dispute relating to the validity of a patent, or proceedings relating to applications for compulsory licensing under the Patent Act, 1970;</p> <p>Any dispute or proceeding in relation to validity of registration under the Copyright Act, 1957, or application for grant of license, or fixation of any fee under the said Act;</p> <p>Any proceeding in relation to any subject matter, falling within any enactment, over which the tribunal constituted under the National Green Tribunals Act, 2010, has jurisdiction;</p> <p>Any dispute relating to levy, collection, penalties or offences, in relation to any direct or indirect tax or refunds, enacted by any state legislature or the Parliament of India;</p>		
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	<p>Any investigation, inquiry or proceeding, under the Competition Act, 2002, including proceedings before the Director General, under the Act; proceedings before the Telecom Regulatory Authority of India, under the Telecom Regulatory Authority of India Act, 1997 or Telecom Disputes Settlement and Appellate Tribunal (TDSAT),</p> <p>Proceedings before appropriate Commissions, and the Appellate Tribunal for Electricity, under the Electricity Act, 2003;</p> <p>Proceedings before the Petroleum and Natural Gas Regulatory Board, and appeals therefrom before the Appellate Tribunal under the Petroleum and Natural Gas Regulatory Board Act, 2006;</p> <p>Proceedings before the Securities Exchange Board of India, and the Securities Appellate</p>		
	<p>Tribunal, under the Securities Exchange Board of India Act, 1992;</p> <p>Land acquisition and determination of compensation under land acquisition laws, or any provision of law providing for land acquisition;</p> <p>Any other subject-matter of dispute which may be notified by the Central Government in the Official Gazette.</p> <p><i>Explanation:</i> The above list is indicative and not exhaustive.</p>		
	<p><b>SCHEDULE-III (See Section 63)</b></p> <p>Contract Act, 1872:</p> <p>For Exception 1 to Section 28 of the Contract Act, 1872 the following shall be substituted:</p> <p>Exception I: Saving of contract to refer to mediation or arbitration dispute that may arise:</p> <p>This section shall not render illegal a contract, by which two or more persons agree that any dispute which</p>	275.	

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	may arise between them in respect of any subject or class of subject shall be referred to resolution through arbitration or mediation.		
	<p style="text-align: center;"><b>SCHEDULE- IV (See Section 64)</b></p> <p>Amendments to Arbitration and Conciliation Act, 1996</p> <p>1. Part III of the Arbitration and Conciliation Act, 1996 containing Section 61-81 shall be substituted as follows:</p> <p>“61. (1) Any provision, in any other enactment for the time being in force, providing for resolution of disputes through conciliation in accordance with the provisions of Arbitration and Conciliation Act, 1996 shall be construed as reference to mediation as provided for under the Mediation Act, 2021.</p> <p>(2) The Conciliation as provided for under this Act or the code of Civil procedure shall be construed as mediation as defined in the Mediation Act, 2021.</p> <p>62. Saving.- Notwithstanding anything contained in section 61 any conciliation proceedings initiated under part III of the Arbitration and Conciliation Act, 1996 before the commencement of the Mediation Act, 2021 shall be continued as such and the Mediation Act, 2021 shall not have any bearing on status and effect of any settlement arrived through such conciliation proceedings.”</p>	276.	
	<p><b>SCHEDULE- V (See Section 65 )</b></p> <p>Amendment to the Code of Civil Procedure, 1908.</p> <p>1. For section 89 following shall be substituted:</p> <p>“89. Settlement of disputes outside the Court.—</p>	277.	

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	<p>(1) Where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court may at the first instance or at any stage thereafter, refer the parties for a possible settlement through -:—</p> <p>(a) arbitration;</p> <p>(b) conciliation or mediation;</p> <p>(c) judicial settlement including settlement through Lok Adalat.</p> <p>(2) Where a dispute has been referred—</p> <p>(a) for arbitration, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration were referred for settlement under the provisions of that Act;</p> <p>for conciliation or mediation, the provisions of the Mediation Act, 2021 shall apply as if the proceedings for conciliation or mediation were referred for settlement under the provisions of that Act;</p> <p>(c) to Lok Adalat, the Court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (1) of section 20 of the Legal Services Authority Act, 1987 (39 of 1987) and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;</p> <p>for judicial settlement, the Court shall effect a compromise between the parties and shall follow such procedure as may be prescribed by the Central Government.</p>		
	<p style="text-align: center;"><b>SIXTH SCHEDULE</b> <b>(See Section 66)</b> Commercial Courts Act, 2015 1. After sub-section (1) of Section 12-A following subsection shall be inserted as follows: “(1A) Pre institution mediation may</p>	278.	

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	<p>be conducted online or otherwise.”</p> <p>2. Sub-section (2) of the Section 12-A shall be substituted and read as follows:</p> <p>—(2) For the purposes of pre-institution mediation, the Central Government may, by notification, authorise</p> <p>(i) the Authorities constituted under the Legal Services Authorities Act, 1987 (39 of 1987); or</p> <p>(ii) any other mediation service provider as defined under the Mediation Act, 2021.”</p>		
	<p style="text-align: center;"><b>SEVENTH SCHEDULE</b> <b>(See Section 67)</b></p> <p>Legal Services Authorities Act, 1987</p> <p>1. Clause (f) of section 4 of the Act shall be substituted as follows:</p> <p>—(f) encourage the settlement of disputes, including by online mode, by way of negotiations, arbitration, mediation and conciliation;”</p> <p>2. After clause (f) following clause may be inserted:</p> <p>—(fa) provide for registration of mediated settlement agreement arrived at between parties under the provisions of Mediation Act, 2021.”</p> <p>3. In sub-section (2) of section 7 of the Act after clause (c) following clause shall be inserted:</p> <p>—(ca) provide by way of regulation for registration of mediated settlement agreement arrived at between parties under section 21 (7) of Mediation Act, 2021.</p> <p>(cb) specify, by way of regulation, fee for registration of mediated settlement agreement under section 21 (8) of Mediation Act, 2021”</p> <p>4. In sub-section (2) of section 10 of the Act after clause (b) following clauses shall be inserted:</p> <p>—(ba) provide, by way of regulation,</p>	279.	

**Proposed amendments / changes in the Draft Mediation Bill by Delhi Dispute Resolution Society (Regd.) Department of Law & Justice of Govt. of NCT, Delhi**

	for registration of mediated settlement agreement arrived at between parties under section 21 (7) of Mediation Act, 2021. (bb) specify, by way of regulation, fee for registration of mediated settlement agreement under section 21 (8) of Mediation Act, 2021”		
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New Schedule as per the Remark in Section 47(1):

Listed below are the certain types of matters that can be referred to community mediation:

- **Government Cases** – revenue, house tax, service matters, etc.
- **Neighbourhood** -Parking, noise, nuisance, destruction / repair / maintenance of property, fencing, pets, interpersonal etc.
- **Family** - Parent / child, parenting (child custody / visitation / support), child welfare etc. adult guardianship, restitution, divorce, domestic violence, maintenance etc.
- **School** - Special education, peer (student -student), minor complaints, corrections.
- **Commercial** – Consumer court cases, Consumer- merchant disputes, small claims, workplace, bad cheques, accident compensation.
- **Miscellaneous** – Environmental, Human Rights, Police / citizen, minor criminal, victim / offender, disabilities, cross-cultural, religious / charitable, multi party etc.



# **MEDIATION**

**PRESENTED BY  
DR RENU RAJ**



CMC Registered  
Mediation Provider 2022

CMC Registered  
Training Course 2022

CMC Registered  
Mediator 2022

CMC Registered  
Workplace Mediator 2022





Mediation is like a root canal where communication flows and all the bulk of confusions / misunderstandings pass through; leaving the final focus on the root cause.



- Mediation is a form of alternative dispute resolution
- Mediation has been popular in the domestic legal sector
- The pandemic and its effects on the legal system
- The passing of this bill will mark a positive landmark in the history of the ever flourishing India



# MEDIATION PROCESS

- All civil, commercial, workplace and peer disputes should be referred to mediation providing there is no foul play suspected.
- Agreement to Mediate should be signed separately before the process starts
- A mediator should maintain complete neutrality. It is very important for this process to be completely confidential, which is why a Mediator should not prepare a failure report.
- Before the process starts the mediator should ensure that participants present have complete authority to settle.
- The process should be similar to the mediation processes followed by most of the countries in the world
- Facilitative Mediation should be more prominent than evaluative Mediation



# MEDIATORS AND TRAINING

- A clear ethical code of conduct should be set in place for Mediators to follow
- A mediator should seek counsel from other senior mediators if there is any doubt
- Mediation training should be accessible to everyone and not be limited to law professionals.
- There should be clear training and assessment outlines set out for training providers to abide with
- Training providers should be registered with the mediation governing body in India to provide any form of training
- Mediators should complete a minimum of 3 CPDs every year



# MEDIATORS AND TRAINING

- Mediators and training providers should have their licenses renewed every 2 years in the least.
- Training providers must ensure that at least 70% of their course is practical and in the form of role plays
- Trained Mediators should observe at least 3 Mediations before beginning practise
- It should not be a very cumbersome process to register as a Mediator



# MEDIATION GOVERNING BODY

- Only Mediators with a minimum of 5 years experience should lead the Mediation governing body or any Mediation related committee.
- The leaders of the committee or governing body should be reappointed every 3 years
- There should be equal opportunities available.
- There should be a clear outline of how the governing body is selected.



THANK YOU FOR LISTENING

**SHRI SRIRAM PANCHU, SR. ADVOCATE & MEDIATION EXPERT**

**EXPLANATORY NOTE FOR KEY CHANGES TO THE DRAFT MEDIATION  
BILL, 2021<sup>1</sup>**

SR. NO.	SECTION	SUBJECT	REASONS FOR RECOMMENDATIONS
1.	<b>Section 2</b>	<b>Enforceability of international commercial mediated settlement agreements under the Singapore Convention, in India</b>	<p>Section 2 stipulates that the Act shall apply where mediation is <i>conducted in India</i> <b>and</b> .....</p> <p>The Act does not provide for enforcement of international mediation (including international commercial mediation under the Singapore Convention) that takes place outside India.</p>
2.	<b>Section 28 (2)</b>	<b>Enforceability of international commercial mediated settlement agreements for mediations conducted in India, under the Singapore Convention, in a member State country.</b>	<p>Per Section 28 (2), a mediated settlement agreement is enforceable as if it were a judgment or decree passed by a court. This would also be applicable to international commercial mediation that take place in India.</p> <p>Per Section 3 (a) (ii) of the Singapore Convention, the Singapore Convention does not apply to settlement agreements concluded during court proceedings that are enforceable as a judgment in the State of that court.</p> <p>It would be advisable that the draft legislation recognize international commercial mediated settlement agreements executed in member State countries of the Singapore Convention, so that they are enforceable in India.</p> <p>It would also be advisable that the legislation enables parties to a international commercial mediation that was conducted in India to have the same enforced under the Singapore Convention before the courts of other member countries, else India will lose out on being a hub for such mediations.</p> <p>The parties to the mediation should not lose</p>

<sup>1</sup> Note: This note only sets out the explanation for our key concerns. The attached draft of the Mediation Bill, 2021 incorporates other suggested amendments as well.



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**Mediators India**

			<p>the benefit of the Singapore Convention only because the mediated settlement agreement is construed to be a judgment of a court in India.</p> <p>We have proposed that a new Part 2 be incorporated for International Mediations.</p> <p><i>Please note that India may need to exercise a reservation under the Singapore Convention for implementing the amendments proposed under the second proviso to Section 28 (2).</i></p>
3.	<b>Section 4</b>	<b>Mediator to Lack Authority</b>	<p>A mediator needs to be neutral and should not have the ability to impose (directly or indirectly) a solution upon the parties. The Singapore Convention requires the mediator to be “<i>lacking the authority to impose a solution upon the parties to the dispute.</i>” This is a fundamental requirement of mediation.</p> <p>However, these words are absent in the definition of mediation under the draft Bill. To keep the sanctity of the process of mediation and ensure that a settlement is truly voluntary, the words as used in the Singapore Convention to be included in the definition of mediation in the draft Bill as well.</p>
4.	<b>Section 7 read with the First Schedule</b>	<b>Cases not fit for mediation</b>	<p>The list provided under the First Schedule is too wide, and most are best left out. While the draft legislation does provide for the Courts having the power to refer parties for mediation in compoundable matters, it does not give the courts a power to refer parties to mediation in other matters.</p> <p>Parties tend to forum shop and criminal allegations and allegations of fraud, coercion etc are common even in civil / commercial disputes. Matters such as cheque bouncing, matrimonial matters ( dowry harassment ), corporate-criminal matters (e.g. oppression mismanagement), civil-criminal matters (family disputes) would be excluded from mandatory pre-litigation if the First Schedule is not amended.</p>

			<p>Some matters under the First Schedule can be referred to mediation by the authority before which the proceeding is pending. That would be better than a flat prohibition.</p> <p>Further, it would be advisable that the parties be able to mediate on matters that are compoundable without requiring permission of the court. However, in such cases, please note that the court would have the power to strike down a settlement if the same is against public policy or is violative of the law.</p> <p>It is further suggested that the rights of the third party would need to be safeguarded and therefore it is proposed that a separate provision be incorporated for the same in Section 22 (5) and Section 28 and it be deleted from the First Schedule.</p> <p>We have suggested amendments to be made to Section 7 and the First Schedule of the draft Mediation Bill, 2021 in the draft attached.</p> <p>We have also suggested amendments to Section 22 (5) and the inclusion of a new Section 28 (3) to safeguard the interests of a third party who is not a signatory to the mediated settlement agreement.</p>
5. ?	<b>Section 22 (7)</b>	<b>Registration of Mediated Settlement Agreements</b>	<p>By creating a requirement for registration of all mediated settlement agreements, an unwarranted layer of bureaucracy and formality is being introduced. It is not clear if such registration would be at an additional cost to the parties (such as registration fees) and what would be the consequence of non-registration, since the legislation states that it does not impact the enforceability.</p> <p>It may be noted that under the Arbitration and Conciliation Act, 1996 neither an arbitration award nor a conciliation award require any registration.</p> <p>This provisions pertaining to registration should be deleted in its entirety. In the draft Mediation Bill, 2021 as attached, we have deleted all provisions that deal or refer to registration of the mediated settlement</p>

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**Mediators India**

			<p>agreement.</p> <p>In the alternate, one of more depositories can be created, where a mediated settlement agreement can be voluntarily and without any compulsion be electronically uploaded at the discretion of the Parties. A mediation institute/mediation service provider possessing prescribed infrastructure could also be recognized as a depository.</p> <p>The draft Mediation Bill, 2021 already includes creation of an electronic depository. We have suggested amendments to Section 42, where a mediation service provider could also be enabled to operate an electronic depository.</p> <p>The unique depository number to be shared only with the Parties and the mediator. Adequate provisions to safeguard the confidentiality of the mediated settlement agreement and the process would need to be implemented as well.</p>
6.	<b>Section 29 (3)</b>	<b>Period for challenge of mediated settlement agreements</b>	<p>The period of limitation for challenge is 90 days from the date of receipt of the mediated settlement agreement and not the actual cause of action, which can be extended by a further period of 90 days by the court/tribunal. There appears to be an assumption that any fraud, corruption, gross impropriety or impersonation would come to the knowledge of the parties within such limited period of 90 days (extendable to a maximum of 180 days).</p> <p>The 90 days period should be computed from the date on which a party becomes aware of the fraud, corruption, gross impropriety or impersonation. We have suggested amendments to Section 29 (3) of the draft Mediation Bill, 2021.</p>
7.	<b>Section 34</b>	<b>Constitution of the Council</b>	<p>All the members of the Council should be knowledgeable in mediation and should understand the issues and concerns pertaining to mediation.</p> <p>We suggest that the Council comprise of 9 (nine) members that includes 3 mediators. Further, we suggest that the Chairperson be</p>

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**Mediators India**

			<p>appointed by the Central Government in consultation with the Chief Justice of India and the mediator members be appointed by the Chief Justice of India.</p> <p>Additionally, we suggest that the term of the members be reduced to 3 (three) years. We have suggested amendments to be made to Section 34 of the draft Mediation Bill, 2021.</p>
8.	<b>Section 19 read with Section 51</b>	<b>Immunity for mediators</b>	<p>A provision similar to that set out in the Mediation and Conciliation Rules, 2004 of the Delhi High Court to be incorporated. We have suggested incorporating the relevant provisions in Section 51 of the draft Mediation Bill, 2021.</p> <p>A mediator cannot be called as a witness in a dispute, even with the consent of the parties. Accordingly, we have suggested deletion of such requirement from Section 19 of the draft Mediation Bill, 2021.</p>
9.	<b>Seventh Schedule</b>	<b>Mediation by the Facilitation Council under the MSME Act</b>	<p>Para 2 of the Seventh Schedule enables the Facilitation Council to either mediate the dispute itself or refer the same to a service provider. Further, if mediation fails, then per Para 4, the Facilitation Council has the power to arbitrate the matter as well.</p> <p>The same body who mediates should not be entitled to arbitrate as well since they would have access to privileged information during the course of mediation. We have suggested amendments to be made to the Seventh Schedule of the draft Mediation Bill, 2021.</p>
10.	<b>Eighth Schedule</b>	<b>Mediator Fees (Companies Act)</b>	<p>The fees to be mutually agreed between the Parties and the mediator. We have suggested amendments to be made to the Eighth Schedule of the draft Mediation Bill, 2021.</p>
11.	<b>Ninth Schedule</b>	<b>Mediation under the Commercial Courts Act</b>	<p>The mediators for Commercial Mediation shall not be limited and Parties should have the same options as provided in Section 6 (3). We have suggested amendments to be made to the Ninth Schedule of the draft Mediation Bill, 2021.</p>

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# Mr. Sriram Panchu, President of Mediators India

AS INTRODUCED IN THE RAJYA SABHA

**Bill No. XLIII of 2021**

## THE MEDIATION BILL, 2021

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THE FIRST SCHEDULE.  
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THE NINTH SCHEDULE.  
THE TENTH SCHEDULE.



**Bill No. XLIII of 2021**

THE MEDIATION BILL, 2021

A

BILL

*to promote and facilitate mediation, especially institutional mediation, for resolution of disputes, commercial or otherwise, enforce mediated settlement agreements, provide for a body for registration of mediators, to encourage community mediation and to make online mediation as acceptable and cost effective process and to give effect to the United Nations Convention on International Settlement Agreements Resulting from Mediation and for matters connected therewith or incidental thereto.*

BE it enacted by Parliament in the Seventy-second Year of the Republic of India as follows:—

PRELIMINARY

- 5      1. (1) This Act may be called the Mediation Act, 2021.  
          (2) It shall extend to the whole of India.  
          (3) It shall come into force on such date as the Central Government may, by notification, appoint and different dates may be appointed for different provisions of this Act and any

Short title,  
extent and  
commencement.

reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

## PART I

### CHAPTER I

#### APPLICATION

Application.

5

2. (1) Subject to sub-section (2), Part I of this Act shall apply where mediation is conducted in India, and—

(i) all or both parties habitually reside in or are incorporated in or have their place of business in India; or

(ii) the mediation agreement provides that any dispute shall be resolved in accordance with the provisions of this Act; or

(iii) there is an international mediation.

(2) The provisions of sub-section (1) shall not apply wherein one of the parties to the dispute is the Central Government or a State Government, or agencies, public bodies, corporations and local bodies, including entities controlled or owned by such Government, except where the matter pertains to a commercial dispute:

Provided that nothing shall prevent the Central Government or a State Government from notifying, such kind of dispute, as it deems appropriate for such Government, for resolution through mediation under this Act, wherein such Government, or agencies, public bodies, corporations and local bodies including entities controlled or owned by them, is a party.

Definitions.

20

3. In this Act, unless the context otherwise requires,—

(a) "commercial dispute" means a dispute defined in clause (c) of sub-section (1) of section 2 of the Commercial Courts Act, 2015;

(b) "Council" means the Mediation Council of India established under section 33;

(c) "court" means the principal civil court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the disputes forming the subject matter of mediation, if the same had been the subject matter of a suit or proceeding;

*Explanation.*—In a commercial dispute of a Specified Value as defined in the clause (i) of sub-section (1) of section 2 of the Commercial Courts Act, 2015, the court of competent jurisdiction shall be the Commercial Courts referred to in Chapter II of the said Act;

(d) "court annexed mediation" means mediation including pre-litigation mediation conducted at the mediation centres established by any court or tribunal;

(e) "institutional mediation" means mediation conducted under the aegis of a mediation service provider;

(f) "international mediation" means mediation undertaken under this Act and relates to a commercial dispute arising out of a legal relationship, contractual or otherwise, under any law for the time being in force in India, and where at least one of the parties, is—

(i) an individual who is a national of, or habitually resides in, any country other than India; or

(ii) a body corporate including a Limited Liability Partnership of any nature, with its place of business outside India; or

(iii) an association or body of individuals whose place of business is outside India; or

(iv) the Government of a foreign country;

(g) "mediation" means mediation referred to in section 4;

(h) "mediator" means a person who is appointed to be a mediator to undertake mediation, and includes a person registered as mediator with the Council.

5 *Explanation.*—Where more than one mediator is appointed for a mediation, reference to a mediator under this Act shall be a reference to all the mediators;

(i) "international mediation settlement agreement" means a mediation agreement referred to in Section 66;

10 (j) "mediation agreement" means a mediation agreement referred to in sub-section (1) of section 5;

(k) "mediation communication" means communication made, whether in electronic form or otherwise, through—

(i) anything said or done;

(ii) any document; or

15 (iii) any information provided,

for the purposes of, or in relation to, or in the course of mediation, and includes a mediation agreement or a mediated settlement agreement;

20 (l) "mediation institute" means a body or organisation that provides training, continuous education and certification of mediators and carries out such other functions under this Act;

39 of 1987. (m) "mediation service provider" means a body or organisation that provides for the conduct of mediation under this Act and rules and regulations made thereunder, and are recognised by the Council;

25 39 of 1987. *Explanation I.*—For the purposes of this clause, mediation service provider includes an Authority constituted under the Legal Services Authorities Act, 1987, or mediation centre annexed to a court, tribunal or such other forum as may be specified.

*Explanation II.*—An Authority constituted under the Legal Services Authorities Act, 1987, or mediation centre annexed to a court or tribunal or such other forum shall be deemed to be a mediation service provider recognised by the Council;

30 (n) "mediated settlement agreement" means settlement agreement referred to in sub-section (1) of section 22;

(o) "notification" means notification published in the Official Gazette and the expression "notified" with its cognate meanings and grammatical variations shall be construed accordingly;

35 (p) "online mediation" means online mediation referred to in section 32;

(q) "participants" means persons other than the parties who participate in the mediation and includes advisers, advocates, consultants and any technical experts and observers;

40 (r) "party" means a party to a mediation agreement or mediation proceeding whose agreement or consent is necessary to resolve the dispute and includes their successors;

45 (s) "pre-litigation mediation" means a process of undertaking mediation, as provided under section 6, for settlement of disputes prior to the filing of a suit or proceeding of civil or commercial nature in respect thereof, before a court or notified tribunal under sub-section (2) of section 6;

(t) "prescribed" means prescribed by rules made by the Central Government under this Act;

(u) "Schedule" means the Schedule annexed to this Act;

(v) "secure electronic signature" with reference to online mediation means, electronic signatures referred to in section 15 of the Information Technology Act, 2000;

21 of 2000.

(w) "specified" means specified by regulations made by the Council under this Act; and 5

(x) "Tribunal" means a tribunal constituted under any law.

## CHAPTER

### II MEDIATION

Mediation. **4.** Mediation shall be a process, whether referred to by the expression mediation, pre-litigation mediation, online mediation, community mediation, conciliation or an expression of similar import, whereby party or parties, request a third person, lacking the authority to impose a solution upon the parties to the dispute, referred to as mediator or mediation service provider to assist them in their attempt to reach an amicable settlement of a dispute. 10

Mediation agreement. **5.** (1) A mediation agreement shall be in writing, by or between parties and anyone claiming through them, to submit to mediation all or certain disputes which have arisen or which may arise between the parties. 15

(2) A mediation agreement may be in the form of a mediation clause in a contract or in the form of a separate agreement.

(3) A mediation agreement is in writing, if it is contained in or recorded as—

(a) any document signed by the parties; 20

(b) an exchange of communications or letters including through electronic form as provided under the Information Technology Act, 2000; 21 of 2000.

(c) any pleadings in a suit or any other proceedings in which existence of mediation agreement is alleged by one party and not denied by the other.

(4) A reference in any agreement containing a mediation clause shall constitute a mediation agreement if the agreement is in writing and the reference is such as to make the mediation clause as part of the agreement. 25

(5) The parties may agree to submit to mediation any dispute arising between them under an agreement, whether entered prior to arising of the dispute or subsequent thereto.

(6) A mediation agreement in case of international mediation shall refer to an agreement for resolution in matters of commercial disputes referred to in clause (a) of section 3. 30

Pre-litigation mediation. **6.** (1) Subject to other provisions of this Act, whether any mediation agreement exists or not, the court or tribunal may at any time during the pendency of any proceedings, require parties to attempt to settle the dispute by way of mediation in accordance with the provisions of this Act.: 35

(2) The provisions, of sub-section (1) shall be applicable to the tribunals notified by the Central Government or a State Government, as the case may be.

(3) For the purposes, of sub-sections (1) and (2), , a mediator,— 4 of 2016.

(i) registered with the Council; 40

(ii) empanelled by a court annexed mediation centre;

(iii) empanelled by an Authority constituted under the Legal Services Authorities Act, 1987; or

45  
39 of 1987.

(iv) empanelled by a mediation service provider recognised under this Act;

(v) otherwise chosen by the parties

39 of 1987.

shall conduct pre-litigation mediation.

39 of 1987.

(4) For conducting pre-litigation mediation under clauses (ii) and (iii) of sub-section (3), a party may request any person designated for this purpose by the High Courts, or an Authority constituted under the Legal Services Authorities Act, 1987, as the case may be.

59 of 1988.

(5) The courts and an Authority constituted under the Legal Services Authorities Act, 1987, shall maintain a panel of mediators for the purposes of pre-litigation mediation.

(6) Notwithstanding anything contained in sub-sections (1) and (2) and the Motor Vehicles Act, 1988, when an application for compensation arising out of an accident is made before the Claims Tribunal, if the settlement as provided for in section 149 of that Act is not arrived at between the parties, the Claims Tribunal shall refer the parties for mediation to a mediator or mediation service provider under this Act.

(7) Where the parties arrive at a settlement agreement under sub-section (6), it shall be placed before the Claims Tribunal for its consideration.

(8) If the parties do not reach to settlement agreement under sub-section (6), a failure report prepared by the mediator shall be forwarded to the Claims Tribunal, which has referred the matter for mediation, for adjudication.

Disputes or matters not fit for mediation.

7. (1) A mediation under this Act shall not be conducted for resolution of any dispute or matter contained in the indicative list under the First Schedule:

Provided that nothing contained herein shall prevent any court, if deemed appropriate, from referring any dispute to mediation relating to the matters listed in the First Schedule,:

Provided further that the outcome of such mediation shall not be deemed to be a judgement or decree of court referred to in sub-section (2) of section 28 unless such mediated settlement agreement is confirmed by the court.

(2) If the Central Government is satisfied that it is necessary or expedient so to do, it may in consultation with the Council and by notification, amend the First Schedule.

Interim relief by court or tribunal.

8. (1) If exceptional circumstances exist, a party may, before the commencement of, or during the continuation of, mediation proceedings under this Act, file suit or appropriate proceedings before a court or tribunal having competent jurisdiction for seeking urgent interim relief.

(2) The court or tribunal shall after granting or rejecting urgent interim relief, as the case may be, refer the parties to undertake mediation to resolve the dispute, if deemed appropriate.

Power of court or tribunal to refer parties to mediation.

9. (1) Notwithstanding the failure to reach any settlement under sub-section (1) of section 6, the court or tribunal may, at any stage of proceeding, refer the parties to undertake mediation, if a request to this effect is made by them.

(2) If the court or tribunal refers the parties to undertake mediation, it may pass suitable interim order to protect the interest of any party if deemed appropriate.

(3) The parties shall not be under obligation to come to a settlement in the mediation pursuant to a reference under sub-section (1).

Appointment of mediators.

### CHAPTER III

#### MEDIATORS

10. (1) Unless otherwise agreed upon by the parties, a person of any nationality may be appointed as a mediator:

Provided that mediator of any foreign nationality shall possess such qualification, experience and accreditation as may be specified.

(2) The parties shall be free to agree upon the name of mediator and the procedure for their appointment.

(3) If the parties do not reach any agreement on a matter referred to in sub-section (2), then the party seeking initiation of mediation shall make an application to a mediation service provider for the appointment of a mediator. 5

(4) Upon receiving an application under sub-section (3), the mediation service provider shall, within a period of seven days, appoint, —

(i) the mediator as agreed by the parties; or 10

(ii) in case the parties are unable to reach agreement as to the appointment of mediator or mediator agreed by them refuses to act as mediator, a mediator from the panel maintained by it, with his consent.

(5) The person appointed under clause (i) of sub-section (4) shall communicate his willingness or otherwise within a period of seven days from the date of receipt of communication of such appointment. 15

Preference of parties.

**11.** The mediation service provider shall, while appointing any person from the panel of mediators maintained by it, consider his suitability and the preference of the parties for resolving the dispute.

Conflict of interest and disclosure.

**12.** (1) The person appointed as a mediator shall, prior to the conduct of mediation, disclose in writing to the parties regarding any circumstance or potential circumstance, personal, professional, financial, or otherwise, to the knowledge of the mediator, that may constitute any conflict of interest or that is likely to give rise to justifiable doubts as to his independence or impartiality as a mediator. 20

(2) During the mediation, the mediator shall, without delay, disclose to the parties in writing any conflict of interest, referred to in sub-section (1), that has newly arisen or has come to his knowledge. 25

(3) Upon disclosure under sub-section (1) or sub-section (2), the parties shall have the option to waive any objection if all of them express in writing, which shall be construed as the consent of parties. 30

(4) Upon disclosure under sub-section (1) or sub-section (2), if either party desires to replace the mediator, then, in case of—

(i) institutional mediation, such party shall apply to the mediation service provider for termination of the mandate of mediator;

(ii) mediation other than institutional mediation, such party shall terminate the mandate of mediator. 35

Termination of mandate of mediator.

**13.** A mediation service provider may terminate the mandate of a mediator upon—

(i) the receipt of application from a party under clause (i) of sub-section (4) of section 12; or

(ii) his withdrawal from mediation for any reason:

**14.** Upon termination of the mandate of mediator—Replacement  
of mediator.

(i) in case of mediation other than institutional mediation, the parties may, appoint another mediator within a period of seven days from such termination or such other extended period as the parties may mutually agree; and

5 (ii) under section 13, the mediation service provider shall appoint another mediator from the panel maintained by it within a period of seven days from such termination.

## CHAPTER IV

## MEDIATION PROCEEDINGS

10 **15.** Every mediation under this Act shall be undertaken within the territorial jurisdiction of the court or tribunal of competent jurisdiction to decide the subject matter of dispute:

Territorial  
jurisdiction to  
undertake  
mediation.

Provided that on the mutual consent of the parties, mediation may be conducted at any place outside the territorial jurisdiction of the court or tribunal, or by way of online mediation.

15 *Explanation.*—For the removal of doubts, it is clarified that where the parties agree to conduct the mediation at any place outside the territorial jurisdiction or online, the same shall be deemed to have been undertaken within the territorial jurisdiction of the court or tribunal of competent jurisdiction, for the purpose of enforcement and challenge of the mediated settlement agreement.

20 Provided that where the territorial jurisdiction of such online mediation is outside India, Part 1 of this Act shall not be applicable to such mediation proceedings and such mediation proceedings shall be international mediations under Part 2 of this Act.

Commencement  
of mediation.

**16.** The mediation proceedings with respect to a particular dispute shall be deemed to have commenced—

25 (a) where there is an existing agreement between the parties to settle the dispute through mediation, the day on which the mediator is appointed; or

(b) in other cases—

(i) on the day the parties have appointed the mediator; or

30 (ii) on the day when the parties have agreed to engage the services of a mediation service provider for settlement of disputes through mediation by appointment of a mediator.

Conduct of  
mediation.

**17.** (1) The mediator shall assist the parties in an independent, neutral and impartial manner in their attempt to reach an amicable settlement of their dispute.

35 (2) The mediator shall at all times be guided by the principles of objectivity and fairness and protect the voluntariness, confidentiality, and self-determination of the parties, and the standards for professional and ethical conduct as may be specified.

(3) The mediation process may include the mediator taking such measures as may be considered appropriate, taking into account the circumstances of the case, including meeting with parties or participants, jointly or separately, as frequently as deemed fit by the mediator, both in order to convene the mediation, and during the mediation for the orderly and timely conduct of the process and to maintain its integrity.

5 of 1908. 40  
1 of 1872.

(4) The mediator shall not be bound by the Code of Civil Procedure, 1908, or the Indian Evidence Act, 1872.

(5) The mediator with the consent of the parties shall determine the language or languages to be used in the mediation process.

45 **18.** (1) The mediator shall attempt to facilitate voluntary resolution of the dispute by the parties and communicate the view of each party to the other to the extent agreed to by them, assist them in identifying issues, reducing misunderstandings, clarifying priorities,

Role of  
mediator.

exploring areas of compromise and generating options in an attempt to resolve the dispute expeditiously, emphasising that it is the responsibility of the parties to take decision regarding their claims.

(2) The parties shall be informed expressly by the mediator that he only facilitates in arriving at a decision to resolve a dispute and that he may not impose any settlement nor give any assurance that the mediation may result in a settlement.

Role of mediator in other proceedings.

(4) If the parties agree, the mediator may, at any stage of the mediation proceedings, make proposals for a settlement of the dispute. Such proposals need not be in writing and need not be accompanied by a statement of the reasons therefor. Further, the parties are not bound to accept any proposal (in whole or in part) made by the mediator.

Withdrawal by parties from mediation.

**19.** Unless otherwise agreed by the parties,—

(a) the mediator shall not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceeding in respect of a dispute that is the subject matter of the mediation proceedings;

Time-limit for completion of mediation.

**20.** (1) The Central Government may by way of notification specify the categories of disputes, where the parties to a dispute are required to attend mediation counselling as may be prescribed before filing any suit or proceedings of civil or commercial nature in any court or tribunal.

Mediated settlement agreement.

(2) A mediation counselling shall comprise of not more than [2] sessions. At the end of the mediation counselling sessions, the parties or any party shall have the right to pursue litigation in a court or tribunal, or both parties may choose to pursue mediation in accordance with this Act.

(2) Where the parties, or any of them, choose to pursue litigation after the mediation counselling as per sub-section (2) of section 20, they shall inform the court or tribunal, in such manner as may be prescribed as to the name of the mediator counsellor, the date(s) on which the mediation counselling was conducted and the venue where the mediation counselling was conducted.

**21.** (1) Notwithstanding anything contained in any other law for the time being in force, mediation under this Act shall be completed within a period of one hundred and eighty days from the date fixed for the first appearance before the mediator.

(2) The period for mediation mentioned under sub-section (1) may be extended for a further period as agreed by the parties, but not exceeding one hundred and eighty days.

**22.** (1) A mediated settlement agreement means and includes an agreement in writing between some or all of the parties resulting from mediation, settling some or all of the disputes between such parties, and authenticated by the mediator:

Provided that the terms of the mediated settlement agreement may extend beyond the disputes referred to mediation.

*Explanation.*—A mediated settlement agreement which is void under the Indian Contract Act, 1872, shall not be deemed to be lawful settlement agreement within the meaning of mediated settlement agreement.

(2) Where a mediated settlement agreement is reached between the parties in regard to all or some of the disputes, the same shall be reduced in writing and signed by the parties.

(3) Subject to the provisions of sections 26 and 27, the mediated settlement agreement so signed—

(i) in case of institutional mediation, shall be submitted to the mediator, who shall, after authenticating the same in the manner prescribed and forward it with a covering letter signed by him, to the mediation service provider and also provide a copy to the parties;

(ii) in all other cases, shall be submitted to the mediator who shall, after authenticating the settlement agreement in the manner prescribed, provide a copy to all the parties.

(4) Subject to provisions of sections 26



and 27, where  
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is arrived at  
between the  
parties, within  
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parties:

Provided that the report referred under this sub-section shall not disclose the cause of failure of the parties to reach a settlement, or any other matter or thing referring to their conduct, during mediation.

5 (5) The parties, may, at any time during the mediation process, make an agreement with respect to any of the disputes which is the subject matter of mediation, provided that no agreement shall be made prejudicially affecting the properties, assets, rights and entitlements of any person, who is not a signatory to the mediated settlement agreement.

10 (6) Any mediated settlement agreement under this section shall also include a settlement agreement resulting from online mediation and duly signed by the parties by way of secure electronic signature or otherwise and authenticated by the mediator in the like manner.

39 of 1987.

15 **23.** (1) Subject to the other provisions of this Act, the mediator, mediation service provider, the parties and participants in the mediation shall keep confidential the following matters relating to the mediation proceedings, namely:—

(i) acknowledgements, opinions, suggestions, promises, proposals, apologies and admissions made during the mediation;

20 (ii) acceptance of, or willingness to, accept proposals made or exchanged in the mediation;

(iii) documents prepared solely for the conduct of mediation or in relation thereto.

25 (2) No audio or video recording of the mediation proceedings shall be made or maintained by the parties or the participants including the mediator and mediation service provider, whether conducted in person or online to ensure confidentiality of the conduct of mediation proceedings.

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Confidentiality.

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(3) No party or participant to the mediation shall in any proceeding before a court or tribunal including arbitral tribunal, rely on or introduce as evidence any information or communication set forth in clauses (i) to (iii) of sub-section (1), including any information in electronic form, or verbal communication and the court or tribunal including arbitral tribunal shall not take cognizance of such information or evidence.

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(4) The provisions of this section shall not prevent the mediator from compiling or disclosing general information concerning matters that have been subject of mediation, for research, reporting or training purposes, if the information does not expressly or indirectly identify a party or participants or the specific disputes in the mediation.

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*Explanation.*—For the removal of doubts, it is hereby clarified that nothing contained in this section shall apply to the mediated settlement agreement where its disclosure is necessary for the limited purpose of implementation, enforcement and challenge.

Admissibility and privilege against disclosure.

**24.** (1) No mediator or participant in the mediation, including experts and advisers engaged for the purpose of the mediation and persons involved in the administration of the mediation, shall at any time be permitted, or compelled to disclose to any court or tribunal, or in any adjudicatory proceedings, by whatever description, any communication in mediation, or to state the contents or conditions of any document or nature or conduct of parties during mediation including the content of negotiations or offers or counter offers with which they have become acquainted during the mediation:

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Provided that nothing in this section and section 23 shall protect from disclosure, information sought or provided to prove or dispute a claim or complaint of professional misconduct of mediator or malpractice based on conduct occurring during the mediation.

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(2) There shall be no privilege or confidentiality that will attach to—

(a) a threat or statement made during a mediation showing a significant imminent threat to commit an offence under Chapter XVI (Offences against the Human Body) of the Indian Penal Code, 1862;

(b) information relating to domestic violence or child abuse; and

(c) statements made during a mediation showing a significant imminent threat to public health or safety.

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Termination of mediation.

**25.** The mediation proceedings under this Act shall be deemed to terminate—

(a) on the date of signing and authentication of the mediated settlement agreement; or

(b) on the date of the written declaration of the mediator, after consultation with the parties or otherwise, to the effect that further efforts at mediation are no longer justified; or

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(c) on the expiry of seven days from the date of the second mediation session, where a party fails to appear before the mediator consecutively for the first two mediation sessions, and the mediator has not received any communication from such party; or

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(d) on the date of the communication by a party or parties in writing, addressed to the mediator and the other parties to the effect that the party wishes to opt out of mediation:

Provided that the parties shall have to attend at least two mediation sessions before giving such communication; or

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(e) on the expiry of time limit under section 21.

26. (1) For the purposes of court annexed mediation including pre-litigation mediation, the procedure of conducting mediation shall be such as may be determined under the practice directions or rules, by whatever name called, framed by the Supreme Court or the High Courts.

5 (2) For the purposes of sub-section (1), the Supreme Court or the High Courts, as the case may be, may constitute mediation committee.

(3) The mediation committee shall, for the purposes of conducting mediation, in all courts, maintain a panel of mediators in accordance with the practice directions or rules, by whatever name called, framed by the Supreme Court or the High Courts, as the case may be, and such mediators may also conduct mediation other than those referred by a court.

(4) Where the parties to a mediation referred by the court or tribunal arrive at settlement agreement in respect of some or all of the disputes, a copy of settlement agreement shall be placed before the said court or tribunal for consideration and in cases, other than court referred mediation provided, to the parties.

15 (5) If the parties do not reach settlement agreement referred to in sub-section (4), a failure report shall be forwarded by the mediator—

(i) to the court or tribunal, as the case may be, which has referred the matter for mediation;

(ii) to the parties in all other cases.

20 27. The provisions of this Act shall not apply to the proceedings conducted by Lok Adalat and Permanent Lok Adalat under the Legal Services Authorities Act, 1987.

## CHAPTER V

### ENFORCEMENT OF MEDIATED SETTLEMENT AGREEMENT

25 28. (1) A mediated settlement agreement resulting from a mediation signed by the parties and authenticated by the mediator shall be final and binding on the parties and persons claiming under them respectively and enforceable as per the provisions of sub-section (2).

5 of 1908. (2) Subject to the provisions of section 29, the mediated settlement agreement shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908, in the same manner as if it were a judgment or decree passed by a court, and may, accordingly, be relied on by any of the parties or persons claiming through them, by way of defence, set off or otherwise in any legal proceeding.

*Provided* that the provisions of Section 28 (2) of this Act shall not be applicable to an international mediation settlement agreement covered under Part 2 of this Act.

35 39 of 1987. *Provided* further that Parties to an international mediation settlement agreement may by writing exclude the applicability of Part 2 of the Act for the purpose of enforceability of the international mediation settlement agreement under Section 28 (2) of the Act.

40 (3) A mediated settlement agreement shall not be binding on nor shall it be enforceable against the properties, assets, rights and entitlements of any person, who is not a signatory to the mediated settlement agreement, and to such extent the mediated settlement agreement shall be void *ab initio*.

29. (1) Notwithstanding anything contained in any other law for the time being in force, in any case in which the mediated settlement agreement is arrived at between the parties other than in court referred mediation or by Lok Adalat or Permanent Lok Adalat under the Legal Services Authorities Act, 1987, and is sought to be challenged by either of the parties, such party may file an application before the court or tribunal of competent jurisdiction.

(2) A mediated settlement agreement may be challenged only on all or any of the following grounds, namely:—

(i) fraud;

(ii) corruption;

(iii) impersonation;

(iv) where the mediation was conducted in disputes or matters not fit for mediation under section 7.

(3) An application for challenging the mediated settlement agreement shall not be made after ninety days have elapsed from the date on which the party making that application (i) in the case of fraud, corruption or impersonation, becoming aware of the same; and (ii) in any other case, has received the copy of mediated settlement agreement under sub-section (3) of section 22:

Court annexed  
mediation.

Proceedings  
of Lok Adalat  
and  
Permanent  
Lok  
Adalat not  
to be  
affected.  
Enforcement  
of mediated  
settlement  
agreement.

Challenge to  
mediated  
settlement  
agreement.

Provided that if the court or tribunal, as the case may be, is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of ninety days, it may entertain the application within a further period of ninety days.

Costs.	<b>30.</b> Unless otherwise agreed by the parties, all costs of mediation, including the fees of the mediator and the charges of the mediation service provider shall be borne equally by the parties.	5
Limitation.	<b>31.</b> Notwithstanding anything contained in the Limitation Act, 1963 or in any other law for the time being in force, in computing the period of limitation fixed for any proceedings in respect of which a mediation has been undertaken under this Act, the period from the date of commencement of mediation under section 16, and up to—	36 of 1963.
	(i) submission of report under sub-section (4) of section 22; or	10
	(ii) termination of mediation under section 25; or	
	(iii) the settlement agreement arrived at in terms of sub-section (4) of section 26, in case of mediation other than court referred mediation; or	
	(iv) forwarding of failure report in terms of clause (ii) of sub-section (5) of section 26,	15
	shall be excluded.	

## CHAPTER VI

### ONLINE MEDIATION

Online mediation.	<b>32.</b> (1) Online mediation including pre-litigation mediation may be conducted at any stage of mediation under this Act, with the written consent of the parties including by the use of electronic form or computer networks.	20
	(2) The process of online mediation shall be in such manner as may be prescribed.	
	(3) The conduct of online mediation shall be in the circumstances, which ensure that the essential elements of integrity of proceedings and confidentiality are maintained at all times and the mediator may take such appropriate steps in this regard as he deems fit.	25
	(4) Subject to the other provisions of this Act, in the case of online mediations, the mediator, the parties and the participants shall maintain confidentiality of all mediation communications .	

## CHAPTER VII

### MEDIATION COUNCIL OF INDIA

Establishment and incorporation of Mediation Council.	<b>33.</b> (1) <b>The Central Government shall, by notification, establish for the purposes of this Act, a Council to be known as the Mediation Council of India to perform the duties and discharge the functions under this Act.</b>	30
	(2) The Council shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to enter into contract, and shall, by the said name, sue or be sued.	35
	(3) The head office of the Council shall be at Delhi or at such other place as may be notified by the Central Government.	
	(4) The Council may, in consultation with the Central Government, establish offices at other places in India and abroad.	40
Composition of Council.	<b>34.</b> (1) <b>The Council shall consist of the following members, namely:—</b>	
	(a) <b>a person of ability, integrity and standing having adequate knowledge and professional experience or shown capacity in dealing with problems relating to law, mediation, alternate dispute resolution and public affairs to be appointed by the Central Government in consultation with the Chief Justice of India—Chairperson;</b>	45

(b) fifteen (15) persons having knowledge and experience in mediation and alternate dispute resolution mechanisms, being chosen in the manner as may be prescribed, and till such time as the relevant rules or regulations are made, they shall be appointed by the Chief Justice of India—Part-Time Member. Provided that when a national body of mediators comes into being pursuant to Section 43A, atleast 10 (ten) persons in this category shall be nominees of such national body;

5 (c) an eminent person having experience in research or teaching in the field of mediation and alternate dispute resolution laws, to be appointed by the Central Government—Part-Time Member;

(d) Secretary to the Government of India in the Department of Legal Affairs, Ministry of Law and Justice or his representative not below the rank of Joint Secretary—Member, *ex officio*;

10 (e) Secretary to the Government of India in the Department of Expenditure, Ministry of Finance or his representative not below the rank of Joint Secretary—Member, *ex officio*;

(f) Chief Executive Officer—Member-Secretary, *ex officio*; and

15 (g) one representative of a recognised body of commerce and industry, chosen by the Central Government—Part-Time Member.

(2) The Chairperson, Full-Time Member and Part-Time Member of the Council, other than *ex officio* members, shall hold office as such, for a term of three years from the date on which they enter upon their office and they shall not be eligible for re-appointment:

20 Provided that no Chairperson, Full-Time Member or Part-Time Member, other than *ex officio* member, shall hold office as such after he has attained the age of seventy years in the case of Chairperson and sixty-seven years in the case of Full-Time or Part-Time Member.

(3) The salaries, allowances and other terms and conditions of the Chairperson and Full-Time members referred to in clauses (b) and (c) of sub-section (1) shall be such as may be prescribed.

25 (4) The Part-Time Member shall be entitled to such travelling and other allowances as may be prescribed.

(5) The Chairperson, the Full Time Member, the Part Time Member, the Secretaries and the Chief Executive Officer” shall be knowledgeable in mediation.

35. No act or proceeding of the Council shall be invalid merely by reason of—

- (a) any vacancy or any defect, in the constitution of the Council;
- 30 (b) any defect in the appointment of a person acting as a Chairperson or Full-Time Member or Part-Time Member of the Council; or
- (c) any irregularity in the procedure of the Council not affecting the merits of the case.

36. The Chairperson or the Full-Time Member or Part-Time Member may, by notice in writing, under his hand addressed to the Central Government, resign his office:

35 Provided that the Chairperson or the Full-Time Member or Part-Time Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is earlier.

40 37. (1) The Central Government may, remove the Chairperson or Full-Time Member or Part-Time Member from his office, if he—

- (a) is an undischarged insolvent; or
- (b) has engaged at any time, during his term of office, in any paid employment without the permission of the Central Government; or
- 45 (c) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude.

affect prejudicially his functions as a Chairperson or such Member; or

Vacancies,  
etc., not to  
invalidate  
proceedings of  
Council.

Resignation.

Removal.



(e) has so abused his position as to render his continuance in office prejudicial to the public interest; or

(f) has become physically or mentally incapable of acting as a Chairperson or Full-Time Member or Part-Time Member:

Provided that where a Chairperson or Full-Time Member or Part-Time Member is proposed to be removed on any ground, he shall be informed of charges against him and given an opportunity of being heard in respect of those charges. 5

Appointment of experts and constitution of Committees.

**38.** The Council may, appoint such experts and constitute such committees of experts as it may consider necessary to discharge its functions on such terms and conditions as may be specified. 10

Secretariat and Chief Executive Officer of Council.

**39. (1) There shall be a Chief Executive Officer of the Council, who shall be responsible for the day to day administration and implementation of the decisions of the Council.**

**(2) The qualification, appointment and other terms and conditions of service of the Chief Executive Officer shall be such as may be specified.**

(3) The Chief Executive Officer shall discharge such functions and perform such duties as may be specified. 15

**(4) There shall be a Secretariat to the Council consisting of such number of officers and employees as may be specified.**

(5) The qualification, appointment and other terms and conditions of the service of the employees and other officers of the Council shall be such as may be specified. 20

(6) The Central Government shall provide such number of officers and employees as may be necessary for the functioning of the Council till regulations are made under this section.

Duties and Functions of the Council.

**40.** The Council shall—

(a) endeavour to promote domestic and international mediation in India through appropriate guidelines; 25

(b) endeavour to develop India to be a robust centre for domestic and international mediation;

(c) lay down the guidelines for the continuous education, certification and assessment of mediators by the recognised mediation institutes;

(d) provide for manner of registration of mediators and renew, withdraw, suspend or cancel registration on the basis of conditions as may be specified; 30

(e) lay down standards for professional and ethical conduct of mediators under sub-section (2) of section 17;

(f) hold trainings, workshops and courses in the area of mediation in collaboration with mediation service providers, law firms and universities and other stakeholders, both Indian and international, and any other mediation institutes; 35

(g) enter into memoranda of understanding or agreements with domestic and international bodies or organisations or institutions;

(h) recognise mediation institutes and mediation service providers and renew, withdraw, suspend or cancel such recognition; 40

(i) specify the criteria for recognition of mediation institutes and mediation service providers;

(j) call for any information or record of mediation institutes and mediation service providers;

(k) lay down standards for professional and ethical conduct of the mediation institutes and mediation service providers;

(l) publish such information, data, research studies and such other information as may be required;

5 (m) maintain an electronic depository of the mediated settlement agreements made in India and for such other records related thereto in such manner as may be specified; and

(n) perform any other function as may be assigned to it by the Central Government.

## CHAPTER VIII

### 10 MEDIATION SERVICE PROVIDERS, MEDIATION INSTITUTES AND NATIONAL BODY OF MEDIATORS

**41.** The mediation service provider recognised by the Council shall be graded by it in the manner as may be prescribed.

Mediation service providers.

**42.** The mediation service providers shall perform the following functions, namely:—

Functions of mediation service providers.

15 (a) accredit mediators and maintain panel of mediators in the manner as may be prescribed;

(b) provide the services of mediator for conduct of mediation;

(c) provide all facilities, secretarial assistance and infrastructure for the efficient conduct of mediation;

20 (d) promote professional and ethical conduct amongst mediators;

(e) maintain an electronic depository, in such form and manner as may be prescribed, for keeping a record of the settlement agreements; and

(f) such other functions as may be prescribed.

Mediation institutes.

**43.** The Council shall recognise mediation institutes to perform such duties and exercise such functions as may be prescribed.

25 43A. The Council shall recognise a national body of mediators which is formed to protect the interest of mediators, provided that such body is not a mediation service provider or a mediation institute.

Community mediation.

## CHAPTER IX

39 of 1987. 30

### COMMUNITY MEDIATION

**44.** (1) Any dispute likely to affect peace, harmony and tranquility amongst the residents of any area or locality or any community or a group of people may be settled through community mediation with prior mutual consent of the parties to the dispute.

(2) For the purposes of sub-section (1), any of the parties shall make an application before the concerned Authority constituted under the Legal Services Authorities Act, 1987 or District Magistrate or Sub-Divisional Magistrate in areas where no such Authority has been constituted, for referring the dispute to mediation.

39 of 1987. 35 (3) In order to facilitate settlement of a dispute for which an application has been received under sub-section (2), the concerned Authority constituted under the Legal Services Authorities Act, 1987 or the District Magistrate or Sub-Divisional Magistrate, as the case may be, shall constitute panel of mediators, after considering the suggestions (if any) that may be given by the parties, which may include persons in the panel under sub-section (4) of section 44 or such other persons as may be deemed fit given the nature of the dispute.

Provided that one person appointed in the panel shall be a trained mediator.

40 (4) For the purpose of section sub-section (2) of section 44 (2) and sub-section (3) of section 44, the Authority or District Magistrate or the Sub-Divisional Magistrate, as the case may be, shall notify a panel of mediators, which may be revised from time to time.

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- (a) persons of standing and integrity who are respectable in the community;
- (b) any local person whose contribution to the society has been recognised;
- (c) representative of area or resident welfare associations; and

(d) any other person deemed appropriate.

(6) While making panel referred to in sub-section (4) the representation of women or any other class or category of persons may be considered.

Procedure for  
community  
mediation.

**45. (1)** Any community mediation shall be conducted by the panel of mediators referred to in sub-section (2) of section 44 and sub-section (3) of section 44 who shall devise suitable procedure for the purpose of resolving the dispute.

(2) In every case where a settlement agreement is arrived at through mediation under this Chapter, the same may be reduced into writing with the signature of the parties and authenticated by the panel of mediators, a copy of which he provided to the parties and in cases where no settlement agreement is arrived at, a failure report may be submitted by the panel of mediators to the Authority or the District Magistrate or the Sub-Divisional Magistrate, as the case may be, and to the parties.

(3) Any settlement agreement arrived at under this Chapter shall be enforceable as a judgment or decree of a civil court once the same has been duly confirmed by the jurisdictional High Court as prescribed.

## CHAPTER X

### MISCELLANEOUS

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**46. (1)** There shall be a fund to be called "Mediation Fund" (hereinafter referred to as the "Fund") for the purposes of promotion, facilitation and encouragement of mediation under this Act, which shall be administered by the Council.

Mediation  
Fund.

**(2)** There shall be credited to the Fund the following, namely:—

**(a)** all monies provided by the Central Government;

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**(b)** all fees and other charges received from mediation service provider, mediation institutes or bodies or persons;

**(c)** all monies received by the Council in the form of donations, grants, contributions and income from other sources;

**(d)** grants made by the Central Government or the State Government for the purposes of the Fund;

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**(e)** amounts deposited by persons as contributions to the Fund;

**(f)** amounts received in the Fund from any other source; and

**(g)** interest on the above or other income received out of the investment made from the Fund.

**(h)** Any costs or fees ordered by a court or tribunal, in relation to a mediation, other than any amount specified to be paid to the mediator for the service provided by the mediator.

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**(3)** The Fund shall be applied towards meeting the salaries and other allowances of Chairperson, Full-Time Member, Part-Time Member, Chief Executive Officer, Officers and employees and the expenses of the Council including expenses incurred in the exercise of its powers and discharge of its duties under this Act.

Accounts and  
audit.

**47. (1)** The Council shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, including the balance sheet, in such form and manner as may be prescribed in consultation with the Comptroller and Auditor-General of India.

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(2) The accounts of the Council shall be audited by the Comptroller and Auditor-General of India and any expenditure incurred by him in connection with such audit shall be payable by the Council to the Comptroller and Auditor-General of India.

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(3) The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of the Council shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the audit of the Government accounts, and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect the offices of the Council.

(4) The accounts of the Council as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and the Central Government shall cause the same to be laid before each House of Parliament.

**48.** (1) Without prejudice to the foregoing provisions of this Act, the Council shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time:

Provided that the views of the Council shall be taken into consideration before any direction is given under this sub-section.

(2) The decision of the Central Government whether a question is one of policy or not shall be final.

**49.** Nothing contained in this Act shall prevent the Central Government or State Government, as the case may be, from framing any scheme or guidelines, to be notified, for resolution of any dispute through mediation or conciliation in cases where the Central Government or State Government or any of its entity or agencies is one of the parties and in such cases mediation or conciliation may be conducted in accordance with such scheme or guidelines.

**50.** Notwithstanding anything contained in this Act, no dispute including a commercial dispute, wherein the Central Government or State Government or any of its agencies, public bodies, corporations and local bodies including entities controlled or owned by them is a party, the settlement agreement arrived at shall be signed only after obtaining the prior written consent of the competent authority of such Government or any of its entity or agencies, public bodies, corporations and local bodies, as the case may be.

**51.** No suit, prosecution or other legal proceeding shall lie against the Central Government or a State Government or any officer of such Government, or the Chairperson, Full-Time Member or Part-Time Member or Officer or employee of the Council or a mediator, mediation institutes, mediation service providers, which is done or is intended to be done in good faith under this Act or the rules or regulations made thereunder. Further, no mediator shall be held liable for anything bonafide done or omitted to be done by him during the mediation proceedings for civil or criminal action nor shall he be summoned by any party to the suit or proceeding to appear in a Court of law to testify in regard to information received by him or action taken by him or in respect of drafts or records prepared by him or shown to him during the mediation.

**52.** (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may make provision for—

(a) the salaries and allowances and the terms and conditions of the Chairperson and Full-time Members under sub-section (3) of section 34;

(b) the travelling and other allowances payable to the Part-Time Member under sub-section (4) of section 34;

(c) the form and manner of annual statement of accounts, including the balance sheet under sub-section (1) of section 47; and

(d) any other matter which is to be, or may be prescribed.

Power to  
make  
regulations.

**53.** (1) The Council may, with the previous approval of the Central Government, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may make provision for— 5

(a) such other forum under *Explanation 1* to clause (l) of section 3;

(b) qualification, experience and accreditation for mediators of foreign nationality under the proviso to sub-section (1) of section 10;

(c) standards for professional and ethical conduct of mediators under sub-section (2) of section 17; 10

(d)

(e)

(f) manner of process of conducting online mediation under sub-section (2) of section 32; 15

(g) the terms and conditions of experts and committees of experts under section 38;

(h) qualifications, appointment and other terms and conditions of service of the Chief Executive Officer under sub-section (2) of section 39; 20

(i) functions and duties to be performed by the Chief Executive Officer under sub-section (3) of section 39;

(j) the number of officers and employees of the Secretariat of the Council under sub-section (4) of section 39;

(k) the qualification, appointment and other terms and conditions of the employees and other officers of the Council under sub-section (5) of section 39; 25

(l) conditions for registration of mediators and renewal, withdrawal, suspension or cancellations of such registrations under clause (d) of section 40;

(m) criteria for recognition of mediation institutes and mediation service providers under clause (i) of section 40; 30

(n) manner of maintenance of electronic depository of mediated settlement agreement under clause (m) of section 40;

(o) manner for grading of mediation service provider under section 41;

(p) such other functions of mediation service provider under clause (f) of section 42; 35

(q) duties and functions to be performed by mediation institutes under section 43; and

(r) any other matter in respect of which provision is necessary for the performance of functions of the Council under this Act.

**54.** Every notification under sub-section (2) of section 7, sub-section (2) of section 56, 40 rule and regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid,

Laying.

both Houses agree in making any modification in the notification, rule or regulation or both Houses agree that the notification, rule or regulation should not be made, the notification, rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without  
5 prejudice to the validity of anything previously done under that notification, rule or regulation.

**55.** (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to it to be necessary for removing the difficulty:

Power to remove difficulties.

10 Provided that no such order shall be made under this section after the expiry of a period of three years from the date of commencement of this Act.

(2) Every order made under sub-section (1) shall be laid, as soon as may be after it is made, before each House of Parliament.

15 **56.** (1) Subject to the enactments mentioned in the Second Schedule, the provisions of this Act shall have overriding effect for conduct of mediation or conciliation notwithstanding anything inconsistent therewith contained in any other law for the time being in force, and any instrument having force of law. It being clarified that where the enactments mentioned in the Second Schedule do not prescribe any rules or regulations governing the conduct of mediation or conciliation, the provisions of this Act and the rules and regulations framed hereunder shall be applicable.

Provisions of Act to have overriding effect on mediation or conciliation contained in other laws.

20 (2) If the Central Government is satisfied that it is necessary or expedient so to do, it may, by notification, amend the Second Schedule and thereupon it shall be deemed to have been amended accordingly.

Act not to apply to pending proceedings.

**57.** This Act shall not apply to, or in relation to, any mediation or conciliation commenced before the coming into force of this Act.

Amendment of Act 9 of 1872.

**58.** The Indian Contract Act, 1872, shall be amended in the manner specified in the Third Schedule.

Amendment of Act 5 of 1908.

25 **59.** The Code of Civil Procedure, 1908, shall be amended in the manner specified in the Fourth Schedule.

Amendment of Act 39 of 1987.

**60.** The Legal Service Authorities Act, 1987, shall be amended in the manner specified in the Fifth Schedule.

Amendment of Act 26 of 1996.

30 **61.** The Arbitration and Conciliation Act, 1996, shall be amended in the manner specified in the Sixth Schedule.

Amendment of Act 27 of 2006.

**62.** The Micro, Small and Medium Enterprises Development Act, 2006, shall be amended in the manner specified in the Seventh Schedule.

Amendment of Act 18 of 2013.

**63.** The Companies Act, 2013, shall be amended in the manner specified in the Eighth Schedule.

Amendment of Act 4 of 2016.

35 **64.** The Commercial Courts Act, 2015, shall be amended in the manner specified in the Ninth Schedule.

Amendment of Act 35 of 2019.

**65.** The Consumer Protection Act, 2019, shall be amended in the manner specified in the Tenth Schedule.





PART II

*INTERNATIONAL MEDIATION*

*CHAPTER I*

*International Commercial Mediation (Singapore Convention)*

**66. Application and Scope**

1. In this Chapter, an international mediation settlement agreement means a settlement agreement resulting from mediation and concluded in writing by parties to resolve:
  - (a) a commercial dispute as defined in the United Nations Convention on International Settlement Agreements Resulting from Mediation set forth in the [] Schedule;
  - (b) which, at the time of its conclusion, is international as provided under that Convention.
2. This Chapter will not apply to a settlement agreement mentioned in Article 1, paragraph 2 or 3 of the Convention.
3. In this Chapter, an agreement covered by sub-section (1) above, will be referred to an ‘international commercial settlement agreement’.
4. In this Chapter, ‘High Court’ means the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the agreement if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court.

**67. When international commercial settlement agreement binding.**—Any international commercial settlement agreement which would be enforceable under this Chapter, shall be treated as binding for all purposes on the persons as between whom it was made, and persons claiming under them, and may accordingly be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings in India. Any references in this Chapter to enforcing an international commercial settlement agreement shall be construed as including references to relying on such international commercial settlement agreement.

**68. Enforcement of international commercial settlement agreement**

1. Any person referred to in Section 66 above, may apply to the High Court for the purposes of (a) enforcing the international commercial settlement agreement in India, or, (b) establishing in any proceedings anticipated, filed or pending before any court, tribunal, arbitral tribunal or other judicial authority, that the matter in dispute before such authority has already been resolved under an international commercial settlement agreement.
2. If any proceedings are initiated or pending in respect of or concerning a matter that a party claims was already resolved by an international commercial settlement agreement, such court, tribunal, arbitral tribunal or other judicial authority where such proceedings are filed or referred, on an application by a party, may, if it considers it proper, adjourn the proceedings in the matter until determination of the application under sub-section (1) (b) above.

**69. Evidence.**— 1. The party applying for the enforcement of an international commercial settlement agreement under Section 68(1) or (2) shall at the time of the application, produce

before the High Court—

- (a) The settlement agreement signed by the parties;
  - (b) Evidence that the settlement agreement resulted from mediation, such as:
    - (i) The mediator's signature on the settlement agreement;
    - (ii) A document signed by the mediator indicating that the mediation was carried out;
    - (iii) An attestation by the institution that administered the mediation; or
    - (iv) In the absence of (i), (ii) or (iii), any other evidence acceptable to the High Court.
2. The requirement that an international commercial settlement agreement shall be signed by the parties or, where applicable, the mediator, is met in relation to an electronic communication if:
- a) A method is used to identify the parties or the mediator and to indicate the parties' or mediator's intention in respect of the information contained in the electronic communication; and
  - (b) if the information contained therein is accessible so as to be useable for subsequent reference.
3. If the international commercial settlement agreement to be produced under sub-section (1) is in a foreign language, the party seeking to enforce the international commercial mediation settlement agreement shall produce a translation into English certified as correct by a diplomatic or consular agent of the country to which that party belongs or certified as correct in such other manner as may be sufficient according to the law in force in India.

**70. Grounds for refusal of enforcement of international commercial mediation settlement agreements.—**

1. The High Court before which the application in Section 68(1) or (2) is made may, at the request of the party against whom the international commercial settlement agreement is sought to be enforced or invoked, refuse to grant the application if such party furnishes proof of any of the grounds set out in sub-section (2).
2. Enforcement of an international commercial mediation settlement agreement may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the court proof that—
- (a) A party to the settlement agreement was under some incapacity;
  - (b) The settlement agreement sought to be relied upon:
    - (i) Is null and void, inoperative or incapable of being performed under the law to which the parties have validly subjected it or, failing any indication thereon, under the law deemed applicable by the court;
    - (ii) Is not binding, or is not final, according to its terms; or
    - (iii) Has been subsequently modified;
  - (c) The obligations in the settlement agreement:

- (i) Have been performed; or
- (ii) Are not clear or comprehensible;
- (d) Granting relief would be contrary to the terms of the settlement agreement;
- (e) There was a serious breach by the mediator of standards applicable to the mediator or the mediation without which breach that party would not have entered into the settlement agreement; or
- (f) There was a failure by the mediator to disclose to the parties, circumstances that raise justifiable doubts as to the mediator's impartiality or independence and such failure to disclose had a material impact or undue influence on a party without which failure that party would not have entered into the settlement agreement.

3. Even if the conditions in sub-section (2) are fulfilled, the court may refuse to grant relief if it finds that:

- (a) granting relief would be contrary to the public policy of India; or
- (b) the subject matter of the dispute is not capable of settlement by mediation under Indian law.

**71. Enforcement of international commercial mediation settlement agreements.**—Where the Court is satisfied that the international commercial settlement agreement is enforceable under this Chapter, the international commercial mediation settlement agreement shall be deemed to be a judgement and decree of that Court.

**72 Appealable orders.**—

An appeal shall lie from the order refusing to enforce an international commercial settlement agreement under Section 71, to the Court authorised by law to hear appeals from such order.

**73. Saving.**—Nothing in this Chapter shall prejudice any rights which any person would have had of enforcing in India of any international commercial mediation settlement agreement or of availing of any international commercial mediation settlement agreement in India if this Chapter had not been enacted.

## **CHAPTER II**

### ***International Mediations (Other than Singapore Convention)***

***MI Note: While the Singapore Convention applies only to international commercial mediations that are defined in the Singapore Convention. There is a need to recognize other forms of international mediated settlement agreements as well, including from non-convention countries as well as other form of disputes, including employment, matrimonial/custody, family and property, consumer, etc,***

**74. Application and Scope**

1. In this Chapter, international settlement agreement means a settlement agreement resulting from mediation, which is international in that:

- (a) At least two parties to the settlement agreement have their domicile, places of incorporation, or

places of business in different countries; or

(b) The country in which the parties to the settlement agreement have their domicile, place of incorporation, or place of business is different from either:

(i) The country in which a substantial part of the obligations under the settlement agreement is performed; or

(ii) The country with which the subject matter of the settlement agreement is most closely connected;

but does not include a settlement agreement that is governed by Chapter I of this Part.

(2) The enforcement of an international settlement agreement under this section shall be subject to any other law applicable to such agreements, or to any order of a judicial authority in respect of any matters forming a part of the mediated settlement agreement.

(3) In this Chapter court shall mean:

(i) the principal civil court of original jurisdiction in a district and includes the High Court in exercise of its ordinary original civil jurisdiction having jurisdiction to decide the subject matter of the mediation if the same had been the subject matter of a suit, but will not include any civil court of a grade inferior to such principal Civil Court or any Court of Small Causes; and

(ii) where the subject matter of the mediation would fall within the exclusive jurisdiction of any special court, tribunal or quasi-judicial body under a law, such special court or tribunal or quasi-judicial body.

**75. When international settlement agreement binding.**— Any international settlement agreement which would be enforceable under this Chapter, shall be treated as binding for all purposes on the persons as between whom it was made, and persons claiming under them, and may accordingly be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings in India. Any references in this Chapter to enforcing an international settlement agreement shall be construed as including references to relying on such international settlement agreement.

**76. Evidence.**— 1. The party applying for the enforcement of an international mediation settlement agreement shall, at the time of the application, produce before the court—

(a) The settlement agreement signed by the parties;

(b) Evidence that the settlement agreement resulted from mediation, such as:

(i) The mediator's signature on the settlement agreement;

(ii) A document signed by the mediator indicating that the mediation was carried out;

(iii) An attestation by the institution that administered the mediation; or

(iv) In the absence of (i), (ii) or (iii), any other evidence acceptable to the competent authority.

2. The requirement that a settlement agreement shall be signed by the parties or, where applicable, the mediator, is met in relation to an electronic communication if:

(a) A method is used to identify the parties or the mediator and to indicate the parties' or mediator's

intention in respect of the information contained in the electronic communication; and

(b) if the information contained therein is accessible so as to be useable for subsequent reference.

3. If the international mediation settlement agreement to be produced under sub-section (1) is in a foreign language, the party seeking to enforce the international commercial mediation settlement agreement shall produce a translation into English certified as correct by a diplomatic or consular agent of the country to which that party belongs or certified as correct in such other manner as may be sufficient according to the law in force in India.

**77. Grounds for refusal of enforcement of international mediation settlement agreements.—**

1. Enforcement of an international mediation settlement agreement may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the court proof that—

(a) the party was not competent as defined in section 11 of the Indian Contract Act, 1872, to enter into the mediated settlement agreement;

(b) The settlement agreement sought to be relied upon:

(i) Is null and void, voidable, inoperative or incapable of being performed;

(ii) Is not binding, or is not final, according to its terms;

(iii) Has been subsequently modified; or

(iv) the object or consideration of the mediated settlement agreement is not lawful in the manner provided in section 23 of the Contract Act, 1872;

(c) The obligations in the settlement agreement have been performed;

(d) Granting relief would be contrary to the terms of the settlement agreement;

(e) where the subject matter of the dispute to which the agreement involves the guardianship, fostering or custody of a child, or relates to the welfare, property or other interests of a child, and one or more of the terms of the agreement is not in the best interests of the child;

(f) There was a serious breach by the mediator of standards applicable to the mediator or the mediation without which breach that party would not have entered into the settlement agreement;  
or

(g) the agreement is in breach of any law providing for conditions or safeguards subject to which such disputes may be resolved.

2. Enforcement or reliance on a mediated settlement agreement may be refused by a court at the request of the party against whom it is invoked, only if that party furnishes to the court proof of the same grounds as set forth in sub-section (1) above.

3. Even if the conditions in sub-section (1) are fulfilled, the court may refuse to grant relief if it finds that:

(a) Granting relief would be contrary to the public policy of India; or

(b) The subject matter of the dispute is not capable of settlement by mediation under Indian law.

Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

(i) it is in contravention with the fundamental policy of Indian law; or

(ii) it is in conflict with the most basic notions of morality or justice.

**78. Enforcement of international settlement agreements.**— Where the Court is satisfied that the international mediation settlement agreement is enforceable under this Chapter, the international mediation settlement agreement shall be deemed to be a judgement or decree of that Court.

## THE FIRST SCHEDULE

(See section 7)

### DISPUTES OR MATTERS NOT FIT FOR MEDIATION

1. Disputes which by virtue of any law for the time being in force may not be submitted for mediation.

2. Disputes relating to claims against minors, deities; persons with intellectual disabilities, under paragraph 2 of the Schedule and person with disability having high support needs [as defined in clause (t) of section 2] of the Rights of Persons with Disabilities Act, 2016 (49 of 2016); persons with mental illness as defined in clause (s) of sub-section (1) of section 2 of the Mental Healthcare Act, 2017 (10 of 2017); persons of unsound mind, in relation to whom proceedings are to be conducted under Order XXXII of the Code of Civil Procedure, 1908 (5 of 1908); and suits for declaration of title against Government; declaration having effect of right *in rem*, save and except with the permission of the statutory authority or body or the Court having jurisdiction.

3. Disputes involving prosecution for non-compoundable criminal offences, save and except with the permission of the statutory authority or body or the Court having jurisdiction.

4. Settlement of matters which are prohibited being in conflict with public policy or is in violation or contravention of any law for the time being in force.

5. Complaints or proceedings, initiated before any statutory authority or body in relation to registration, discipline, misconduct of any practitioner, or other registered professional, such as legal practitioner, medical practitioner, dentist, architect, chartered accountant, or in relation to any other profession of whatever description, which is regulated under any law for the time being in force, save and except with the permission of the statutory authority or body or the Court having jurisdiction.

6. Any proceeding in relation to any subject-matter, falling within any enactment, over which the Tribunal constituted under the National Green Tribunals Act, 2010 (19 of 2010) has jurisdiction, save and except with the permission of the statutory authority or body or the Court having jurisdiction.

7. Any dispute relating to levy, collection, penalties or offences, in relation to any direct or indirect tax or refunds, enacted by any State legislature or Parliament, save and except with the permission of the statutory authority or body or the Court having jurisdiction.

8. Any investigation, inquiry or proceeding, under the Competition Act, 2002 (12 of 2003), including proceedings before the Director General, under that Act; proceedings before the Telecom Regulatory Authority of India, under the Telecom Regulatory Authority of India Act, 1997 (24 of 1997) or Telecom Disputes Settlement and Appellate Tribunal established under section 14 of that Act, save and except with the permission of the statutory authority or body or the Court having jurisdiction.

9. Proceedings before appropriate Commissions, and the Appellate Tribunal for Electricity, under the Electricity Act, 2003 (36 of 2003), save and except with the permission of the statutory authority or body or the Court having jurisdiction.

10. Proceedings before the Petroleum and Natural Gas Regulatory Board, and appeals therefrom before the Appellate Tribunal under the Petroleum and Natural Gas Regulatory Board Act, 2006 (19 of 2006), save and except with the permission of the statutory authority or body or the Court having jurisdiction.

11. Proceedings before the Securities and Exchange Board of India, and the Securities Appellate Tribunal, under the Securities and Exchange Board of India Act, 1992 (15 of 1992), save and except with the permission of the statutory authority or body or the Court having jurisdiction.

12. Land acquisition and determination of compensation under land acquisition laws, or any provision of law providing for land acquisition, save and except with the permission of the statutory authority or body or the Court having jurisdiction

13. The Central Government, in consultation with the Council, may amend this

Schedule.

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## SECOND SCHEDULE

(See section 56)

1. The Industrial Disputes Act, 1947 (14 of 1947).
2. The Brahmaputra Board Act, 1980 (46 of 1980).
3. The Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981 (50 of 1981).
4. The Family Courts Act, 1984 (66 of 1984).
5. The Legal Services Authorities Act, 1987 (39 of 1987).
6. The Maintenance and Welfare of Parents and Senior Citizen Act, 2007 (56 of 2007).
7. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (14 of 2013).
8. The Finance Act, 2016 (28 of 2016).
9. The Industrial Relations Code, 2020 (35 of 2020).

### THE THIRD SCHEDULE

(See section 58)

In section 28 of the Indian Contract Act, 1872 (9 of 1872), for *Exception 1* and *Exception 2*, the following shall be substituted, namely:—

*"Exception 1.—Saving of contract to refer to arbitration or mediation dispute that may arise.—*This section shall not render illegal a contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to resolution through arbitration or mediation.

*Exception 2.—Saving of contract to refer questions that have already arisen.—*Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration or mediation any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration or mediation."

## THE FOURTH SCHEDULE

(See section 59)

In the Code of Civil Procedure, 1908 (5 of 1908),—

(i) under Part V, under the heading SPECIAL PROCEEDINGS, the sub-heading "ARBITRATION" shall be omitted;

(ii) for section 89, the following section shall be substituted, namely:—

"89. Settlement of disputes outside the Court.—Where it appears to the Court that the dispute between the parties may be settled and there exists elements of settlement which may be acceptable to the parties, the Court may—

(a) refer the dispute to arbitration, and thereafter, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration were referred for settlement under the provisions of that Act; or

(b) refer the parties to mediation, to the court annexed mediation centre or to any other mediator as per the option of the parties, in accordance with the provisions of the Mediation Act, 2021; or

(c) refer the dispute to Lok Adalat, in accordance with the provisions of sub-section (1) of section 20 of Legal Services Authorities Act, 1987 (39 of 1987) and thereafter, all other provisions of that Act shall apply in respect of the dispute;

(d) effect compromise between the parties and shall follow such procedure as deemed fit for judicial settlement."

THE FIFTH SCHEDULE

(See section 60)

In the Legal Services Authorities Act, 1987 (39 of 1987), in section 4, for clause (f), the following clause shall be substituted, namely:—

"(f) encourage the settlement of disputes, including online by way of negotiations, arbitration, mediation and conciliation;"

## THE SIXTH SCHEDULE

(See section 61)

In the Arbitration and Conciliation Act, 1996 (26 of 1996),—

(a) in section 43D,—

(i) in sub-section (1), the words "mediation, conciliation" shall be omitted;

(ii) in sub-section (2), in clauses (e), (f) and (i), the words "and conciliation" wherever they occur shall be omitted;

(b) for sections 61 to 81, the following sections shall be substituted, namely:—

"61. Reference of conciliation in enactments.—(1) Any provision, in any other enactment for the time being in force, providing for resolution of disputes through conciliation in accordance with the provisions of this Act, shall be construed as reference to mediation as provided under the Mediation Act, 2021.

(2) Conciliation as provided under this Act and the Code of Civil Procedure, 1908 (5 of 1908), shall be construed as mediation referred to in section 4 of the Mediation Act, 2021.

62. Saving.—Notwithstanding anything contained in section 61, any conciliation proceeding initiated in pursuance of sections 61 to 81 of this Act as in force before the commencement of the Mediation Act, 2021, shall be continued as such, as if the Mediation Act, 2021, had not been enacted."

## THE SEVENTH SCHEDULE

(See section 62)

In the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006), for section 18, the following section shall be substituted, namely:—

"18. Reference to Micro and Small Enterprises Facilitation Council.—(1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.

(2) On receipt of a reference under sub-section (1), the Council shall refer the matter to any mediation service provider as provided under the Mediation Act, 2021.

(3) The conduct of mediation under this section shall be as per the provisions of the Mediation Act, 2021.

(4) Where the mediation initiated under sub-section (3) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any institution or centre providing alternative dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996), shall, then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of section 7 of that Act.

(5) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Councils shall have jurisdiction to act as an Arbitrator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India."

## THE EIGHTH SCHEDULE

(See section 63)

In the Companies Act, 2013 (18 of 2013), for section 442, the following section shall be substituted, namely:—

"442. Reference to mediation.—(1) Any of the parties to a proceedings before the Central Government, Tribunal or the Appellate Tribunal may, at any time apply to the Central Government, Tribunal or the Appellate Tribunal, as the case may be, in such form along with such fees, if any, as may be prescribed, for referring the matter pertaining to such proceedings for mediation and the Central Government, Tribunal or the Appellate Tribunal, as the case may be, shall refer the matter to mediation to be conducted under the provisions of the Mediation Act, 2021.

(2) Nothing in this section shall prevent the Central Government, Tribunal or the Appellate Tribunal before which any proceeding is pending from referring any matter pertaining to such proceeding *suo motu* to mediation to be conducted under the provisions of Mediation Act, 2021 as the Central Government, Tribunal or the Appellate Tribunal, deems fit.

(3) The mediator or mediation service provider shall file the mediated settlement agreement arrived at between the parties with the Central Government or the Tribunal or the Appellate Tribunal under the Act.

(4) The Central Government or the Tribunal or the Appellate Tribunal shall pass an order or judgment making the said Mediated settlement agreement as part thereof.

(5) The fee of the mediator shall be such as agreed between the Parties and the mediator."

THE NINTH SCHEDULE

(See section 64)

In the Commercial Courts Act, 2015 (4 of 2016),—

(a) for Chapter IIIA, the following Chapter shall be substituted, namely:—

"CHAPTER IIIA

PRE-LITIGATION MEDIATION AND SETTLEMENT

12A. Pre-litigation Mediation and Settlement.—(1) A suit, which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of pre-litigation mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.

(2) For the purposes of pre-litigation mediation, a mediator: —

- (i) registered with the Council;
- (ii) empanelled by a court annexed mediation centre;
- (iii) empanelled by an Authority constituted under the Legal Services Authorities Act, 1987; or
- (iv) empanelled by a mediation service provider recognised under this Act,
- (v) otherwise chosen by the parties

shall conduct pre-litigation mediation

(3) Notwithstanding anything contained in the Legal Services Authorities Act, 1987 (39 of 1987), the Authority or mediation service provider authorised by the Central Government under sub-section (2) shall complete the process of mediation within a period of six months from the date of application made by the plaintiff under sub-section (1):

Provided that the period of mediation may be extended for a further period of six months with the consent of the parties:

Provided further that, the period during which the parties spent for pre-litigation mediation shall not be computed for the purposes of limitation under the Limitation Act, 1963 (36 of 1963).

(4) If the parties to the commercial dispute arrive at a settlement, the same shall be reduced into writing and shall be signed by the parties and the mediator.

(5) The mediated settlement agreement arrived at under this section shall be dealt with in accordance with the provisions of sections 28 and 29 of the Mediation Act, 2021.";

(b) in section 21A, in sub-section (2), for clause (a), the following clause shall be substituted, namely:—

"(a) the manner and procedure of pre-litigation mediation under sub-section (1) of section 12A;"



THE NINTH SCHEDULE

*(See section 64)*

## THE TENTH SCHEDULE

(See section 65)

In the Consumer Protection Act, 2019 (35 of 2019),—

(a) in section 2, clauses (25) and (26) shall be omitted;

(b) for section 37, the following sections shall be substituted, namely:—

"37. Reference to mediation.—The District Commission or State Commission or the National Commission, as the case may be, shall either *suo moto* or on an application by the parties at any stage of proceedings refer the disputes for settlement by mediation under the Mediation Act, 2021.

37A. Settlement through mediation.—(1) Pursuant to mediation, if an agreement is reached between the parties with respect to all of the issues involved in the consumer dispute or with respect to only some of the issues, the terms of such agreement shall be reduced to writing accordingly, and signed by the parties to such dispute or their authorised representatives.

(2) The mediator shall prepare a settlement report of the settlement and forward the signed agreement along with such report to the concerned Commission.

(3) Where no agreement is reached between the parties within the specified time or the mediator is of the opinion that settlement is not possible, he shall prepare his report accordingly and submit the same to the concerned Commission.

37B. Recording settlement and passing of order.—(1) The District Commission or the State Commission or the National Commission, as the case may be, shall, within seven days of the receipt of the settlement report, pass suitable order recording such settlement of consumer dispute and dispose of the matter accordingly.

(2) Where the consumer dispute is settled only in part, the District Commission or the State Commission or the National Commission, as the case may be, shall record settlement of the issues which have been so settled and continue to hear other issues involved in such consumer dispute.

(3) Where the consumer dispute could not be settled by mediation, the District Commission or the State Commission or the National Commission, as the case may be, shall continue to hear all the issues involved in such consumer dispute.";

(c) in section 38, in sub-section (1), the words "or in respect of case referred for mediation on failure of settlement by mediation," shall be omitted;

(d) in section 41, the third proviso shall be omitted;

(e) Chapter V shall be omitted;

(f) in section 101, in sub-section (2),—

(i) clause (r) shall be omitted;

(ii) clause (zf) shall be omitted;

(g) in section 102, in sub-section (2), clause (p) shall be omitted;

(h) in section 103, in sub-section (2), clauses (c) to (h) shall be omitted.

## STATEMENT OF OBJECTS AND REASONS

An effective dispute resolution process has a significant impact on the economy and doing business in the country, thereby promoting ease of living for citizens, access to justice and rule of law. The rapidly changing society and progress in various areas not limited to economic, industrial or financial sectors, demand commensurate expeditious settlement of dispute between the parties, which at present is time consuming. Thus, there is a need to further promote Alternative Dispute Resolution (ADR), *inter alia*, by institutional mediation. The ADR mechanism of mediation though finds mention in various existing laws, but as on date, there is no comprehensive law governing the various aspects of mediation.

2. Mediation results in amicable resolution of disputes in civil, commercial, family and matrimonial matters and fosters collaborative approach, reduces the burden on the courts, and preserves relationships amongst disputants. Therefore, bringing a comprehensive mediation law and providing for online mediation may serve the interests of all the stakeholders as effective alternative mechanism for resolving disputes.

3. The Bill covering the various aspects of mediation seeks to promote mediation as a preferred mode of ADR, *inter alia*, providing for—

(i) subsuming conciliation under Part III of the Arbitration and Conciliation Act, 1996, in mediation as per international practice of using the terms “conciliation” and “mediation” interchangeably;

(ii) compulsory pre-litigation mediation in matters of civil or commercial dispute, before parties approach a court or a tribunal as provided;

(iii) conduct of online mediation;

(iv) an indicative list of matters which are not fit for mediation under the First Schedule;

(v) mediation that will take place within the territorial jurisdiction of the court or tribunal of competent jurisdiction, unless parties agree otherwise or undertake mediation in online mode;

(vi) a period of one hundred and eighty days, for completing the mediation process which is further extendable to a maximum period of one hundred and eighty days with the mutual consent of the parties;

(vii) the mediated settlement agreement resulting from mediation which will be final and binding and will be enforceable in accordance with the provisions of Code of Civil Procedure, 1908, in the same manner as if it were a judgment or decree of a Court;

(viii) establishment of Mediation Council of India, objects of which would be, *inter alia*, to promote mediation and to develop India as a robust centre for domestic and international mediation, make regulations for registration of mediators, grade mediation service providers, specify criteria for recognition of mediation institutes and mediation service providers, to hold training workshops and courses in the area of mediation, etc.; and

(ix) conduct of community mediation with consent of parties for disputes which are likely to affect peace, harmony and tranquility amongst the residents or families of any area or locality.

(x) To give effect to the provisions of the United Nations Convention on International Settlement Agreements Resulting from Mediation.

4. The Bill seeks to achieve the above objectives.



*Notes on clauses*

*Clause 1* of the Bill provides for short title, extent and commencement of the Act.

*Clause 2* of the Bill provides for applicability of the Act.

*Clause 3* of the Bill provides definition of various expressions used in the Bill.

*Clause 4* of the Bill provides that mediation shall be a process whereby party or parties, request a third person referred to as mediator or mediation service provider to assist in the attempt to reach an amicable settlement of dispute.

*Clause 5* of the Bill provides that mediation agreement shall be in writing, by or between parties and anyone claiming through them, to submit to mediation all or certain disputes which have arisen or which may arise between the parties. It further provides that mediation agreement may be in the form of a mediation clause in a contract or in the form of a separate agreement.

*Clause 6* of the Bill provides that whether any mediation agreement exists or not, any party before filing any suit or proceedings of civil or commercial nature in any Court shall, take steps to settle the disputes by pre-litigation mediation in accordance with the provisions of the new law. It further provides that pre-litigation mediation in matters of commercial disputes of Specified Value, shall be undertaken in accordance with the provisions of section 12A of the Commercial Courts Act, 2015, and the rules made thereunder.

*Clause 7* of the Bill provides an indicative list of disputes or matters which cannot be referred to mediation except some compoundable offences or matrimonial offences connected with or arising out of civil proceedings which can be referred to mediation by Court, if deemed appropriate. Settlement arrived in these cases not to have effect of judgement or decree of Court.

*Clause 8* of the Bill provides that if exceptional circumstances exist, a party may, before the commencement of or during the continuation of mediation proceedings under this Part, file appropriate proceedings before a court or tribunal of competent jurisdiction for seeking urgent interim measures.

*Clause 9* of the Bill provides that court or tribunal may, at any stage of pending proceeding, refer the parties to undertake mediation if a request to this effect is made by them.

*Clause 10* of the Bill provides for the appointment of mediator.

*Clause 11* of the Bill provides that mediation service provider while appointing mediator shall consider his suitability and the preference of the parties for resolving the dispute.

*Clause 12* of the Bill provides that when a person is appointed as a mediator, he shall disclose in writing to the parties about any circumstances or potential circumstances, personal, professional or financial, that may constitute conflict of interest or that is likely to give rise to justifiable doubts as to such mediator's independence or impartiality in the conduct of the mediation process.

*Clause 13* of the Bill provides for the termination of mandate of mediator.

*Clause 14* of the Bill provides for the replacement of mediator.

*Clause 15* of the Bill provides that mediation under this Act shall take place within the territorial jurisdiction of the court or tribunal of competent jurisdiction unless parties agree to conduct mediation outside the said territorial jurisdiction or by way of online mediation.

*Clause 16* of the Bill provides that mediation proceedings with respect to a particular dispute shall be deemed to have commenced on the date on which a party issues notice to

the other party in case of prior mediation agreement and in other cases on the day the parties have agreed to appoint a mediator of their choice or on the day when a party applies to a mediation service provider for mediation.

*Clause 17* of the Bill provides that the mediator shall assist the parties in an independent, neutral and impartial manner in their attempt to reach an amicable settlement of their dispute. It further provides that mediator shall not be bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872.

*Clause 18* of the Bill provides that mediator shall attempt to facilitate voluntary resolution of the dispute by the parties, and communicate the view of each party to the other to the extent agreed to by them, assist them in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise and generating options in an attempt to resolve the dispute.

*Clause 19* of the Bill provides that mediator shall not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceeding in respect of a dispute that is the subject of the mediation proceedings and he shall not be presented by the parties as a witness in any arbitral or judicial proceeding.

*Clause 20* of the Bill provides that parties may withdraw from mediation at any time after the first two mediation sessions. The court or tribunal can however, impose cost in subsequent litigation if a party fails to attend the first two mediation sessions without any reasonable cause thereby resulting in the failure of mediation.

*Clause 21* of the Bill provides that mediation under this Act shall be completed within a period of one hundred and eighty days from the date fixed for the first appearance before the mediator and the period can be extended by further period of one hundred and eighty days with the mutual consent of the parties.

*Clause 22* of the Bill provides that mediated settlement agreement means and includes an agreement in writing between some or all of the parties resulting from mediation including online mediation, settling some or all of the disputes between such parties, and authenticated by the mediator. It further provides that mediated settlement agreement arrived at between the parties other than those arrived in Court annexed mediation centres or under sections 21 and 22E of the Legal Services Authorities Act, 1987 shall be registered with the Authority constituted under the Legal Services Authorities Act, 1987 within a period of one hundred and eighty days. However, registration is not mandatory till the time regulations specifying the manner of registration are made by the Council.

*Clause 23* of the Bill provides that the mediator, mediation service provider, the parties and participants in the mediation shall keep information and communication relating to the mediation proceedings confidential and no party to the mediation shall in any proceedings before a court or tribunal including arbitral tribunal, rely on or introduce as evidence any such information or communication. However, confidentiality shall not apply to the mediated settlement agreement where its disclosure is necessary for the purpose of registration, implementation, enforcement and challenge.

*Clause 24* of the Bill provides immunity to the participants including experts and advisers engaged for the purpose of the mediation and persons involved in the administration of the mediation from disclosing by whatever description, any communication in mediation, or to state the contents or conditions of any document or nature or conduct of parties during mediation including the content of negotiations or offers or counter offers with which they have become acquainted during the mediation.

*Clause 25* of the Bill provides for termination of mediation proceedings in certain circumstances.

*Clause 26* of the Bill provides that court annexed mediation including pre-litigation mediation in court annexed mediation centre shall be conducted in accordance with the

practice directions or rules by whatever name called by the Supreme Court or the High Courts. Also, Supreme Court or the High Court to constitute mediation committee for the empanelment of mediators who shall conduct mediation in all courts.

*Clause 27* of the Bill provides that the provisions of the proposed Act shall not apply to the proceedings conducted by Lok Adalat and Permanent Lok Adalat under the Legal Services Authorities Act, 1987.

*Clause 28* of the Bill provides that mediated settlement agreement resulting from mediation is final and binding and is enforceable in accordance with the provisions of Code of Civil Procedure, 1908, in the same manner as if it were a judgement or decree passed by a court.

*Clause 29* of the Bill provides that mediated settlement agreement can be challenged on the grounds of fraud, corruption, impersonation or where mediation is conducted in a dispute or matter not fit for mediation and that such challenge can be made within a period of ninety days from the date of receipt of copy of mediated settlement agreement by the parties.

*Clause 30* of the Bill provides that all costs of mediation, including the fees of the mediator and the charges of the mediation service provider shall be borne equally by the parties unless otherwise agreed by the parties.

*Clause 31* of the Bill provides that the period during which the parties were engaged in the mediation shall be excluded for computing the period of limitation specified for any proceedings.

*Clause 32* of the Bill provides that the online mediation including pre-litigation mediation may be conducted at any stage of mediation with the written consent of the parties and that such online mediation shall be conducted in the manner specified by the Council.

*Clause 33* of the Bill provides for the establishment of Mediation Council of India as a body corporate having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both moveable and immoveable, and to enter into contract, and shall, by the said name, sue or be sued.

*Clause 34* of the Bill provides for the composition of Council and appointment and qualifications, term of office, salary and allowances, etc., of Chairperson, Full-Time Member and Part-Time Member.

*Clause 35* of the Bill provides that any vacancy, defect in the appointment or any irregularity in procedure shall not invalidate the proceedings of the Council.

*Clause 36* of the Bill provides for the procedure for resignation of Chairperson or the Full-Time Member and Part-Time Member by notice in writing, addressed to the Central Government.

*Clause 37* of the Bill specifies the circumstances in which the Central Government may, remove Chairperson or a Full-Time Member or a Part-Time Member of the Council.

*Clause 38* of the Bill provides for the appoint of experts and constitution of committees of experts as Council may consider necessary for the effective discharge of its functions.

*Clause 39* of the Bill provides for the Chief Executive Officer of the Council as well as the Secretariat of the council, which shall comprise of such number of officers and employees as may be specified by the Council.

*Clause 40* of the Bill provides the duties and functions of the Council.

*Clause 41* of the Bill provides for the recognition and grading of mediation service provider by the Council.

*Clause 42* of the Bill provides the functions to be performed by the mediation service provider.

*Clause 43* of the Bill provides for the recognition of mediation institutes by the Council and the functions and duties to be performed by such mediation institutes as may be specified by the Council.

*Clause 44* of the Bill provides for community mediation, with prior mutual consent of parties, for resolution of disputes which are likely to affect peace, harmony and tranquility amongst the residents or families of any area or locality and empowers the concerned Authority or District Magistrate or Sub-Divisional Magistrate to constitute a panel of three mediators for conducting the community mediation.

*Clause 45* of the Bill provides that a panel of three community mediators shall conduct community mediation in accordance with the procedure to be devised by them for resolving the dispute.

*Clause 46* of the Bill provides that there shall be a fund to be called "Mediation Fund" for the purposes of promotion, facilitation and encouragement of mediation and empowers the Council to administer the Fund.

*Clause 47* of the Bill provides that Council shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, including the balance sheet, in such form and manner as may be made by rule in consultation with the Comptroller and Auditor-General of India. It further provides that the accounts of the Council shall be audited by the Comptroller and Auditor-General of India.

*Clause 48* of the Bill empowers the Central Government to issue directions to the Council on questions of policy which shall be binding on the Council.

*Clause 49* of the Bill provides that Central Government or State Government can frame any scheme or guidelines for resolution of any dispute through mediation or conciliation in cases where the Central Government or State Government or any of its entity or agencies is one of the party.

*Clause 50* of the Bill provides that the settlement agreement arrived at in a dispute including a commercial dispute, wherein the Central Government or State Government or any of its agencies, public bodies, corporations and local bodies including entities is a party shall be signed only after obtaining the prior written consent of the competent authority.

*Clause 51* of the Bill provides that no suit, prosecution or other legal proceedings shall lie against the Central Government or a State Government or any officer of such Government, or the Chairperson, Full-Time Member or Part-Time Member or Officer or employee of the Council or a mediator, mediation institutes, mediation service providers, which is done or is intended to be done in good faith.

*Clause 52* of the Bill empowers the Central Government to make rules to carry out the provisions of this Act.

*Clause 53* of the Bill empowers the Council to make regulations, by notification, with the previous approval of the Central Government. It further provides that the regulations shall be consistent with the provisions of the Act and the rules made thereunder.

*Clause 54* of the Bill provides for laying of every notification issued under sub-clause (2) of clause 7 and sub-clause (2) of clause 56 and every rule made by the Central Government and every regulation made by the Council, as soon as may be, after it is made, before each House of Parliament.

*Clause 55* of the Bill seeks to provide that, if any difficulty arises in giving effect to the provisions of the Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of the Act, as may appear to it to be necessary for removing the difficulty.



*Clause 56* of the Bill seeks to provide that the provisions of Act to have overriding effect on mediation or conciliation contained in other laws except those mentioned in the Second Schedule. It further provides that the Central Government may amend the Schedule by notification in the Official Gazette.

*Clause 57* of the Bill seeks to provide that the Act shall not apply to, or in relation to, any mediation or conciliation commenced before the coming into force of this Act.

*Clause 58* of the Bill amends the Indian Contract Act, 1872 in the manner specified in the Third Schedule.

*Clause 59* of the Bill amends the Code of Civil Procedure, 1908 in the manner specified in the Fourth Schedule.

*Clause 60* of the Bill amends the Legal Service Authorities Act, 1987 in the manner specified in the Fifth Schedule.

*Clause 61* of the Bill amends the Arbitration and Conciliation Act, 1996 in the manner specified in the Sixth Schedule.

*Clause 62* of the Bill amends the Micro, Small and Medium Enterprises Development Act, 2006 in the manner specified in the Seventh Schedule.

*Clause 63* of the Bill amends the Companies Act, 2013 in the manner specified in the Eighth Schedule.

*Clause 64* of the Bill amends the Commercial Courts Act, 2015 in the manner specified in the Ninth Schedule.

*Clause 65* amends the Consumer Protection Act, 2019 in the manner specified in the Tenth Schedule.

## FINANCIAL MEMORANDUM

- Sub-clause (1) of clause 33 of the Bill provides for establishment of Mediation Council of India.
2. Sub-clause (1) of clause 34 of the Bill provides for the composition of the Mediation Council of India.
3. Sub-clauses (3) and (4) of clause 34 provides for the terms and conditions, salary and allowances payable to the Chairperson, Full-Time Member and Part-Time Member.
4. Clause 38 of the Bill provides for appointment of such experts and constitution of such committees of experts by the Mediation Council as it may consider necessary to discharge its functions.
5. Sub-clause (1) of clause 39 provides for appointment of a Chief Executive Officer, who shall be responsible for the day to day administration of the Council.
6. Sub-clause (2) of clause 39 provides for the qualification, appointment and other terms and conditions of Chief Executive Officer.
7. Sub-clause (4) of clause 39 provides for Secretariat to the Council consisting of such number of officers and employees. Further, sub-section (5) provides for qualification, appointment and other terms and conditions of the service of the employees and other officers of the Council.
8. Clause 46 of the Bill provides for maintenances of a Fund called "Mediation Fund" for crediting all monies provided by the Central Government; all fees and other charges received from mediation service provider, mediation institutes or bodies or persons; all monies received by the Council in the form of donations, grants, contributions and income from other sources; grants made by the Central Government or the State Government for the purposes of the Fund; amounts deposited by persons as contributions to the Fund; amounts received in the Fund from any other source; interest on the above or other income received out of the investment made from the Fund.
9. Sub-clause (3) of clause 46 provides that the Fund shall be applied towards meeting the salaries and other allowances of Chairperson, Full-Time Member, Part-Time Member, Chief Executive Officer, Officers and employees and the expenses of the Council including expenses incurred in the exercise of its powers and discharge of its duties under this Act.
10. It is estimated that the proposed law when passed would entail an expenditure of approximately twenty-one crores one lakh fifteen thousand thirty-six rupees in the first year, twenty crores ninety-nine lakhs nine thousand forty in the second year, twenty-three crores sixteen lakhs seven thousand one hundred ninety-four in the third year of establishment of Council as initial establishment expenses, including salaries and allowances and other remuneration of Chairperson, Full-Time Member, Part-Time Member and its officers and other employees.
11. The Bill if enacted and brought into operation would not involve any other expenditure of a recurring or non-recurring nature from the Consolidated Fund of India.

## MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (2) of clause 7 of the Bill provides for amendment of the First Schedule by notification by the Central Government.

2. Clause 33 of the Bill provides for the establishment of Mediation Council of India.

3. Clause 52 of the Bill empowers the Central Government to make rules with respect to the matters which relate to the terms and conditions and the salaries and allowances payable to the Chairperson and Full-Time Members; the travelling and other allowances payable to the Part-Time Members; the form and manner of annual statement of accounts, including the balance sheet and any other matter which is to be, or may be prescribed.

4. Clause 53 of the Bill provides for the Mediation Council of India, with the previous approval of the Central Government, to make regulations consistent with the Act and the rules made thereunder to carry out the provisions of this Act which, *inter alia* relate to qualification, experience and accreditation for mediators of foreign nationality; manner of registration of mediated settlement agreement; fees for registration of mediated settlement agreement; manner of process of conducting online mediation; the terms and conditions of experts and committees of experts; qualifications, appointment and other terms and conditions of service of the Chief Executive Officer; functions and duties to be performed by the Chief Executive Officer; the number of officers and employees of the Secretariat of the Council; the qualification, appointment and other terms and conditions of the employees and other officers of the Council; conditions for registration of mediators and renewal, withdrawal, suspension or cancellations of such registrations; standards for professional and ethical conduct of mediators; criteria for recognition of mediation institutes and mediation service providers; manner of maintenance of electronic depository of mediated settlement agreement; manner for grading of mediation service provider; functions of mediation service provider; duties and functions to be performed by mediation institutes; any other matter in respect of which provision is necessary for the performance of functions of the Council under this Act.

5. Sub-clause (2) of clause 56 provides for the amendment of the Second Schedule by notification to be issued by the Central Government.

6. The matters in respect of which notification, rules and regulations may be made under the aforesaid provisions are matters of procedure and administrative details and it is not practical to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

ANNEXURE

EXTRACT FROM THE INDIAN CONTRACT ACT, 1872

(9 OF 1872)

\* \* \* \* \*

Agreements in restraint of legal proceedings.

28. Every agreement,—

(a) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights; or

(b) which extinguishes the rights of any party thereto, or discharges any party thereto, from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights, is void to the extent.

Exception 1.—Saving of contract to refer to arbitration dispute that may arise.—This section shall not render illegal a contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

Exception 2.—Saving of contract to refer questions that have already arisen.—Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration.

\* \* \* \* \*

EXTRACT FROM THE CODE OF CIVIL PROCEDURE, 1908

(5 OF 1908)

\* \* \* \* \*

PART V

SPECIAL PROCEEDINGS

ARBITRATION

Settlement of disputes outside the Court.

89. (1) Where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of a possible settlement and refer the same for:—

- (a) arbitration;
- (b) conciliation;
- (c) judicial settlement including settlement through Lok Adalat; or
- (d) mediation.

(2) Where a dispute has been referred—

(a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act; 26 of 1996.

(b) to Lok Adalat, the Court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (1) of section 20 of the Legal Services Authorities Act, 1987. 39 of 1987.

Act, 1987 and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;

39 of 1987.

(c) for judicial settlement, the Court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authorities Act, 1987 shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;

(d) for mediation, the Court shall effect a compromise between the parties and shall follow such procedure as may be prescribed

\* \* \* \* \*

EXTRACT FROM THE LEGAL SERVICES AUTHORITIES ACT, 1987

(39 OF 1987)

\* \* \* \* \*

**4.** The Central Authority shall perform all or any of the following functions, namely:— Functions of the Central Authority.

\* \* \* \* \*

(f) encourage the settlement of disputes by way of negotiations, arbitration and conciliation;

\* \* \* \* \*

EXTRACTS FROM THE ARBITRATION AND CONCILIATION ACT, 1996

(26 OF 1996)

\* \* \* \* \*

**43D.** (1) It shall be the duty of the Council to take all such measures as may be necessary to promote and encourage arbitration, mediation, conciliation or other alternative dispute resolution mechanism and for that purpose to frame policy and guidelines for the establishment, operation and maintenance of uniform professional standards in respect of all matters relating to arbitration. Duties and functions of Council.

(2) For the purposes of performing the duties and discharging the functions under this Act, the Council may—

\* \* \* \* \*

(e) frame, review and update norms to ensure satisfactory level of arbitration and conciliation;

(f) act as a forum for exchange of views and techniques to be adopted for creating a platform to make India a robust centre for domestic and international arbitration and conciliation;

\* \* \* \* \*

(i) conduct examination and training on various subjects relating to arbitration and conciliation and award certificates thereof;

\* \* \* \* \*

PART III  
CONCILIATION

**61.** (1) Save as otherwise provided by any law for the time being in force and unless the parties have otherwise agreed, this Part shall apply to conciliation of disputes arising out of legal relationship, whether contractual or not and to all proceedings relating thereto. Application and scope.

(2) This Part shall not apply where by virtue of any law for the time being in force certain disputes may not be submitted to conciliation.

Commencement  
of conciliation  
proceedings.

**62.** (1) The party initiating conciliation shall send to the other party a written invitation to conciliate under this Part, briefly identifying the subject of the dispute.

(2) Conciliation proceedings, shall commence when the other party accepts in writing the invitation to conciliate.

(3) If the other party rejects the invitation, there will be no conciliation proceedings.

(4) If the party initiating conciliation does not receive a reply within thirty days from the date on which he sends the invitation, or within such other period of time as specified in the invitation, he may elect to treat this as a rejection of the invitation to conciliate and if he so elects, he shall inform in writing the other party accordingly.

Number of  
conciliators.

**63.** (1) There shall be one conciliator unless the parties agree that there shall be two or three conciliators.

(2) Where there is more than one conciliator, they ought, as a general rule, to act jointly.

Appointment  
of conciliators.

**64.** (1) Subject to sub-section (2)—

(a) in conciliation proceedings, with one conciliator, the parties may agree on the name of a sole conciliator;

(b) in conciliation proceedings with two conciliators, each party may appoint one conciliator;

(c) in conciliation proceedings with three conciliators, each party may appoint one conciliator and the parties may agree on the name of the third conciliator who shall act as the presiding conciliator.

(2) Parties may enlist the assistance of a suitable institution or person in connection with the appointment of conciliators, and in particular,—

(a) a party may request such an institution or person to recommend the names of suitable individuals to act as conciliator; or

(b) the parties may agree that the appointment of one or more conciliators be made directly by such an institution or person:

Provided that in recommending or appointing individuals to act as conciliator, the institution or person shall have regard to such considerations as are likely to secure the appointment of an independent and impartial conciliator and, with respect to a sole or third conciliator, shall take into account the advisability of appointing a conciliator of a nationality other than the nationalities of the parties.

Submission  
of statements  
to conciliator.

**65.** (1) The conciliator, upon his appointment, may request each party to submit to him a brief written statement describing the general nature of the dispute and the points at issue. Each party shall send a copy of such statement to the other party.

(2) The conciliator may request each party to submit to him a further written statement of his position and the facts and grounds in support thereof, supplemented by any documents and other evidence that such party deems appropriate. The party shall send a copy of such statement, documents and other evidence to the other party.

(3) At any stage of the conciliation proceedings, the conciliator may request a party to submit to him such additional information as he deems appropriate.

*Explanation.*—In this section and all the following sections of this Part, the term "conciliator" applies to a sole conciliator, two or three conciliators, as the case may be.

5 of 1908.  
1 of 1872.

**66.** The conciliator is not bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872 .

Conciliator not bound by certain enactments.

**67.** (1) The conciliator shall assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.

Role of conciliator.

(2) The conciliator shall be guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties.

(3) The conciliator may conduct the conciliation proceedings in such a manner as he considers appropriate, taking into account the circumstances of the case, the wishes the parties may express, including any request by a party that the conciliator hear oral statements, and the need for a speedy settlement of the dispute.

(4) The conciliator may, at any stage of the conciliation proceedings, make proposals for a settlement of the dispute. Such proposals need not be in writing and need not be accompanied by a statement of the reasons therefor.

**68.** In order to facilitate the conduct of the conciliation proceedings, the parties, or the conciliator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.

Administrative assistance.

**69.** (1) The conciliator may invite the parties to meet him or may communicate with them orally or in writing. He may meet or communicate with the parties together or with each of them separately.

Communication between conciliator and parties.

(2) Unless the parties have agreed upon the place where meetings with the conciliator are to be held, such place shall be determined by the conciliator, after consultation with the parties, having regard to the circumstances of the conciliation proceedings.

**70.** When the conciliator receives factual information concerning the dispute from a party, he shall disclose the substance of that information to the other party in order that the other party may have the opportunity to present any explanation which he considers appropriate:

Disclosure of information.

Provided that when a party gives any information to the conciliator subject to a specific condition that it be kept confidential, the conciliator shall not disclose that information to the other party.

**71.** The parties shall in good faith co-operate with the conciliator and, in particular, shall endeavour to comply with requests by the conciliator to submit written materials, provide evidence and attend meetings.

Co-operation of parties with conciliator.

**72.** Each party may, on his own initiative or at the invitation of the conciliator, submit to the conciliator suggestions for the settlement of the dispute.

Suggestions by parties for settlement of dispute.

**73.** (1) When it appears to the conciliator that there exist elements of a settlement which may be acceptable to the parties, he shall formulate the terms of a possible settlement and submit them to the parties for their observations. After receiving the observations of the parties, the conciliator may reformulate the terms of a possible settlement in the light of such observations.

Settlement agreement.

(2) If the parties reach agreement on a settlement of the dispute, they may draw up and sign a written settlement agreement. If requested by the parties, the conciliator may draw up, or assist the parties in drawing up, the settlement agreement.

(3) When the parties sign the settlement agreement, it shall be final and binding on the parties and persons claiming under them respectively.

(4) The conciliator shall authenticate the settlement agreement and furnish a copy thereof to each of the parties.

Status and effect of settlement agreement.

**74.** The settlement agreement shall have the same status and effect as if it is an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal under section 30.

Confidentiality.

**75.** Notwithstanding anything contained in any other law for the time being in force, the conciliator and the parties shall keep confidential all matters relating to the conciliation proceedings. Confidentiality shall extend also to the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement.

Termination of conciliation proceedings.

**76.** The conciliation proceedings shall be terminated—

(a) by the signing of the settlement agreement by the parties, on the date of the agreement; or

(b) by a written declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration; or

(c) by a written declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated, on the date of the declaration; or

(d) by a written declaration of a party to the other party and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of the declaration.

Resort to arbitral or judicial proceedings.

**77.** The parties shall not initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject-matter of the conciliation proceedings except that a party may initiate arbitral or judicial proceedings where, in his opinion, such proceedings are necessary for preserving his rights.

Costs.

**78.** (1) Upon termination of the conciliation proceedings, the conciliator shall fix the costs of the conciliation and give written notice thereof to the parties.

(2) For the purpose of sub-section (1), "costs" means reasonable costs relating to—

(a) the fee and expenses of the conciliator and witnesses requested by the conciliator with the consent of the parties;

(b) any expert advice requested by the conciliator with the consent of the parties;

(c) any assistance provided pursuant to clause (b) of sub-section (2) of section 64 and section 68.

(d) any other expenses incurred in connection with the conciliation proceedings and the settlement agreement.

(3) The costs shall be borne equally by the parties unless the settlement agreement provides for a different apportionment. All other expenses incurred by a party shall be borne by that party.

Deposits.

**79.** (1) The conciliator may direct each party to deposit an equal amount as an advance for the costs referred to in sub-section(2) of section 78 which he expects will be incurred.

(2) During the course of the conciliation proceedings, the conciliator may direct supplementary deposits in an equal amount from each party.

(3) If the required deposits under sub-sections (1) and (2) are not paid in full by both parties within thirty days, the conciliator may suspend the proceedings or may make a written declaration of termination of the proceedings to the parties, effective on the date of that declaration.



(4) Upon termination of the conciliation proceedings, the conciliator shall render an accounting to the parties of the deposits received and shall return any unexpended balance to the parties.

**80.** Unless otherwise agreed by the parties,—

Role of conciliator in other proceedings.

(a) the conciliator shall not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceeding in respect of a dispute that is the subject of the conciliation proceedings;

(b) the conciliator shall not be presented by the parties as a witness in any arbitral or judicial proceedings.

**81.** The parties shall not rely on or introduce as evidence in arbitral or judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of the conciliation proceedings,—

Admissibility of evidence in other proceedings.

(a) views expressed or suggestions made by the other party in respect of a possible settlement of the dispute;

(b) admissions made by the other party in the course of the conciliation proceedings;

(c) proposals made by the conciliator;

(d) the fact that the other party had indicated his willingness to accept a proposal for settlement made by the conciliator.

\* \* \* \* \*

EXTRACT FROM THE MICRO, SMALL AND MEDIUM ENTERPRISES DEVELOPMENT ACT, 2006  
(27 OF 2006)

\* \* \* \* \*

**18. (1)** Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.

Reference to Micro and Small Enterprises Facilitation Council.

(2) On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.

26 of 1996.

(3) Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of section 7 of that Act.

26 of 1996.

(4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.

(5) Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference.

\* \* \* \* \*

EXTRACT FROM THE COMPANIES ACT, 2013

(18 OF 2013)

\* \* \* \* \*

Mediation and Conciliation Panel.

**442.** (1) The Central Government shall maintain a panel of experts to be called as the Mediation and Conciliation Panel consisting of such number of experts having such qualifications as may be prescribed for mediation between the parties during the pendency of any proceedings before the Central Government or the Tribunal or the Appellate Tribunal under this Act.

(2) Any of the parties to the proceedings may, at any time during the proceedings before the Central Government or the Tribunal or the Appellate Tribunal, apply to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, in such form along with such fees as may be prescribed, for referring the matter pertaining to such proceedings to the Mediation and Conciliation Panel and the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, shall appoint one or more experts from the panel referred to in sub-section (1).

(3) The Central Government or the Tribunal or the Appellate Tribunal before which any proceeding is pending may, *suo motu*, refer any matter pertaining to such proceeding to such number of experts from the Mediation and Conciliation Panel as the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, deems fit.

(4) The fee and other terms and conditions of experts of the Mediation and Conciliation Panel shall be such as may be prescribed.

(5) The Mediation and Conciliation Panel shall follow such procedure as may be prescribed and dispose of the matter referred to it within a period of three months from the date of such reference and forward its recommendations to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.

(6) Any party aggrieved by the recommendation of the Mediation and Conciliation Panel may file objections to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.

\* \* \* \* \*

EXTRACT FROM THE COMMERCIAL COURTS ACT, 2015

(4 OF 2016)

\* \* \* \* \*

CHAPTER IIIA

PRE-INSTITUTION MEDIATION AND SETTLEMENT

Pre-Institution Mediation and Settlement.

**12A.** (1) A suit, which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of preinstitution mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.

(2) The Central Government may, by notification, authorise the Authorities constituted under the Legal Services Authorities Act, 1987, for the purposes of pre-institution mediation. 39 of 1987.

(3) Notwithstanding anything contained in the Legal Services Authorities Act, 1987, the Authority authorised by the Central Government under sub-section (2) shall complete the process of mediation within a period of three months from the date of application made by the plaintiff under sub-section (1): 39 of 1987.

Provided that the period of mediation may be extended for a further period of two months with the consent of the parties:

36 of 1963. Provided further that, the period during which the parties remained occupied with the pre-institution mediation, such period shall not be computed for the purpose of limitation under the Limitation Act, 1963 .

(4) If the parties to the commercial dispute arrive at a settlement, the same shall be reduced into writing and shall be signed by the parties to the dispute and the mediator.

26 of 1996. (5) The settlement arrived at under this section shall have the same status and effect as if it is an arbitral award on agreed terms under sub-section (4) of section 30 of the Arbitration and Conciliation Act, 1996 .

\* \* \* \* \*

EXTRACTS FROM THE CONSUMER PROTECTION ACT, 2019

(35 OF 2019)

\* \* \* \* \*

**2.** In this Act, unless the context otherwise requires,— Definitions.

\* \* \* \* \*

(25) "mediation" means the process by which a mediator mediates the consumer disputes;

(26) "mediator" means a mediator referred to in section 75;

\* \* \* \* \*

**37.** (1) At the first hearing of the complaint after its admission, or at any later stage, if it appears to the District Commission that there exists elements of a settlement which may be acceptable to the parties, except in such cases as may be prescribed, it may direct the parties to give in writing, within five days, consent to have their dispute settled by mediation in accordance with the provisions of Chapter V. Reference to mediation.

(2) Where the parties agree for settlement by mediation and give their consent in writing, the District Commission shall, within five days of receipt of such consent, refer the matter for mediation, and in such case, the provisions of Chapter V, relating to mediation, shall apply.

\* \* \* \* \*

**38.** (1) The District Commission shall, on admission of a complaint, or in respect of cases referred for mediation on failure of settlement by mediation, proceed with such complaint. Procedure on admission of complaint.

\* \* \* \* \*

**41.** Any person aggrieved by an order made by the District Commission may prefer an appeal against such order to the State Commission on the grounds of facts or law within a period of forty-five days from the date of the order, in such form and manner, as may be prescribed: Appeal against order of District Commission.

Provided that the State Commission may entertain an appeal after the expiry of the said period of forty-five days, if it is satisfied that there was sufficient cause for not filing it within that period:

Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the District Commission, shall be entertained by the State Commission unless the appellant has deposited fifty per cent. of that amount in the manner as may be prescribed:

Provided also that no appeal shall lie from any order passed under sub-section (1) of section 81 by the District Commission pursuant to a settlement by mediation under section 80.

## CHAPTER V

## MEDIATION

Establishment  
of consumer  
mediation cell.

**74.** (1) The State Government shall establish, by notification, a consumer mediation cell to be attached to each of the District Commissions and the State Commissions of that State.

(2) The Central Government shall establish, by notification, a consumer mediation cell to be attached to the National Commission and each of the regional Benches.

(3) A consumer mediation cell shall consist of such persons as may be prescribed.

(4) Every consumer mediation cell shall maintain—

(a) a list of empanelled mediators;

(b) a list of cases handled by the cell;

(c) record of proceeding; and

(d) any other information as may be specified by regulations.

(5) Every consumer mediation cell shall submit a quarterly report to the District Commission, State Commission or the National Commission to which it is attached, in the manner specified by regulations.

Empanelment  
of mediators.

**75.** (1) For the purpose of mediation, the National Commission or the State Commission or the District Commission, as the case may be, shall prepare a panel of the mediators to be maintained by the consumer mediation cell attached to it, on the recommendation of a selection committee consisting of the President and a member of that Commission.

(2) The qualifications and experience required for empanelment as mediator, the procedure for empanelment, the manner of training empanelled mediators, the fee payable to empanelled mediator, the terms and conditions for empanelment, the code of conduct for empanelled mediators, the grounds on which, and the manner in which, empanelled mediators shall be removed or empanelment shall be cancelled and other matters relating thereto, shall be such as may be specified by regulations.

(3) The panel of mediators prepared under sub-section (1) shall be valid for a period of five years, and the empanelled mediators shall be eligible to be considered for re-empanelment for another term, subject to such conditions as may be specified by regulations.

Nomination  
of mediators  
from panel.

**76.** The District Commission, the State Commission or the National Commission shall, while nominating any person from the panel of mediators referred to in section 75, consider his suitability for resolving the consumer dispute involved.

Duty of  
mediator to  
disclose  
certain facts.

**77.** It shall be the duty of the mediator to disclose—

(a) any personal, professional or financial interest in the outcome of the consumer dispute;

(b) the circumstances which may give rise to a justifiable doubt as to his independence or impartiality; and

(c) such other facts as may be specified by regulations.

Replacement  
of mediator in  
certain cases.

**78.** Where the District Commission or the State Commission or the National Commission, as the case may be, is satisfied, on the information furnished by the mediator or on the information received from any other person including parties to the complaint and after hearing the mediator, it shall replace such mediator by another mediator.

Procedure for  
mediation.

**79.** (1) The mediation shall be held in the consumer mediation cell attached to the District Commission, the State Commission or the National Commission, as the case may be.

(2) Where a consumer dispute is referred for mediation by the District Commission or the State Commission or the National Commission, as the case may be, the mediator nominated by such Commission shall have regard to the rights and obligations of the parties, the usages of trade, if any, the circumstances giving rise to the consumer dispute and such other relevant factors, as he may deem necessary and shall be guided by the principles of natural justice while carrying out mediation.

(3) The mediator so nominated shall conduct mediation within such time and in such manner as may be specified by regulations.

**80.** (1) Pursuant to mediation, if an agreement is reached between the parties with respect to all of the issues involved in the consumer dispute or with respect to only some of the issues, the terms of such agreement shall be reduced to writing accordingly, and signed by the parties to such dispute or their authorised representatives.

Settlement through mediation.

(2) The mediator shall prepare a settlement report of the settlement and forward the signed agreement along with such report to the concerned Commission.

(3) Where no agreement is reached between the parties within the specified time or the mediator is of the opinion that settlement is not possible, he shall prepare his report accordingly and submit the same to the concerned Commission.

**81.** (1) The District Commission or the State Commission or the National Commission, as the case may be, shall, within seven days of the receipt of the settlement report, pass suitable order recording such settlement of consumer dispute and dispose of the matter accordingly.

Recording settlement and passing of order.

(2) Where the consumer dispute is settled only in part, the District Commission or the State Commission or the National Commission, as the case may be, shall record settlement of the issues which have been so settled and continue to hear other issues involved in such consumer dispute.

(3) Where the consumer dispute could not be settled by mediation, the District Commission or the State Commission or the National Commission, as the case may be, shall continue to hear all the issues involved in such consumer dispute.

\* \* \* \* \*

**101.** (1) \* \* \* \* \*

Power of Central Government to make rules.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for,—

\* \* \* \* \*

(r) the cases which may not be referred for settlement by mediation under sub-section (1) of section 37;

\* \* \* \* \*

(zf) the persons in the consumer mediation cell under sub-section (3) of section 74;

\* \* \* \* \*

**102.** (1) \* \* \* \* \*

Power of State Government to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

\* \* \* \* \*

(p) the persons in the consumer mediation cell under sub-section (3) of section 74;

\* \* \* \* \*

Power of  
National  
Commission  
to make  
regulations.

**103. (1)** \* \* \* \* \*

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may make provisions for—

\* \* \* \* \*

(c) the maintenance of any other information by the consumer mediation cell under sub-section (4) of section 74;

(d) the manner of submission of quarterly report by consumer mediation cell to the District Commission, the State Commission or the National Commission under sub-section (5) of section 74;

(e) the qualifications and experience required for empanelment as mediator, the procedure for empanelment, the manner of training empanelled mediators, the fee payable to empanelled mediator, the terms and conditions for empanelment, the code of conduct for empanelled mediators, the grounds on which, and the manner in which, empanelled mediators shall be removed or empanelment shall be cancelled and the other matters relating thereto under sub-section (2) of section 75;

(f) the conditions for re-empanelment of mediators for another term under sub-section (3) of section 75;

(g) the other facts to be disclosed by mediators under clause (c) of section 77;

(h) the time within which, and the manner in which, mediation may be conducted under sub-section (3) of section 79;

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to promote and facilitate mediation, especially institutional mediation, for resolution of disputes, commercial or otherwise, enforce mediated settlement agreements, provide for a body for registration of mediators, to encourage community mediation and to make online mediation as acceptable and cost effective process and for matters connected therewith or incidental thereto.

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*(Shri Kiren Rijiju, Minister of Law and Justice)*

Date: 6 February 2022

Comments on the Draft Mediation Bill 2021 – as introduced before Rajya Sabha and placed before the Standing Committee on Personnel, Public Grievances, Law and Justice, Rajya Sabha Secretariat, Parliament of India – CHITRA NARAYAN- MEDIATOR AND ADVOCATE, CHENNAI

Topic/Section	Comments
s.2 & Applicability of Act	<ul style="list-style-type: none"><li>• The first basis for applicability of the Act is where mediation is conducted between parties and on a subject matter that is domestic, when the law will perform apply.</li><li>• The second basis for its applicability is where (a) the mediation may not be conducted in India, or (b) may be international, but parties apply this law as the law governing their mediation.</li><li>• It will follow that in international mediations where parties conduct the mediation in India, but subject the process to a law of another jurisdiction, that law will apply.</li><li>• It may be unnecessary to add the other qualifiers.</li><li>• The Bill has not included the Singapore Convention and this should be done in the Bill so that we have an integrated law on mediation. The draft for the implementation of the Singapore Convention is provided later in this submission. This inclusion will have implications on the Application provisions of the Act.</li><li>• If the Singapore Convention is implemented, this law / Part will govern (a) the process of mediation, and (b) oversight on the mediated settlement agreement, in <b>international commercial mediations</b> (as defined in the Singapore Convention), but will not govern the status and enforcement of such mediated settlement agreement. The status and enforcement of the mediated settlement agreement will be governed by the Part implementing the Singapore Convention.</li></ul>
s. 2(2) Excluding the Government	<ul style="list-style-type: none"><li>• The Bill adopts the premise that mediation will not be used in government disputes (Section 2(2)). The proviso to section 2(2) proceeds to state that mediation will be utilised in certain kind of Government disputes as deemed appropriate.</li></ul>



Date: 6 February 2022

Comments on the Draft Mediation Bill 2021 – as introduced before Rajya Sabha and placed before the Standing Committee on Personnel, Public Grievances, Law and Justice, Rajya Sabha Secretariat, Parliament of India – CHITRA NARAYAN- MEDIATOR AND ADVOCATE, CHENNAI

	<ul style="list-style-type: none"><li>• If the government, which is the largest litigant, is unwilling to adopt mediation, this will not inspire confidence in mediation as an effective and wholesome process for resolving disputes.</li><li>• Mediation has special advantages in the case of government disputes. It supports interest based resolution – that will take into account government’s concerns, is cost effective, time effective, and most importantly, builds confidence amongst the citizenry that the government is listening to their issues and grievances and working collaboratively to resolve them.</li><li>• The concerns that a government will have in adopting mediation are well understood. These include concerns on adopting a private dispute resolution process for a public dispute, public interests involved, concerns on abuse of discretion, the clash of confidentiality in mediation versus the public’s right to information, etc.</li><li>• However, and keeping these concerns in mind, it would be beneficial for resolution of government disputes, and for a policy on mediation as reflected in this Bill, to not exclude mediation for government disputes, but rather to adopt mediation - agency by agency, department by department and sector by sector, through evaluation of the process and setting up guardrails specific to each agency/ department, that will address the concerns listed above.</li><li>• As such, the embargo in section 2(2) of the Bill may be removed.</li></ul>
<p><i>s.3(c) Court</i></p>	<ul style="list-style-type: none"><li>• The inclusion of the definition of ‘court’ in this Part is unclear, and appears to be superfluous.</li><li>• The expression is used in sections 3(e), 6, 8, 9, 15, 29, etc., and these include any court having territorial or subject</li></ul>

	<p>matter jurisdiction over the dispute that is the subject of the mediation. Thus, the references to court are not confined to the principal civil court or the High Court in exercise of its original jurisdiction.</p> <ul style="list-style-type: none"><li>• Disputes, including international disputes may be filed or may fall under the jurisdiction of any court or tribunal, including courts below the principal civil court of original jurisdiction, as well as criminal courts in the case of compoundable criminal offences.</li></ul>
<p>s.3(f) &amp; s.5(6) <i>International mediation</i></p>	<ul style="list-style-type: none"><li>• The definition of ‘<i>international commercial mediation</i>’ adopts the definition of ‘<i>commercial dispute</i>’ under section 2(a). The element of ‘commercial’ in this definition does not match ‘commercial’ as defined in the Singapore Convention, viz., where both parties enter into the agreement/ arrangement with a commercial purpose.</li><li>• This extends the categories of disputes beyond the scope of disputes considered commercial under the Singapore Convention.</li><li>• There will thus be two sets of international commercial disputes: one covered by the Singapore Convention, and the rest that will not be covered.</li><li>• On account of this definition, there is a duality in terms of the grounds of challenge of international commercial mediation (<i>under either or both of sections 29 and the Singapore Convention if implemented</i>), and duality in terms of manner of enforcement (<i>under section 28(2) in terms of which the agreement can immediately be enforced as if it were a decree in India, and under the Singapore Convention, where the party must satisfy the court that the grounds under section 52 are not attracted</i>).</li><li>• Insofar as ‘international commercial settlement agreements’ as fall within the definition of the Singapore Convention are concerned, the Convention sets out the outcome and conditions for enforcement of such agreements.</li></ul>

Date: 6 February 2022

Comments on the Draft Mediation Bill 2021 – as introduced before Rajya Sabha and placed before the Standing Committee on Personnel, Public Grievances, Law and Justice, Rajya Sabha Secretariat, Parliament of India – CHITRA NARAYAN- MEDIATOR AND ADVOCATE, CHENNAI

	<ul style="list-style-type: none"><li>• The consequences under the Singapore Convention follow irrespective of where the mediation is conducted. ‘Seat’ is not a relevant consideration in the case of ‘international commercial mediation’, (unlike in international arbitrations under the New York Convention).</li><li>• As such, section 28(2), that deals with the status of settlement agreements arising from mediations conducted under this law must exclude such international commercial settlement agreements that are covered by the Convention.</li><li>• Insofar as the Indian law is adopted by parties to an international commercial dispute not covered by the Singapore Convention, the status/ outcome, grounds for evaluating and enforcement of international settlement agreements arising from mediation will require detailed consideration in light of the relationships from which these disputes arise (e.g., employment, consumer disputes).</li></ul>
<i>s.3(f), s.28(2) International mediations (non-commercial)</i>	<ul style="list-style-type: none"><li>• The definition in section 3(f) as it stands is limited to commercial mediation.</li><li>• Mediations of non-commercial international disputes and the settlement agreements that arise should also be covered by this law.</li><li>• Mediated agreements in such contexts may be regarded as an agreement whose enforcement will be the subject of, and subject to, the sectoral laws, and considered by the courts/tribunals that have jurisdiction in these matters. Alternatively, they may be considered for enforcement on an enumeration of grounds that accommodate the specific cultural, legal and policy considerations that arise in these contexts.</li><li>• Please see at the end of this document at <b>Appendix A</b>, suggested provisions for enforcement of mediated settlement agreements in such contexts.</li></ul>
<i>s.2(l)</i>	Mediation Service Providers may be defined as a body or organisation <i>that provides mediation services</i> in conformity with the Act

Date: 6 February 2022

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<i>s.2(q) Party</i>	The expression “ <i>parties claiming through them</i> ” may be added to the definition of ‘ <i>party</i> ’ to include assignees and other legal representatives.
<i>s.4 Mediation</i>	<ul style="list-style-type: none"><li>• The definition of mediation is a definition of the process, and need not include contexts such as pre-litigation mediation, or online mediation or community mediation, when mediation is undertaken.</li><li>• It will be important to add to the definition the aspect that the mediator will not have the authority to impose a settlement on the parties.</li></ul>
<i>s.5(5)</i>	The language in this section needs review.
<i>s.6 Mandating pre-litigation mediation</i>	<ul style="list-style-type: none"><li>• A dispute of a civil and commercial nature, will first have to be attempted to be resolved through mediation, and that such attempt is mandatory (<i>use of the expression ‘shall’</i>) before filing a case in the relevant court or Tribunal</li><li>• It is suggested that mandatory mediation may be introduced for a narrower category of disputes under the Bill, and its efficacy and utility may be reviewed, and extended to other categories based on the learnings from this.</li><li>• The use of mediation can also be left to the determination of sectoral regulators/ institutions/ dispute resolution bodies that will assess the appropriateness of this step in the context and the nature of the disputes they are concerned with.</li><li>• With respect to mediation of commercial disputes, it is important that parties to commercial disputes be able to appoint mediators of their choice.</li><li>• The appropriateness of the Legal Services Authorities (LSA) as a designated authority to handle mandatory mediation in commercial disputes falling under the Commercial Courts Act, 2015 may also be reconsidered. The remit of the LSA is for a different and larger purpose, which may not align with the objective of mandating</li></ul>

	<p>mediation in commercial disputes. The Pre-Institution Mediation Rules, 2018, notified by the Government under the Commercial Courts Act, 2015, is a case in point, where it half-heartedly implements section 12A, and makes the process a discretionary process, that any party can disregard.</p>
<p><i>Proviso to s.6(1); s.8(1)</i></p>	<ul style="list-style-type: none"><li>• The proviso states that pre-litigation mediation of commercial disputes of a Specified Value will be undertaken in terms of section 12A of the Commercial Courts Act, 2015.</li><li>• Under section 12A, as proposed to be amended by the Bill, parties to a commercial dispute will not have a choice of the mediator, but will allotted mediators from panels maintained by the authorities set out in this section 12A.</li><li>• This creates an anomaly. While parties to a dispute of a value falling below the Specified Value, and to civil disputes, and disputants generally, will have access to mediators of their choice (see s.6(3)), parties to a commercial dispute of a Specified Value will necessarily have to go to the LSA/ mediation service provider authorised by the Central Government, and be bound to mediate through a mediator selected by them.</li><li>• This also militates against the important principle of party autonomy in section 10(2) of the Bill.</li><li>• The second anomaly is in the conditions when pre-institution mediations in commercial disputes need not be attempted. While section 12A speaks of the need for an ‘urgent interim relief’, upon which, pre-institution mediation need not be attempted, section 8(1) of the Bill uses the expression ‘exceptional circumstances’ when parties can first approach court before attempting mediation.</li><li>• This postulates different conditions or circumstances in case interim relief is necessary, and is anomalous. The use of the expression ‘exceptional circumstances’ is new, and suggests a situation that is dire or exceptional when</li></ul>

	<p>compared to ‘<i>urgent interim relief</i>’. This will lead to immense churn and interventions by courts before a definitive resolution of this expression is reached, which disserves the cause of mediation.</p> <ul style="list-style-type: none"> <li>• Third, the existence of the need for urgent interim relief, completely exempts the mandate of attempting resolution through pre-institution mediation for commercial disputes under the Commercial Courts Act, 2015. In the case of mandatory pre-institution mediation under the Bill, the matter can be referred to mediation by the court when the application for urgent interim relief has been ordered by the court.</li> <li>• A similar provision may be added in section 12A in the proposed amendment to the Commercial Courts Act, 2015, in the Ninth Schedule</li> </ul>
s.6(4)	<ul style="list-style-type: none"> <li>• The purport of section 6(4) should be made clearer.</li> </ul>
s.6 (6) to (8)	<ul style="list-style-type: none"> <li>• These provisions may be re-drafted as proposed amendments to the Motor Vehicles Act, 1988, and moved to a Schedule to the Bill. This will ensure parity with the language of that Act, and recourse to mediation as a part of the legislative policy of that Act.</li> </ul>
s.7 & Schedule I- Exclusion of categories of disputes from mediation	<ul style="list-style-type: none"> <li>• The appropriateness of private dispute processes for resolution of certain disputes is an important issue.</li> <li>• However, it is not dispute categories but certain types of disputes within such categories that are inappropriate. For instance, intellectual property disputes may be inappropriate for mediation where parties privately determine or confirm the validity of a patent, by agreeing to withdraw a challenge to the patent on the basis of a settlement agreement. However, intellectual property disputes arising from contractual relationships, such as licenses, may be resolved through mediation.</li> <li>• Settlement agreements in the context of validity of intellectual property rights (<i>rights in rem</i>) are permitted in</li> </ul>

	<p>the U.S.A., subject to disclosure of such agreements, and independent review by statutory authorities. Please see pages 327 to 333 in <i>Mediation Policy and Practice, Chitra Narayan (Oakbridge, 2021)</i>.</p> <ul style="list-style-type: none"><li>• The Supreme Court has elaborated on the principles that must be considered when deciding if a type of dispute can be resolved by private dispute processes such as arbitration, and if such disputes are properly to be determined by the courts/ tribunals/ statutory authorities. Please see: <i>Vidya Drolia v. Durga Trading Corporation, (2021) 2 SCC 1; Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd., (2011) 5 SCC 532; A. Ayyasamy v. A. Paramasivam, (2016) 10 SCC 386.</i></li><li>• These principles provide sufficient guidance on the use of mediation in different types of disputes.</li><li>• Please consider the removal of section 7 and Schedule I.</li><li>• Finally, and importantly, most matrimonial offences relate to domestic violence. The legislative policy in treating these offences, though non-compoundable, as offences across the bar, that can be settled, diminishes the seriousness of these offences, and ignores the vulnerable and disempowered conditions of women in families, in negotiating mediated settlements.</li></ul>
<p><i>s.8 – Interim relief as an exception to pre-litigation mediation</i></p>	<ul style="list-style-type: none"><li>• The bar in section 8 is at variance with the standards a party will need to show for obtaining interim relief.</li><li>• It is suggested that the section be amended exclude the need to demonstrate exceptional circumstances, and the well understood expression ‘urgent interim relief’ be used in its place. Section 77 of the Arbitration and Conciliation Act, 1996 captures this situation succinctly and may be adopted here.<sup>1</sup></li></ul>

<sup>1</sup> S. 77: The parties shall not initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject-matter of the conciliation proceedings except that a party may initiate arbitral or judicial proceedings where, in his opinion, such proceedings are necessary for preserving his rights.

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	<ul style="list-style-type: none"> <li>• Sub-section (2) in any case provides that if an interim relief is necessitated in a case, the parties will be directed to mediation, after such relief has been considered by the court/tribunal.</li> </ul>
s.9(3)	<ul style="list-style-type: none"> <li>• It is integral to a mediation process that <i>parties shall not be under obligation to come to a settlement</i>. This statement made only in the specific context of section 9, dealing with the power of the court to refer parties to mediation, is inappropriate and suggests that this principle is confined to section 9.</li> </ul>
s.10(1)	<ul style="list-style-type: none"> <li>• The section has been bodily adopted from s.11(1) of the Arbitration and Conciliation Act, 1996.</li> <li>• The context of mediation is different from arbitration, where culture and contextual understanding play an important role. Thus, while not suggesting that mediators of other nationalities may be appointed, it is suggested that this provision not be made a part of the policy of the Act.</li> </ul>
<i>Proviso to s.13(1) hearing to mediator</i>	<ul style="list-style-type: none"> <li>• Where the parties or any of them are of the view that the mediator is conflicted, such assessment should be given its due, and not be subject to a hearing of the mediator.</li> <li>• This not only delays the commencement of mediation, but also derogates from party autonomy in the choice of mediator, and in particular, imposing a mediator in respect of whom a party has expressed a reservation on grounds of conflict of interest.</li> </ul>
s.17	<ul style="list-style-type: none"> <li>• The use of the expression ‘<i>neutral</i>’ may be reconsidered. The expressions ‘<i>independent</i>’ and ‘<i>impartial</i>’, serve the purpose well.</li> <li>• Neutrality is fluid state. Most experts in mediation suggest that where the imbalance in power between parties is immense, and a party is incapable of negotiating in this context, it would be advisable to terminate the mediation.</li> </ul>



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	<p>While this would be seen as the correct course of action, would the action of the mediator be neutral in this context?</p> <ul style="list-style-type: none"><li>• Given the difficulty in encapsulating the contours of this expression, it would be better to keep this expression out from the law.</li><li>• Section 17(2) that imposes a responsibility of ensuring ‘fairness’, ‘voluntariness’, and ‘self-determination’. If a mediator is neutral, they will be precluded from making assessments on these bases.</li></ul>
<i>s.18- Role of Mediator – facilitative mediation</i>	<ul style="list-style-type: none"><li>• The language in this section may be reviewed.</li><li>• Would this definition preclude the use of evaluative mediation or the mediator suggesting terms of settlement to the parties if the parties so desire?</li></ul>
<i>s.20</i>	<ul style="list-style-type: none"><li>• Does the requirement in section 20(1) for participation in a mediation for at least two sessions apply to all mediations, or only for mandatory pre-institution mediations?</li></ul>
<i>s.21 - Time-limit for completion of mediation</i>	<ul style="list-style-type: none"><li>• The provision of a limit in time for completion of the mediation may be reconsidered.</li><li>• Depending on the nature and complexity of disputes, the number and location of parties, etc., mediations can take longer than the duration of 90 plus 90 days that have been provided. It will be a wasted effort of the parties if a mediation has to be abandoned merely because the time stipulated has lapsed.</li><li>• It is, in any event, open to a party or the mediator to terminate the mediation if it is believed that the process is being protracted or misused.</li></ul>
<i>s.22(1) Mediated settlement agreement</i>	<ul style="list-style-type: none"><li>• The use of the expression ‘means and includes’ may be reviewed.</li><li>• The requirement of the settlement agreement being in writing may be mandated only if parties are seeking the status and enforcement of the settlement agreement as proposed by the Bill.</li></ul>

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	<ul style="list-style-type: none"><li>• The Explanation to section 22(1) may be extended to agreements that are voidable under the Indian Contract Act, 1872.</li><li>• Section 12A of the Commercial Courts Act, 2015, proposes signing of the mediated settlement agreement by the mediator. These provisions may be amended to state that the agreement will be authenticated by the mediator.</li></ul>
<i>s.22(9) Registration</i>	<ul style="list-style-type: none"><li>• The requirement of registration of the settlement agreement makes the process onerous for disputants.</li><li>• While mandating registration, the law does not set out the consequences of non-registration. If the consequence were to be to make the settlement agreement of no legal effect, this would mean that efforts at resolution and the resolution would be put to waste; actions taken by parties pursuant to such resolution will have to be reversed; result in disenchantment with the mediation process, etc.</li><li>• The requirement of registration of the mediated settlement agreement should be optional.</li><li>• It should also not be the responsibility of the mediator to undertake such registration. This could impact the perception of neutrality of the mediator, if the parties do not themselves take steps for registration.</li></ul>
<i>s.27, 29(1) – Mediation by Lok Adalat and Permanent Lok Adalat</i>	<ul style="list-style-type: none"><li>• The provisions in the Legal Services Authorities Act, 1987, for mediation by the Lok Adalats, (a) do not provide for confidentiality of the proceedings, (b) directs the Permanent Lok Adalat to decide the issue if the parties do not reach a settlement – <i>without the consent of the parties</i>, and (c) empowers such Adalats to summon witnesses and call for documents.</li><li>• These aspects derogate from principles and considerations that are essential to mediation, and provision may be made for their amendment in the Legal Services Authorities Act, 1987.</li></ul>

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<p>s.28 – Status of a mediated settlement agreement</p>	<p>The status and enforcement of an agreement arising from international commercial mediation may be excluded from the consequence provided in this section, for reasons addressed above.</p>
<p>s.29 – Challenge to mediated settlement agreements</p>	<ul style="list-style-type: none"><li>• Since mediated settlement agreements under this law could cover all categories of disputes, not restricted to contractual disputes, it is important that the grounds for challenge be expanded to accommodate considerations that arise in other categories of disputes, for instance the paramount interests of a child, whose custody may be the subject of the mediated settlement agreement.</li><li>• The provisions of sections 10 to 19A of the Indian Contract Act, 1872 provide broader grounds for avoiding an agreement, and these may be considered for inclusion as well.</li><li>• Please see the corresponding provision in the Singapore Mediation Act, 2017, for instance.<sup>2</sup></li><li>• The Draft Bill proposes challenge only by a party to the mediation. This for instance, could preclude challenge by a person on the grounds of impersonation. It should be open to persons affected to challenge the settlement agreement.</li><li>• It is not clear what ‘corruption’ and ‘gross impropriety’ means/ includes, and if this is limited to the conduct of the mediator.</li><li>• The time limit it is understood will be extended where fraud or other incapacity applies, and will start only from the time such fraud is discovered/ incapacity ceases.</li></ul>

<sup>2</sup> Section 12(4) of the Singapore Mediation Act, 2017:

(a) the agreement is void or voidable because of incapacity, fraud, misrepresentation, duress, coercion, mistake or any other ground for invalidating a contract; (b) the subject matter of the agreement is not capable of settlement; (c) any term of the agreement is not capable of enforcement as an order of court; (d) where the subject matter of the dispute to which the agreement relates involves the welfare or custody of a child, one or more of the terms of the agreement is not in the best interest of the child; or (e) the recording of the agreement as an order of court is contrary to public policy.

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<i>S.33 Online Mediation</i>	The section may be amended to allow for the written consent of the parties to be obtained electronically.
<i>Chapter 7 – Mediation Council of India</i>	<ul style="list-style-type: none"> <li>• This Council should be a self-regulatory body comprising mediators, with governance and leadership being matters that are determined by the mediators as a professional body</li> <li>• The council will also be empowered to co-opt other stakeholders to the body, such as representatives from ODR institutions.</li> </ul>
<i>s.41 Mediation Service Providers</i>	The provisions relating to grading of mediation service providers may be deleted. The work of the service providers will generate the necessary goodwill and reputation to enable disputants to make their choices.
	<i>Part II Community Mediation</i>
	<ul style="list-style-type: none"> <li>• This Part may be deleted.</li> <li>• Community dispute resolution through mediation should be attempted through such persons as the communities' repose faith and confidence in, rather than the imposition of mediators selected by the Legal Services Authority or the District Magistrate</li> </ul>
<b>Singapore Convention (a) exclusion in the current draft and (b) its treatment in the draft dated 29.10 2021</b>	
<p>A Part implementing the Singapore Convention is to be added in the Bill. This was part of the earlier draft published for comments.</p> <p><i>Please see draft provisions for inclusion for enforcement of international commercial mediations as defined in the Singapore Convention, and for international mediations generally, in Appendices B and A at the end of this document</i></p>	

<p>s.49 – The earlier draft of the Bill that was published for comments had the issues listed in the next column.</p>	<p>Please consider the points made above on the duality in treatment of international commercial settlement agreements that are governed by the Singapore Convention in this Draft Bill.</p> <ul style="list-style-type: none"><li>• The Singapore Convention governs international commercial mediated settlement agreements as defined in Article 2 of the Convention.</li><li>• As such the definition of ‘mediated settlement agreement’ in this section (and consequently this Part) will cover such agreements and not those “<i>considered as commercial under the law in force in India..</i>” <i>Proviso to s.49</i></li><li>• The proviso to section 49 in the earlier version of the Bill made a reservation for government and government agencies. This exclusion of government and government agencies may be reconsidered as this will exclude a large category of disputes, including investor state disputes under investment treaties and free trade agreements, that could be resolved through mediation.</li><li>• Mediation is appropriate in investor state disputes, by resolution on a consideration of the interests of all stakeholders concerned. The investor seeks a long term relationship with India through the investment, and such interest is well addressed by the mediation process.</li><li>• Appropriate oversight mechanisms, the setting up of a nodal agency in the government to assist and evaluate settlement proposals, etc., will help in the due process of government participation and agreement in mediation <i>s.51 -Enforcement</i></li><li>• The Singapore Convention provides two broad circumstances for enforcement under Article 3: (i) use of the settlement agreement as a defence when proceedings are initiated in respect of the same dispute that was settled in mediation; and (ii) for implementation of the settlement agreement through the processes of the court, when a party to the agreement does not give effect to the agreed terms.</li><li>• The second aspect of enforcement is not included in section 51.</li></ul>
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	<ul style="list-style-type: none"><li>• Both clauses (a) and (b) in section 51(3) address the enforcement of the settlement agreement only by way of a defence in proceedings to show that the dispute was already resolved by agreement.</li><li>• Parties should be enabled to raise the issue of the dispute already being resolved by agreement in the courts/ tribunals where the proceedings have been filed. The court/tribunal would be required to stay the proceedings until appropriate orders from the High Court on the enforcement of the agreement in the manner set out in section 52 are concluded.</li></ul>
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	Part IV Miscellaneous
s.48	It is not clear why this provision has been included, and what the questions of policy as addressed in this section will cover.
s.56	<ul style="list-style-type: none"><li>• Section 56 of the Draft Bill also states that this law will not be in derogation of other laws providing for mediation that are Schedule II.</li><li>• The effect is that (a) different laws could provide differing standards on which pre-litigation mediation is mandated to be attempted; and (b) the laws could exempt pre-litigation mediation simply on a showing that an interim relief is necessary (<i>please see section 12A of the Commercial Courts Act, 2015</i>).</li><li>• The provisions in the Legal Services Authorities Act, 1987, for mediation by the Lok Adalats, (a) do not provide for confidentiality of the proceedings, (b) directs the Permanent Lok Adalat to decide the issue if the parties do not reach a settlement – <i>without the consent of the parties</i>, and (c) empowers such Adalats to summon witnesses and call for documents.</li><li>• These aspects derogate from principles and considerations that are essential to mediation, and provision may be made for their amendment in the Legal Services Authorities Act, 1987.</li></ul>

## ***Appendix A***

### ***CHAPTER II***

#### ***International Mediations (Other than Singapore Convention)***

##### ***Section 1***

1. In this Chapter, international settlement agreement means a settlement agreement resulting from mediation, which is international in that:

(a) At least two parties to the settlement agreement have their domicile, places of incorporation, or places of business in different countries; or

(b) The country in which the parties to the settlement agreement have their domicile, place of incorporation, or place of business is different from either:

(i) The country in which a substantial part of the obligations under the settlement agreement is performed; or

(ii) The country with which the subject matter of the settlement agreement is most closely connected;

but does not include a settlement agreement that is governed by Chapter I of this Part.

(2) The enforcement of an international settlement agreement under this section shall be subject to any other law applicable to such agreements, or to any order of a judicial authority in respect of any matters forming a part of the mediated settlement agreement.

(3) In this Chapter court shall mean:



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- (i) the principal civil court of original jurisdiction in a district and includes the High Court in exercise of its ordinary original civil jurisdiction having jurisdiction to decide the subject matter of the mediation if the same had been the subject matter of a suit, but will not include any civil court of a grade inferior to such principal Civil Court or any Court of Small Causes; and
- (ii) where the subject matter of the mediation would fall within the exclusive jurisdiction of any special court, tribunal or quasi-judicial body under a law, such special court or tribunal or quasi-judicial body.

## ***Section 2***

**When international settlement agreement binding.**— Any international settlement agreement which would be enforceable under this Chapter, shall be treated as binding for all purposes on the persons as between whom it was made, and persons claiming under them, and may accordingly be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings in India. Any references in this Chapter to enforcing an international settlement agreement shall be construed as including references to relying on such international settlement agreement.

## ***Section 3***

**Evidence.**— 1. The party applying for the enforcement of an international mediation settlement agreement shall, at the time of the application, produce before the court—

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- (a) The settlement agreement signed by the parties;
- (b) Evidence that the settlement agreement resulted from mediation, such as:
  - (i) The mediator’s signature on the settlement agreement;
  - (ii) A document signed by the mediator indicating that the mediation was carried out;
  - (iii) An attestation by the institution that administered the mediation; or
  - (iv) In the absence of (i), (ii) or (iii), any other evidence acceptable to the competent authority.

2. The requirement that a settlement agreement shall be signed by the parties or, where applicable, the mediator, is met in relation to an electronic communication if:

- a) A method is used to identify the parties or the mediator and to indicate the parties’ or mediator’s intention in respect of the information contained in the electronic communication; and
- (b) if the information contained therein is accessible so as to be useable for subsequent reference.

3. If the international mediation settlement agreement to be produced under subsection (1) is in a foreign language, the party seeking to enforce the international commercial mediation settlement agreement shall produce a translation into English certified as correct by a diplomatic or consular agent of the country to which that party belongs or certified as correct in such other manner as may be sufficient according to the law in force in India.

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## **Section 4**

### **Grounds for refusal of enforcement of international mediation settlement agreements.—**

1. Enforcement of an international mediation settlement agreement may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the court proof that—
  - (a) the party was not competent as defined in section 11 of the Indian Contract Act, 1872, to enter into the mediated settlement agreement;
  - (b) The settlement agreement sought to be relied upon:
    - (i) Is null and void, voidable, inoperative or incapable of being performed;
    - (ii) Is not binding, or is not final, according to its terms;
    - (iii) Has been subsequently modified; or
    - (iv) the object or consideration of the mediated settlement agreement is not lawful in the manner provided in section 23 of the Contract Act, 1872;
  - (c) The obligations in the settlement agreement have been performed;
  - (d) Granting relief would be contrary to the terms of the settlement agreement;
  - (e) where the subject matter of the dispute to which the agreement involves the guardianship, fostering or custody of a child, or relates to the welfare, property or other interests of a child, and one or more of the terms of the agreement is not in the best interests of the child;
  - (f) There was a serious breach by the mediator of standards applicable to the mediator or the mediation without which breach that party would not have entered into the settlement agreement; or

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(g) the agreement is in breach of any law providing for conditions or safeguards subject to which such disputes may be resolved.

2. Enforcement or reliance on a mediated settlement agreement may be refused by a court at the request of the party against whom it is invoked, only if that party furnishes to the court proof of the same grounds as set forth in sub-section (1) above.

2. Even if the conditions in sub-section (1) are fulfilled, the court may refuse to grant relief if it finds that:

(a) Granting relief would be contrary to the public policy of India; or

(b) The subject matter of the dispute is not capable of settlement by mediation under Indian law.

Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

(i) it is in contravention with the fundamental policy of Indian law; or

(ii) it is in conflict with the most basic notions of morality or justice.

### ***Section 5***

**Enforcement of international settlement agreements.**— Where the Court is satisfied that the international mediation settlement agreement is enforceable under this Chapter, the international mediation settlement agreement shall be deemed to be a judgement or decree of that Court.

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## ***Appendix B***

*NOTE: A proviso to be added to sub-section (1) of section 28 to the effect that the section will not apply to mediated settlement agreements covered by this Part.*

### ***Part []***

## ***INTERNATIONAL MEDIATION***

### ***CHAPTER I***

#### ***International Commercial Mediation (Singapore Convention)***

#### ***Section 1***

1. In this Chapter, an international mediation settlement agreement means a settlement agreement resulting from mediation and concluded in writing by parties to resolve:
  - (a) a commercial dispute as defined in the United Nations Convention on International Settlement Agreements Resulting from Mediation set forth in the [] Schedule;
  - (b) which, at the time of its conclusion, is international as provided under that Convention.
2. This Chapter will not apply to a settlement agreement mentioned in Article 1, paragraph 2 or 3 of the Convention.
3. In this Chapter, an agreement covered by sub-section (1) above, will be referred to an ‘international commercial settlement agreement’.
4. In this Chapter, ‘High Court’ means the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the agreement if the same had been

the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court.

### ***Section 2***

**When international commercial settlement agreement binding.**—Any international commercial settlement agreement which would be enforceable under this Chapter, shall be treated as binding for all purposes on the persons as between whom it was made, and persons claiming under them, and may accordingly be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings in India. Any references in this Chapter to enforcing an international commercial settlement agreement shall be construed as including references to relying on such international commercial settlement agreement.

### ***Section 3***

#### **Enforcement of international commercial settlement agreement**

1. Any person referred to in section 2 above, may apply to the High Court for the purposes of (a) enforcing the international commercial settlement agreement in India, or, (b) establishing in any proceedings anticipated, filed or pending before any court, tribunal, arbitral tribunal or other judicial authority, that the matter in dispute before such authority has already been resolved under an international commercial settlement agreement.
2. If any proceedings are initiated or pending in respect of or concerning a matter that a party claims was already resolved by an international

commercial settlement agreement, such court, tribunal, arbitral tribunal or other judicial authority where such proceedings are filed or referred, on an application by a party, may, if it considers it proper, adjourn the proceedings in the matter until determination of the application under subsection (1) (b) above.

#### **Section 4**

**Evidence.**— 1. The party applying for the enforcement of an international commercial settlement agreement under section 3(1) or (2) shall, at the time of the application, produce before the High Court—

- (a) The settlement agreement signed by the parties;
- (b) Evidence that the settlement agreement resulted from mediation, such as:
  - (i) The mediator’s signature on the settlement agreement;
  - (ii) A document signed by the mediator indicating that the mediation was carried out;
  - (iii) An attestation by the institution that administered the mediation; or
  - (iv) In the absence of (i), (ii) or (iii), any other evidence acceptable to the High Court.

2. The requirement that an international commercial settlement agreement shall be signed by the parties or, where applicable, the mediator, is met in relation to an electronic communication if:

- a) A method is used to identify the parties or the mediator and to indicate the parties’ or mediator’s intention in respect of the information contained in the electronic communication; and

*Date: 6 February 2022*

*Comments on the Draft Mediation Bill 2021 – as introduced before Rajya Sabha and placed before the Standing Committee on Personnel, Public Grievances, Law and Justice, Rajya Sabha Secretariat, Parliament of India – CHITRA NARAYAN- MEDIATOR AND ADVOCATE, CHENNAI*

(b) if the information contained therein is accessible so as to be useable for subsequent reference.

3. If the international commercial settlement agreement to be produced under sub-section (1) is in a foreign language, the party seeking to enforce the international commercial mediation settlement agreement shall produce a translation into English certified as correct by a diplomatic or consular agent of the country to which that party belongs or certified as correct in such other manner as may be sufficient according to the law in force in India.

### ***Section 5***

#### **Grounds for refusal of enforcement of international commercial mediation settlement agreements.—**

1. The High Court before which the application in section 3(1) or (2) is made may, at the request of the party against whom the international commercial settlement agreement is sought to be enforced or invoked, refuse to grant the application if such party furnishes proof of any of the grounds set out in sub-section (2).
2. Enforcement of an international commercial mediation settlement agreement may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the court proof that—
  - (a) A party to the settlement agreement was under some incapacity;
  - (b) The settlement agreement sought to be relied upon:



*Date: 6 February 2022*

*Comments on the Draft Mediation Bill 2021 – as introduced before Rajya Sabha and placed before the Standing Committee on Personnel, Public Grievances, Law and Justice, Rajya Sabha Secretariat, Parliament of India – CHITRA NARAYAN- MEDIATOR AND ADVOCATE, CHENNAI*

(i) Is null and void, inoperative or incapable of being performed under the law to which the parties have validly subjected it or, failing any indication thereon, under the law deemed applicable by the court;

(ii) Is not binding, or is not final, according to its terms; or

(iii) Has been subsequently modified;

(c) The obligations in the settlement agreement:

(i) Have been performed; or

(ii) Are not clear or comprehensible;

(d) Granting relief would be contrary to the terms of the settlement agreement;

(e) There was a serious breach by the mediator of standards applicable to the mediator or the mediation without which breach that party would not have entered into the settlement agreement; or

(f) There was a failure by the mediator to disclose to the parties, circumstances that raise justifiable doubts as to the mediator's impartiality or independence and such failure to disclose had a material impact or undue influence on a party without which failure that party would not have entered into the settlement agreement.

3. Even if the conditions in sub-section (2) are fulfilled, the court may refuse to grant relief if it finds that:

(a) granting relief would be contrary to the public policy of India; or

(b) the subject matter of the dispute is not capable of settlement by mediation under Indian law.

*Date: 6 February 2022*

*Comments on the Draft Mediation Bill 2021 – as introduced before Rajya Sabha and placed before the Standing Committee on Personnel, Public Grievances, Law and Justice, Rajya Sabha Secretariat, Parliament of India – CHITRA NARAYAN- MEDIATOR AND ADVOCATE, CHENNAI*

### ***Section 6***

**Enforcement of international commercial mediation settlement agreements.**—Where the Court is satisfied that the international commercial settlement agreement is enforceable under this Chapter, the international commercial mediation settlement agreement shall be deemed to be a judgement and decree of that Court.

### ***Section 7***

**Appealable orders.**—

An appeal shall lie from the order refusing to enforce an international commercial settlement agreement under section 5, to the court authorised by law to hear appeals from such order.

### ***Section 8***

**Saving.**—Nothing in this Chapter shall prejudice any rights which any person would have had of enforcing in India of any international commercial mediation settlement agreement or of availing of any international commercial mediation settlement agreement in India if this Chapter had not been enacted.

**Email****Committee Section PPG****Re: Change in meeting schedule and venue of the meeting on the Mediation Bill - reg.**

**From :** ajjawad62@gmail.com Thu, Apr 28, 2022 11:35 AM  
**Subject :** Re: Change in meeting schedule and venue of the meeting on the Mediation Bill - reg.  
**To :** Committee Section PPG <rs-cpers@sansad.nic.in>  
**Cc :** chitranarayan1996@gmail.com, sriram panchu <sriram.panchu@gmail.com>, tnmac@tn.gov.in, secy@chennaiport.gov.in

Hon'ble Chairman and Esteemed members of the Committee

Thank you for the opportunity given to me for presenting my views on the Mediation Bill to you. To confirm the points made by me, I am sending you this email.

1. Mandatory mediation:

A point was raised by some lawyers present that mandatory mediation is violative of the fundamental right to invoke the jurisdiction of the courts. This may not be correct for the following reasons:

- a. Parties are not deprived of the opportunity of going to the court. They are only required to explore the possibility of an amicable resolution before seeking to invoke the courts.
- b. Are the fundamental rights not violated when there is a huge delay in rendering decisions by the courts owing to the huge backlog?
- c. Mandatory pre litigation mediation is like the proverbial taking the horse to the water. The new Act will only be showing them the option of mediation. It is their choice to continue or to withdraw after they have attended two sessions.

d. Experience has shown that parties who come reluctantly to mediation, take part willingly once they understand the benefits of the process.

e. The Act provides for urgent interim orders being passed if so required and parties can go for the mediation after securing their immediate interests.

f. The dissonance induced by 200 years of the colonial legacy of the court system will take some time to go. In the beginning it may be difficult to inculcate the culture of mediation. But over a period of time, mediation may become the norm. To do this mandatory pre litigation mediation will be needed.

## 2. Online mediation:

Online mediation has been found to be very effective during the pandemic period. The modes and medium of online mediation are diverse and the choice depends on the nature of the dispute and people involved. Too much regulation in this regard may be counter-productive and hence there should be some flexibility allowed in its evolution.

## 3. Community mediation:

Given the cultural, class and caste dynamics operating at the community level, the community members should be given the flexibility to choose their mediators along with those prescribed under the Act. Secondly, given the possibility that dominant groups may be able to force the weaker groups to accept onerous terms, the mediated settlement should be approved by the court. This would ensure the fairness of the process.

## 4. Excluded matters under the First Schedule:

Not all criminal cases are grievous or heinous in nature where state intervention is mandatory. Even cases involving fraud and forgery can be mediated and settled. Hence an omnibus exclusion of all criminal cases may be reconsidered.

The above points are confined only to the submissions made by me, while my colleagues have raised other points too.

In conclusion, I would like to congratulate the Government of India for bringing in this law which will usher the revival of our ancient and hoary culture of conflict resolution through dialogue.

Yours truly,

A.J. Jawad  
Advocate and Mediator

\*Strictly Confidential - Attorney-Client privileged communication  
Unintended recipients of this email are prohibited from disseminating, distributing, copying or using its contents. They should immediately destroy the email and notify the sender at +919840087114. Recipients should run their own virus checks and we shall not be liable for any losses.

On 26-Apr-2022, at 7:42 PM, Committee Section PPG <[rs-cpers@sansad.nic.in](mailto:rs-cpers@sansad.nic.in)> wrote:

Madam/Sir,

The meeting of the Committee on the Mediation Bill, 2021 with the mediation experts which was earlier scheduled on 28th April, 2022, has now been rescheduled (preponed) and the details of the date, time and venue are as under:

**Revised Schedule**

Meeting on **the Mediation Bill, 2021** with:

- (i) Mediation Experts;
- (ii) Tamil Nadu Mediation and Conciliation Centre;
- (ii) Bar Council; and
- (iii) Bar Associations.

**Date : 27th April, 2022**

**Time: 5:30 PM - 7:00 PM**

**Venue: MADRAS HIGH COURT**

You are requested to take note of the above change.

--

Regards,

Committee Section (PPG)  
Department-related Parliamentary Standing Committee on  
Personnel, Public Grievances, Law and Justice

Rajya Sabha Secretariat, Parliament of India  
Room No. 415, Block - B  
Parliament Annexe Extension Building  
New Delhi - 110001

Ph. No. 011 - 2303 5781  
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## **RESPONSE TO THE QUESTIONNAIRE**

- 1. What are your views on the government bringing a standalone Bill on Mediation, when there is already a statute on Conciliation (i.e., Arbitration and Conciliation Act, 1996), which has now been recognised as same thing as mediation in the present Mediation Bill?**

Conciliation and mediation are two different alternate dispute resolution (ADR) procedures. Conciliation is normally included in a contract as one of the steps for dispute resolution. Provisions for conciliation have been provided in the Arbitration and Conciliation Act, 1996. It is, in my opinion, a good idea to have a standalone Mediation Bill.

- 2. One of the key aspects of Mediation is its 'voluntariness', however, the Mediation Bill, 2021 has made pre-litigation mediation compulsory in civil and commercial matters. Do you think that mandatory pre-litigation mediation mechanism would defeat the essence of mediation where the parties are unwilling to mediate?**

Since the entire rationale behind mediation is its voluntariness, compulsory pre-litigation mediation cannot be the norm. Parties frequently require urgent *ex parte* relief, the purpose of which would be defeated by compulsory pre-litigation mediation, which would give parties time to change the status quo and cause damage to other parties, thus defeating the purpose of *ex parte/ad interim* injunctions.

**3. How do you see the Bill on facilitating the resolution of commercial disputes and boosting the 'ease of doing business' in India?**

The twin aspects which are most important for the ease of doing business in ADR are (i) impartiality and integrity of mediators/conciliators/arbitrators and (ii) expeditious disposal. Although mediation is a step forward in providing quick, expeditious, and less expensive resolution of disputes, and would thus improve the ease of doing business, it may not be a major factor. However, even if it is a viable option only for a small percentage of stakeholders i.e., those having contractual business agreements, it would have a salutary role.

**4. How is the Bill going to help in establishing and facilitating 'Private Mediation' in India?**

Although trained mediators have become popular in some parts of the world, with well-respected private mediation centres that inspire the confidence of both the parties, this confidence is lacking in India. We have also not seen the growth of many private mediation centres at present.

**5. Do you think that we have enough trained mediators and other infrastructure for making the pre-litigation mediation binding?**

Each court system has trained mediators attached to it. Mediation is more a temperament than merely training. In some courts, sitting judges act as mediators, in other courts, retired judges are the mediators. Yet another alternative is lawyers trained in mediation. In my view, the training for mediators is not vigorous. The disadvantage of mediation is its lack of transparency. The advantage is its voluntariness. The former could cause some injustice to unempowered people. However, given the fact that we have such extreme pendency of cases, the way forward has to be through mediation, while maintaining its confidentiality and voluntariness.



**6. India is one of the signatories to the 'Singapore Convention on Mediation'. Does the Bill fulfil the provisions mandated for its signatories? How is the Bill going to help in making India a leading centre in international dispute resolution?**

The Singapore Convention on Mediation applies to international settlement agreements resulting from mediation, concluded by parties to resolve a commercial dispute. Thus, only international commercial settlement agreements resulting from mediation can be enforced under the Convention. The scope of the Mediation Bill, 2021 is broader.

The main difference lies in Article 5 (grounds for refusing to grant relief), Singapore Convention:

1. The competent authority of the Party to the Convention where relief is sought under article 4 may refuse to grant relief at the request of the party against whom the relief is sought only if that party furnishes to the competent authority proof that:
  - (a) A party to the settlement agreement was under some incapacity;
  - (b) The settlement agreement sought to be relied upon:
    - (i) Is null and void, inoperative or incapable of being performed under the law
    - (ii) Is not binding, or is not final, according to its terms; or
    - (iii) Has been subsequently modified;
  - (c) The obligations in the settlement agreement:
    - (i) Have been performed; or
    - (ii) Are not clear or comprehensible;
  - (d) Granting relief would be contrary to the terms of the settlement agreement;
  - (e) There was a serious breach by the mediator of standards applicable to the mediator or the mediation without which breach that party would not have entered into the settlement agreement; or

- (f) There was a failure by the mediator to disclose to the parties circumstances that raise justifiable doubts as to the mediator's impartiality or independence and such failure to disclose had a material impact or undue influence on a party without which failure that party would not have entered into the settlement agreement.
2. The competent authority of the Party to the Convention where relief is sought under article 4 may also refuse to grant relief if it finds that:
- (a) Granting relief would be contrary to the public policy of that Party; or
  - (b) The subject matter of the dispute is not capable of settlement by mediation under the law of that Party.

The provision in the Indian Mediation Bill, 2021, for reference, is as follows:

- (1) Notwithstanding anything contained in any other law for the time being in force, in any case in which the mediated settlement agreement is arrived at between the parties other than in court referred mediation or by Lok Adalat or Permanent Lok Adalat under the Legal Services Authorities Act, 1987, and is sought to be challenged by either of the parties, such party may file an application before the court or tribunal of competent jurisdiction.
- (2) A mediated settlement agreement may be challenged only on all or any of the following grounds, namely:—
- (i) fraud;
  - (ii) corruption;
  - (iii) impersonation;
  - (iv) where the mediation was conducted in disputes or matters not fit for mediation under section 7.
- (3) An application for challenging the mediated settlement agreement shall not be made after ninety days have elapsed from the date on which the party making that application has received the copy of mediated settlement agreement under sub-section (3) of section 22:

Provided that if the court or tribunal, as the case may be, is satisfied that the applicant was prevented by sufficient cause from making the application

FROM THE CHAMBERS OF

*Geeta Luthra*

LL.M. M.PHIL (CAMBRIDGE)

SENIOR ADVOCATE

within the said period of ninety days, it may entertain the application within a further period of ninety days.

The UN has also drafted a Model Bill for the Singapore Convention, attached with this email, which may be referred to for this purpose.

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## **DRAFT PROVISIONS**

### 1. CONFIDENTIALITY

#### Section 23, Mediation Bill –

(1) Subject to the other provisions of this Act, the mediator, mediation service provider, the parties and participants in the mediation shall keep confidential the following matters relating to the mediation proceedings, namely:—

- (i) acknowledgements, opinions, suggestions, promises, proposals, apologies and admissions made during the mediation;
- (ii) acceptance of, or willingness to, accept proposals made or exchanged in the mediation;
- (iii) documents prepared solely for the conduct of mediation or in relation thereto.

(2) No audio or video recording of the mediation proceedings shall be made or maintained by the parties or the participants including the mediator and mediation service provider, whether conducted in person or online to ensure confidentiality of the conduct of mediation proceedings.

(3) No party to the mediation shall in any proceeding before a court or tribunal including arbitral tribunal, rely on or introduce as evidence any information or communication set forth in clauses (i) to (iii) of sub-section (1), including any information in electronic form, or verbal communication and the court or tribunal including arbitral tribunal shall not take cognizance of such information or evidence.

(4) The provisions of this section shall not prevent the mediator from compiling or disclosing general information concerning matters that have been subject of mediation, for research, reporting or training purposes, if the information does

not expressly or indirectly identify a party or participants or the specific disputes in the mediation.

Explanation.— For the removal of doubts, it is hereby clarified that nothing contained in this section shall apply to the mediated settlement agreement where its disclosure is necessary for the purpose of registration, implementation, enforcement and challenge.

Article 7, European Union Directive 2008/52/EC –

Given that mediation is intended to take place in a manner which respects confidentiality, Member States shall ensure that, unless the parties agree otherwise, neither mediators nor those involved in the administration of the mediation process shall be compelled to give evidence in civil and commercial judicial proceedings or arbitration regarding information arising out of or in connection with a mediation process, except:

- (a) where this is necessary for overriding considerations of public policy of the Member State concerned, in particular when required to ensure the protection of the best interests of children or to prevent harm to the physical or psychological integrity of a person; or
- (b) where disclosure of the content of the agreement resulting from mediation is necessary in order to implement or enforce that agreement.

Suggestion –

**ADD Section 23(5):**

**Nothing in this section shall prevent disclosure of the abovementioned information where this is necessary for overriding considerations of public policy, in particular when required to ensure the protection of the best interests of children or to prevent harm to the physical or psychological integrity of a person.**

## 2. VOLUNTARINESS

### Section 17, Mediation Bill –

(1) The mediator shall assist the parties in an independent, neutral and impartial manner in their attempt to reach an amicable settlement of their dispute.

(2) The mediator shall at all times be guided by the principles of objectivity and fairness and protect the voluntariness, confidentiality, and self-determination of the parties, and the standards for professional and ethical conduct as may be specified.

(3) The mediation process may include the mediator taking such measures as may be considered appropriate, taking into account the circumstances of the case, including meeting with parties or participants, jointly or separately, as frequently as deemed fit by the mediator, both in order to convene the mediation, and during the mediation for the orderly and timely conduct of the process and to maintain its integrity.

### EU Directive –

The mediation provided for in this Directive should be a voluntary process in the sense that the parties are themselves in charge of the process and may organise it as they wish and terminate it at any time.

### Suggestion –

#### **ADD Explanation to Section 17:**

**Voluntariness in this section means that the parties are themselves in charge of the mediation proceedings and may organise it as they wish and terminate it at any time.**

### 3. MEDIATED SETTLEMENT AGREEMENT

#### Section 29, Mediation Bill –

(1) Notwithstanding anything contained in any other law for the time being in force, in any case in which the mediated settlement agreement is arrived at between the parties other than in court referred mediation or by Lok Adalat or Permanent Lok Adalat under the Legal Services Authorities Act, 1987, and is sought to be challenged by either of the parties, such party may file an application before the court or tribunal of competent jurisdiction.

(2) A mediated settlement agreement may be challenged only on all or any of the following grounds, namely:—

- (i) fraud;
- (ii) corruption;
- (iii) impersonation;
- (iv) where the mediation was conducted in disputes or matters not fit for mediation under section 7.

(3) An application for challenging the mediated settlement agreement shall not be made after ninety days have elapsed from the date on which the party making that application has received the copy of mediated settlement agreement under sub-section (3) of section 22:

Court annexed mediation.

Provided that if the court or tribunal, as the case may be, is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of ninety days, it may entertain the application within a further period of ninety days.

#### Section 12(4), Singapore Mediation Act 2017 –

**The court may refuse to record a mediated settlement agreement as an order of court if —**

- (a) the agreement is void or voidable because of incapacity, fraud, misrepresentation, duress, coercion, mistake or any other ground for invalidating a contract;**
- (b) the subject matter of the agreement is not capable of settlement;**
- (c) any term of the agreement is not capable of enforcement as an order of court;**
- (d) where the subject matter of the dispute to which the agreement relates involves the welfare or custody of a child, one or more of the terms of the agreement is not in the best interest of the child; or**
- (e) the recording of the agreement as an order of court is contrary to public policy.**

**Suggestion –**

**ADD the above grounds to Section 29(2).**

**4. TIME LIMIT**

**Section 21, Mediation Bill:**

*(1)* Notwithstanding anything contained in any other law for the time being in force, mediation under this Act shall be completed within a period of one hundred and eighty days from the date fixed for the first appearance before the mediator.

*(2)* The period for mediation mentioned under sub-section *(1)* may be extended for a further period as agreed by the parties, but not exceeding one hundred and eighty days.



**Suggestion –**

**AMEND:**

**(1) Notwithstanding anything contained in any other law for the time being in force, mediation under this Act shall be completed within a period of thirty days from the date fixed for the first appearance before the mediator.**

**(2) The period for mediation mentioned under sub-section (1) may be extended for a further period as agreed by the parties, but not exceeding ninety days.**

**P.G. Suresh, Advocate & Mediator Trainer,**  
**KSMCC, High Court of Kerala**

**Suggestions on Draft Mediation Bill 2021 by Kerala**  
**Mediator Trainers Team. (Amended Version)**

I. **Sec.3 (b) (i) : -Definition**

“Court”. For the purpose of Mediation under this part means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its Ordinary Original Civil Jurisdiction, having jurisdiction to decide the disputes forming the subject matter of mediation if the same had been the subject matter of a suit.

As per this definition the Court means District Courts in every district and other 5 High Courts - (Bombay, Delhi, Calcutta, Madras and Himachal Pradesh) where it has its Ordinary Original Civil Jurisdiction.

It may not be correct and contradictory to the Sec. 29 (1) of this Bill.

**Sec. 29 (1) : - Challenge to Mediated Settlement Agreement.**

Notwithstanding anything contained in any other law, in any case in which the mediated settlement agreement is arrived between the parties and is sought to be challenged by either of the parties, he may apply to the Court or Tribunal of competent jurisdiction before which the subject matter of dispute or other proceeding would lie.

Here it is mentioned that either party can challenge the mediated settlement agreement before the Court of Competent Jurisdiction before which the subject of the dispute would lie. – For example, it may be a Munsiff Court or Sub Court.

**Hence should make a change in this section and add this provision of Sec.3 (b) (i) into the “Court” means – Any Court or Tribunal established in India as per the provisions of law to try any such cases in civil or criminal in nature of competent jurisdiction before which the subject matter of dispute or other proceeding would lie.**

So that the reference of criminal matters to Mediation is also will be possible. Eg: - 138 of Negotiable Instruments Act.

In the present Bill it is not specifically mentioned anywhere else for the remedy of conducting mediation in compoundable criminal matters, matrimonial matters criminal in nature, 138 N.I Act matters, The Protection of Women from Domestic Violence Act, Maintenance and Welfare of Parents and Senior Citizens Act, etc.

Hence this has to be addressed in the present Mediation Bill otherwise it will certainly create problems for referring the criminal cases or such other disputes for the resolution of issues through Mediation.

**II. Sec. 3(a): – “Council” Means the Mediation Council of India established under Sec.35 of this Act.**

Here it is evident that there is only a Central body is established. But Like other enactments, this Mediation Act also should get some independent statutory rights. For Eg: - Legal Services Authorities Act.

Then only we can easily spread the message of Mediation throughout nation. The Mediation should implement in the grass root level of society to get the benefit of this enactment for which there must be a separate statutory body which should be constituted under this new enactment.

So, the constitution of such statutory body also must be mentioned in the Bill. Hence as mentioned herein the Bill, there must be a central body to control every aspects of Mediation in national and international basis. It is also very much necessary to note that there must be state and district bodies to look after the entire matters with in the state and each district. There are so many cultural, religious, customary, linguistic, regional diversities and differences all over India and that are very important in the field of Mediation. This has to be addressed by the new enactment by giving independent right to the State and districts but under the supervision of the central body.

Hence, we should Provide relevant provisions to constitute State Mediation Authority in each State in all over India and under them there must be District Mediation Authorities by whom the ground level works can be implemented.

**So, after mentioning the definition for "Council" should give the definition for the "Authority".**

**"Authority" Means the State Mediation Authority and District Mediation Authority constituted under this Act.**

The constitution may be like wise mentioned in the Legal Services Authorities Act. Thus, the Mediation will get separate statutory right to implement every matter related to Mediation.

It is to be noted that as per Sec.89 of CPC, the ADR mechanism,

- i. Arbitration - There is one Enactment that Arbitration and Conciliation Act, 1996.
- ii. Lok Adalat - The Legal Services Authorities Act, 1987
- iii. Judicial Settlement - Follow such procedures prescribed by the central Government in this behalf.
- iv. Mediation - Mediation Act, 2021

Here Mediation also coming under a new enactment which has separate body and power and then why to merge some of the activities with other authority and enactment like, Legal Services Authorities Act. For Eg: - for effecting Registration of Settlement Agreement or passing any such awards etc.

It is also to be noted that so many responsibilities are given to the Legal Services Authority to implement the activities imposed upon them as per that legislation and now why we are seeking the mercy of another enactment to implement the legalities and other Mediation activities.

So according to us we need to establish a new operating system and procedure to the entire nation from top to bottom and the fund and other things should come from the central government which is more profitable to the government if it is implemented.

So, from the Reference of a matter to Mediation and till the final settlement agreement registration and its filing process and other allied things should be done by the state and district authorities. The central authority will have the final decision making power and entire monitoring rights over the state. The Accreditation of Mediator and all other rights conferred as per this Bill should be maintained as such and should done by the Mediation Council of India.

Otherwise to meet the expenditure for conducting and completion of the Mediation process we have to wait for the mercy of the Legal Services Authority and never get any independent rights on this. Even now it is evident in the grass route level of each district in India and that has to be addressed.

**III. Sec. 6 (1) - Pre-Litigation Mediation and Settlement: -**

Here we need more clarification about the consent of the parties. Whether the consent for Pre-Litigation Mediation is compulsory or not? If it is compulsory then what are the norms to be clarified and mentioned herein? If not, what should be done?

**IV. Sec. 6 (2) - Pre-Litigation Mediation and Settlement: -**

In this provision there should be more clarification about the qualification of a Mediator. Who can be a Mediator?

While going through the present Sec.6 (2) anybody who is appointed by the parties can be a Mediator. If that be so what is the importance of registration of a Mediator with the Mediation Council of India to become a Mediator. So also, the person who is not qualified as per the norms of the Council, if opted by the parties and the status of such Settlement Agreement also will be questioned. This aspect should be clarified and should mention that any person registered with the Mediation Council of India can be opted by the parties to be a Mediator  
.....

V. Sec. 8 (2) :- Interim Relief by Court or Tribunal: -

The Court or Tribunal shall after granting or rejecting urgent interim relief, as the case may be, refer the parties to undertake mediation to resolve the dispute, if deemed appropriate.

It is to be noted and specified in this Mediation Bill that there is no Appeal remedy to either party from any settlement arrived on account of Mediation and in other cases the aggrieved party can approach the jurisdictional appeal court to challenge any order other than the matters directly or indirectly affected in Mediation process.

It is also to be clarified that no appeal remedy is available to either party from challenging any Mediation Settlement Agreement in any manner and the challenge raised by either party before the jurisdictional court will be final. The resolution of disputes through Mediation must be final and the finality is very important and that also to be highlighted in the Mediation Bill.

VI. Sec. 9:-- Power of Court or Tribunal to Refer the Parties to Mediation: -

In Sec. 9 (1) Notwithstanding anything contained in any other law for the time being in force, a Court or Tribunal, before which an action is brought in a matter which is the subject of an agreement to submit to Mediation shall, **if aparty to such agreement or any person claiming through or under him so applies not later than the date of submitting his first statement on the substance of the dispute have to be omitted.**

Without applying by the parties if there is any such Mediation Agreement the matter should be referred to Mediation without consent or willingness of any other parties thereto.

**VII. Sec.10 (2) : - Appointment of Mediator: -**

The parties are free to agree on a procedure for appointing the Mediator or Mediators.

Here we have to make it clear that whether the consent of the parties is necessary for the reference to Mediation or not? If Consent is necessary then it must be a written agreement and by whom it will be taken and when and where it will be taken who will keep those documents and its confidentiality. These matters must be clarified in the Mediation Bill itself.

If the consent is not mandatory for conducting Mediation, then it will affect the conducting of Pre-Litigation Mediation as per this Mediation Bill.

If the Pre-Litigation Mediation is compulsory and mandatory in any civil proceedings or any other compoundable criminal proceedings which has the civil flavor, the consent of parties will become immaterial. These aspects should be clarified and specified in this Mediation Bill.

It is also to be clarified that how a person can initiate the Pre-Litigation Mediation proceedings and what are the procedures to be complied with by the parties.



### **VIII. Sec.21 (3) (ii) : - Mediated Settlement Agreement : -**

As per this Mediation Bill, it is clearly mentioned that if any settlement is arrived in an Institutional Mediation, the Mediator shall after authenticate the same, submit to the Mediation Service Provider.

As per Sub Sec. 3 (ii) it is further mentioned that in all other cases shall be submitted to the Mediator and after authenticating the same, the mediator can provide a copy of this agreement to the parties.

Here we need some clarifications. If the Mediation is conducted through an Ad-Hoc Mediation process, what should be done by the Mediator with the original settlement agreement? The Accredited Mediator should mention his Accreditation Number issued by the Mediation Council of India while authenticating the Settlement Agreement and also producing for registration before the District Mediation Authority.

The District Mediation Authority should maintain a list of Accredited Mediators in the District as well as whole State and verify with the same while producing the Settlement Agreement for Registration by anybody at any point of time.

Who should keep the original after furnishing the authenticated copies to the parties? These aspects to be clarified in the Mediation Bill.

As per Sec. 21 (8) who can produce this settlement agreement for effecting registration before the District Mediation Authority.

Here there should be some clarifications with regard to the Execution and Registration of the Settlement Agreement.

**IX. Sec. 21 (7): - Mediated Settlement Agreement: -**

Provided that the mediated settlement agreement reached between the parties under sub section (2) shall be registered within the territorial jurisdiction of the Court or Tribunal of competent jurisdiction to decide the subject matter of dispute.

Here it is very much necessary to clarify that in a case of court annexed mediation what to do with this settlement agreement and all such procedures before the Court also should mention in this Bill. Otherwise it will create problem in future.

It is to be noted that as per this Mediation Bill it is clear that the Mediated Settlement Agreement is equalent to judgment and decree and if that be so there need not pass any further decree in a matter considering the settlement agreement in case of court annexed mediation.

This has to be clarified and explained as proviso to this section.

**X. Sec. 21 (8): - Mediated Settlement Agreement: -**

Registration referred to in sub section 7 shall be made by either of the parties, mediator, mediation service provider within a period of ninety days from the date of receipt of copy of the mediated settlement agreement.

Here also there must be some clarification with respect to the production of settlement agreement before the District Mediation Authority for

effecting registration as per sub section 7. Whether the mediator who occupies the original settlement agreement should produce for registration or the parties themselves have to get it registered from the authority. If it is not clarified there will be disputes on this matter in future and that has to be cleared now itself.

Here we have to give some more clarifications with regard to the authenticity of the Mediator who is executing and producing for registration of a Settlement Agreement before the District Mediation Authority.

### **Registration of Settlement agreement: -**

In relation to the registration of the settlement agreement before the District Mediation Authority there should be more clarity. At the time of preparing and authenticating the settlement agreement by an Accredited Mediator, he/she should be very careful and put their enrollment number or Accreditation Number to prove that he/she is an accredited mediator and qualified to do a mediation as per the law. Moreover, the District Mediation Authority also should verify the same and after confirmation only they should effect registration of the Mediation Settlement Agreement and give the registration number to the parties concerned. Thereafter the District Mediation Authority should give a Certificate bearing the details of parties, summary of settlement including the name of competent court jurisdiction, the registration number, the Accreditation Number/Enrollment Number of the

Mediator and by whom it was produced and accepted from the Authority including the registration. The party concerned can file the execution petition and should insist to produce this registration certificate along with the E.P. Any court should not accept the E.P. in file without producing the Registration Certificate issued by the District Mediation Authority as contemplated in the Bill. Otherwise any party may create any fake settlement agreement and produce it for the registration and if it is registered that cannot be challenged later.

**XI. Sec.22 (4): - Confidentiality: -**

Sec.22 (4) provided that evidence or information that is otherwise admissible or subject to discovery in proceedings will not become inadmissible or protected from discovery solely by reason of its disclosure or use in a mediation.

We need some clarification in this proviso.

**XII. Sec.28 (2) : - Status of Mediated Settlement agreement: -**

Subject to the provisions of Sec.29, it shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908, in the same manner as if it were a judgement and/or decree passed by a court, and may accordingly be relied on by any of parties or persons claiming through them, by way of defense, set off or otherwise in any legal proceedings.

It is further to be clarified that how we will get the status of a civil decree for the settlement agreement in a criminal matter. Eg: - 138 N.I. Act matter settled what should do with this settlement agreement and if the same is accepted by the Judicial First Class Magistrate Court or any Appellate Court in case of settlement.

It is correct that criminal court cannot pass a decree/judgment even if it is settled in Mediation. Thereby accepting this settlement agreement before a Criminal Court by whom cannot pass a decree on it.

Thus, what should we do with a settlement Agreement before a Criminal Court having jurisdiction to settle an issue and how it can be dealt with?

Is it possible that if the Mediation Bill provides a provision that the Settlement Agreement executed in Mediation with respect to the criminal matters by way of Pre Litigation Mediation or Court Referred Mediation will have the same effect and status of the Award which may be passed as per Sec.21 of The Legal Services Authorities Act.

For the settlement of criminal cases compoundable in nature, the non-compoundable cases which the court gives permission, all the matters related to the offences under Sec.138 of Negotiable Instruments Act, all the matrimonial matters including the petitions filed under Protection of Women from Domestic Violence Act 2005, Maintenance and Welfare of Parents and Senior Citizens Act 2007, and which are all the other criminal cases having civil flavor and disputes which are personal in nature which may be permitted by any court of law including any Appellate or Revisional Court, may be referred to Mediation as an ADR

mode of resolution of the disputes. For this purpose, one new provision may be added as **Sec.320A in the Code of Criminal Procedure.** All the settlement arrived in mediation under this provision shall have the same effect and status as equal to the Award under Section 21 of the Legal Services Authorities Act. Hence sufficient amendments also to be carried out in the Code of Criminal Procedure for the strict compliance of this provision and by which the Pre-Litigation Mediation rights also will be protected under this provision. For the purpose of execution of the Award which are executed under this provision shall be either criminal or civil in nature/manner which may be opted by the parties concerned and the court concerned can initiate deterrent punishment by awarding sentence for 2 years which may be extended to 3 years in accordance with the gravity of offence and the court can pass any order for the recovery of any amount as compensation from any party for the compliance of the settlement terms arrived between the parties in Mediation.

This aspect should be clarified here.

### **XIII. Sec.28 (2) : - Status of Mediated Settlement agreement: -**

Here it should be clarified that how a settlement agreement should be drawn and what is the stamp duty payable for the execution of a settlement agreement by a Mediator and who can produce stamp paper for preparing the settlement agreement. The time/period of production of stamp paper is also to be clarified. Since it is a Settlement Agreement,

the stamp duty payable may prefer for preparing a valid agreement and the same can be considered while drafting the Rules in the Act.

The stamp duty payable for drawing a settlement agreement is very much important otherwise it will create problem in future which may led to further litigation.

The details can be included in the Rules which may be framed hereafter.

**XIV. Sec. 30: - Cost: -**

Needs more clarification with regard to the costs which may be incurred in Ad-Hoc Mediation.

**XV. Sec.36: - Composition of the Mediation Council of India: -**

Now it is clear that only one Council is going to establish for the entire activities of Mediation in India. It may create many issues in future and the sole body cannot control all over India all the matters related to Mediation. So as a matter of reality we can divide the entire nation as 4 or 5 Zones and select one participant from each Zones from the Mediators Fraternity and include them also in the Mediation Council of Indian to represent the entire Nation for the development of Mediation. Apart from constitution of the State Mediation Authority and District Mediation Authority also should be included as another provision in this Mediation Bill.

While drafting the Rules and regulations the rights and liabilities and constitution of the State Authority and District Authority may be mentioned in detail.

**XVI. Sec. 44 (f): - Functions of Mediation Service: -**

Since the Sec.25 is seen deleted then no need to include this sub section and hence it has to be deleted.

**XVII. CHAPTER -7 - MEDIATION COUNCIL OF INDIA**

It is not mentioned elsewhere in this Bill about the constitution of Mediation Authority in each and every state as stated earlier.

It is very much necessary to constitute Mediation Authority in each and every state in India which has to communicate with the Central Body, Mediation Council of India, and the State body can be called as “State Mediation Authority” and district body can be called as “District Mediation Authority”

The State Body as well as District body have so many duties to be complied with in connection with the day to day affairs of Mediation within the state. The entire things engaged by the Central body should be materialized through the State and District body and providing trainings and awareness programs in each State/District should be decided by the State body and in confirmation of the Central Body. The each and every matter in relation to the Mediation process including the quality, experience, expertise, retirement, panel and number of Mediators should be kept under the custody of the State Body and the



District body should come under the direct control and supervision of the State Body and the same shall be intimated to the Central Body and they can keep sufficient registers and records with respect to these matters and final decision will be taken by the Central Body on each and every matter, if arises.

The State Body should give the power in making Regulations for that State in relation to the entire Mediation process within the state and working of this State Body which should not be against the interest of the Central Body.

The State Body shall consist One Senior High Court Judge as Chairman and one District Judge shall be the Executive Director and shall also nominate 3 or 4 Mediators from the panel to the executive committee and also one member nominated by the State Government (Qualification can be decided) to the State Body.

The State Mediation Authority shall function as per the Regulations made by the State under the direct control by the Mediation Council of India.

The District Mediation Authority shall consist one Chairman, the District and Sessions Judge of the District, One Sub Judge as Executive Secretary, and one Nodal Officer to look after the office affairs of the District Mediation Authority and the State Authority can appoint any other employees for the smooth functioning of the State as well as District Authorities in consultation with the State Government. These points also to be added in this Act.

This also may be considered and added as another Chapter in addition to this chapter in the Mediation Bill.

**XVIII. SCHEDULE- II - Disputes which may not be fit for Resolution Through Mediation under PART -I**

(ii). - Disputes relating to claim against minors..... This should be removed and effect amendment like this ....

Here we should add and amend that those matters relating to the claims against and in favour of minors which are not permitted or consented by the competent Court

**XIX. SCHEDULE- IV -**

In this Schedule we have to add one sub Section as..

Sub Section 3. The Words Mediation and Conciliation referred in Sec.43D of Arbitration and Conciliation Act, 1996 shall stand omitted.

**XX. Sec.65 - SCHEDULE -V: -**

There will be some corrections in the amendment sought in CPC Sec.89. It is stated in Sec.89 (b) that conciliation or Mediation. Here the word conciliation also must be removed since the entire conciliation part in Arbitration and Conciliation Act is removed and amended. So that herein after in CPC also we need not mention anything about Conciliation. So, after Sub section (a) in Sec.89 need to mention only "Mediation".

Thereafter in sub section (c) also there need some corrections. Now it is written that “judicial settlement including settlement through Lok Adalat”. Here we have to segregate these two forms of ADR and mention as (c) Lok Adalat and (d) Judicial Settlement. It is to be noted that in sub Section (2) of Sec.89 will prove the same and in sub section (2) (b) and (c) are very much correct and that has to be looked into and make sufficient corrections like wise.

In Sec.89 (2) (b) we have to remove the word conciliation and only mention Mediation. We need not mention “Conciliation or Mediation”. Since the conciliation is already amended and omitted from the Arbitration and Conciliation Act s per this Bill and thereby we need not mention it again the word conciliation.

The same thing is again repeated in Sec.67 Schedule VII which is sought for amendment in the Legal Services Authorities Act, 1987 in 1<sup>st</sup> Clause, it is mentioned last ..... “negotiation, arbitration, mediation and conciliation”. Here we have to remove the word Conciliation.

#### **XXI. SCHEDULE - VIII - To be added**

Sec.320A is to be added in the Code of Criminal Procedure and other relevant amendments to be effected in the Code.

#### **Sec. 320 A of the Code of Criminal Procedure: -**

For the settlement of criminal cases compoundable in nature, the non-compoundable cases which the court gives permission, all the matters related to the offences under Sec.138 of Negotiable Instruments Act, all the matrimonial matters including the petitions filed under Protection of Women from Domestic Violence Act 2005, Maintenance and Welfare of

Parents and Senior Citizens Act 2007, and which are all the other criminal cases having civil flavor and disputes which are personal in nature which may be permitted by any court of law including any Appellate or Revisional Court, may be referred to Mediation as an ADR mode of resolution of the disputes. All the settlement arrived in mediation under this provision shall have the same effect and status as equivalent to the Award under Section 21 of the Legal Services Authorities Act. Pre-Litigation Mediation rights also will be protected under this provision.

Provided that for the purpose of execution of the Award which are executed under this provision shall be either criminal or civil in nature/manner which may be opted by the parties concerned and the court concerned can initiate deterrent punishment by awarding sentence for 2 years which may be extended to 3 years in accordance with the gravity of offence and the court can pass any order for the recovery of any amount as compensation for the compliance of the settlement terms arrived between the parties in Mediation.

## **XXII. SCHEDULE - IX - To be added**

Sufficient amendments to be effected in Family Court Act 1984, for encouraging the Settlement through Mediation. All the Settlement Agreements arrived in Mediation with respect to any of the family disputes civil in nature which are not excluded as per the Schedule- II of this Act shall have the same status and effect as if it was an order, judgment or decree of a civil court as per Sec.9 (4) of this Act.

All Settlement Agreements arrived in Mediation with respect to the matters criminal in nature shall have the same status and effect as if it

was an Award under Sec.21 of the Legal Services Authority and also will follow the provisions of Sec.320A of Code of Criminal Procedure as mentioned in Schedule VIII under this Act.

**XXIII. SCHEDULE - X: - Amendment in The Consumer Protection Act, 2019**

All Mediations mentioned in this Act comes under this enactment shall be governed by the provisions of the Mediation Act 2021.

**XXIV. SCHEDULE - XI: - Amendment in The Companies Act, 2013**

All mediations mentioned in The Companies Act, 2013 will be governed by the Mediation Act 2021. For that purpose, Sec.442 of The Companies Act should be amended so as to give effect to the Mediation Act to conduct the Mediation and Conciliation referred in Section 442. The word conciliation also should be removed from this provision by amending it.

Dated this the 13<sup>th</sup>Day of November 2021

**P.G. Suresh,**

Advocate & Mediator Trainer,

KSMCC, High Court of Kerala.

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To  
Shri Goutham Kumar,  
Deputy Secretary, Rajya Sabha Secretariat  
Sir,

I am Dr. C Thilakanandan, former Principal, Government Law College, Kozhikode, Kerala. My research was in ADR with the topic " Alternative Dispute Resolution a Study with Special reference to Kerala." It is available in ShodhGanga.

I am happy that a new standalone legislation for Mediation is going to be enacted in the Country. It adds to my happiness that almost all recommendations I made in my thesis are seen in the bill. It is a great endeavour, a good piece of work on legislation. I have a few suggestions to this effect. The most important among them is the need for an amendment in the Indian Evidence Act.1872. I would like to point out one by one as follows.

- 1) In section 3 which deals with definitions I think, it is better to define " *Ad hoc*" mediation as well, just below clause "e". It would be better to at least mention the expression '*Adhoc*' Mediation in the statute.
- 2) In Chapter VIII dealing with the Mediation council of India, there is a considerable change from the draft Bill. It would be better if the provision given in the draft bill be reinstated. It would be better to be a Retired Judge of the Supreme Court of India who has inclination towards Mediation. I have a view that one representative from the bar is also required. Apart from this I would like to suggest making explicit provisions in the Act itself for the constitution of Similar councils in the state level, District level and Panchayath level. This is required for the spread and development of mediation to the grassroot level and also to encourage and compel the state governments to promote it.
- 3) In the bill wherever the expression " Alternate Dispute Resolution" is given , has to be changed to "Alternative Dispute resolution". Because, Alternate and Alternative are different in meaning.
- 4) In section 40 it would be better to include one clause stating that " endeavour to establish spacious well equipped modern mediation centers" in every part of the country..
- 5) In Chapter X dealing with Community Mediation, sub section 5 of section 44 deals with the panelists. My humble suggestion is to include one trained mediator also among the panelists. Lastly,
- 6) Add one more schedule for the amendment in the Indian Evidence Act1872. Since Confidentiality is an important factor in mediation, apart from the provisions in the Act, it is necessary that section 126 of the Indian Evidence Act be amended to include Mediator also in the category of persons to whom protection is guaranteed by Section 126 of the Evidence Act 1872.

The above are my humble suggestions. Many of the researchers across the country including me would have suggested the enactment of a stand alone legislation for Mediation. We will be happy if an acknowledgement is made to that effect also.

I would like to attach the conclusions and suggestions portion of my thesis along with this mail. Important areas are highlighted in red colour. If your good self has time, I request you to kindly go through it. I have conducted an extensive empirical study conducting surveys among the stakeholders like parties in mediation, parties in Lok adalat, Mediators, Advocates, Law teachers etc. across the state of Kerala.

I have visited Many of the Mediation centers in Kerala and Bangalore Mediation centre, Delhi high Court Mediation centre, Thees hazari mediation centre etc. I have interviewed eminent persons like Adv. Shri Sri Ram Panchu, Dr. N R Madhava Menon, Adv. Anil Xaviour etc. The thesis is available on the ShodhGanga site of Infilbnet.

Thanking you very much Sir

Dr. C Thilakanandan,,

## CHAPTER XV CONCLUSIONS AND SUGGESTIONS

*“if our business methods are as antiquated as our legal system, we would  
have become a bankrupt nation long back”.*

Lord Devlin

In this fast changing world everybody is busy with their schedules. No one will be interested to conduct litigations *ad nauseam*. People need quick remedy to their solutions. In such circumstances, in order to provide speedy remedy to the litigant public, promotion of Alternative Dispute Resolution methods like mediation, conciliation etc. may be one of the appropriate remedies available to people.

The statistical results obtained from various collected data (on the present status of the ADR system in Kerala and the opinions of its various stakeholders) have already been presented, discussed and summarized in the various previous chapters. Possible inferences have already been made in those chapters. Most conclusions have also been arrived at in those chapters. In addition, this chapter aims at presenting them in a brief and consolidated manner and adds a few more conclusions, suggestions and proposals, all related the further development of the ADR system in the state.

### **15.1. Some General Suggestions**

The results obtained from this study primarily reveals that the law experts (advocates, judges etc.) are expected to take action **for spreading awareness to the litigants about the different alternatives (provided by the ADR system), their advantages and disadvantages and making them aware** about the right to choose the forum from among different alternatives to litigation. Before referring cases to various forms of ADR the referring courts should make the litigants aware of its importance, explain them about the different modes of settlement, and about the process in each forum.

One of the most important suggestions to be made here is on consultation before referring the case to ADR. Since the study reveals that



advocates in Kerala are not against ADR but many of them are against referring cases for settlement without consulting them and their clients. While referring the cases to ADR the courts need to consider the particular aspect that ADR process is a consensus one and therefore, the initiation of a consensual process also should be in a consensus manner (as against arbitrary manner). In other words, the courts are not expected to mechanically refer cases to ADR. **It is generally expected that the court will discuss this matter with the appearing counsels (and if necessary, with the parties in litigation) before referring cases to ADR. The desirable (and not mandatory) consultations by the court (with the appearing counsels and parties) can sometimes be essential for taking the lawyers also in to confidence (and there is nothing wrong in taking them into confidence if such an action will be ultimately beneficial to the parties in litigation).** All the referring judges are expected to note down these points and if needed, bring an attitudinal change in their functioning.

This study has already revealed that (the fundamentals of the ADR system are quite different from those of adjudication and so,) all advocates are expected acquire the fundamentals of the ADR system to a certain extent. For instance, the fundamentals of mediation teach that the mindset of a mediator is not that of a judge and he or she needs a considerable amount of patience to listen others without interruption and interference<sup>1</sup>. The mediation need not be a to-the-point-deliberation. It is not a process to investigate in to what is right and what is wrong. It is all about an art and science of winning the minds for getting to yes.<sup>2</sup> **Since the mediation process is different from adjudication, the mindsets required for both are different. Just like those of mediation, the fundamentals of adalats, conciliation etc. are also different from those of adjudication and so all advocates are expected to understand this truth**

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<sup>1</sup> Henry j Brown & Arthur I. Marriott, *ADR Principles and practice* (1999), p.328 &pp.128to149

<sup>2</sup> Roger Fisher, & William Ury, *Getting to Yes* (1981) pp200, G.Richard Shell, *Bargaining for Advantage* (1999) pp.286

This study suggests that there should be an education system to build ADR professionals from educated and skilled professionals. These professionals can even be drawn from areas outside law and judiciary like management, social work, science and technology. The selection process of ADR professionals are expected to be based on some internationally accepted stringent methods of tests to assess the aptitude of the mediator aspirants. All the trained ADR professionals must undergo apprenticeship training under well experienced efficient and successful ADR professionals for sufficient number of sittings. All ADR professionals should be given periodic refresher courses. Based on the responses from the feedback nonperforming and unsuccessful ADR professionals must be decertified.

The judicial officers manning the ADR processes can be slowly replaced by (the above mentioned) well trained ADR professionals with experience in negotiation and mediation. The judicial officers shall be re-deployed to adjudication processes. Such a revised policy in turn can be beneficial to the judiciary too in the context of the insufficiency of judicial (Wo)man power for adjudication.

Also, this study emphasizes there is a need for eventual bifurcation between adjudication and consensual processes like conciliation and mediation.

ADR processes are expected to be treated as an independent status rather than a subsidiary means to clear the backlog of cases in courts. Thus there shall be measures to attract youngsters into mediation. Under the present rules, for example, one requires fifteen years legal practice to become a mediator. This is not only a restriction upon the youngsters entering into mediation but a discouragement to qualitative leap in the entire ADR processes. Therefore, the entry level restriction shall be brought to a minimum of experience from fifteen to five. For this purpose, the Civil Procedure (Alternative Dispute Resolution) rules may be amended accordingly.

In order to further develop the current ADR system to an attractive dispute resolution programme as well as an attractive profession, more importance to ADR must be given in the LL.B curriculum. Also, ADR fundamentals need to be included in school curriculum.

The advocates' associations are also encouraged to take up a proactive role in strengthening the dispute resolution system and justice delivery in a better manner. Every Bar association in the state is encouraged to set up (1) a Dispute Resolution Division; (2) Continuing Legal Education Division; and (3) a Research Division, all with an objective of the professional development of its members in ADR.

On the strength of the various provisions contained in the Code of Civil Procedure (Alternative Dispute Resolution) Rules, 2008 and the various provisions of the Arbitration and Conciliation Act, 1996, the Bar Associations in every District in Kerala can start their own centres for mediation and arbitration and can conduct mediation and arbitration of cases with the help of advocates with good aptitude in mediation and arbitration. There are recommendations in supportive to this in the report of the 246<sup>th</sup> law Commission. The dispute Resolution Division of every Bar Association shall work in tandem with (and need not be under) the judiciary. When the Bar takes up such a responsibility of consensual dispute resolution system in the State and Nation, the judiciary will confine its functioning in the adjudication process alone. This thesis argues that it is the absence of such a responsibility shown by the Bar that encourages the Bench to remain proactive and also to assume the lead role in the consensual way of dispute resolution. If the advocate community is willing to take up such a responsibility, it will create a new dispute resolution culture in our society.

The lack of chance for a legal scrutiny in settlements reported by parties before *Lok Adalats* and mediation centres may lead to injustice and violation of human rights. This may be a major setback for ADR initiatives and it may become counterproductive. Therefore it is desirable that every

settlement reported shall be brought under the scrutiny of a statutory authority or statutorily recognised forum.

At present the *Lok Adalat* settlement or resolution of disputes at the court-annexed mediation centres are free of cost to rich and poor alike. At this initial stage of development of mediation in the country and state, it is desirable that the state providing it free of cost. But at the same time it is time to think about limiting the free delivery of service only to the poor litigants deserving legal aid under the provisions of the Legal Services Authorities Act, 1987. Those litigants with own financial support need not be given the benefit of free service. The fee collected should be utilised for the development of mediation and other ADR processes.

Court fee must be collected from Banks, financial institutions, and also from financially sound litigants. Poor people must be exempted from payment of court fees. Court fee refund shall not be given for all litigants. Only those deserving litigants must be given this refund. The amount collected by way of court fees should be utilised for the development of judicial administration and ADR.

### **15.2. Some Specific Suggestions on Lok Adalat**

The long standing issues between the parties may not always be possible to resolve in a hasty manner within the available limited time of the *Adalat*. Hence the courts must take very much care in referring cases to *Lok Adalats*. Only those cases which do not involve confidential issues and those do not require much deliberations shall be referred to *Lok Adalat* settlement.

The need to consult the appearing counsels before referring case to ADR (including to *Lok Adalat*) and also to take them into confidence has already been discussed above. Such a discussion between the Bar and the Bench can also enable both of them to suggest / determine whether a particular case is suitable for settlement in *Lok Adalat*.

As it is generally seen in the *Lok Adalat melaas*, all the litigating parties of multiple litigations / cases reach the *Adalat* venue at the same time.

Such a mass gathering can often make the *adalat* venue, a busy and congested one. In addition, such a mass gathering often compels each party to wait for long before his/her case is called for. As an effective solution to the issues created by such a massive gathering, it is proposed that separate time slots be earmarked for each case. This slight change in the system itself can make the settlement process comfortable to the litigating parties. Such a change can also help avoid public discussion of the private, personal and confidential matters of the litigating parties in a particular case, particularly where there are no mediation centres.

### **15.3. Some Specific Suggestions on Mediation**

This primary point that this study reveals is that the advocate community in general are in need of more theoretical exposure to the mediation process. They are expected to be given more awareness about the various dimensions of mediation, the role of advocates in mediation, the scope of mediation as a profession etc.

In addition, this study reveals that mediators too are in need of more theoretical exposure and practical training in areas like interpersonal skills motivation skills etc. Since the role of a mediator is chiefly to facilitate communication between parties and motivate them to arrive at an amicable settlement, it is not the province of the mediators to give legal counseling and advice to the parties involved in mediation. The study reveals that, during the mediation process. There have been chances that some mediators forgot their designated neutral role as mediators and often transgress their limits (as mediators) and self-importantly act themselves as legal counselors. The mediators, their trainers and also the authorities of the Kerala State Mediation and Conciliation Centre are expected not only to be aware of this fact but also to necessary and sufficient steps to emphasise and ensure the principle of neutrality in conducting mediation process.

The parties appearing in the mediation too need to be aware of the actual process of mediation and only through such an awareness campaign can

the authorities ensure that the mediation process can be carried out according to the principles of mediation. As part of this awareness campaign, waiting room are expected to be set up and parties are expected to compulsorily watch video shows on the mediation process, prior to their appearance before mediators. In addition, invocation classes can be given to the litigants at the mediation center.

After the mediation process, the parties should be encouraged to express their opinion and experience during mediation. Their feedback documents are expected to be properly analyzed and the results of such an analysis can be used by the ADR authorities to further strengthen and improve the process of mediation.

In addition, an ombudsman may be introduced to conduct surprise inspection in the mediation centers.

Amenities must be provided for litigants in the mediation centers including play area for children (after taking cue from the amenities provided at several modern mediation centers across the world, including the one at Delhi High Court).

The study reveals that there is widespread support for establishment of mediation centers in major centers across the state, even outside the premises of courts. Although most mediators do not want to move out of court premises, most advocates and most law faculty members support setting up mediation centers outside the court premises

There is scope even for amending rules so that the disputants can approach such mediation centres (outside the premises of the court) first and try for settlement of their disputes before approaching courts. Thus mediation centres should be able to provide a venue for the parties to settle all kinds of disputes, whether referred to or not by the judiciary. Parties, who were unable to settle their disputes in a mediation centre, may subsequently consider instituting litigation before courts.

Such mediation centers will be helpful in many ways. Firstly, they can enable the courts to entertain only serious contentious cases which in turn can be useful to improve the quality of legal profession and standards of adjudication. Secondly, as is evident from the results of the data from general public, many are dreaded to approach courts and many litigants hesitate to again approach courts, in case of disputes in their future life.

In the absence of such mediation centres, there is likelihood that the unrecognized, unethical, informal and even illegal settlement practices will grow in the society and parties (especially those who are already disgruntled with their bad experience in courts) will be forced to resort to such unethical practices.

Now mediation is governed under the rules made by High Court. Since all the stakeholders are in support of the future development of mediation in the state, for the future development of mediation a comprehensive legislation is required with the constitution of a Mediation Commission of India with representatives from judiciary, Bar, mediators, government etc. the commission can lay down standards, certify decertify, conduct training, give accreditation, organize awareness programmes etc This shall be a national legislation. The people and the government of Kerala shall take initiatives for such legislation.

For the development of mediation as an effective way of dispute Resolution, awareness must be created among, Advocates, judges, Law teachers, General Public etc.

#### **15.4. Some Specific Suggestions on Arbitration**

Although arbitration, as an alternative to litigation, has its importance in commercial disputes, the lack of popularity for arbitration in Kerala is evident in the results of this study. This lack of popularity can be attributed to many aspects like (1) deficiencies of the present law on arbitration in the country; (2) the pending amendment bill before the parliament etc. Even then, there is scope for improvement in the arbitration process.

The government courts and advocate community need to take action for to help the business community to quickly resolve business disputes. An immediate suggestion is that advocates are expected to form arbitral forums under various Bar Associations and are expected to create instruments to train advocates in arbitration, prepare its own panel of arbitrators and educate the business community about the benefits of institutional arbitration and also to attract this community to the arbitration forum of bar associations. The High Court will have to prepare panel of arbitrators including advocates having experience in handling commercial disputes and shall take steps to appoint them in rotation.

There are several problems involved in the matter of appointment of arbitrators. Since the Arbitration and Conciliation Act, 1996 provides that a clause in the contract to submit any dispute for arbitration is misused by many parties who are in an advantageous position. The parties who are in a disadvantaged end are forced to sign the agreement that includes an arbitration clause. The financing companies situated at faraway places are able to manipulate the liberty that is provided by the Act and can appoint their own men as arbitrators. Therefore, in order to ensure the appointment convenient to parties, to avoid delay in appointment and also to ensure transparency in appointments, one important helpful step is to empower the Principal District Judges also as the Delegates of the Chief Justice. The Section 11 of the Arbitration and Conciliation Act, 1996 need to be amended to achieve this.

The introduction of Commercial courts in all districts may be a very good step as recommended by the 246<sup>th</sup> report of the Law Commission, but fixing Rs. One crore as its lowest pecuniary jurisdiction may not be helpful for all litigants. Therefore, the lower limit has to be brought to Ten Lakh Rupees.

Interim attachments ordered under section 9 of the Act are valid only for the period fixed in the order or till passing of the award, whichever is earlier. Because of these, as soon as the moment the award is passed, the attachment ordered by the court ceases. The award can be executed only after



the time for challenge to the award is over and the Act provides for an automatic stay of execution once the OP is filed in the District Court. The dangerous possibility is that the next day after the award the respondent against whom the award is passed can sell his property. Therefore, the period of interim stay should be extended to cover the period to challenge the award. In order to achieve this amendment to the Arbitration rules is necessary.

#### **15.5. Some Specific Suggestions in the form of Amendments in Law**

- 1) **Code of Civil Procedure (Alternative Dispute Resolution) Rules, 2008:** In the rule 8(b) of the said rules; Legal Practitioners with at least 'fifteen years' standing at the bar has to be substituted in to 'five years' standing at the bar. In the rule (c) also similar change has to be brought.
- 2) **In the Arbitration and Conciliation Act, 1996:** In the Arbitration Act under Section 11 If powers are conferred upon the Chief Justice to empower all Principal District Judges to be his delegates the practical impediments like delay involved in the appointment of arbitrators, and to the problems can be overcome. Promotion of institutional arbitration is the next step. Preparation of a panel that includes the names of advocates who have experience in handling commercial disputes and appointing the arbitrators on rotation will be another desirable step. Introduction of video conferencing in arbitration proceedings as recommended by the Law Commission in its 176<sup>th</sup> report may be another useful step in this direction
- 3) **Arbitration and Conciliation (Kerala) Rules:**
  - i. Any interim order granted by the Court u/s 9 shall remain in force for a period of six months unless it is extended, or modified by the Arbitrator on application by any of the parties.
  - ii. The Arbitrator shall specify in the award whether such interim orders are to continue with or without any modifications as are deemed necessary.

#### 4) In the Indian Evidence Act 1872

Confidentiality is an important factor in mediation. The litigant parties during the private session of the mediation may disclose several private secret and confidential matters relating to a case. According to the principles of mediation and also as part of ethics and law the mediator is bound to keep them confidential. Therefore, there is the need to include mediator also in the category of persons to whom is protection guaranteed by Section 126 of the Evidence Act, 1872.

#### 15.6. Future directions in this research

Several suggestions have already been made in the various previous chapters (while discussing the various results obtained) along the future directions of this research. The remaining suggestions are given below.

It is seen that among the Pre-Litigation Petitions (PLP) considered in the *Lok Adalats* many of the cases are submitted by banks. In cases where the limitation period is exceeded, the banks approach the *Adalats*. Therefore, without paying the court fee the banks are able to recover the amount. The banks will not get a decree in such matters if they approach any other legal forum except the *Lok Adalats*. Similarly there are views that other corporate also use *Lok Adalat* forum for their benefit free of costs. The legal Services Authorities Act which was enacted chiefly to help the poor litigants have now appears to be turned as a relief for rich clients. The loss of money to the exchequer as a consequence of this practice needs scientific investigation.

It is seen that the average amount of compensation paid in the settlement of MACT cases through *Lok Adalats* in Kerala is very low compared to the national average. There may be several reasons for this average low amount of compensation paid in Kerala. Whatever be the reason, this lowest average amount in compensation awarded in *Lok Adalat* settlements in Kerala needs further investigation and analysis.

A considerable 30.2% advocates feel that cases bounced back to adjudication from ADR are usually short-shrifted (or dismissed rapidly and without sympathy) by the courts (see table-12.1 and figure 12.1). Why do a significant group of lawyers feel that judges act tough in such cases? Does their such a feeling arise from own experience? On behalf of clients (or not), why do advocates expect sympathy from judges and what shortage in the degree of sympathy did these advocates feel in such cases? Can judges denounce this feeling as prejudice of and absurdity from the part of advocates? All these aspects need to be further studied.

Although 68.2% advocates and many field experts feel that mediation centers should be established at places away from court premises, only 7.3% of mediators feel so. Is this reduced percentage among mediators a net result of their potential insecurity feeling in case they are forced to work outside the court premise? Or, it is due to their fear of possible reduction in their self-important and self-assumed status of a judge in a court premise? Given the fact that mediators are picked by courts from an approval panel, do mediators fear that establishment of mediation centers at places away from court premises will reduce their professional opportunities to act as mediators? All these questions demand further studies.

The question relating to the bifurcation of adjudication and the ADR systems is desirable or to the view that they should run independent of each other but under the same judicial structure? This question needs to be thoroughly explored with the help of more studies.

Given the fact that some cases, which are potentially eligible to create some important precedents, can be referred for settlement and thus, lose chance to create precedents. So, the apprehension of the 40.1% advocates cannot be disregarded. Since mediators and law faculty members are also expected to be aware of this lost chance, why did majority of them disregarded this fact while answering the questionnaire? This question needs to be further explored with the help of further studies.

**Sanjeev Ahuja (Mediator & Resolution Professional)**  
**Founder – MissingBridge ([www.missingbridge.in](http://www.missingbridge.in))**

***Critical Analysis of the Mediation Bill (The Other Side)***

**The Perspective**

Well, we hear a lot about Mediation now a days. This is primarily for reasons emanating from the business environment which are in a way forcing the Government to do something real and fast in this space. *Hence, the government is out with a Mediation Bill, open for discussion and suggestions.* We all need to be active in giving our suggestions to make sure that what we get is a good piece of legislation, which is the need of the hour.

***Sense of Urgency in imbibing Mediation***

The reasons which likely are putting the added pressure on the government and judiciary now a days in imbibing mediation are two-fold.

- One, Singapore Convention on Mediation (2019) is inviting lot of attention from world over and countries are actively exploring its ratification, Georgia being the 9<sup>th</sup> one in the list. India may not want to be late (as we missed the bus earlier wanting to be the hub for the International Arbitration and regret it till date) and in any case would need a law of its own before the convention can be ratified, having been a signatory to the said convention already.
- Second pressing need, which we keep hearing all through by almost everyone linked or connected to the Judicial system is the huge backlog we have in respect of pendency of cases in the courts. Well, ask me and I would have always wanted this not to be the reason for the required and desired push to Mediation but then, since we need both push and pull, let this reason be one for the push. The inherent benefits of Mediation are so many and such that, if they are properly explained and understood, the Courts would in any case become the last option/resort (as also wished by our CJI recently in his remarks while the opening of an (ADR) Alternate Dispute Resolution platform).

Mediation has been known to be a collaborative way of resolving disputes. It can be the most flexible and creative tool in terms of finding solutions suiting

either side, ideally with the aid of a neutral or a facilitator and it is touted to be a cheaper mode of ADR. What is important is a proper 'pull' and a 'push'. Pull takes time and need to be handled differently. For now, the right push can happen through the Mediation Bill which is being discussed and debated in the corridors across. We need to be sure that the bill puts forth what needs to be told and accordingly understood by various stakeholders, reduces the ambiguity on certain aspects of Mediation and clarifies the government stand with regards to its own commitment. This would be an Act soon and it would be expected of all of us to choose Mediation as the default option to resolve our disputes, all types, always. Hence, a critical view required on the current document in circulation:

### ***Critical Analysis of the Draft Bill:***

A critical analysis of the current Mediation Bill (Draft) is being done with a request to policy makers (as they set out to debate on this bill) to get the basics right as the world is watching us, and we cannot go wrong in 'pace' and surely not in the 'direction'. Some precautions as mentioned below, if taken care at the right stage, might be a good idea.

- a) *Ad hoc mediation* is a taboo, is a word with huge negative connotation. Let this be addressed as *non-institutional* or *private mediation*. After all, policy making includes taking care of the psychological factors and avoiding an improper use of nomenclature and terminology. (Would humbly suggest the removal of 'insolvency in corporate ~~insolvency~~ resolution process' in IBC on the same lines)
- b) *Court annexed mediation* is not and cannot be equated with private mediation (or the stated 'pre litigation' mediation) Mediation is purely a voluntary initiative and anything happening on the direction of the Court cannot be voluntary. A said/unsaid pressure on the parties, having already litigated for a while, cannot be coerced to settle. Having said this, an option to mediate and explore settlement should be and can be given at any stage of the ongoing litigation and even an out of court (private) mediation should be an option.
- c) *Pre-litigation Mediation* should be the buzz word and promoted, endorsed, and pushed across all the time. Though, it cannot be forced or coerced as would go against the grain of the concept. Just that if we can find a better word and avoid the term 'litigation' in pre-litigation mediation when we promote Mediation, we would do justice to the cause. CJI recent remarks be repeated that courts should be the last option to be

explored to resolve disputes. The takeaway from this statement is that ADR (and Mediation in that being the first option) be tried first to resolve those disputes.

- d) Making an *Agreement to Mediate in writing* as a pre-requisite is both inconsistent with above mentioned Pre litigation Mediation as a default step and goes against the intent of giving the free will to the parties to opt for mediation (whether agreed prior or not). In any case, over the period, the intent would be to have all agreements and contracts contain the mediation clause as the default option.
- e) Any kind of *timelines* being imposed to initiate or complete the Mediation process is contrary to the intent of bringing this law itself when we first put pressure on parties to settle and then to settle within the defined time frame. Let the party autonomy be at play and let them take their own time, after all they are not coming to the Court till the time, they are busy resolving. Yes, in any case any one side can call off mediation and move to the next best alternative.
- f) Of course, it would be great to have *dedicated courts* to handle the settlements through mediation so that unwanted situations can be avoided and a veiled threat of a big brother watching is available. After all, a fresh/different mindset would be required to deal with this concept. This in any case might be required as the last resort, in case of any unintended situation as normally enforcement would seldom be an issue as these settlements would be an outcome of a voluntary initiative. *Settlement through mediation carries the weight and force of a decree and that is a good weight behind it.*
- g) Mediation is to be promoted as a career and a profession and cannot and should not be looked down upon by tagging it as a cheaper resolution option. Let the best of minds be excited and attracted towards this and help the larger cause. The cost efficiency is only to the extent it can be attributed to a quicker resolution which is a possibility under this concept.
- h) *Registration and the Depository* concept be brought in cautiously keeping in mind the very essence of Mediation which is '*confidentiality*'.
- i) Setting up of *Mediation Council of India* as a regulatory body be only required for discipline and a structure and not to stifle the creativity and flexibility which is the hall mark of the Mediation process.
- j) *Schedule II* inserted talks about the exceptions and the types of disputes which are not to be subjected to Mediation. *List is surprisingly very long.*

Ideally only the typical kind of issues like those dealing with fraud, misrepresentations, and ones where adjudication is required need be excluded, else ideally most of them should pass through the prism of Mediation atleast once and parties in dispute be encouraged to solve, resolve, and explore creative settlements. Restricting types of issues to Mediation might also be an outcome of the existing mindset where justice by a third-party is seen superior to the actual solutions expected and desired by the parties in dispute. When last year some statements from the top bosses appeared in the papers suggesting use of Mediation even in Income Tax Disputes, it raised a ray of hope. Let that hope remain. It's worth the effort.

Mediation in commercial space might be a non-starter if Government does not lead with the example. Yes, the *biggest litigator in Government* (authorities and departments) too are welcome to try mediation in all their issues. To make it easy for them to avoid scrutiny later, let there be committees (a three-member team) formed taking joint calls while taking part in the mediation process and come out with creative and flexible solutions and bring down litigation and disputes, alike.

Let India grab this opportunity to be the *hub of Mediation*, let the world get attracted to this jurisdiction and learn from us and follow us. Let us do the basics right from the very beginning. Yes, the law would evolve like others, but let us not repeat any of the earlier mistakes. Let these (mistakes) be the new ones and let us use mediation to settle new and old disputes alike, using mediation. After all, ease of doing business needs a further boost and so does the world bank rankings. This would help. Happy drafting and debating.

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Ref. No.

महचकता विधीयक. 2021

Date 10/02/22

मित.

अत्यंत नकारात्मक पूर्ण विचारों एवं दृष्टिकोण के अनुसार अंग्रेजों द्वारा इण्डिया में स्थापित तथाकथित "न्यायिक व्यवस्था" निरन्तर प्रदूषित एवं अव्यवहार से ग्रसित होती गई। समय युग परिवर्तन का है। भारत सरकार द्वारा नये भारत निर्माण हेतु समस्त कार्य-विचार पूर्णतया स्वकारात्मकता से सम्पन्न है।

"संस्थागत महचकता" अत्यंत प्रभावशाली एवं नव भारत निर्माण में अपनी स्वकारात्मक विचार ऊर्जा का सर्वश्रेष्ठ प्रदर्शन कर सम्पूर्ण राष्ट्र के निवासियों हेतु न्यायिक अवधारणा को सफल प्रति करने में सर्वथा सहायक एवं उपयोगी ही सिद्ध होगी।

राष्ट्रहित की दृष्टि से "संस्थागत महचकता" वर्तमान समय को अनिवार्यतः परिलक्षित कर रही है। वर्तमान व्यवस्था को लघु रूप प्रदान करने की दिशा में "संस्थागत महचकता" की व्यवस्था निश्चित रूप से प्रभावकारी एवं लाभदायक ही प्रदर्शन प्रस्तुत करेगी।

संस्थागत महचकता की ऑन लाइन एवं आफलाइन व्यवस्था सामान्य नागरिकों को सरल, सहज एवं त्वरित न्याय प्रदान करने में, वर्तमान न्यायिक व्यवस्था से अधिक उपयोगी एवं लाभदायक ही सिद्ध होगी।

भारत काई अध्यक्षता  
योगेश



## संस्थागत महत्त्व

वर्तमान समय की न्यायिक प्रक्रिया का आरम्भ ब्रिटिश इण्डिया सरकार द्वारा स्थापित है। इस न्यायिक व्यवस्था के उद्देश्य एवं कारणों पर चर्चा अथवा वार्ता करना सर्वथा समय का दुरुपयोग करना है, क्योंकि वे समस्त साक्ष्य सप्रमाण उपलब्ध हैं जो इण्डिया की अब तक की तथाकथित न्यायिक प्रणाली में परि-लक्षित हो रहा है।

ब्रिटिश इण्डियन सरकार द्वारा स्थापित न्यायिक व्यवस्था में "न्याय" का सर्वथा अभाव ही रहा है और मात्र "निर्णय" करने की शक्ति का ही सफलता पूर्वक दुरुपयोग किया जाता ही रहा है।

मैकाले द्वारा तथाकथित 'लार्ड' 'विलियम बेंटिक' के शासनकाल में "विधि आयोग" स्थापित होना, यह स्पष्ट प्रमाण है कि सर्वथा वास्तविक "न्याय" के अतिरिक्त इस न्यायिक प्रणाली द्वारा गरीबों, उत्पीड़ित एवं शोषित तत्वों का कभी कोई संज्ञान लिया ही नहीं गया एवं तथाकथित न्यायिक प्रक्रिया में संलिप्त तत्वों द्वारा इस दिशा में सम्यक ध्यान ही दिया गया।

मैकाले द्वारा स्थापित शिक्षा व्यवस्था का पूर्ण अवसान राष्ट्रीय शिक्षा नीति, 2020 के अर्न्तगत सुनि-श्चित किया गया, किन्तु मैकाले द्वारा ही स्थापित "विधि आयोग" संशोधनोपरान्त वर्तमान समय में व्यवहारत अवस्थित है, जिसमें "अब" पूर्णतया परिवर्तन अनिवार्य है।

संस्थागत महत्त्वकता, :- सामान्य न्यायिक व्यवस्था  
से संपुष्ट एक स्वागत योग्य " नवाचार " परिलक्षित ही  
रहा है। " नव भारत निर्माण परियोजना " हेतु यह एक  
अपरिहार्य कारण एवं दृष्टिकोण है।

भारतीय महत्त्वकता परिषद, :- वर्तमान न्यायिक व्यवस्था के  
पूर्वाग्रहों से सर्वथा विमुक्त प्रतिष्ठित होना ही सर्वथा  
शावद्रहित के अनुकूल अपनी क्षमता एवं सामर्थ्य को  
प्रस्तुत करने हेतु सफलतम स्वरूप प्राप्त करने में प्रथम  
दृष्टया ही पूर्णतया समर्थ सिद्ध है, अतः भारतीय  
महत्त्वकता परिषद का स्वरूप एवं कार्य-व्यवहार पूर्णतया  
" भारतीय संस्कृति " के अनुरूप ही व्यवस्थापक होना  
आवश्यक है।

भारतीय महत्त्वकता परिषद को अन्तर्राष्ट्रीय स्तर  
पर, नेतृत्व करने में पूर्णतया सक्षम होना वर्तमान  
समय, काल एवं पारिस्थितिक तन्त्र एवं व्यवस्था की  
आवश्यकता है।

भारतीय महत्त्वकता परिषद के तत्त्वार्थीन नियुक्ति  
विषयक दृष्टिकोण एवं विचारों में भी सम्पूर्ण परि-  
-वर्तन अपरिहार्य है।

भारतीय महत्त्वकता परिषद सुयोग्य, सुशिक्षित  
एवं संस्कारवान व्यक्तित्व का संकलन करने में अमूल्य  
समय का शावद्रहित में सर्वथा सदुपयोग प्रदर्शित करे,  
यह सर्वथा अनिवार्य है " नव भारत निर्माण " हेतु, तथा  
मानवता हित हेतु भी।

मध्यकता सेवा प्रदाता और मध्यकता संस्थान सम्पूर्ण राष्ट्र की व्यापक न्यायिक अवधारणा का संबंधन प्रदान करने वाला होना आवश्यक है - वर्तमान न्यायिक व्यवस्था के "समानान्तर" इस नवाचारिक न्यायिकता पूर्ण अवधारणा को पुष्टता एवं संतुष्टता प्रदान करने में पूर्णतया समर्थ एवं सक्षम होना "न्याय" हेतु राष्ट्र एवं मानवता हित हेतु अपरिहार्य है।

मध्यकता व्यवस्था प्रत्येक नागरिक हेतु सहज एवं सरल होना अत्यंत आवश्यक है अंग्रेजों द्वारा स्थापित न्यायिक प्रणाली सामान्य नागरिकों हेतु अत्यंत जटिल एवं कष्टदायक ही रही है अतः "पुरानी सेवा को बिना मिटाये, बिना हटाये लघु रूप प्रदान करने के लिए एक नवीन सेवा "समानान्तर" निर्मित की जानी अनिवार्य है।

अतः अंग्रेजों द्वारा भारत में मातृ स्वार्थ-सिद्धि हेतु जो न्यायिक व्यवस्था सामान्य नागरिकों को प्रदान करने हेतु स्थापित की गई थी उसका भी पूर्ण अवसान होकर राष्ट्रीय शिक्षा नीति 2020 के समान ही किया जाना आवश्यक है। कारण :-

मैकाले द्वारा इण्डिया में जिस भाव-विचार के साथ शिक्षा व्यवस्था की स्थापना की थी ठीक उसी रूप और ढंग में तथाकथित लॉर्ड मैकाले द्वारा बिलिथम बोटिक के शासनकाल में सामान्य नागरिकों हेतु अत्यंत नकारात्मक दृष्टिकोण से "विधि व्यापोग" की स्थापना की गई थी।

"Facts are facts and will not disappear on account of your likes." - Jawaharlal Nehru

सामुदायिक महत्त्वता प्रति सराहनीय, प्रशंसनीय एवं स्वागत योग्य प्रावधान है। इस प्रकार का व्यवस्था सम्पूर्ण शब्द के निवासियों को अंग्रेजों द्वारा स्थापित जटिल न्यायिक प्रणाली से स्वतंत्र करने में सर्वाधिक प्रभावकारी सिद्ध होना निश्चित है।

"सामुदायिक महत्त्वता" अपने शीर्षक एवं उपमा के अनुसार, "प्राचीन भारतीय न्यायिक प्रणाली" को आत्मसात एवं अंगीकार करने में सर्वथा प्रभावित सिद्धता प्राप्त करने में सफल परिलक्षित हो रही है।

"सामुदायिक महत्त्वता" का सफल व्यवस्था हेतु शब्दाय प्रणाली के साथ-साथ सामाजिक प्रयास भी नितांत आवश्यक है।

वर्तमान अज्ञान (न्यायिक अज्ञान) की सामान्य एवं आम विवादा हेतु तथाकथित "अज्ञान" न्यायिक तन्त्र पर ही अवधारित है, "सामुदायिक महत्त्वता" सामान्य नागरिकों को जटिल न्यायिक प्रक्रिया से मुक्त करने में सफल सिद्ध हो इस हेतु सामुदायिक महत्त्वता का शब्दाय एवं सामाजिक व्यवहार का "डॉन लाइन" एवं "ऑफलाइन" विस्तार प्रदान करना "शासन" हेतु अनिवार्य है।

नव भारत निर्माण पथ पर तीव्र गति से अग्रसर होने हेतु "अस्वागत महत्त्वता" वर्तमान "पारिस्थिक तन्त्र" हेतु सर्वथा स्वागत योग्य व अनिवार्य है।

प्रस्तुत मध्यकता विधेयक 2021 को सामान्य नागरिकों हेतु एक सम्पूर्ण न्यायिक व्यवस्था निर्मित करने की नितान्त आवश्यकता पर विशेष ध्यान प्रदान करने की स्थिति को निश्चित रूप से सुनिश्चित किया जाना, वर्तमान समस्त न्यायालयों इत्यादि से अनावश्यक एवं निरर्थक कार्य-भार निश्चित रूप से "कम" होना ही चाहिए और इस उद्देश्य की संज्ञा हेतु "मध्यकता विधेयक 2021 एक प्रशंसनीय एवं स्वागतयोग्य कदम है।

मध्यकता विधेयक 2021 की संचालन एवं कार्यान्वयन प्रक्रिया वर्तमान में परिलक्षित (उपस्थित) साधन, संसाधन एवं प्रक्रिया इत्यादि से पूर्णतया विलग एवं पृथक् होना अनिवार्य है। वर्तमान प्रक्रिया से पूर्णतया परिवर्तित होना प्रस्तुत सकारात्मक प्रयास की निश्चितता के साथ सकलसम शक्ति प्रदान करने में सक्षम एवं उपयुक्त भी है "नव भारत निर्माण परिषद्" हेतु।

"भारतीय मध्यकता परिषद्" अर्न्तगर्भय स्तर पर नेतृत्व करने में अनिवार्यतः सक्षम होना वर्तमान समय, काल एवं पारिस्थितिक तन्त्र व्यवस्था की आवश्यकता है, अतः एक सुझाव यह अवश्य समर्पित है कि, "भारतीय मध्यकता परिषद्" का स्वरूप पूर्णतया नवाचार आधारित हो, इस परिषद् के तत्त्वार्थाने नियुक्ति विषयक दृष्टिकोण एवं विचारों में ही सम्पूर्ण परिवर्तन अपरिहार्य है। अतः भारतीय मध्यकता परिषद् श्रुतयोग्य, शिक्षित एवं सरंकारवान व्यक्तित्व का संकलन करने में अपने अमूल्य समय का शोधित में शर्था सुदुपयोग प्रदर्शित करे, यह आवश्यक ही और अपरिहार्य भी है "नव भारत निर्माण" हेतु, शोधित एवं मानवता हेतु।

"मध्यकता सेवा प्रदाता और मध्यकता संस्थान" सम्पूर्ण शोध की आंतरिक न्यायिक व्यवस्था का संबंधन प्रदान करने वाला, होना आवश्यक है सम्पूर्ण न्यायिक प्रणाली जो वर्तमान में शोध के आंतरिक विवादों का निवारण करने में सक्षम है हीक इसके "समानान्तर" इस नवाचारिक न्यायिकता पूर्ण व्यवस्था की पुष्ट एवं संतुष्ट करने एवं बनने में सम्पूर्ण सहमता प्राप्त कर सामान्य नागरिकों की उपकृष्ट करे इस हेतु अविषय में प्रयास करने की सतत योजना का पूर्ण पूर्व विनिश्चय करना अत्यंत आवश्यक है।

"सामुदायिक मध्यकता" हेतु शोधय प्रयासों के साथ-साथ सामाजिक प्रयास नितान्त आवश्यक है। वर्तमान व्यवस्था ती सामान्य नागरिकों का आम विवादों हेतु तत्कालीन "सक्षम" न्यायिक तन्त्र पर ही अवधारित है, नव भारत निर्माण पथ पर तीव्र गति से अग्रसर होने हेतु "शासक" की सामुदायिक मध्यकता की व्यवस्था की अनिवार्य विस्तार प्रदान करना आवश्यक है।

To  
 PARLIAMENT OF INDIA  
 Rajya Sabha Secretariat  
 New Delhi  
 Department-related Parliamentary Standing Committee on Personnel,  
 Public Grievances, Law and Justice

Respected Sir

Subject: Suggestions on “**The Mediation Bill, 2021**”

In reference to your Press Communique dated 28<sup>th</sup> January 2022, we are submitting our suggestions on Draft “The Mediation Bill, 2021”.

**Suggestions on Mediation Bill, 2021**

<b>Change suggested by:</b>			<b>Dr. (h.c) CS Mamta Binani, Practicing Advocate and G Sriram, Practicing Company Secretary</b>	
<b>Date</b>			<b>09/02/2022</b>	
<b>Page No.in the Bill</b>	<b>Guidelines /Annexure</b>	<b>Para and Sub-para/ Clauses in the draft Bill</b>	<b>Comments/ Suggestions</b>	<b>Reasons</b>
4		<b>Title of the Bill is The Mediation Bill, 2021</b>	The Title of the Bill can be changed to The Mediation Code, 2021	Through this Mediation Bill sections in various Acts are likely to be amended, like MSME Act, 2006; Companies Act, 2013; Legal Services Authority Act, 1987; Indian Contract Act, 1872; Arbitration and Conciliation Act, 1996; The Consumer Protection Act, 2019; etc. The above amendments in various Acts are similar to the amendments brought about by the Insolvency and Bankruptcy Code and Labour Code.  Therefore, it is suggested that, the title “ <b>The Mediation Bill, 2021</b> ” can be changed to “ <b>The Mediation Code 2021</b> ”
5		<b>2<sup>nd</sup> Proviso of Clause 2</b>	The words “ <i>Provided that nothing shall prevent the</i> ” <b>Central</b>	This will give clarity that Union Territories can also notify the disputes for mediation.

			<p><b><u>Government or a State Government</u></b> from notifying, such kind of dispute, as it deems appropriate for such Government, for resolution through mediation under this Act,” ....</p> <p>After the Word Central Government or a State Government, the word “<b>Union Territory</b>” shall be included</p>	
5		<b>Clause 3(C) Definition of “Court”</b>	<p>In the definition of Court,</p> <p>Tribunals and Consumer Commissions can be included</p>	<p>Reason being that the National Company Law Tribunal can refer the matters for Mediation as per section 442 of the Companies Act, 2013 as well as the Consumer Commissions can also refer the dispute for Mediation as per the Consumer Protection Act, 2013.</p> <p>As they have the power to refer the disputes for mediation under the respective Acts. Therefore, Tribunals and Consumer Commissions may be considered for inclusion under the definition of “Court”.</p>
3.		<b>Clause 3(P)</b>	<p>“participants” means persons other than the parties who participate in the mediation and includes advisers, <u>advocates</u>, consultants and any technical</p>	<p>Company Secretaries who are members of the Professional Body i.e., the Institute of Company Secretaries of India who have domain expertise knowledge in various laws like I&amp;B Code, Companies Act, Limited Liability Partnership Act, Consumer Protection Act, MSME Act, Real Estate Regulatory Authority Act etc.</p>

			<p>experts and observers”.</p> <p>In the above definition after the word, advocates the following professional can be included</p> <p><b>“Company Secretaries in Practice”</b></p>	<p>may be included in the definition of “participants”.</p> <p>Currently, Company Secretaries are appearing before many forums such as Micro Small Enterprises Facilitation Council, Real Estate Regulatory Authority, Real Estate Appellate Tribunals, National Company Law Tribunal and National Company Law Appellate Tribunal etc.</p> <p>Therefore, it suggested that, <b>Company Secretaries in Practice may be included in the definition of “participants”.</b></p>
5.	Chapter IV MEDIATORS	Clause -10 Appointment of Mediators	<p>In Subclause (1) of Clause 10 of the Bill.</p> <p>“Unless otherwise agreed upon by the parties, a person of <b>any nationality may be appointed as a mediator</b>: Provided that mediator of any foreign nationality shall possess such qualification, experience and accreditation as may be specified.</p> <p>Our Suggestion: “Unless otherwise agreed upon by the parties, a person of any nationality may be appointed as a mediator <b>in case of</b></p>	<p>Only in the matter of International Commercial Disputes, <u>a person of any nationality</u> can be allowed to act as a mediator.</p> <p>In case of disputes between the Indian parties only mediators who are Indian nationals and resident in India should be appointed. It will help with the development of mediation and growth of mediation professionals in India.</p>



			<b>International Commercial Dispute”.</b>	
<b>6</b>		<b>Clause -12</b>	<p>The term “<u>conflict of interest</u>” be defined/ explained in the Bill.</p> <p>The Committee may consider to define the term <u>conflict of interest</u> or an explanation may be provided in the respective section itself.</p>	If the term <u>conflict of interest</u> is not defined or explained then it may be difficult for mediators and parties to the disputes to understand that, what constitutes a “ <u>conflict of interest</u> ”.
<b>7</b>		<b>Clause-14</b>	<p><u>Replacement of Mediator</u></p> <p>After sub-clause (ii) of 14 the following clause may be included:</p> <p>(iii) mediation service providers shall intimate the concerned Courts or Tribunals of replacement of mediators within 7 days from the date of such replacement, in case the mediation was referred by the Courts or Tribunals.</p>	<p>In some cases, the matters which were pending before, the Court or Tribunal may be referred for mediation by the Courts or Tribunals.</p> <p>Therefore, it is important to inform the replacement of mediator by the mediation service provider to the Court or Tribunal. Hence this inclusion is suggested.</p>
<b>19</b>		<b>Insertion of Clause-65</b>	After clause 65 the following clauses may be	<b>1.</b> The RERA Act 2016 consists provision for referring the dispute to conciliation under Section 32(g).

			<p>inserted in the draft Bill</p> <p><b>Insertion of Clause 66</b> <b><u>RERA ACT 2016</u></b></p> <p>1.The Real Estate Regulatory Authority Act 2016 shall be amended in the manner specified in the Eleventh Schedule.</p> <p><b><u>Insertion of Clause 67</u></b></p> <p><b><u>SARFAESI ACT</u></b></p> <p>2. The SARFAESI Act 2002 shall be amended in the manner specified in the Twelfth Schedule</p>	<p>2.SARFAESI Act 2002 consists of resolving the disputes through Conciliation under Section-11 (Resolution of Disputes)</p>
29		<p><b>Insertion of Eleventh and Twelfth Schedule in the Draft Bill</b></p>	<p>After the Tenth Schedule in the Bill, the following Eleventh and Twelfth Schedule may be inserted:</p> <p><b><u>Eleventh Schedule</u></b></p> <p>In RERA Act 2016 for the Section 32(g), the following shall be substituted:</p>	<p>As the RERA Act 2016 consist of provisions for settling the disputes through conciliation under Section 32(g) of the Act.</p> <p>Therefore, this amendment is suggested to the Committee.</p>

		<p>Section 32 subclause (g)</p> <p>“Measures to facilitate amicable Mediation of disputes between the promoters and the allottees through Mediators appointed by the Mediation Service Providers in accordance with provisions of “The Mediation Act, 2021; ...”</p> <p><b><u>Twelfth Schedule</u></b> Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (SARFAESI Act)</p> <p>For Section 11 in the Act (Resolution of Disputes):</p> <p>The following shall be substituted:</p> <p>“Where any dispute relating to securitisation or reconstruction or non-payment of any</p>	<p>As the SARFAESI Act, 2002 consist of provision for resolving the disputes through conciliation under section 11 of the Act.</p> <p>Therefore, this amendment is suggested to the Committee.</p>
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			<p>amount due including interest arises amongst any of the parties, namely, the bank or financial institution or securitisation company or reconstruction company or qualified institutional buyer, such dispute shall be settled either by Mediation as Provided under the Mediation Act 2022 or by way of arbitration as provided in the Arbitration and Conciliation Act, 1996 (26 of 1996), as if the parties to the dispute have consented in writing for determination of such dispute by Mediation or arbitration and the provisions of that Act shall apply accordingly.”</p>
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Therefore, we humbly request the Hon'ble Committee to kindly consider our suggestions.

Thanking You,

Your Truly

Digitally Signed

**MAMTA  
BINANI**

Digitally signed by MAMTA BINANI  
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**SDS ADVOCATES**  
— TOWARDS EXCELLENCE —

11.02.2022

To,  
Shri Goutam Kumar,  
Deputy Secretary,  
Rajya Sabha Secretariat

Sub: Memoranda containing views/suggestions regarding the Mediation Bill, 2021.

Dear Sir,

The Mediation Bill, 2021 (“the Bill”) has been proposed to encourage and promote institutional mediation for resolution of disputes. Keeping in view this objective, we have the following comments for your consideration-

1. Challenge to mediated settlement agreement under s. 29 of the Bill- *We propose that a provision for challenge before the arbitrator be included as a challenge to the mediation settlement agreement can be adjudicated through arbitration in case of failure of mediation.*

The Bill provides that a party which seeks to challenge the mediated settlement agreement may file an application before the court or tribunal of competent jurisdiction. However, most alternate dispute resolution clauses contain reference to arbitration in case of failure of mediation between parties. Keeping in mind the concept of party autonomy and in order to further reduce the burden of the courts, we propose that a provision for challenge to the mediated settlement agreement be sought before the Ld. Arbitrator or Arbitral Tribunal, subject to agreement between the parties. Such a provision would facilitate adjudication of dispute between the parties without having to approach the courts, thereby reducing the burden on judicial forums.

2. Disputes or matters not fit for mediation provided under s. 7 read with the First Schedule of the Bill- *We propose that a liberal view be taken towards mediation of tax disputes.*

There is growing consensus regarding the arbitrability of tax disputes internationally. Since mediation is also a form of alternate dispute resolution, the act may provide for certain classes of tax disputes to be arbitrable, especially under international business transactions or under investor state treaties as these are not necessarily restrictive of the national legislation pertaining to taxation. We propose that a liberal view may be taken for mediation of tax disputes under the Bill.

3. Time-limit for completion of mediation under s. 21 of the Bill- *We propose that the period for mediation be reduced from one hundred and eighty days which can be extended upto one hundred and eighty days to be reduced to ninety days which can be extended upto ninety days.*

The Bill provides for a period of one hundred and eighty days from the date fixed for first appearance before the mediator, which can be extended upto one hundred and eighty days as agreed by the parties. We propose that this period be reduced to ninety days which can



**SDS ADVOCATES**  
— TOWARDS EXCELLENCE —

be extended upto ninety days for mediation. Alternative Dispute Resolution is becoming increasingly popular as an effective and speedy means of adjudication. Therefore, providing the parties with 180+180 days may prove to be time consuming, especially if the parties ultimately fail to reach a settlement agreement. A period of 90+90 days may be an adequate period for resolution of disputes through mediation especially since mediation is based on consent of parties.

4. Commencement of mediation under s. 16 of the Bill- *We propose that a provision be included for the mode of service of the notice to the other party.*

It may be in the interest of parties to indicate the modes of service available for service of notice to the other party. This would not leave any room for confusion or error between the parties with respect to an important aspect which is commencement of mediation. Therefore, we propose that a provision be included for the mode of service of the notice to the other party.

We request you to consider our suggestions and we will be obliged to assist the Committee in case any clarification or further discussion is necessary pertaining to these points in terms of oral evidence, or through any other mode. We are grateful for your time and consideration.

Regards,

Subir Kumar  
Founder  
**SDS Advocates**  
Mob: 9769441090

**Email****Chanderlekha Sharma****The Mediation Bill, 2021**

**From :** mediatorvikram@gmail.com Sun, Feb 13, 2022 08:31 AM  
**Subject :** The Mediation Bill, 2021  
**To :** Chanderlekha Sharma <rs-memocpers@sansad.nic.in>

Dear Mr. Kumar

Hope you and your family are doing well and are staying safe and healthy.

This is with reference to the Draft Mediation Bill, 2021 for which the Parliamentary Standing Committee Personnel, Public Grievances, Law and Justice has invited comments.

I'm an Advocate who is focused on practicing as a Mediator. I'm on the Panel of Mediators & Conciliators, Ministry of Corporate Affairs. I'm promoting Mediation around the world. You can find details of the work that I'm doing on my website, <https://MediatorVikram.com>. In August and September, I organised a Symposium on *Mediation In Our Culture & Traditions* with 90+ Speakers from 40+ Countries. The Symposium has given insights on Mediation in all parts of the world. The recordings of the sessions are available on my YouTube Channel. Link is <https://www.youtube.com/c/MediatorVikram>. Details of the speakers are available on <https://MediatorVikram.com>.

I have various shows in relation to Mediation including *Evolution Of A Mediator, In Conversation With A Beautiful Mind, Talking Books* and *Mediator Experiences*. The recordings are available on my YouTube Channel. Link Details of the videos are available on my website.

I had sent my comments on the Bill to the Department of Legal Affairs. I had organised a Discussion on the Draft Bill that was circulated by the Department of Legal Affairs. Link to the recording is <https://youtu.be/TnhnY-VG0J8>. I had also organised a Workshop on the Draft Mediation Bill, 2021 circulated by the Department of Legal Affairs. Link to the recording is <https://youtu.be/fCH3cfM57Jk>

Mediation has been appropriately defined in the Singapore Convention in a very broad manner as: *a process, irrespective of the expression used or the basis upon which the process is carried out, whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person or persons lacking the authority to impose a solution upon the parties to the dispute.*

Countries around the world have agreed on the definition of Mediation. India is a signatory to the Convention and has in-principle accepted this definition. UNCITRAL has drafted a Model Law in relation to International Commercial Mediation which should be a guide while drafting the Mediation Bill in India. Link to the Model Law is <https://bit.ly/UNCITRALModelLawMediation> which also gives the rationale behind the Model Law. Discussions and deliberations with participants from all over the world have taken place before UNCITRAL has finalised the draft Model Law. We should take advantage of it



instead of overlooking it. Adopting the Model Law will make our legislation internationally accepted and will go a long way in our ease of doing business ranking.

Contrary to the confusion being created by many people who may have a vested interest or self interest, India has an excellent law on Mediation which is Conciliation as contained in Part III of the Arbitration and Conciliation Act, 1996 (the Act). Conciliation as provided in the Act is covered by the definition of Mediation in the Singapore Convention. The word "Conciliation" was used because UNCITRAL was using that word at the time the Act was enacted. The current Model Law clarifies this position as under:

*For the purposes of this Law, "mediation" means a process, whether referred to by the expression mediation, conciliation or an expression of similar import, whereby parties request a third person or persons ("the mediator") to assist them in their attempt to reach an amicable settlement of their dispute arising out of or relating to a contractual or other legal relationship. The mediator does not have the authority to impose upon the parties a solution to the dispute.*

It is further clarified in *footnote 2* of the Model Law that:

*In its previously adopted texts and relevant documents, UNCITRAL used the term "conciliation" with the understanding that the terms "conciliation" and "mediation" were interchangeable. In preparing this Model Law, the Commission decided to use the term "mediation" instead in an effort to adapt to the actual and practical use of the terms and with the expectation that this change will facilitate the promotion and heighten the visibility of the Model Law. This change in terminology does not have any substantive or conceptual implications.*

The Conciliation provisions are simple and can be easily understood by the layman. This is what we need because we always have to think of the person living in a village who doesn't have access to justice and is actually denied justice. Mediation is the only hope they have for Dispute Resolution in India and we have to empower the people. The ODR Handbook prepared by Niti Aayog in collaboration with other organisations has mentioned that 75% to 97% of matters don't reach Courts. With 18 million matters going into Courts every year, it means that there could be about 600 million disputes that arise every year.

There is a colonial mindset that Dispute Resolution happens only in Courts. We have to undo this mindset and Mediation is an excellent method which is totally unconnected to the Court system. Mediation is a method of Dispute Resolution where parties resolve their dispute on their terms and under our law on Conciliation gives the Settlement Agreement status of a Court Decree. This is empowerment of people where they can get a Court Decree sitting in their village and with Online Mediation they can get a Court Decree sitting in their home. The Government should highlight this as people don't have to go through the most inefficient institution, the Indian Judiciary.

Mediation and litigation are diametrically opposite methods of Dispute Resolution and the Courts should be kept far away from it. Courts have destroyed litigation and arbitration by sitting on matters for an average of 14 years. Now, they are going to destroy Mediation. By providing Mediation for free devalues Mediation and Mediators in the minds of people which also doesn't let the profession develop. With the Courts sending parties for Mediation is like the Government sending people who approach it to make a road to their village to make the road themselves. If the Government does that,

the Courts will pull up the Government and ask Government officials to appear before it and pull them up. However, the Judiciary cannot be questioned even if they deny Justice because Justice delayed is Justice denied.

In the Bill there is an attempt to regulate Institutions providing Mediation services and training. It's surprising that the Government wants to do that whereas law firms are still not regulated. Mediation Institutions only create a panel of Mediators and do not and cannot mediate as that has to be done by the Mediators. However, law firms are providing legal services in their own name. In any case, the number of disputes that are handled by Mediation Institutions around the world is really low. JAMS in the USA is considered the largest private ADR Institution in the world and it only handles about 9,000 Mediations in the entire year. Singapore Mediation Centre has mediated only 5,200 matters since its launch in 1997. This is the same all around the world. Do we really need to regulate this? Institutions will have to self-regulate for their own reputation.

There may be people with a vested interest in providing Mediation training that may push their agenda to include a requirement of training to practice as a Mediator. Where are the number of trainers required for the large number of Mediators required in the country to handle the millions of disputes that arise every year? Who accredits the trainers? Training, accreditation and certification hasn't helped develop Mediation around the world which was highlighted in the Symposium that I had organised. The only people that are making money in relation to Mediation are the training Institutions that are providing training while the Mediators are providing services almost for free in the Courts which has led to devaluing Mediators and Mediation.

Mediation has to be left to the disputing parties. They are smart enough to choose their Mediator and decide the way the process is to be conducted. They will do their due diligence and appoint a person they trust and it is not for the Government or Judiciary to decide whom people can appoint as Mediators. The Government and the Judiciary have no role to play in the process. There is a section on Community Mediation in the draft Bill where the Government wants to interfere in a process which is the people's process. As I said, people are smart enough to appoint the people they trust as Mediators.

We have to strengthen traditional methods of collaborative Dispute Resolution by whatever name they are called. People might not be familiar with the word "Mediation" but are familiar with the process as it has been used and has been used in families and communities for centuries. Let's not destroy this by regulating it.

I want to appear before the Committee to put across my views on the Bill.

Please acknowledge the receipt of this email.

Warm Regards  
Vikram

**Vikram Singh**  
Mediator. Advocate. Golfer. Peacemaker

C 17 Anand Niketan

2/16/22, 1:38 AM

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## Open Letter to Parliamentary Standing Committee (*Personnel, Public Grievances, Law and Justice*) on the **Draft Mediation Bill 2021**.

It is a case where the left hand does not know what the right is doing. India ratified the UN Convention on the Rights of Persons with Disabilities within months of its coming into force. We have since then replaced our older laws on disability rights and mental health to bring them in harmony with the UN Convention. A common feature in all these legal instruments was the recognition of persons with disabilities as persons before the law — possessed of legal capacity on an equal basis with others. A logical consequence of this position is that whenever any law is made for the people of the country, it will as much extend to persons with disabilities. Any law excluding persons with disabilities would be in breach of both the country's international commitment and its national laws. Yet the Mediation Bill 2021 has excluded a range of persons with disabilities from the purview of the Mediation law as if to say these path-breaking rights affirming efforts never happened.

Mediation, unlike adjudication, is supposed to be a win-win, give and take exercise. It operates on the principle that both society and people benefit when disputes are peaceably resolved. Yet any legal proceedings against persons with intellectual disability or persons with mental illness or persons with high support needs have been kept out of the purview of this law. Other people's unhappiness or disagreement with them cannot be peaceably settled, be it in individual or community mediation. No one can be compelled to go for mediation and this non compulsion would as much apply to people with disabilities as to others .

From such a framing of the bill it appears as though people with disabilities either do not have any requirement for mediation or their representation or need for mediation is dispensable. What the law has done is that it has *denied to persons with disabilities the option to settle disputes amicably*. With this one act these *persons with disabilities have been rendered invisible* by the law. When people are barred from having any grievance against any member of a community then people prefer to have nothing to do with them : they are shunned or socially ostracised. Yet the UN Convention and our national laws speak about giving all persons with disabilities the right to live independently and in the community. So who will solve their disputes if they have any? Or will they continue to either be socially ostracised or face continued prejudice and violence of diverse sorts?

The lawmakers of the country are expected to make law with full knowledge and understanding of what they have the power to do and not do. To honour the international commitments of the country and not override special laws through general laws is a part of the commitment. Furthermore, it is in order to enable course correction and ensure that laws made are not opposed to the interests of the people; that [rules for pre-legislative public participation](#) have been formulated. The rules require that at least a period of 30 days must be given to the people to offer their comments and suggestions. [Even that period has been unilaterally cut down to fifteen days by the Parliamentary Standing Committee](#). So, the doors of the Standing Committee have been shut on us even before the invitation to participate could reach us.

[Clause 7](#) of the Bill read along with [Schedule 1](#) ought to be closely examined so that stigma prevailing against persons with disabilities is not mechanically reinforced by the law. Through this open letter we are conveying our dismay to the Parliamentary Standing Committee and urge it to fulfil its duties in both letter and spirit by recommending that schedule 1 of the Bill be duly amended.

**Ignorance of the law is no excuse - neither for the people nor for the governors.**

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**Endorsed on 17 February 2022 by**

- AMITA DHANDA (*Professor Emerita*, NALSAR Hyderabad)

- PRATEEKSHA SHARMA (Peer psychotherapist, *Founder* Bright Side Family Counselling Centre)
- **DISABILITY RIGHTS ALLIANCE (DRA)**
- **NATIONAL CENTRE FOR PROMOTION OF EMPLOYMENT FOR DISABLED PEOPLE (NCPEDP)**
- **NATIONAL PLATFORM FOR THE RIGHTS OF THE DISABLED**
- **PASCHIM BANGA RAJYA PRATHIBANDHI SAMMELANI**
- **TAMILNADU ASSOCIATION FOR RIGHTS OF DIFFERENTLY-ABLED & CAREGIVERS**
- **DIFFERENTLY-ABLED WELFARE FEDERATION, KERALA**
- **VIKALANGULA HAKKULA JATHIYA VEDIKA, TELANGANA**
- **VIKALANGULA HAKKULA JATHIYA VEDIKA, AP**
- **HARYANA VIKLANG ADHIKAR MANCH, HARYANA**
- **KARNATAKA RAJYA ANGAVIKALARA MATTU PALAKARA OKKOTA**
- **TRIPURA PRATHIBANDHI ADHIKAR MANCH**
- **GUJARAT VIKLANG ADHIKAR MANCH**
- **LAKSHWADEEP DISABLED ASSOCIATION**
- **MADHYA PRADESH VIKLANG ADHIKAR MANCH**
- **JHARKHAND VIKLANG MORCHA**
- **DELHI VIKLANG ADHIKAR MANCH**
- **TEAM EKTHA**
- **DECEMBER 3 MOVEMENT**
- **EQUALS CENTRE FOR PROMOTION OF SOCIAL JUSTICE (EQUALS CPSJ)**
- **SHISHU SAROTHI**
- **VIDYA SAGAR**
- **BAPU TRUST**
- **THE INTEGRATED RURAL DEVELOPMENT OF WEAKER SECTIONS IN INDIA, TAMIL NADU**
- **ECUMENICAL COUNCIL FOR DROUGHT ACTION AND WATER MANAGEMENT, ANDHRA PRADESH**
- **ORISSA DEVELOPMENT ACTION FORUM, ODISHA.**
- **OIKOTREE INDIA**
- **AUTISTIC MINORITY INTERNATIONAL**
- **AFRICAN ALBINISM AMBASSADORS**
- VAISHNAVI JAYAKUMAR (*Co-Founder* The Banyan, *Member* Disability Rights Alliance)
- SUDHA RAMAMOORTHY (Equals Centre for Promotion of Social Justice)
- DR. ANJLEE AGARWAL (*Executive Director*, Samarthyam / *Member*, NITI Aayog [CSO-SC])
- POONAM NATARAJAN (*Founder* Vidya Sagar)
- SATHISH KUMAR (*Member* Disability Rights Alliance)
- MEENAKSHI BALASUBRAMANIAN (*Co-founder* Equals Centre for Promotion of Social Justice)
- DR V JANAKI, CHENNAI
- SANGEETA ISVARAN
- T M RAMANA RAO
- KARTHIK CHANDRASEKAR
- DR. SRINIVAS GOLI (*Medical Officer*, North Delhi Municipal Corporation)
- ARMAN ALI (*Executive Director*, NCPEDP)
- UMMUL KHAIR (*Advocate* with disability, *Member* DRA)
- RADHA RAMESH (*Director*, Vidya Sagar)
- DR MS KETNA MEHTA (*Founder Trustee*, Nina Foundation)
- RAJESH (*Accessibility consultant*)
- VIDHYA RAMASUBBAN
- DR SATENDRA SINGH (*Doctors with Disabilities: Agents of Change*)
- LV JAYASHREE (*Director*, The Spastics Society of Tamil Nadu)
- GOPINATH RAMAKRISHNAN (*Managing Trustee*, Special Child Assistance Network [SCAN])
- RAMANATHAN G
- RAJUL PADMANABHAN

- SMITHA SADASIVAN
- P RAJASEKHARAN (*Co-founder, v-shesh*)
- DR. LALITHKUMAR NATARAJAN (*Love and Acceptance & Tamil Nadu Spinal Cord Disabilities Association*)
- PROF. YASMIN SULTANA (*Head Pharmaceuticals, SPER, Jamia Hamdard*)
- MOHD FAISAL NAWAZ (*Disability Rights Activist*)
- PAWAN KUMAR MUNTHA (*CEO, Swadhikaar*)
- PREETHA KRISHNADAS (*Deputy Director, The Banyan*)
- LALITHA VELLORE
- DR. AISWARYA RAO (*Pediatrician and Disability Activist*)
- GAYATRI KHANDHADAI (*Lawyer*)
- BIR SINGH
- ADIM PHUKAN, (*Vedic counselor*)
- SAJIDA
- NALINI (*Associate Professor, DCAC, University of Delhi*)
- ANJU VARMA
- MRS. SAROJ KAUSHAL
- BINDHULAKSHMI PATTADATH (*TISS Mumbai*)
- DR. M. V. CHANDRAMATHI (*Principal, Anantha Law College, Kukatpally, Hyderabad*)
- INDERJEET SINGH
- REEMA MALIK
- DR VIJAY KUMAR WADIA
- NANDINI GHOSH (*Assistant Professor, IDSK*)
- ABHISHEK ANICCA (*Poet & Activist*)
- PRITI
- NILESH SINGIT
- GAUTAM CHAUDHURY (*Disability Development worker*)
- PROF. G. VASUKI (*Department of chemistry, Pondicherry University, Pondicherry*)
- ARCHANA SUDHAKARAN
- RUTH ARCHANA
- SHARADA DEVI. V (*PhD Research Scholar and Disability Rights Advocate*)
- PATRICK RODRIGUES
- PRIYA VARADAN (*Disability Researcher*)
- CHETAN (*PhD scholar in Psychology and Disability Studies/IIT Hyderabad*)
- KOTA PRABHU
- NITHIN (*Sign Language Interpreter*)
- NARENDRA SATHE (*Advocate with disability, Maharashtra*)
- B VENKATESH (*Hon.President CBR Global network,Hon Convener IFRA & DDC*)
- SRILATHA JUVVA (*Professor, School of Social Work, TISS*)
- AKHIL PAUL (*Founder, Sense India*)
- PARIMALA V BHAT
- K RAMKRISHNA (*Retired from IDBI Bank*)
- JESSICA PRAKASH-RICHARD (*Consultant, TouchStone Consultancy, Chennai*)
- SANDESHIKA SHARMA (*Artist n Holistic Health Practitioner*)
- DR. L. RAMAKRISHNAN, Chennai.
- PROF. SANDHYA LIMAYE, TISS, Mumbai
- MANJIT KUMAR RAM, Kolkata
- VIJAY GAJANAN JADHAV
- GNANA BHARATHI
- DR NONITA GANGWANI (*Senior Resident, University College of Medical Sciences*)
- DR.SUNANDA.K.REDDY (*Developmental Pediatrician , CARENIDHI*)
- SWARNALATHA J (*Managing Trustee, Swarga Foundation*)

- SWAMI SHIVANANDA (*Promoter* Spiritual Sciences)
- BHUSHAN PUNANI (*General Secretary*, Blind People's Association, India)
- RAMA KANT AGNIHOTRI
- RUMI HARISH
- SAI
- G RAVI (Disability Rights Activist)
- TANUSHREE SARKAR (PhD candidate Vanderbilt University)
- BANIBRATA MAHANTA (*Professor of English*, Banaras Hindu University, Varanasi)
- SHILPA DAS (National Institute of Design)
- SHAMPA SENGUPTA (*Director*, Sruti Disability Rights Centre)
- DR ARAVINDA BHAT, Assistant Professor, Department of Languages, Manipal Academy of Higher Education, Manipal
- NILIKA MEHROTRA Professor JNU
- RAJAN MANI, Director, Disability Law Initiative
- JAYANT SINGH RAGHAV, President, Bhumika Trust
- ANJALI CAPILA
- TIRTHA PRATIM DEB, Research Scholar, EFLU, Hyderabad
- MERRY BARUA (Director, Action For Autism)
- DIETHONO NAKHRO, Nagaland
- KIM FERNANDES, Doctoral candidate, University of Pennsylvania
- AZIZ MINAT, a concerned citizen
- ÁINE KELLY-COSTELLO, disabled person, MSC journalism
- VANDANA BEDI, Consultant & Trainer - Disability and Development
- ALAGAMMAI, University student
- TANMOY BHATTACHARYA, Professor, University of Delhi
- DR. NAMITA JACOB, Director, Chetana Trust
- ERICH KOFMEL, President, Autistic Minority International
- RANJANI. K MURTHY
- DR GAYATRI MAHAJAN, Consultant Radiologist, mumbai
- MONICA GUPTA Associate professor Gargi College University of Delhi
- RACHANA SINGH, Disabled Sexual Assault Survivor
- JAVED AHMAD TAK, Humanity Welfare Organisation HELPLINE J&K
- ABHA KHETARPAL
- KANU PRIYA
- ANERI ARYA
- RICHA SHARMA
- MEENU SHARMA
- SANJAY JAIN
- DAYANIDAS SUDHAKAR
- PRIYAM SINHA
- RAJAGOPALAN SS
- PROF V SUNDER (*Member*, Disability Rights Alliance)
- BHAVNA BOTTA (*Editor*, Connect Special)
- PETER GIBSON (EnableMe Access - EMA)
- ASHLEY TELLIS (Independent Researcher)
- SANJAY E (Advocate)
- ARPITA GUPTA (Clinical Psychologist & PhD Scholar at IIT Kanpur)
- DR. P. SEKAR (Chairperson, LC Project Nagapattinam)
- DENNIS
- MARY GEORGE (School administrator)
- VISHNU ADITYA (Ordinary citizen)

- ANUJ GOYAL
- PATHLOTH OMKAR
- G RAVI
- TADIGATLA KIRAN KUMAR
- BISWAJIT K. BORA
- SHILPAA ANAND (*Associate Professor*, HSS, BITS-Pilani Hyderabad Campus)
- SAMUEL SAMSON
- PALLAVI GAURI DEHARI (*The Gender Lab Fellow*)
- NISHANT
- REV. IMMANUEL NEHEMIAH
- DR SANGEETA SAKSENA (*Co-Founder*, Enfold Proactive Health Trust)
- ROCHE VICTOR ( RISE, Pondicherry)
- P SATTIYABAMA (WORD, Pondicherry)

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**Signatures are still being appended here : <http://bit.ly/fix-mediation-bill>**

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**VAISHNAVI JAYAKUMAR**  
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Mobile : +919003088388



Justice Dipankar Datta

Chief Justice,  
High Court of Bombay



Chief Justice House,  
14, Narayan Dabholkar Road,  
Malabar Hill, Mumbai - 400 006.  
Tel.: 022-23631650

No. CJ/ **10** /2022  
5th May, 2022

Respected Chairman Sir,

Apropos the discussions and deliberations between the Members of the Parliamentary Standing Committee on Personnel, Public Grievances, Law & Justice and the Hon'ble Judges of the Bombay High Court on issues like functioning of virtual courts, live streaming of court proceedings, etc. as also the draft Mediation Bill, 2021 on 26th April, 2022 in the premises of the Bombay High Court, I am forwarding herewith certain suggestions for your kind perusal and consideration.

With warm regards,

Yours sincerely,

(Dipankar Datta)  
Chief Justice

...

To,

Shri Sushil Kumar Modi,  
Hon'ble Chairman,  
Parliamentary Standing Committee (RS)  
Personnel, Public Grievances, Law & Justice,  
Room No.301, 'B' Block,  
Parliament House Annexe Extension Building,  
New Delhi - 110001.  
Email: sushilmodi@sansad.nic.in

JSC(R) & C150

Re speak

19/5  
Dr (CA)

SPOKEN. Pts raised  
may be included  
in the OR Report of Mediation bill.  
Suggestion on virtual courts  
may be included for  
opening remarks for  
5.00 clock meeting.

Suggestions on the Draft Mediation Bill, 2021

HIGH COURT OF BOMBAY

Provision	Comments & Suggestion
<p>Chapter II</p> <p><b>Section 2 - Application</b></p> <p><b>2(1)</b> – Subject to sub-section (2), this Act shall apply where mediation is conducted in India, and -</p> <p style="padding-left: 40px;">(i) all or both parties habitually reside in or are incorporated in or have their place of business in India; or</p> <p style="padding-left: 40px;">(ii) the mediation agreement provides that any dispute shall be resolved in accordance with the provisions of this Act; or</p> <p style="padding-left: 40px;">(iii) there is an international mediation.</p> <p><b>(2)</b> The provisions of sub-section (1) shall not apply wherein one of the parties to the dispute is the Central Government or a State Government, or agencies, public bodies, corporations and local bodies, including entities controlled or owned by such Government, except where the matter pertains to a commercial dispute:</p> <p style="padding-left: 40px;"><b>Provided that nothing shall prevent the Central Government or a State Government from notifying, such kind of dispute, as it deems appropriate for such Government, for resolution through mediation under this Act, wherein such Government, or agencies, public bodies, corporations and local bodies including entities controlled or owned by them, is a party.</b></p>	<p>The proviso below sub-section (2) has kept a window open for the Central or the State Government to notify the kinds of disputes which the Government(s) may feel appropriate for resolution through mediation under this Act, wherein, the Government or its agencies, public bodies, corporations and local bodies including entities controlled or owned by them may be the parties. This is an exception to sub-section (2) which provides that the Act shall not apply wherein one of the parties to the disputes is the Central Government or State Government, or agencies, public bodies, corporations, and local bodies including entities controlled or owned by such Government, except where the matter pertains to a commercial dispute.</p> <p>The suggestion is to the effect that when a window is kept open by virtue of the 'proviso' to sub-section (2), as we know that the Government and its agencies/public bodies are parties to large number of disputes filed before various Courts, should it be appropriate to have a separate provision, notifying a category of disputes to be taken to mediation where Government and its agencies are parties?</p> <p>In this view of the matter whether an independent provision, and a separate schedule to the Act can be provided enlisting the category of such cases, against the Government/public bodies which can be taken to mediation. This would bring a big relief to lakhs of litigants with scare means who otherwise are constrained to approach different Courts against the</p>

	<p>Government/public bodies even for small and petty issues.</p> <p>The alternative can be to make a provision in the Act for a robust mediation mechanism <b>by having a specialized body</b> which can resolve the disputes at the level of the Government, on a demand for justice being made by knocking the doors of the Government or its agencies for a relief which need not go for litigation in a large number of cases.</p>
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Provision	Comments and Suggestion
<p><b>Chapter III</b></p> <p><b>Section 5 – Mediation agreement</b></p> <p><b>5 (1)</b> A mediation agreement shall be in writing, by or between parties and anyone claiming through them to submit to mediation all or certain disputes which have arisen or which may arise between the parties.</p> <p><b>(2)</b> A mediation agreement may be in the form of a mediation clause in a contract or in the form of a separate agreement.</p> <p><b>(3)</b> A mediation agreement is in writing, if it is contained in or recorded as-</p> <p>(a) any document signed by the parties;</p> <p>(b) an exchange of communications or letters including through electronic form as provided under the Information Technology Act, 2000;</p> <p>(c) any pleadings in a suit or any other proceedings in which existence of mediation agreement is alleged by one party and not denied by the other.</p> <p><b>(4)</b> A reference in any agreement containing a mediation clause shall constitute a mediation agreement if the agreement is in writing and the reference is such as to make the mediation clause as part of the agreement.</p> <p><b>(5)</b> The parties may agree to submit to mediation any dispute arising between them under an agreement, whether entered prior to arising of the dispute or subsequent thereto.</p> <p><b>(6)</b> A mediation agreement in case of international mediation shall refer to an agreement for resolution in matters of commercial disputes referred to in clause (a) of section 3.</p>	<p>The concept as to what is a “mediation agreement” is introduced. There is a possibility of defining such term in a variety of agreements in different forms in different regions of the country, which may not be in any standard manner and content. It is hence thought appropriate to incorporate in the provision “contents of mediation agreement”</p> <p>The need for this can be felt to be more imperative, as experience of litigants, lawyers and judges in the arbitration jurisprudence is replete with a variety of forms of arbitration agreements, which become subject matter of interpretation before Courts, and have generated massive litigation. Considering this reality it is felt that at least the ‘mediation agreement’ as may entered between the parties ought not to generate litigation on its interpretation requiring parties to waste resources and time on futile issues. This would be counter productive to the entire concept of mediation which is to keep the parties away from Courts and litigation.</p> <p>The Mediation Act, 2017 enacted by Ireland can be a guidance on this issue, which provides for mediation agreement to comprehensively contain the following:-</p> <ol style="list-style-type: none"> <li>a. The manner of conducting the mediation</li> <li>b. the fees and costs of the mediation</li> <li>c. place and time of mediation</li> <li>d. confidentiality</li> <li>e. parties’ right to seek legal advice</li> <li>f. manner in which a mediation may be terminated</li> <li>g. any other terms as agreed between parties.</li> </ol> <p>A settlement in an international mediation can be arrived at before different forums which can be even international forums, if that be so, separate provisions are required to be made which can be in the form of a separate chapter or part so as to provide for all matters concerning international mediation settlement</p>

c/s(6)

	<p>agreements and its enforcement.</p> <p>Sub-section (6) provides that a mediation agreement in case of international mediation shall refer to an agreement for resolution in matters of commercial disputes referred to in clause (a) of section 3.</p>
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Provision	Comments and Suggestion
<p><b>Chapter III</b></p> <p><b>Section 6 - Pre-litigation mediation</b></p> <p><b>6(1)</b> Subject to other provisions of this Act, whether any mediation agreement exists or not, any party before filing any suit or proceedings of civil or commercial nature in any court, shall take steps to settle the disputes by pre-litigation mediation in accordance with the provisions of this Act:</p> <p>Provided that pre-litigation mediation in matters of commercial disputes of Specified Value shall be undertaken in accordance with the provisions of section 12A of the Commercial Courts Act, 2015, and the rules made thereunder.</p> <p><b>(2)</b> The provisions, of sub-section (1) shall be applicable to the tribunals notified by the Central Government or a State Government, as the case may be.</p> <p><b>(3) For the purposes, of sub-sections (1) and (2), unless otherwise agreed upon by the parties, a mediator,-</b></p> <p>(i) registered with the Council;</p> <p>(ii) empanelled by a court annexed mediation centre;</p> <p>(iii) empanelled by an Authority constituted under the Legal Services Authorities Act, 1987; and</p> <p>(iv) empanelled by a mediation service provider recognised under this Act, shall conduct pre-litigation mediation.</p> <p><b>(4)</b> For conducting pre-litigation mediation under clauses (ii) and (iii) of sub-section (3), a party may request any person designated for this purpose by the High Courts, or an Authority constituted under the Legal Services Authorities Act, 1987, as the case may be.</p> <p><b>(5)</b> The courts and an Authority constituted under the Legal Services Authorities Act, 1987, shall maintain a panel of mediators for the purposes of pre-litigation mediation.</p>	<p>Sub-section (3) provides that “unless otherwise agreed upon by the parties, a mediator can be appointed from the bodies as referred in sub-clauses (i) to (iv), who shall conduct pre-litigation mediation. This necessarily postulates that a mediator who would be nominated by such bodies would <b>be a qualified/trained mediator</b>. Hence, the requirements of appointing a qualified mediator should also be applicable to the parties when the parties are themselves appointing a mediator which is clear from the following wording of sub-section (3):- “unless otherwise agreed upon by the parties”.</p> <p>The suggestion is that when the parties agree to appoint any mediator by themselves, such a mediator should be a <u>trained/qualified mediator</u>, so that the mediation even if it is in the hands of a mediator appointed by the parties, it is in the hands of a trained/expert mediator. This would have an important bearing on the success of the mediation. In this context, proviso to sub-section (1) of Section 10 can be referred when provides that if a person of foreign nationality is to be appointed as a mediator by the parties, such person shall possess qualification, experience and accreditation as may be specified. Thus, the requirement of a qualified mediator has already been recognised/considered in the other provisions of the Act.</p> <p>Sub section (3) of Section 6 can read thus:</p> <p><b>(3) For the purposes, of sub-sections (1) and (2), unless otherwise agreed upon by the parties to appoint a qualified mediator”:</b></p>

c) 6(3)

(6) Notwithstanding anything contained in sub-sections (1) and (2) and the Motor Vehicles Act, 1988, when an application for compensation arising out of an accident is made before the Claims Tribunal, if the settlement as provided for in section 149 of that Act is not arrived at between the parties, the Claims Tribunal shall refer the parties for mediation to a mediator or mediation service provider under this Act.

(7) Where the parties arrive at a settlement agreement under sub-section (6), it shall be placed before the Claims Tribunal for its consideration.

(8) If the parties do not reach to settlement agreement under sub-section (6), a failure report prepared by the mediator shall be forwarded to the Claims Tribunal, which has referred the matter for mediation, for adjudication.

Provision	Comments and Suggestion
<p>Chapter III</p> <p>Section 8 - Interim relief by court or tribunal.</p> <p>8(1) If exceptional circumstances exist, a party may, before the commencement of, or during the continuation of, mediation proceedings under this Act, file suit or appropriate proceedings before a court or tribunal having competent jurisdiction for seeking urgent interim relief.</p> <p>(2) The court or tribunal shall after granting or rejecting urgent interim relief, as the case may be, refer the parties to undertake mediation to resolve the dispute, if deemed appropriate.</p>	<p>This is an important provision which provides that if exceptional circumstances exist, a party may, before the commencement of, or during the continuation of, mediation proceedings, file a suit or appropriate proceedings before a Court or tribunal having competent jurisdiction for seeking urgent interim relief.</p> <p>This provision does not provide for an eventuality for a party to approach the Court after a settlement agreement is reached between the parties and before such settlement is enforced in accordance with Section 28. Hence, a provision is required to be made to take care of situations after a settlement is reached and till it is enforced, so that at all material times, the settlement interest of the parties stands protected.</p> <p>The experience in this regard shows that even after settlement, the parties have brazenly violated settlements and ultimately such dispute on violations of the settlement reach the Court for reliefs being prayed, in these situations. The behavioral pattern of parties would show that even when settlement has been reached before the Court, the parties breach settlements and sometimes even when settlements form part of the Court's orders. A safeguard in this regard, is essential.</p> <p>Therefore, Section 8(1) can read thus:-  <b>8(1) If exceptional circumstances exist, a party may, before the commencement of, or during the continuation of mediation proceedings, and after a settlement agreement is reached but before it is enforced in accordance with Section 28 under this Act, file suit or appropriate proceedings before a court or tribunal having competent jurisdiction for seeking urgent interim relief.</b></p>

c/8(1)



Provision	Comments and Suggestion
<p><b>Chapter IV</b></p> <p><b>Section 10 - Appointment of mediators.</b></p> <p><b>10(1) Unless otherwise agreed upon by the parties, a person of any nationality may be appointed as a mediator:</b>            Provided that mediator of any foreign nationality shall possess such qualification, experience and accreditation as may be specified.</p> <p>(2) The parties shall be free to agree upon the name of mediator and the procedure for their appointment.</p> <p>(3) If the parties do not reach any agreement on a matter referred to in sub-section (2), then the party seeking initiation of mediation shall make an application to a mediation service provider for the appointment of a mediator.</p> <p>(4) Upon receiving an application under sub-section (3), the mediation service provider shall, within a period of seven days, appoint,-            (i) the mediator as agreed by the parties;            or            (ii) in case the parties are unable to reach agreement as to the appointment of mediator or mediator agreed by them refuses to act as mediator, a mediator from the panel maintained by it, with his consent.</p> <p>(5) The person appointed under clause (i) of sub-section (4) shall communicate his willingness or otherwise within a period of seven days from the date of receipt of communication of such appointment.</p>	<p>Sub-section (1) of Section 10 may be considered to include to have a qualified/trained mediator when it simplicitor says that a person of any nationality may be appointed as a mediator. Significantly, when the proviso to it prescribes such clarification that a mediator to be appointed if is a foreign national, he shall possess such qualification, experience and accreditation as may be specified.</p> <p>For a mediator to be appointed by the parties or otherwise who is not a foreign national, he should equally be a trained/qualified mediator. Similar provision can be made in sub-clause (i) of sub-section (4).</p> <p>Section 10(1) hence can read thus:-  <b>10(1) Unless otherwise agreed upon by the parties, a person of any nationality who is qualified as a mediator may be appointed as a mediator</b></p> <p>Clause (i) of sub-section (4) can read thus:-  <b>(4) Upon receiving an application under sub-section (3), the mediation service provider shall, within a period of seven days, appoint,-</b>            (i) the mediator as agreed by the parties <b>who is otherwise qualified;</b> or</p>

Provision	Comments and Suggestion
<p><b>Chapter V</b></p> <p><b>Section 15 – Territorial jurisdiction to undertake mediation.</b></p> <p>15. Every mediation under this Act shall be undertaken within the territorial jurisdiction of the court or tribunal of competent jurisdiction to decide the subject matter of dispute:</p> <p>Provided that on the mutual consent of the parties, mediation may be conducted at any place outside the territorial jurisdiction of the court or tribunal, or by way of online mediation.</p> <p>Explanation.- For the removal of doubts, it is clarified that where the parties agree to conduct the mediation at any place outside the territorial jurisdiction or online, for the purpose of enforcement, challenge and registration of the mediated settlement agreement, the same shall be deemed to have been undertaken within the territorial jurisdiction of the court or tribunal of competent jurisdiction.</p>	<p>This provision pertains to the territorial jurisdiction to undertake mediation. As the proviso to Section 15 confers a liberty to the parties by mutual consent to have mediation to be conducted at any place outside the territorial jurisdiction of the Court or tribunal or by way of online mediation, an inclusion can be made in regard to the <b>“seat of the mediation”</b> the parties may desire, so that there is no dispute on the jurisdiction of the Court on the basis of subject matter of the dispute and/or the place/seat of the mediation, as the parties may select.</p> <p>In the explanation below Section 15, after the words “competent jurisdiction”, to have more clarity the following can be provided:-  “to decide subject matter of dispute, or where the seat of mediation is situated.”</p> <p>Therefore, Section 15 and the “Explanation” below it, can read thus:-</p> <p><b>15. Every mediation under this Act shall be undertaken within the territorial jurisdiction of the court or tribunal of competent jurisdiction to decide the subject matter of dispute or where seat of the mediation is situated.</b></p> <p>Explanation.- For the removal of doubts, it is clarified that where the parties agree to conduct the mediation at any place outside the territorial jurisdiction or online, for the purpose of enforcement, challenge and registration of the mediated settlement agreement, the same shall be deemed to have been undertaken within the territorial jurisdiction of the court or tribunal of competent jurisdiction <b>to decide subject matter of dispute, or where seat of mediation is situated.</b></p> <p>[definition of Court under Section 3(c)]</p>

c/15

Provision	Comments and Suggestion
<p><b>Chapter V</b></p> <p><b>Section 19 – Role of mediator in other proceedings.:</b> Unless otherwise agreed by the parties.-</p> <p>(a) the mediator shall not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceeding in respect of a dispute that is the subject matter of the mediation proceedings;</p> <p>(b) the mediator shall not be presented by the parties as a witness in any arbitral or judicial proceeding.</p>	<p>This provision is intended to preserve the confidentiality of the mediation proceedings and the information the mediator may have about parties and on the subject matter of the mediation.</p> <p>Sub-clause (a) provides for the role of the mediator in other proceedings. It begins with the words “unless otherwise agreed by the parties” to provide that the mediator shall not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceeding in respect of a dispute that is the subject matter of the judicial proceedings. Sub-clause (b) provides that the mediator shall not be presented by the parties as a witness in any arbitral or judicial proceeding.</p> <p>In other words, the parties are free to agree not to have such restrictions on the mediator and waive such requirement. If that be the case, then it completely goes contrary to the very ethos and the solemn principles of confidentiality which are required to be maintained in mediation, and which are reflected in section 23, which is also made subject to the other provisions under the Act (possibly this provision). Irrespective of whatever the agreement between the parties, the mediator needs to be under solemn obligation to maintain the confidentiality of the matters under mediation and subsequent proceedings, and in any event whatsoever, cannot be a mouthpiece of any of the parties or take any action prejudicial to the interest of justice.</p> <p>If such requirement is intended to be so provided in specific category of mediations then those exceptions are required to be clearly carved out. This ought not to be a provision of a blanket import, which gives an impression that the mediator can also have a role as provided for in sub-clause (a) or (b) of Section 19.</p>

c/19

Provision	Comments and Suggestion
<p><b>Chapter V</b></p> <p><b>Section 22. Mediated settlement agreement:</b> (1) A mediated settlement agreement means and includes an agreement in writing between some or all the parties resulting from mediation, settling some or all of the disputes between such parties, and authenticated by the mediator:</p> <p>Provided that the terms of the mediated settlement agreement may extend beyond the disputes referred to mediation.</p> <p>Explanation.- A mediated settlement agreement which is void under the Indian Contract Act, 1872, shall not be deemed to be lawful settlement agreement within the meaning of mediated settlement agreement.</p> <p>(2) Where a mediated settlement agreement is reached between the parties in regard to all or some of the disputes, the same shall be reduced in writing and signed by the parties.</p> <p>(3) Subject to the provisions of sections 26 and 27, the mediated settlement agreement so signed-</p> <p>(i) in case of institutional mediation, shall be submitted to the mediator, who shall, after authenticating the same and forward it with a covering letter signed by him, to the mediation service provider and also provide a copy to the parties;</p> <p>(ii) in all other cases, shall be submitted to the mediator who shall, after authenticating the settlement agreement, provide a copy to all the parties.</p> <p>(4) Subject to provisions of sections 26 and 27, where no agreement is arrived at between the parties, within the time period as provided under section 21, or where, the mediator is of the view that no settlement is possible,-</p>	<p>At the outset, it is required to be mentioned that <b>this is too long a provision</b> as it takes within its ambit <b>three different issues</b> and hence needs to be bifurcated.</p> <p>It is suggested that section 22 can be re-arranged so as to include :-</p> <p><b>in the First Part</b> sub-section (1), (2), (3) read with Sections (5) and (6) which all pertain to a mediated settlement agreement and its nature/ requirements.</p> <p>Further, in the First Part, additionally it can be provided that :</p> <p><b>the mediated settlement agreement would not preclude the party to take recourse to a fresh mediation on any other matters/issues arising under a fresh cause of action subject matter of the same mediation agreement.</b></p> <p><b>The Second Part</b> can be bifurcated to be of sub-section (4) which pertains to a <b>failure of mediation</b>. This can be an independent provision.</p> <p><b>The Third Part</b> can also be an independent provision/section which would pertain to registration of settlement, so as to include sub-section (7) to sub-section (9).</p> <p>In the first proviso below sub-section (7), the following concluding words can be added to read thus:</p> <p>Provided that the mediated settlement agreement under this section shall be registered with such Authority situated within the territorial jurisdiction of the court or tribunal of competent jurisdiction to decide the subject matter of dispute <b>“or at the place of the seat of mediation”</b>.</p>

c/22

(i) the mediator shall submit a failure report to this effect to the mediation service provider in writing in case of institutional mediation;

(ii) in all other cases, the mediator shall prepare a failure report to this effect and provide a signed copy to all the parties:

Provided that the report referred under this sub-section shall not disclose the cause of failure of the parties to reach a settlement, or any other matter or thing referring to their conduct, during mediation.

(5) The parties, may, at any time during the mediation process, make an agreement with respect to any of the disputes which is the subject matter of mediation.

(6) Any mediated settlement agreement under this section shall also include a settlement agreement resulting from online mediation and duly signed by the parties by way of secure electronic signature of otherwise and authenticated by the mediator in the like manner.

(7) For the purpose of record, mediated settlement agreement arrived at between the parties, other than those arrived in a court or tribunal referred mediation or award of Lok Adalat or final award of Permanent Lok Adalat under section 21 or section 22E of the Legal Service Authorities Act, 1987, shall be registered with an Authority constituted under the Legal Services Authorities Act, 1987, in such manner as may be specified and such Authority shall issue a unique registration number to such settlements:

**Provided that the mediated settlement agreement under this section shall be registered with such Authority situated within the territorial jurisdiction of the court or tribunal of competent jurisdiction to decide the subject matter of dispute.**

Provided further that such registration shall not be mandatory till the time regulations under this sub-section are made.

*Explanation.* - For the removal of doubts, it is clarified that nothing contained in this sub-section shall affect the rights of parties to enforce the mediated settlement agreement under section 28 or challenge the same as provided under section 29.

(8) For the purposes of registration of mediated settlement agreement, in matters other than commercial disputes, wherein mediation is not conducted by a mediation service provider, the presence of parties to the mediated settlement agreement or their authorised representative shall be mandatory before the Authority referred to in sub-section (7).

(9) The registration referred to in sub-section (7) shall be made by the parties, mediator or mediation service provider within a period of one hundred and eighty days from the date of receipt of authorilicated copy of mediated settlement agreement;

Provided that mediated settlement agreement may be allowed to be registered after the expiry of period of one hundred and eighty days on payment of such fee as may be specified in consultation with the Authority referred to in sub-section (7).

Provision	Comments and Suggestion
<p><b>Chapter V</b></p> <p><b>Section 23 – Confidentiality :</b> (1) Subject to the other provisions of this Act, the mediator, mediation service provider, the parties and participants in the mediation shall keep confidential the following matters relating to the mediation proceedings, namely:-</p> <p>(i) acknowledgments, opinions, suggestions, promises, proposals, apologies and admissions made during the mediation;</p> <p>(ii) acceptance of, or willingness to, accept proposals made or exchanged in the mediation;</p> <p>(iii) documents prepared solely for the conduct of mediation or in relation thereto.</p> <p><b>(2) No audio or video recording of the mediation proceedings shall be made or maintained by the parties or the participants including the mediator and mediation service provider, whether conducted in person or online to ensure confidentiality of the conduct of mediation proceedings.</b></p> <p><b>(3) No party to the mediation shall in any proceeding before a court or tribunal including arbitral tribunal, rely on or introduce as evidence any information or communication set forth in clauses (i) to (iii) of sub-section (1), including any information in electronic form, or verbal communication and the court or tribunal including arbitral tribunal shall not take cognizance of such information or evidence.</b></p> <p><b>(4) The provisions of this section shall not prevent the mediator from compiling or disclosing general information concerning matters that have been subject of mediation, for research, reporting or</b></p>	<p>This is an important provision regarding the confidentiality to be maintained by the mediator, mediation service provider, the parties and participants in the mediation. It however does not incorporate any consequence for breach of confidentiality, which can be provided.</p> <p>In sub-section (2) when it provides that no audio or video recording of the mediation proceedings can be made by the parties or the participants including the mediator and mediation service provider, whether conducted in person or online to ensure confidentiality of the conduct of mediation proceedings, it would be necessary to have some code of conduct in relation to the online mediation. (This provision read with Section 32 can be considered together.)</p> <p>As to in what situations and circumstances a waiver of confidentiality can be provided for e.g. the interest of the sovereignty and integrity of India or in matters concerning issues of immense public interest, needs to be provided.</p> <p>Thus, rules for the purpose of maintaining confidentiality of the online mediation proceedings so as to be equally fair and transparent as the physical mediation can be framed. This can be by a separate schedule/rules providing to safeguard the interest of the parties in an online mediation. An expert's thinking including from the I.T. team is possibly essential.</p>

C/23(2)

training purposes, if the information does not expressly or indirectly identify a party or participants or the specific disputes in the mediation.

**Explanation:-** For the removal of doubts, it is hereby clarified that nothing contained in this section shall apply to the mediated settlement agreement where its disclosure is necessary for the purpose of registration, implementation, enforcement and challenge.



Provision	Comments and Suggestion
<p><b>Chapter VI</b></p> <p><b>Section 29 – Challenge to mediated settlement agreement:</b></p> <p>(1) Notwithstanding anything contained in any other law for the time being force, in any case in which the mediated settlement agreement is arrived at between the parties other than in court referred mediation or by Lok Adalat or Permanent Lok Adalat under the Legal Services Authorities Act, 1987, and is sought to be challenged by either of the parties, such party may file an application before the court or tribunal of competent jurisdiction.</p> <p>(2) <b>A mediated settlement agreement may be challenged only on all or any of the following grounds, namely:-</b></p> <p>(i) fraud;</p> <p>(ii) corruption;</p> <p>(iii) impersonation;</p> <p>(iv) <b>where the mediation was conducted in disputes or matters not fit for mediation under Section 7.</b></p> <p>(3) An application for challenge the mediated settlement agreement shall not be made after ninety days have elapsed from the date on which the party making that application has received the copy of mediated settlement agreement under sub-section (3) of section 22:</p> <p>Provided that if the court or tribunal, as the case may be, is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of ninety days, it may entertain the application within a further period of ninety days. Part I – It be provided that the mediated settlement agreement would not preclude the party through mediated settlement agreement to take recourse to a fresh mediation.</p>	<p>This is an important provision. Sub-section (2) provides that a mediated settlement agreement may be challenged only on all or any of the four grounds as set out in clauses (i) to (iv) which are fraud, corruption, impersonation and where the mediation was conducted in disputes or matters not fit for mediation under Section 7.</p> <p>The suggestion is that when a mediation/ settlement is in conflict with the fundamental policy of Indian law and basic notions of morality, it needs to be a ground for setting aside the mediated settlement. Such a provision is also contained in mediation laws of Ireland and Singapore as a ground to refuse enforcement of settlement agreements.</p> <p>It is suggested that Section 29(2) of the Bill can be rephrased as :-</p> <p>2) A mediated settlement agreement may be challenged only on all or any of the following grounds, namely:-</p> <p>(i) fraud;</p> <p>(ii) corruption;</p> <p>(iii) impersonation;</p> <p>(iv) where the mediation was conducted in disputes or matters not fit for mediation under Section 7.</p> <p>(v) <b>the settlement agreement is in contravention with the fundamental policy of Indian law</b></p> <p>(vi) <b>the settlement agreement is in conflict with the most basic notions of morality or justice.</b></p>

c/29 (2)

Provision	Comments and Suggestion
<p><b>Chapter VII</b></p> <p><b>Section 32 – Online Mediation:</b>(1) Online mediation including pre-litigation mediation may be conducted at any stage of mediation under this Act, with the written consent of the parties including by the use of electronic form or computer networks but not limited to an encrypted electronic mail service, secure chat rooms or conferencing by video or audio mode or both.</p> <p>(2) The process of online mediation shall be in such manner as may be specified.</p> <p>(3) The conduct of online mediation shall be in the circumstances, which ensure that the essential elements of integrity of proceedings and confidentiality are maintained at all times and the mediator may take such appropriate steps in this regard as he deems fit.</p> <p>(4) Subject to the other provisions of this Act, the mediation communications in the case of online mediation shall, ensure confidentiality of mediation.</p>	<p>It is suggested that separate rules need to be prepared for online mediation so as to include overall facets in regard to the confidentiality and sanctity of the online mediation process.</p> <p>Appropriate Rules be annexed as a separate Schedule to the Act.</p>

c/32

Provision	Comments and Suggestion
<p><b>Chapter X</b></p> <p><b>Section 44 – Community Mediation.:</b> (1) Any dispute likely to affect peace, harmony and tranquility amongst the residents or families of any area or locality may be settled through community mediation with prior mutual consent of the parties to the dispute.</p> <p>(2) For the purposes of sub-section (1), any of the parties shall make an application before the concerned Authority constituted under the Legal Services Authorities Act,1987 or District Magistrate or Sub-Divisional Magistrate in areas where no such Authority has been constituted, for referring the dispute to mediation.</p> <p>(3) In order to facilitate settlement of a dispute for which an application has been received under sub-section (2), the concerned Authority constituted under the Legal Services Authorities Act,1987 or the District Magistrate or Sub-Divisional Magistrate, as the case may be, shall constitute panel of three mediators.</p> <p>(4) For the purpose of this section, the Authority or District Magistrate or the Sub-Divisional Magistrate, as the case may be, shall notify a permanent panel of mediators, which may be revised from time to time.</p> <p>(5) The following persons may be included in the panel referred to in sub-section (4)--</p> <p>(a) Persons of standing and integrity who are respectable in the community;</p> <p>(b) any local person whose contribution to the society has been recognised;</p> <p>(c) representative of area or resident welfare associations; and</p> <p>(d) any other person deemed appropriate.</p> <p>(6) While making panel referred to in sub-section (4) the representation of women or any other class or category of persons may be considered.</p>	<p>This is a welcome provision. A suggestion is however made that a separate illustrative schedule showing nature of matters which can go for community mediation be provided for.</p>

c/440)

### ADDITIONAL SUGGESTIONS

S/I  
1. A provision can be made for mediation in cases involving offences which are compoundable in nature. These may be offences under different legislations including under the Indian Penal Code, so that any settlement if brought about can be presented before the Court and the offences compounded.

C/12  
2. As mediation is likely to become a substantial legal activity, would it not be advisable to prescribe norms on impartiality and independence of the mediators, to provide that, the mediators ought not to have either directly or indirectly any past or present relationship or interest with any of the parties, either in relation to the subject matter of the dispute or the parties before the mediator, which can be financial, business, professional or of any other kind, which is likely to influence the mediation proceedings and create justifiable doubts as to the independence or impartiality of the mediator. Such provisions are made in the Sixth Schedule to the Arbitration and Conciliation Act. The requirement of a "Code of Professional and Ethical Responsibility for the Mediators" can be provided to avoid conflict of interest scenario.


C/10  
3. It can also be pondered whether the bodies like the Central Government, State Government, Supreme Court, High Court, District Court with the approval of the High Court, can have panels of qualified/trained professional mediators to enable the parties to select the mediators from such panels.

**Email****Committee Section PPG**

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**Suggestions regarding Mediation Bill, 2021 by Hon'ble Mr. Justice Bharatha Chakravarthy (PPT presentation in pdf format) and the Institution (TNMCC) - Forwarded - Regarding.**

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**From :** tnmac@gmail.com Mon, May 02, 2022 01:04 PM  
**Subject :** Suggestions regarding Mediation Bill, 2021  2 attachments  
by Hon'ble Mr. Justice Bharatha  
Chakravarthy (PPT presentation in pdf  
format) and the Institution (TNMCC) -  
Forwarded - Regarding.  
**To :** Committee Section PPG <rs-  
cpers@sansad.nic.in>

Sir/Madam,

I am enclosing herewith the Power Point Presentation given by Hon'ble Mr. Justice Bharatha Chakravarthy, Judge High Court of Madras, in respect of Mediation Bill, 2021 and the Suggestions regarding Mediation Bill, 2021 along with necessary enclosures.

Regards,  
TNMCC

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 **DBCJ PPT - Mediation bill - PDF Format.pdf**  
368 KB

 **Suggestions regarding Mediation Bill - 2.pdf**  
13 MB

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# Mediation Bill – Concerns & Suggestions

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Presented during

The Interaction of Standing  
Committee & The Madras High Court

# Mediation Bill - Concerns

Section – 2 –  
Applicability

Section – 4 –  
Definition

Section -7 –  
Exclusion of  
Certain Cases

Section – 33  
Composition of  
Council

Section – 44 –  
Community  
Mediation

Schedule 1 & 7 –  
Exclusion and  
Amendments

Separate Chapter  
for International  
Mediations

# Section - 2(1)

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2. (1) Subject to sub-section (2), this Act shall apply where mediation is conducted in India, and— (i) all or both parties habitually reside in or are incorporated in or have their place of business in India; or (ii) the mediation agreement provides that any dispute shall be resolved in accordance with the provisions of this Act; or (iii) there is an international mediation.

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In many cases either or both or some of the parties may habitually reside outside India ?



# Section 2(1)

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International Mediation & the various provisions contained in respect thereof – Runs into Article 3 of Singapore Convention

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Article 3 – Reads

“3. This convention does not apply to:

(a) Settlement agreements :

(i) that have been approved by a Court or concluded in the course of proceedings before a court;

ii) That are enforceable as a Judgment in the state of that court

# Section 2

## (2)

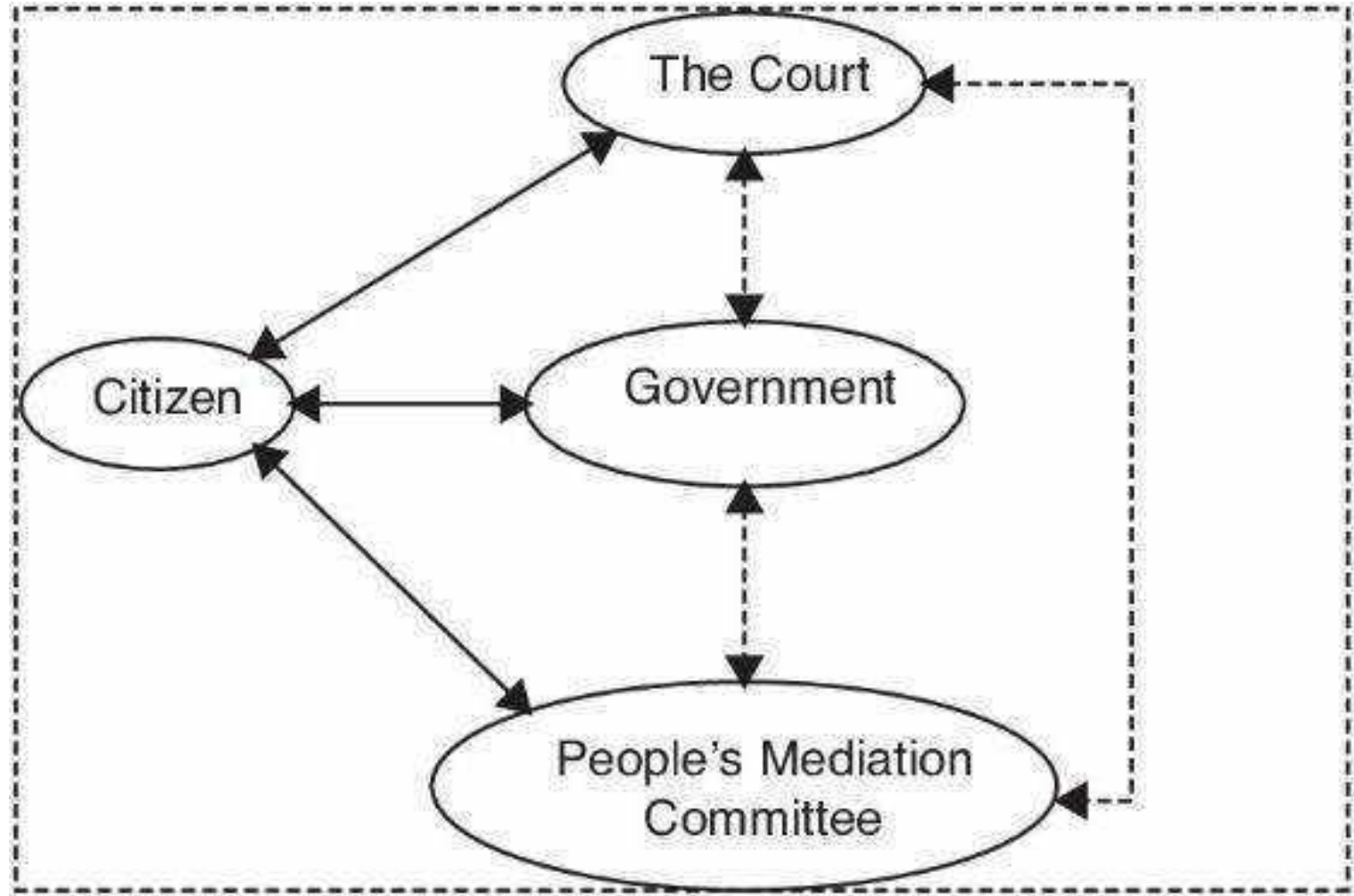
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(2) The provisions of sub-section (1) shall not apply wherein one of the parties to the dispute is the Central Government or a State Government, or agencies, public bodies, corporations and local bodies, including entities controlled or owned by such Government, except where the matter pertains to a commercial dispute: Provided that nothing shall prevent the Central Government or a State Government from notifying, such kind of dispute, as it deems appropriate for such Government, for resolution through mediation under this Act, wherein such Government, or agencies, public bodies, corporations and local bodies including entities controlled or owned by them, is a party.

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It is estimated about 46% of the litigation involve Government & Government Agencies. There is no logic to excluding this cases and Including by notification. Fit case cannot be by category but on the facts – Examples of TNEB case, School Case. Public Sector Undertakings – are Industries – Labour Disputes etc

# China Model



# Suggestion

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Section -2 : This act applies to all Mediations conducted in India, and Part –II of this act shall apply to International Mediations

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All provisions in various sections for International Mediation, except definition may be deleted and a separate Part –II by Incorporating UNCITRAL Model law on International Commercial Mediation & International Settlement Agreements can be made

# Section 4

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4. Mediation shall be a process, whether referred to by the expression mediation, pre-litigation mediation, online mediation, community mediation, conciliation or an expression of similar import, whereby party or parties, request a third person referred to as mediator or mediation service provider to assist them in their attempt to reach an amicable settlement of a dispute.

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The words “party or parties request” may be deleted as the Court also sends the matter to mediation under Section 89

# Section -7

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7. (1) A mediation under this Act shall not be conducted for resolution of any dispute or matter contained in the indicative list under the First Schedule: Provided that nothing contained herein shall prevent any court, if deemed appropriate, from referring any dispute to mediation relating to compoundable offences or matrimonial offences connected with or arising out of civil proceedings between the parties: Provided further that the outcome of such mediation shall not be deemed to be a judgement or decree of court referred to in sub-section (2) of section 28, and shall be further considered by the court in accordance with the law for the time being in force

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Matrimonial Offenses and such other offenses predominantly civil in nature

# Section 34

- 34. (1) The Council shall consist of the following members, namely:— (a) a person of ability, integrity and standing having adequate knowledge and professional experience or shown capacity in dealing with problems relating to law, alternate dispute resolution, public affairs or administration to be appointed by the Central Government—Chairperson; Costs. 36 of 1963. Limitation. Online mediation. Establishment and incorporation of Mediation Council. Composition of Council. 5 10 15 20 25 30 35 40 45 13 (b) a person having knowledge and experience in law related to mediation or alternate dispute resolution mechanisms, to be appointed by the Central Government— Full-Time Member; (c) an eminent person having experience in research or teaching in the field of mediation and alternate dispute resolution laws, to be appointed by the Central Government—Full-Time Member; (d) Secretary to the Government of India in the Department of Legal Affairs, Ministry of Law and Justice or his representative not below the rank of Joint Secretary—Member, ex officio; (e) Secretary to the Government of India in the Department of Expenditure, Ministry of Finance or his representative not below the rank of Joint Secretary— Member, ex officio; (f) Chief Executive Officer—Member-Secretary, ex officio; and (g) one representative of a recognised body of commerce and industry, chosen by the Central Government—Part-Time Member. (2) The Chairperson, Full-Time Member and Part-Time Member of the Council, othe
- Chairperson – A retired Judge of the Supreme Court or High Court , who is trained as a Mediator ; Council should consists of atleast 3 Trained Mediators – Member Secretary, NALSAR or Registrar, Mediation Committee or any person nominated by the Supreme Court can be an ex-officio member

# S-44 – Community Mediation

- 44. (1) Any dispute likely to affect peace, harmony and tranquility amongst the residents or families of any area or locality may be settled through community mediation with prior mutual consent of the parties to the dispute. (2) For the purposes of sub-section (1), any of the parties shall make an application before the concerned Authority constituted under the Legal Services Authorities Act, 1987 or District Magistrate or Sub-Divisional Magistrate in areas where no such Authority has been constituted, for referring the dispute to mediation. (3) In order to facilitate settlement of a dispute for which an application has been received under sub-section (2), the concerned Authority constituted under the Legal Services Authorities Act, 1987 or the District Magistrate or Sub-Divisional Magistrate, as the case may be, shall constitute panel of three mediators
- One Mediator is enough and if necessary two can be considered. Three is too many in a mediation room – The name to be altered as Neighbourhood/Grassroots Mediation as the concept of community mediation is larger



# Schedule I & VII



Except for Entries 4,5,7 & 8 – other entries prevent otherwise fit cases for mediation



MSME –Act they are taking up arbitration after mediation – will run counter to the confidentiality part – therefore needs amendment



Thanks for the appropriate Section -89

Thank you

Presented virtually on 27/04/2022

**Preliminary Views/Suggestions on 'The Mediation Bill, 2021'**  
**by Bar Council of India**

Realizing that mediation is one of the most effective and efficacious mode of alternate dispute resolution, and, can go a long way in addressing and alleviating the problem of pendency of cases, Bar Council of India took a decision in 2020 to make mediation a compulsory subject for LL.B degree course in India.

We welcome the decision of the Central Govt. to introduce The Mediation Bill, 2021 to encourage and promote mediation of resolution of dispute.

The Bar Council of India would like to give the following preliminary comments and suggestions, which, it considers necessary and worthwhile to be taken care of for a final draft of the Bill:-

1. It is important to keep private players having vested interest out from the ambit of Mediation Service Providers or Institutional Mediation. Experience shows that even Institutional Arbitration has not worked successfully in India and in order to ensure that the process of mediation does not fall prey to vested interests, it is suggested that court annexed mediation or mediation agreed between the parties through a mediation agreement is only recognized. The court annexed mediation centers have been quite successful as they are manned by lawyers and judges, who are trained mediators too. The USP of court

annexed mediation centers is that it is supervised by legally trained minds, and, therefore, there is almost zero backfires, there are no off-shoots, such as challenge to higher courts. In this way, the basic objective to reduce pendency right from lower court to Supreme Court is being achieved.

2. The introduction of compulsory pre-litigation mediation in The Mediation Bill, 2021, we are afraid, may result in delaying of cases and may prove to be an additional tool in hands of truant litigants to delay the disposal of cases.

The adversarial system that exists in India has been aptly termed as "Defendant's Paradise". Odds work heavily against the person who has knocked at the door of justice. The dice has been heavily loaded against the propounder of cause of action, be it the plaintiff, the petitioner or the applicant.

In this backdrop, the recourse to pre-litigation mediation, as envisaged in the Bill does not equally put the onus upon the parties. Any law, if it has to earn the distinction of being fair, must aim at equal treatment of parties. This aspect is conspicuous by absence in the provisions that deal with pre-litigation mediation.

While Section 6(1) has put an embargo upon the plaintiff, no equal embargo has been created upon the defendant in Section 20(2) of the Bill. Thus, the defendant has his field's day at the cost and expense of the plaintiff.

Section 20(2) of the Bill provides that where any party fails to attend the first two mediation sessions without any reasonable cause which resulted in the failure of mediation, the Court, Tribunal or the Authority, in a subsequent litigation on the same subject matter, between the parties, may take the said conduct of such party into consideration and impose such cost as it deems fit.

The conditions in Section 20(2) of the Bill have various aspects:-

- i. It is generic in nature and applies to both the parties:
- ii. It does not impose any embargo upon the defendant or does not create any deterrence against him in withdrawing from the mediation:
- iii. It does not provide any basis for imposition of cost, when the Court is not aware of any circumstances as to why the defendant has withdrawn from the pre-litigation mediation and whether such conduct invites imposition of cost:

- iv. Courts cannot impose cost as a rule of thumb and must have justifiable material to impose the cost. Mediation proceedings being confidential, no evidence can be available to the Court to cull out any substantive reason to impose the cost.
3. The provision for pre-institution mediation has been introduced as Section 12 A in the Commercials Courts Act, 2015 as a maiden measure w.e.f. 18.5.2018. The results can be broadly summarized as under:-
- i. The parties have taken refuse under the umbrella of “urgent interim relief” to bypass the pre-institution mediation:
  - ii. Wherever the mediation has been resorted to, in more than 90% of the matters, it has been a non-starter

Thus, the aversion to pre-institution mediation is manifestly clear from the above. The concept of pre-institution mediation has been reduced to empty formality or a mere ritual; it may not take the movement of mediation any further or far. Therefore, in view of the ground position that cases are not getting settled through pre-institution mediation, and, ultimately going to trial, the embargo of resorting to pre-institution mediation in the Mediation Bill should be revisited.

Another aspect which we cannot lose sight of is that plaintiff or petitioner will have just an additional layer of litigation, and, for pre-institution mediation, will have to engage a Counsel, incur expenses, and, after failure of mediation again knock at the door of the courts for going to a trial which would mean bearing more and additional expenses for filing and prosecuting court case.

4. Another aspect which must be born in mind is that when it is made mandatory for the plaintiff to take recourse to pre-institution mediation, why similar measures cannot be put against the defendant responsible for failure of mediation. It is the foremost duty in any statute to balance and equalize the rights and responsibilities of both the parties, else it may become lopsided.

It is suggested that this can be achieved by creating an embargo against the defendants by not permitting them to file a statement of defense, until and unless they deposit a sum of money in the court, depending on the value of the claim or other factors as may be determined. This embargo would create a sufficient deterrence for avoiding mediation and would give an impetus to the mediation movement. Otherwise, the provision of pre-institution mediation may turn out to be a dead letter.

It is suggested that instead of having the provision of Section 6 in The Mediation Bill, 2021 in place, a provision can be inserted thereby making it mandatory for the courts to refer the parties to mediation on the very first hearing, unless, there is some application for an urgent relief, which may be first disposed of and the parties thereafter can be referred to mediation. Experience shows that post-litigation mediation succeeds in almost 50 percent cases referred for mediation by the court.

If at all pre-litigation mediation is to be retained it should only be through court annexed mediation center and not through private service providers.

5. The role of advocates in the mediation process should be made clear, particularly, when in circumstances where there is a large power imbalance between the parties, or a complete breakdown of communication, it can be beneficial for the mediation process if lawyers remain essential part of it. This will ensure fairness of the process.
6. Mediation is completely confidential and things said at mediation cannot be raised later in court. This means the parties can speak freely and discuss all issues to explore options to resolve the problem. Under Section 23(1)(iii) of the Bill, although, confidentiality of a dispute is maintained and documents produced during mediation are not



admissible as evidence in any Court or Tribunal, this can be somewhat problematic if one party decides to sue the counterparty following a failed mediation and is prevented from introducing key documents into evidence in Court simply because they were a part of the mediation proceedings.

7. The present scheme of establishment and incorporation of Mediation Councils given in Section 33 of the Bill may create a body with no accountability. All the powers will vest with the government with actual or genuine mediators having no say in running/ managing the Council.

In our view, the body should be a mix of appointees with adequate number to be brought in the body through election among mediators so that mediators can have a say in the entire process.

Further, among the appointees to be nominated by the Govt., **Chairman Bar Council of India** or **his nominee** should also be made an ex-officio member keeping in view the fact that a pre-dominant section among the mediators would be from among advocates whose regulator is the Bar Council.

As suggested above, there should be a State Mediation Council also consisting of a mix of Members to be nominated by the State Govt. and

should also have Chairman of State Bar Council or his nominee as ex-officio member

8. Adequate provisions are required to be made for regulating the fee of mediators and expenses for mediation process.
9. Further Comments on The Mediation Bill, 2021

<b>Sl. No.</b>	<b>Section</b>	<b>Comments</b>
1.	3(b)	There should be State Mediation Councils also with power of Registration of mediators.
2.	3(h)	Mediator should be a person accredited and registered with Bar Council, State Mediation Council or a person who is appointed to be mediator to undertake mediation by the Court.  It should be mandatory for all mediators to be registered with State Mediation Council, whether they are accredited with any MSP (Mediation Service Provider) and mentioning of their registration number on all documents should be a must.

Sl. No.	Section	Comments
3.	3 (k) & (l)	<p>“Mediation Institutes” &amp; “Mediation Service Providers” will be two separate entities and have two separate registrations? Its like Law Colleges and Law Firms.</p> <ul style="list-style-type: none"> <li>• Will ‘MI’ &amp; ‘MSP’ be permitted to advertise their expertise? If this happens, it may lead to cartelization of Mediation Process in all the regions.</li> </ul>
4.	10(1)	<p>The language should be as follows :-</p> <p><b>“Unless otherwise agreed by the parties, a person(s) of Indian nationality shall be a /the mediator(s).”</b></p> <p>Otherwise, we will be subletting the mediation process to foreigners, which is not acceptable.</p>
5.	Proviso to Section 13	Needs clarification.
6.	Section 16(a)	“And the mediator gives its consent to act as mediator and makes disclosure in terms of Section 12 above”

Sl. No.	Section	Comments
7.	Section 21	The period of 180 days and also the period given in the proviso is excessive.
8.	Section 22 (3)	Subject to the provisions under Section 26 and 27, mediator shall draw a settlement with the help of the parties and their counsels which is lawful and is not barred by any law and the settlement shall be reduced in writing and signed by parties.

\*\*\*\*\*



# THE BAR COUNCIL OF TAMILNADU & PUDUCHERRY

High Court Campus, Chennai - 600 104.

Phone No : 2534 2739, 2535 2595

**P.S. AMALRAJ**  
CHAIRMAN

**S. PRABAKARAN**  
SENIOR ADVOCATE  
VICE CHAIRMAN, B.C.I.

**V. KARTHIKEYAN**  
VICE CHAIRMAN

Dated 27.04.2022

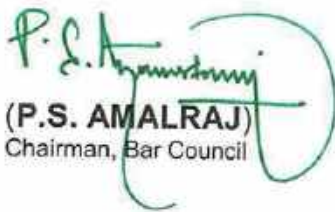
To:

**The Parliamentary Standing Committee,**  
Personnel, Public Grievances, Law and Justice,  
Rajya Sabha Secretariate,  
Parliament of India,  
New Delhi

Sir,

We herewith enclose the Views and Suggestions of the Bar Council of Tamilnadu and Puducherry on the Mediation Bill, 2021 (Bill No. XLII of 2021).

Thanking You,

  
(P.S. AMALRAJ)  
Chairman, Bar Council

  
(S. PRABAKARAN)  
Vice-Chairman, Bar Council of India

  
(V. KARTHIKEYAN)  
Vice-Chairman, Bar Council

VIEWS AND SUGGESTIONS OF THE BAR COUNCIL OF TAMILNADU  
AND PUDUCHERRY ON THE MEDIATION BILL 2020-2021

Bill No. XLIII of 2021

CHAPTER I

Section 1 - No Comments.

CHAPTER II

Section 2 - No Comments

Section 3 - No Comments

CHAPTER III

Section 4 - "...Mediation service provider to assist them in their attempt to reach an amicable settlement of a dispute...

Reference should be more specific by expressing the process.

So, instead of the word "**assist**", the word "**facilitate**" may be mentioned (The parties to arrive settlement without affecting the rights of the parties to the litigation).

Section 5 - No Comments

Section 6 - No Comments

Section 7 - No Comments

Section 8 - The word **exceptional** can be removed. (As the same can be decided by the Court)

Section 9 - No Comments

CHAPTER IV

Section 10(3)- To add "Shall make an application to the Court or Tribunal which may refer to the mediation service provider for the appointment of the mediator". (Object-In any event litigation should not arise).

Section 11 - No Comments

Section 12 - No Comments

Section 13 - No Comments

Section 14 - No Comments

CHAPTER V

Section 15 - No Comments

Section 16 - No Comments

Section 17 - No Comments

Section 18 - No Comments

Section 19 - No Comments

Section 20(1)- No Comments

Section 20(2)- To include **after receipt of due notice**

Section 21(1)- Instead of 180 days it has to be changed as 120 days.

Section 21(2)- Instead of 180 days it has to be changed as 90 days. So, totally shall not exceed 210 days.

Section 22(9)- Instead of 180 days it has to be changed as within 60 days.

Section 23 - No Comments

Section 24 - No Comments

Section 25(C)-To include "**after receipt of due notice**"

**To add Provided** :- That in case the parties expresses difficulty in attending the hearing, and seeks adjournment, the said adjournment day shall not be included as a day of hearing.

Section 26 - No Comments

Section 27 - No Comments

CHAPTER VI

Section28 - No Comments

Section29 - No Comments

Section30 - No Comments

Section31 - No Comments

CHAPTER VII

Section 32 - No Comments

CHAPTER VIII

Section 33(3)-To add **"Head office of the council shall be at Delhi and at regional offices at Mumbai, Kolkatta, Chennai and such other places may be notified by the Central Government"**

Section 34 - No Comments

Section 35 - No Comments

Section 36 - No Comments

Section 37(1)(c) – To remove **"Which in the opinion of the Central Government involves moral turpitude"**.

Section 38 - No Comments

Section 39 - No Comments

Section 40 - No Comments

CHAPTER IX

Section 41 - No Comments

Section 42(a)- To add **"Trained and"** before accredit mediators.

Section 43 - No Comments

CHAPTER X

Section 44 - No Comments

Section 45 - No Comments

CHAPTER XI

Section 46 - No Comments

Section 47 - No Comments

Section 48 - No Comments

Section 49 - No Comments

Section 50 - No Comments

Section 51 - No Comments



Section 52 - No Comments

Section 53 - No Comments

Section 54 - No Comments

Section 55 - No Comments

Section 56 - No Comments

Section 57 - No Comments

Section 58 - No Comments

Section 59 - No Comments

Section 60 - No Comments

Section 61 - No Comments

Section 62 - No Comments

Section 63 - No Comments

Section 64 - No Comments

Section 65 - No Comments

**Schedule I** - No Comments

**Schedule II** - No Comments

**Schedule III** - No Comments

**Schedule IV** - No Comments

**Schedule V** - No Comments

**Schedule VI** - No Comments

**Schedule VII** - No Comments

**Schedule VIII** - No Comments

**Schedule IX** - No Comments

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# SUPREME COURT BAR ASSOCIATION (Regd.)

SUPREME COURT OF INDIA, TILAK MARG, NEW DELHI-110001 (INDIA)

Mr. Vikas Singh (Sr.)  
President

Mr. Pradeep Kumar Rai (Sr.)  
Vice President

Mr. Ardhendumauli Kumar Prasad  
Hony. Secretary

Mr. Rahul Kaushik  
Joint Secretary

Mr. Meenesh Kumar Dubey  
Treasurer

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Mr. Mukesh Kumar Singh  
Ms. Sasmita Tripathy  
Mr. Prashant Singh  
Ms. Prema Kumari  
Ms. Seema Patnaha  
Ms. Nandani Gupta

04.04.2022

Shri. Goutam Kumar,  
Deputy Secretary,  
Rajya Sabha Secretariat,  
Parliament of India.

**Ref:** LAFEAS-PP18/1/2021-PPG-RSS

**Subject:** Suggestions on 'The Mediation Bill, 2021'

Dear Mr. Kumar,

I have examined the Mediation Bill, 2021 in detail and my suggestions on the said Bill are in the following paragraphs.

I feel that henceforth all mediation provided under any enactment should be done only under this Act and provisions relating to mediation in other enactments be deleted from those enactments so that a centralised pool of mediators are made available under this Act who will be available for various forms of mediation depending upon their qualification and experience. There should be a method of enrolling mediators under this Act and the qualification and experience and expertise of the mediator should also be incorporated therein so as to make them available as and when required for any form of mediation.

In my view, mediation otherwise should be voluntary as provided under other sections of the Act and the compulsion of going to mediation should only be provided during the course of litigation. Instead of pre-litigation mediation, I would suggest **Section 6** of the Bill as under:

*"6(1). Subject to the other provisions of this Act, in every dispute as enumerated in the [Eleventh] Schedule which is brought before a Court of Law for adjudication whether it be a Writ Petition or Civil Suit, the Court while issuing notice will*



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**Mr. Prashant Singh**

**Ms. Prerna Kumari**

**Ms. Seema Patnaha**

**Ms. Nandanl Gupta**

*mandate that the matter be taken up for mediation positively by the returnable date and report to the Court on the said date about the outcome of such mediation regardless of any interim order granted or not on the first date of hearing.*

*(2). While taking up the issue in mediation, regard must always be made of the likely cost of litigation, the time period that the litigation would entail and the impact that the litigation will have because of the delay on the subject matter of the litigation."*

**Sections 8 and 9** would also have to be deleted accordingly.

**Section 19(a)** to be read as under:

*(a) the mediator shall not act as an arbitrator in respect of a dispute that is the subject matter of the mediation proceedings;*

**Section 20(1)** to be read as under:

*"20. (1) A party may withdraw from mediation at any time after the first two mediation sessions, in mediations other than those provided in section 6."*

Substitution of **Section 32(1)** as under after deletion of "pre litigation mediation":

*"32. (1) Online mediation may be conducted at any stage of mediation under this Act, with the written consent of the parties including by the use of electronic form or computer networks but not limited to an encrypted electronic mail service, secure chat rooms or conferencing by video or audio mode or both."*

In **Section 34**, the following needs to be added:



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**Ms. Sasmita Tripathy**  
**Mr. Prashant Singh**  
**Ms. Prema Kumar**  
**Ms. Seema Patnaha**  
**Ms. Nandani Gupta**

*"(h) One member to be nominated by the Bar Council of India and one member to be nominated by the Supreme Court Bar Association."*

**Sections 58 to 65** – the corresponding provisions relating to mediation in those statutes will be deleted and henceforth all mediations under all those statutes will be governed by provisions of Mediation bill.

The above suggestions may be considered by the Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice.

**[VIKAS SINGH]**



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# BOMBAY BAR ASSOCIATION

Room No 57, 3<sup>rd</sup> Floor , High Court, Bombay – 400 032  
Tel : 2267 3367 ; Fax : 91-22-22701160  
<http://www.bombaybar.com/>

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To,

Rajya Sabha Secretariat,  
Parliament House/Annexe,  
New Delhi 110001

Subject: Mediation Bill,2021  
Views of Bombay Bar Association

Dear Sir,

This refers to your letter dated 11th January 2022 received by the Association on 17th January 2022. We are called upon to give our suggestions views on the Mediation Bill,2021. Due to ongoing pandemic the time at our disposal is very short and we have made our best efforts to give our suggestions.

At the outset our Association welcomes the Mediation Bill and underlying concept. We as one of the stakeholders are always in favor of encouraging Alternate Dispute Resolution modes. Mediation being one where resolution of disputes by consent will go a long way in resolving problems of pendency of cases in courts.

Coming to the present bill please find below our comments with reference to certain provisions. For want of sufficient time we have not been able to give comments on other provisions. If you happen to extend time please let us know.

**1. In Section 5(3) after sub-section ( c ) add the following:**

**(d) the order of the Court,**

Reason:

It so happens that courts in pending matter records agreement of parties to refer disputes to Mediation. The order of court therefore serves as agreement between the parties and it will obviate signing of any fresh agreement. So if the agreement is contained in order of court it should be treated as mediation agreement.

**2. In Section 5(5) requires re consideration as it limits the application of the Section to the disputes arising out of agreement. There may be disputes which may arise other than out of agreement.**

**3. In Section 9(1) add the following at the end after the word them;**

**“Or if the Court deems it fit that it is appropriate for the parties to settle the disputes.”**

Reason:

It is better to give some leeway and discretion to court to nudge the parties to adopt mediation. Some times the view of the court goes a long way in parties agreeing to go to mediation.

**4. In Section 14 provision be made for appointment of substituted mediator if the parties don't agree on the name of substituted mediator within & days. Otherwise it will remain open ended.**

**5. In Section 22(1) in 3rd line after the word parties the following be added;**

**“which is signed by them”,**

**Delete sub-section(2).**

**Renumber other sub-sections, consequently in the renumbered sub-section 7 and 8 reference to sub-section 7 shall become 6.**

Reason.

There is no need to have separate sub-section to indicate requirement of signature of the parties. If it is incorporated in sub-section (1) it will give complete definition of a mediated settlement agreement. Other changes are consequential.

**6. In Section 22(8) the word Authorised Representative needs to be defined. Secondly there is no consequences provided of a party not attending before the registering authority.**

**Some provision like in Registration Act of registration if one of the parties does not attend in spite of the notice than the registration shall be effected. Such provision be enacted.**

**The provision should also be made like disentitling the party not attending for registration from disputing the same.**

**7. In Section 25( c ) in 3rd line the words “ has not received any communication from such party;” be deleted and be substituted by the words “ makes a declaration under (b) above”.**

Reason:

The present language will give rise to dispute and therefore it is mediator's declaration which should be insisted.

**8. In Section 31 in (i). Consequent to suggestion made above being accepted sub-section will be (3) of Section 22 instead of (4) of 22.**

Reason:

It is consequential.

**9. In First Schedule Clause 2 and 7 be deleted. In any event except impersonation everything else be deleted.**

Reason:

Mediation is process which happens with the consent of the parties.

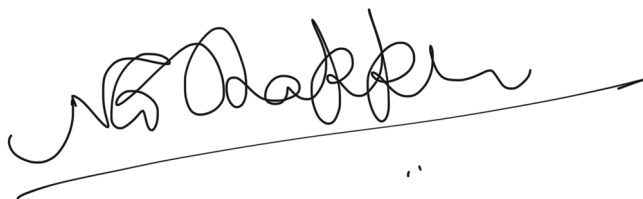
Inclusion of this clause will exclude large number of matters for reference to mediation. In civil matters ultimately the settlements take place on commercial terms and the parties know the truth or at least know with what numbers they are comfortable to settle. Inclusion of Clause 2 is not conducive to encourage parties to settle the matter in spite of having such allegations.

Clause 7 will be misused. Any settlement if it affects third party will not be binding on third parties and therefore Clause 7 be also deleted.

**10. A model format of mediated settlement agreement requiring mentioning of mandatory details be prescribed. it should be a schedule to the Act.**

**There are other suggestions but for want of time it has not been possible to enumerate them.**

**We will be willing to appear before committee and explain all our suggestions.**

A handwritten signature in black ink, appearing to read 'Nitin Thakker', written over a horizontal line that extends to the right.

**Nitin Thakker**  
**President**

**Email****Com. PPG RS**

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**views as suggested on draft bill " Mediation Bill, 2021"**

---

**From :** sikkimhcba@gmail.com

Wed, Jan 19, 2022 03:04 PM

**Subject :** views as suggested on draft bill " Mediation Bill, 2021"**To :** Com. PPG RS <rs-cpers@sansad.nic.in>

Esteemed Sir,

First of all Sikkim High Court Bar Association, Gangtok, would like to express the sincere gratitude and honour for making part of the process of drafting of bill by seeking views/suggestion.

As a stakeholder after having perused the entire draft bill, the draft bill is well thought out and most of the pertinent issues required to be considered both in pre-litigation and during litigation is covered.

Nothing seems to have been left excellently done.

Only suggestion with respect to cost if Woman, physically challenged person and LGBTQIA community exempted. It might serve inclusive Mediation

If through virtual mode can be part of process as stake holder would be grate as small suggestion.

Warm Regards  
Dr. Doma T. Bhutia  
President  
SHCBAG

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# THE HIGH COURT BAR ASSOCIATION, CUTTACK

ORISSA HIGH COURT, CUTTACK - 753002

Tel. / Fax : 0671-2507810

Web : www.orissahighcourtbar.in / E-mail : orissahighcourtbarassociation@gmail.com

Ref. No.

Date :

Date:- 20.01.2022

**President**

**Sri Jagabandhu Sahoo**  
Senior Advocate  
Mob-9437018532, 9776122229

**Vice-President**

**Sri Devi Prasad Dash**  
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Mob-9438124380

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**Sri Dipak Ranjan Mishra**  
Advocate  
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To,  
The Director,  
Rajya Sabha Secretariat,  
Parliament House/ Annexe, New Delhi-110001

**Ref:-** Your Office letter no. LAFEAS-PP18/1/2021-PPG-RSS dt. 11.01.2022

**Sub:-** Examination of the Mediation Bill, 2021” by Department related Parliamentary Standing Committee on Personnel, Public Grievances, Law & Justices-Reg.

Sir,

I have the privilege of going through the Mediation Bill, 2021, hereinafter referred to as “the Bill” and upon perusal of the same I, on behalf of the OHCBA, consider it expedient to submit my precise views as delineated below:-

1. S.2(1) (i) under Chapter-II of the Bill, the expression used “habitually” may be substituted as “ordinarily”. **Reason-** the expression habitually appears to be not appropriately worded.
2. S. 3(f) (i) under Chapter-II of the Bill, the expression used “habitually” may be substituted as “ordinarily”. **Reason-** the expression habitually appears to be not appropriately worded.
3. S. 10 (1) under Chapter-IV of the Bill, is required to be re-considered.

The changes suggested is described as hereunder :- “Unless otherwise agreed upon by the parties, a person of any other nationality may be appointed as a Mediator in respect of such commercial disputes and such other disputes as may be notified by the Central Government from time to time.”

Reason:- Appointment of a person of any nationality as Mediator will result in causing growing resentment both among the public in general as well as legal fraternity since the scope and nature of litigation in India intended to be resolved through mediation will be impaired. Secondly, the legislative intent behind the present scheme of law cannot be successful when left to Mediators of any nationality unless the same is cautiously and appropriately revisited with pragmatism and legislative wisdom.

Regards,

**Jagabandhu Sahoo,**  
Sr. Advocate, President,  
Orissa High Court Bar Association,  
Cuttack, Odisha.



# TAMIL NADU ADVOCATES' ASSOCIATION

*Madras High Court Campus, Chennai-600 104*

S.PRABAKARAN  
SENIOR ADVOCATE  
President

## DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE ON PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE

### PROS AND CONS OF THE MEDIATION BILL, 2021

Mediation is a form of 'Alternative Dispute Resolution' (ADR), which is a very ancient practice that has been developed for modern usage. ADR can offer a compelling alternative to litigation which is often costly and damaging to business relationships whilst offering limited creative problem-solving opportunities. Mediation has been used as a method of resolving disputes since time began, however it was not until the 1990s that it become an accepted part of the legal process. Due to the global growth unfortunately prone to dispute for which the traditional route to resolution was litigation; often a costly and long-winded affair. Now however there are various methods of ADR appreciated by the legal system which are available:

- Mediation
- Adjudication
- Arbitration





# TAMIL NADU ADVOCATES' ASSOCIATION

*Madras High Court Campus, Chennai-600 104*

**S.PRABAKARAN**  
SENIOR ADVOCATE  
President

- Expert determination
- Court proceedings

The use of ADR has become more recognized and the Pre - Action Protocol to resolve disputes requires parties “to make appropriate attempts to resolve the matter without starting proceedings and, in particular, to consider the use of an appropriate form of ADR in order to do so”. Mediation is now the most commonly used ADR method and although more expensive than a simple negotiation, it allows the parties to retain control, and be intrinsically involved, in the resolution process.

There are numerous advantages and a few disadvantages to mediating a dispute. The below-mentioned advantages and disadvantages of mediation are general examples.

There may be any number of parties or case-specific benefits or detriments to mediation.

- a. Recall that mediation allows the parties to retain control over the dispute.





# TAMIL NADU ADVOCATES' ASSOCIATION

*Madras High Court Campus, Chennai-600 104*

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**S.PRABAKARAN**  
SENIOR ADVOCATE  
President

- b. They are free to refuse to negotiate, and they are not required to find a resolution to the dispute.
- c. The voluntary nature of negotiation in the mediation process allows the parties to decide to pursue litigation or some other form of ADR.
- d. The level of control retained by the parties can also be seen as a disadvantage.
- e. Neither party can be certain that the mediation will result in a settlement.
- f. This lack of certainty can frustrate the parties with the process.
- g. Mediation is less expensive than litigation.
- h. There is significant cost savings associated with mediation.
- i. While the parties generally share the responsibility of paying the mediator, it avoids court fees, some legal fees, and other expenses associated with going to trial.
- j. Further, the cost of mediation is generally far lower than the cost of other ADR approaches, such as arbitration.





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- k. The cost disadvantage of mediation is that it can still be expensive and not result in a resolution.
- l. A simple negotiation between the parties can resolve a dispute for free; but, employing counsel to represent the parties at mediation and employing the mediator can cost significant money.
- m. Generally, the mediator takes a small percentage of the total settlement amount between the parties.
- n. As with other types of ADR, mediation is a private process.
- o. The parties do not have to disclose the dispute or any of the facts of the situation to the rest of the world.
- p. Litigation, on the other hand, is generally a public affair. Unless the court orders otherwise, anyone can attend a public trial and can access the court records.
- q. This includes access to all allegations, testimony, and the evidence presented in the case.
- r. The disadvantage of privacy generally concerns the





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- expectations of the aggrieved party.
- s. In many cases, the injured party seeks compensation for the harm or loss to make certain that the alleged wrong is not repeated.
  - t. Negotiating a settlement of the dispute outside of the public's knowledge does less to prevent a party from repeating the allegedly illegal conduct.
  - u. This is particularly true when that party's conduct is intentional.
  - v. Mediation can help preserve Relationships.
  - w. Disputes between parties can destroy their on-going relationship.
  - x. Being able to work out a mutually agreeable settlement of the dispute can serve to preserve the relationship.
  - y. This is important for businesses that depend upon each other as future business partners (such as in supplier-purchaser relationships).
  - z. Litigation generally destroys the business relationship, as





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the process is highly competitive and confrontational.

- aa. The negative aspect of mediation is that relationships can still be strained without any resolution to guide the relationship going forward.
- bb. A judicial determination that one party's conduct is not legal establishes precedent to guide the future conduct of a business.
- cc. A negotiated settlement does not always achieve this same effect.
- dd. Not compulsory
- ee. Concerns exist around the enforceability of a mediation agreement;
- ff. All parties must agree to a resolution as the result is not guaranteed;
- gg. Can be difficult if either party are withholding information;
- hh. Mediation may not be appropriate if one of the parties required public disclosure;





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- ii. Utilizing the services of an unskilled mediator can contribute to an unproductive resolution;
- jj. An unwillingness of one or both of the parties to cooperate can make the whole process a waste of time, effort and money;
- kk. If the dispute cannot be resolved in mediation the cost of mediation will have been wasted;
- ll. During the mediation process either party can withdraw from proceeding at any time;
- mm. There is the possibility that information may be given away to the party and the same may be an advantage to the party.

It is a welcoming gesture of the government to bring a special Act on Mediation. Hence it is necessary to bring Mediation Act to give it a special platform in dispute resolution methods. It is important for both parties to recognize the requirements of the Pre-Action Protocol for Construction and Engineering Disputes and that the consequences of failing to mediate, or attempt another method of ADR, could possibly result in an adverse cost order.

Any party refusing to mediate needs to ensure that their stance for refusal is reasonable, as the courts will consider any refusal







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to mediate seriously when making orders as to the costs of the subsequent litigation.

*“Justice delayed is justice denied”* is a popular adage that suggests the time taken to resolve issues is critical to the attainment of justice for a person seeking justice. However, justice is often delayed in the Indian justice system due to its inability to dispose of cases in a timely manner. According to a recent survey, over 4.5 crores (a crore is equal to 10 million rupees) cases are pending across all courts in the country. Such a judicial backlog is the premise used to advocate the need for Alternative Dispute Resolution (“ADR”) mechanisms, including Mediation as a way of resolving disputes.

## **ENFORCEMENT OF INTERNATIONAL MEDIATED SETTLEMENT AGREEMENT (MSA) AS PER THE SINGAPORE CONVENTION AND ITS RELEVANCE TO THE PRESENT BILL:**

The Singapore Convention on Mediation Settlements is a UNCITRAL convention that allows signatory nations to provide for easy enforcement of international mediation settlement agreements. India is one of the 42 signatories to the convention which interestingly does not include otherwise advanced





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mediation jurisdictions like United Kingdom and USA. The bill provides for the domestic provisions necessary for enforcement of international mediation settlements under the convention. The fact that we are actually bringing a domestic law to implement the Singapore Convention really shows how India is now moving from the position of an observer in foreign policy to becoming a front runner and pioneer. In my opinion, this puts India out of the shadow of other international hegemonies and is a clear signal that India is coming into its own as a global economy. Having said that, there is still a lot to be done to make the enforcement mechanisms in India really work not just for mediation settlements but also for foreign judgments and awards in international commercial arbitrations and foreign arbitrations.

An effective attempt has been made in the said draft bill to overcome the shortcomings within the existing framework. Some of the appreciable provisions of the draft bill include the establishment of the Mediation Council of India, promotion of private, online and community mediation as an acceptable process, enforcement of the successful outcome of the mediation in the form of 'mediation settlement agreements,' among others. Further, the draft bill incorporates detailed provisions on the enforcement of international mediation settlement





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agreements owing to the fact that India is a signatory to the Singapore Convention on Mediation.

However, certain provisions have been left open-ended and ambiguous by the drafters, which need to be addressed urgently. Section 2 of the draft lays down provisions on the territorial jurisdiction of the mediation centers. The explanation to Section 2(i)(iii) needs to be re-examined as the phrase "*place of business having closest relationship to the mediation agreement*" is not defined adequately. Such loose drafting can lead to several interpretations. Thus, the drafters should define the phrase to avoid any conflicts over the jurisdiction of courts in future.

As far as subject-matter jurisdiction is concerned, Section 7 states that mediation shall not be conducted in relation to matters listed under Schedule II of the draft. However, it is pertinent to note that Schedule II is titled "disputes which may not be fit for resolution through mediation." The use of two different phrases (shall and may) leads to different interpretations. Thus, making the language consistent under the said provisions would streamline their interpretation.





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Further, Schedule II of the draft bill laid down an extensive list of cases that cannot be subjected to mediation. Though the provision states that the list is indicative in nature, the drafters seem to ignore the recent *Vidya Drolia II* judgment wherein the Supreme Court laid down the four-fold test to determine the arbitrability of the disputes. The Court's four-fold test on arbitrability would also help determine whether disputes can be referred to mediation or not without leaving any scope for interpretations and uncertainties. However, the list under the bill is primarily based on balancing the rights in rem v. rights in personam without looking into other facets of the judgement. It is therefore important that all aspects of the four-fold test be incorporated within the statute instead of leaving it to the courts.

Under Section 6 of the draft bill, the legislators included the process of mandatory pre-litigation mediation ("mandatory mediation"). It is clear that the legislative intention behind the provision is to give impetus to mediation culture in India. However, the legislators failed to notice that India does not have enough infrastructure, such as no. of mediators and mediation center etc., for mandatory mediation. Further, forcing unwilling parties to go for mediation can be counterproductive. The unwilling parties can resort to Section 26(1) of the draft bill,





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wherein parties can withdraw from mediation proceedings after communicating with the mediator, provided they have attended one session, thereby reducing the mandatory mediation to a procedural formality.

Thus, caution has to be taken as India already witnessed the failed attempt of mandatory mediation under the Commercial Courts (Amendment) Act 2018 . In this regard, inspiration can be drawn from other jurisdictions such as Italy, where mandatory mediation was introduced with a sunset clause of four years. In *Mr Krishna Murthi v. The New India Insurance Co. Ltd. & Ors.* , the Supreme Court suggested that mandatory mediation should be introduced in India in a phased manner, starting with a limited category of cases. A similar approach ought to be adopted in India wherein mandatory mediation would start with a small pilot program. Inserting such a blanket provision on mandatory mediation in all cases at an initial stage can cause more harm than good.

Lastly, attention has to be drawn towards Section 29 of the draft bill wherein parties can challenge the mediated settlement agreement on fraud, corruption etc., within three months from the date of receiving the settlement agreement. The provision runs contrary to the general principle wherein the limitation





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period begins from the date of the discovery of the fraud and not from the date of receiving the said agreement. Thus, there is need to address the concerns revolving around the limitation period under the said provision.

The rollout of the draft mediation bill by Ministry of Law and Justice has caused a flurry of excitement among mediators in India. Rightly so since if the bill becomes a law, India will join the club of a handful of countries with their standalone law on commercial mediation including Singapore, Hong Kong, Brazil and United States of America (with a uniform code). While the intent of the bill is laudable and pioneering, most practitioners agree that it is a work in progress which shall require a lot of polishing to reach status of a good law.

## **MEDIATING POSSIBILITIES FOR COMPOUNDABLE CRIMINAL MATTERS LIKE SECTION 138 OF N.I. ACT OR MATRIMONIAL CASES:**

The special acts of Negotiable instruments and family court acts does not fall under the category heinous offences and the same is permissible to settle among the parties, hence the same are liable to be included in the present act.





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It is necessary to include the compoundable cases and NI Act cases (Sec 138) and matrimonial issues and disputes in the arena of Mediation because, in domestic mediation majority of disputes are to be settled by bridging gap between the parties, to restore peace and harmony. Mediation is the only tool to gain the situation and appropriate door to resolution. If these cases are kept beyond purview of the Mediation Bill, it would not be any help to the common issues of the common majority of the land.

## **PRE-LITIGATION MEDIATION MANDATORY AND ITS EFFECTS:**

India has lost the battle on becoming an international arbitration hub owing to its excessive culture of ad hoc arbitrations. Till this culture does not change, it is difficult for us to join the race to become an international arbitration hub. It is for this reason that the emphasis of institutional mediation in Clause 12(3) of the Bill is a great foundational habit for commercial mediation in India. Further emphasizing on party autonomy and in happy contrast to provisions of the Arbitration and Conciliation Act, 1996, Clause 12(3) clarifies that when parties do not reach an agreement on a procedure for appointing the mediator or mediators, then the party seeking to initiate mediation shall make an application to a mediation service provider (instead of courts) for the





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appointment of a mediator. This is an innovative provision which sets the tone of the proceedings even before they commence towards confidentiality and party autonomy.

The provision under section 23 in regards to maintaining confidentiality of the mediation proceedings is an welcoming move as the same would make the dispute adjudication an easier process and the same would have a fruitful progress in settling the dispute.

The operative provision which places the key obligation to opt for mediation before approaching a court as a dispute resolution mechanism of first resort. But the provision is drafted in a very subjective fashion leaving room for colourful interpretation. The use of '*in accordance with the provisions of this Act*' is unnecessary as it creates room for doubt and also does not clarify the instruction to the parties. The provision asks parties to 'takes steps to settle the dispute through mediation' without clarifying what 'steps' shall be adequate compliance of this provision. Although the tenor is mandatory, the enforcement shall be optional. Like arbitration, there needs further clarity that in the instance when parties contractually agree to mediation, they cannot take up any other dispute resolution until they exhaust the







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remedy of mediation.

In conclusion, mediation, being the cheapest and simplest option available to the public at large, can be described as a tool of social justice. A separate legislation for mediation and rules will indubitably address most concerns around the mediation process and pave the way for making mediation the first-stop dispute resolution method for domestic and cross-border disputes. In addition to the reforms discussed above, a great deal of shift in mindset of stakeholders, awareness about the process, and redefining our approach to mediation is essential for growth and sustainability of the mediation practice in India.

## **MATTER OF CONCERNS IN THE MEDIATION BILL IN REGARDS TO PROVISIONS OF MEDIATOR:**

- The Draft Bill does not provide any details pertaining to the qualifications of a trained mediator nor provides any reference of the 'capacity to mediate'.
- Mandatory pre-litigation mediation mechanism would





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defeat the essence of mediation where the parties are unwilling to mediate.

- The requirement in Section 18 of the Draft Bill that the mediator shall communicate 'the view of each party to the other to the extent agreed to by them' could give rise to possible conflict of interest, besides striking at the root of the requirement of confidentiality of the mediation process.
- The Draft Bill does not address as to what provisions would govern an international mediation that takes place in India but relates to non-commercial disputes that have arisen under a foreign law, such mediation not being covered by either Part I or Part III of the Draft Bill.
- The undue powers given to Central or State government might at times affect the autonomy of the parties who participate in the mediation and that would ultimately lead to reducing the objective and the value of the bill in dispute resolution.
- The Draft Bill does not specify whether a Mediation Service Provider can be a company.





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- The Draft Bill provides that a domestic mediated settlement may be challenged on the ground of 'gross impropriety', without making any endeavor to define the term or specify its contours.
- The consequences of non-registration of a Mediated Settlement Agreement have not been mentioned under the Draft Bill.

Addressing these concerns would ensure that the Mediation Act, as and when enacted, contains clear and elaborate provisions which will, in practical terms, facilitate the alternative dispute resolution mechanism of mediation

## **COMPARATIVE ANALYSIS OF PROVISIONS OF CPC WITH THE MEDIATION BILL 2021:**

- Section 21 of the Draft Bill defines a 'Mediated Settlement Agreement' to mean and include an agreement or interim agreement in writing between some or all parties resulting from mediation which settles some or all of the disputes between such parties and which is authenticated by the mediator, further the time period of mediation with





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extension shall not exceed a period of 360 days.

- The Draft Bill has incorporated provisions to recognize both domestic and international mediation under Part I and III of the Draft Bill respectively. Consequently, Section 28 and Section 50 of the Draft Bill have recognized a Mediated Settlement Agreement for domestic and international mediation, as final and binding as between the parties and the person claiming thereunder.
- The Draft Bill provides that a Mediated Settlement Agreement can be enforced in accordance with the provisions of the Code of Civil Procedure, 1908. For an international Mediation Settlement Agreement, as per Section 51 of the Draft Bill, the parties applying for enforcement shall approach the respective High Court with the Settlement Agreement or an attested copy of the same along with any other evidence that may be required to prove that the Settlement Agreement is covered under the Singapore Convention.
- Further, for the benefit of the parties to the dispute, the Draft Bill provides certain grounds to challenge the Agreement under Section 29(2), which lays down four grounds of challenges for a domestic Mediated Settlement





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Agreement:

- Fraud
  - Corruption
  - Gross impropriety
  - Impersonation
- Whereas, in the case of an international Mediated Settlement Agreement, the grounds to challenge laid down in Section 52(2) of the Draft Bill are:
    - The subject matter of disputes is not capable of settlement by mediation under the law of India.
    - The settlement agreement was induced or effected by fraud or corruption.
    - It is in contravention with the public policy of India

## **MEDIATION COUNCIL AND ITS FUNCTIONS ENUMERATED IN THE BILL:**

The Bill gives the mediated settlement agreement the status of a court decree. This brings Mediation shoulder to shoulder as a dispute resolution process to Arbitration and Litigation. The creation of a new dispute resolution process that includes the





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participation of all the parties, their technical teams, influencers, experts and lawyers, facilitated by the mediator will support informed decision making and sustainable/ long-lasting solutions. Our justice system is in real need of this.

- To avoid any conflict Potential mediator appointees will have to disclose any conflict of interest that may raise questions about their independence and impartiality. The Bill gives a right to parties to terminate any mediator if he/she has given false or incorrect information on conflict of interest.
- The Bill proposes the establishment of a Mediation Council of India (the “Council”) as a body corporateto promote and regulate domestic and international mediation in India. Members of the Council are proposed to be selected from among Supreme Court or High Court judges, eminent persons and academicians in the field of mediation, and key government officials.
- Chapter 10 of the Bill recognizes community mediation as a resolution mechanism for community- related disputes that are likely to affect the peace and harmony among



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- families or people of any area or locality. A three-mediator panel can be constituted and notified by the concerned authority, which can include persons of high integrity and standing in the community or representatives of welfare associations.
- Prior written consent of the competent government authority will be required to sign an Agreement to which the government is a party. Moreover, actions taken in good faith by the central or state government, its officers, members of the Council, mediation institutes, or mediation service provider, cannot be challenged and shall be free from any legal proceeding.
  - To streamline the implementation of mediation in India, the Bill proposes to amend certain key legislations, including the Indian Contract Act, the Arbitration and Conciliation Act, and the Code of Civil Procedure.
  - The Bill has not been divided into four (4) parts as was the case with the earlier draft and does not address the enforcement of international commercial settlement agreements.





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- The term “mediation” entails pre-litigation mediation, online mediation, and conciliation. The time limit for a mediation proceeding shall be 180 days from the date of first appearance before the mediator. A person of any nationality can be a mediator under the Bill, provided that a foreign mediator’s qualifications satisfy the requirements as may be specified by the Council. Moreover, the parties shall be free to determine the procedure for the appointment of a mediator(s) or whether to use a mediation service provider as a mediator.
- The government’s attempt to have a standalone mediation law is positive because of the beneficial effect it will have in reducing the backlog of cases in the Indian judicial system. However, clarity needs to be provided on which entities will be recognized by the Council as mediation service providers. In addition, the applicability of pre-litigation mediation will be a challenge for disputants who may prefer to litigate. Therefore, the Bill should give a choice in this regard and specify that only certain types of disputes should be directed for pre-litigation mediation.







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## MEDIATION BILL AND ITS EFFECTS OF OVERRIDING MULTIPLE AUTHORITIES:

- Section 3(i) of the Draft Bill defines a 'Mediation Service Provider' as a body or organization that provides for the conduct of mediation and has in place procedures and rules to govern the conduct of the mediation in conformity with the Draft Bill. Lok Adalat's constituted under the National Legal Services Authorities Act, 1987 and mediation centres annexed to courts are also included in the term 'Mediation Service Provider'.
- As per Sections 43 and 44 of the Draft Bill, Mediation Service Providers shall be graded by the Mediation Council of India and shall be required to maintain a panel of mediators, provide infrastructure and facilities for the efficient conduct of mediations, register and file Settlement Agreements, amongst other functions.
- There are other provisions of the Civil Procedure Mediation Rules and the 1996 Act that help facilitate the mediation/conciliation process but which are also conspicuous by their absence in the Draft Bill. For instance, Rule 11 of the Civil Procedure Mediation Rules



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permits the mediator to gather information from the parties as may be required by him or her in connection with the issues to be resolved. Section 65(3) of the 1996 Act empowers the conciliator to request a party, at any stage of the conciliation proceedings, to submit to the conciliator such additional information as the conciliator deems appropriate. The said information can be sought by the mediator/conciliator in confidence even before commencing the session so as to enable him or her to do a pre-mediation dispute analysis, identify possible common underlying interests of the parties and provide a framework for the session. It is simply inexplicable as to why these provisions do not find a place in the Draft Bill. If such flaws in the Draft Bill are baffling, the provisions relating to the challenge of a mediated settlement agreement are incredulous.

- Further, it may be recalled that the Supreme Court, in its decision in *Afcons (2010)*, had “interchanged” the definitions of “judicial settlement” and “mediation” in Section 89 of the Civil Procedure Code, 1908 – a section that enables the Court to refer the dispute in a pending case for resolution through various ADR mechanisms. The Supreme





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Court had inter-alia held that “for “mediation”, the court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act”. That would imply that a mediator in even a Court-annexed mediation would now be deemed to be a Lok Adalat under the 1987 Act! As pointed out in my earlier article in this column, such mediator would, by virtue of Section 22 of the 1987 Act, have the powers of a Civil Court, including though not limited to, the summoning and enforcing attendance of any witness and examining him or her on oath; the discovery and production of any document; the receiving of evidence on affidavit; the requisitioning of any public record or document or copy thereof from any Court or office and so on so forth. And all mediation proceedings would be deemed to be judicial proceedings within the meaning of those provisions of the Indian Penal Code, 1860 that, for instance, deal with punishment for false evidence or for intentionally insulting or causing interruption to a public servant in judicial proceedings. Further, every mediator would be deemed to be a Civil Court for the purpose of the provisions





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of the Code of Criminal Procedure, 1973 pertaining to prosecution for contempt of lawful authority of public servant, or for offences specified in Section 22.

Given that such consequence runs contrary to every conceivable principle of mediation anywhere in the world, one had hoped that Parliament would step in with corrective measures. However, the Draft Bill does not clarify the position as to whether in a Court-referred matter, the mediator is still to be deemed to be a Lok Adalat under the 1987 Act. Instead, the Draft Bill cryptically states in Section 26 that "(f)or the purpose of court annexed mediation the procedure of conducting mediation shall be such as may be determined under the practice directions or rules framed by the Supreme Court or the concerned High Courts", and provides further in Section 27 that "*mediation conducted by Lok Adalat and Permanent Lok Adalat shall be in accordance with the provisions of Legal Services Authorities Act, 1987 and the rules or regulations made thereunder*". The Draft Bill does contain certain beneficial provisions like those setting up the Mediation Council of India and other institutions, as also providing for accreditation of mediators, mediation education and



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training, and regulation of ethical conduct. The Draft Bill, however, leaves many questions unanswered. For instance, what provisions would govern an international mediation that takes place in India but relates to non-commercial disputes that have arisen under a foreign law, such mediation not being covered by either Part I or Part III of the Draft Bill? With Section 8 of the Draft Bill empowering the Court or Tribunal to grant, before or during mediation, urgent interim measures in exceptional circumstances, should the party aggrieved by the grant or the refusal to grant of such relief not be afforded the remedy of at least one appeal? Would the right of at least one appeal not be an obvious requirement for this provision to pass the test of constitutionality? When a party can apply to the Court or Tribunal to refer a matter to mediation at any stage of the litigation, why should Section 9 require that "in a matter which is the subject of an agreement to submit to mediation", a party must apply for mediation not later than the date of submitting his first statement on the substance of the dispute? How would the linking of the place for conducting mediation with the territorial jurisdiction of the Court or Tribunal as contemplated by Section 15 work for online mediation? Why have a time limit at all in Section 20





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for the completion of mediation? Should it not be for the parties and the mediator to take a call on whether or not adequate time has been spent on the process? With Section 21 providing for mandatory registration with the authorities under the Legal Services Authority Act, 1987 of a mediated settlement agreement (other than those arrived at in Court annexed mediation centres and Lok Adalats/Permanent Lok Adalats), should not the consequences for non-registration be spelt out as well? Further, would this provision of mandatory registration not negate the settled proposition that confidentiality extends also to the settlement agreement except for the purposes of its enforcement? Can the responsibility of the registration be put on a mediator at all as has been sought to be done? The list is endless.

## **SUGGESTIONS RECOMMENDED FOR EFFECTIVE APPLICATION OF MEDIATION BILL:**

Despite formulating cogent provisions that majorly tackle the immediate concerns surrounding the mediation process in the country, there are some factors that need in-depth deliberation.





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Following suggestions can be incorporated in the bill to eliminate ambiguities and establish a well-rounded framework to guide mediation processes.

1. Section 22 talks about confidentiality to be maintained by the parties to the dispute as well as the mediator.

However, the draft does not provide for any punishment/liability or the consequences which shall be imposed on one who willfully infringes the said section, thereby defeating the primary objective of the act of maintaining confidentiality.

1. Under section 29, an application for challenging the mediated settlement agreement may not be made after three months have elapsed from the date on which the party making that application has received the copy of mediated settlement agreement under section 21(3) of this Act. Provided that if the Court is satisfied that the applicant was prevented by "sufficient cause" from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

The term "sufficient cause" for the delay in filing the challenge to the settlement agreement is ambiguous; therefore, it is





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suggestible that the draft should include specific and clear grounds under which the settlement agreement can be challenged even after three months.

1. Under section 10, the bill provides that qualification, experience, and accreditation of the foreign, as well as domestic mediator, would be determined by the council.

The same should be decided in consultation with the judiciary or a body of specialized individuals. The same shall in still more faith in the parties towards the appointed expert. Additionally, mediation shall become a viable career option for young professionals in the sector. The concept of composite reference arbitration has gained a lot of significance in the field of ADR since it facilitates clubbing more than one dispute arising under many sub - agreements under a common contract, eg; a construction contract. This method aids in avoiding multiple conflicting awards, saving time, money, and resources. However, the same does not have any legal backup in the Indian statutes and is dependant on legal precedents and the discretion of the courts.

It would be sensible to include the concept of "Composite







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reference mediation” in the mediation Rules, 2021 which will help in avoiding multiple conflicting awards, boost efficiency, and render the process cost-effective.

In a nutshell, it can be concluded that the Bill indeed is a step in the right direction and is equipped with fair shares of constructive provisions which will certainly contribute towards strengthening and promotion of mediation as a viable alternate dispute resolution mechanism in the country. This stand-alone legislation would not only inspire greater confidence and faith in the mediation process but also significantly address the concerns of an Over-burdened and over-worked adversarial system of justice. However, to truly instill merit and prudence in the processes it is imperative to carefully address the abovementioned gaps in the Bill and facilitate the ADR mechanism of mediation.

## **CONCLUSION:**

Mediation bill would help the India judicial system in more than one way. The government has been looking for a way to strengthen Alternative Dispute Resolution (ADR) that would help in resolving the disputes in an expedited manner and to take away some burden of the overworked courts of the Indian judiciary. Mediation is already a part of





# TAMIL NADU ADVOCATES' ASSOCIATION

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**S.PRABAKARAN**  
SENIOR ADVOCATE

President

some of the India law such as the Industrial dispute act, the consumer protection act and such, all have different rules and regulations regarding mediation. Thus, it was necessary to ascertain the present statutory framework on mediation. Moreover, India is already a signatory of the Singapore convention (The Singapore Convention ultimately aims to facilitate international trade by rendering mediation an efficient and entrusted method for resolving disputes, alongside arbitration and litigation) So, it is expected from India to enact a law regarding mediation to keep up with the standards of mediation at an international level with a faster process than the traditional litigation and the above measures.

Until now, the government had made minimal attempts in strengthening the Alternative Dispute Resolution (ADRs). By making a standalone law on mediation, the government is finally recognising the effectiveness of mediation in resolving a dispute.

The bill, at large, is a step in the right direction. However, there are some aspects of the bill that need more clarity and some provision that need to be added in the bill to make it more viable to people. The government also needs to clarify on which entities will be recognized by the Council as mediation service providers. The bill will help serve people better after some minor adjustments and will surely help in delivering justice in an efficient manner.



## TAMIL NADU SENIOR ADVOCATES FORUM

Convenor : P.S.RAMAN  
Secretary : ARVIND PANDIAN

27.4.2022

To,

The Chairperson and members of the Parliamentary Standing Committee on Personal, Public Grievances Law and Justice.

Subject : Mediation Bill, 2021

Dear and Respected Chairperson and Members of the Standing Committee,

On behalf of our Forum, which comprises of all the designated senior advocates of the Madras high Court (including Madurai) we thank you for inviting us to for this discussion at Chennai to discuss the proposed Mediation Bill, 2021. I have collected the views of our Forum members including a few professional mediators and it is with great pleasure that I am enclosing the same.

Unfortunately, due to a family bereavement I am unable to attend the meeting this evening at the High Court complex. However, on behalf of our Forum, one of our senior members, a reputed mediator and founder of the Nani Palkhivala Centre, Mr. NL Rajah will present our Forum's suggestions.

Thanking you ,

Yours truly,



PS Raman

Convenor, Tamil Nadu Senior Advocates Forum

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General Observations on the Meditation Bill, 2021 for the consideration of the  
Parliamentary Committee:

- A) Sec 3(1) of the Bill refers to "*meditation service provider*"- It may be advisable to include in this all statutory mediation service providers like the facilitation council under the MSME Act.
- B) Sec 5(5) may be amended to say "or prior institution of proceedings or during pendency of proceedings at any stage".
- C) Sec 6(2) of the Act provides for application of the provisions relating to mediation before tribunals. However, it says that it shall apply to tribunals notified by the Central Govt or the State Govt as the case may be. However, the Schedules to the Act, namely, the 5<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup> Schedules simultaneously empower the various tribunals referred to therein to make reference to meditation. Will they still have to wait for a notification from the Government to refer matters to mediation or does the enactment of the above Schedules automatically empower them? If on enactment such power is vested, then Sec 6(2) is not necessary and may be deleted.
- D) Sec 6(8)-refers to the mediator submitting a report. It may be advisable to have a table attached to the Act which gives the basic format of what the mediator's report must contain.
- E) Sec 7(1)- its proviso is not clear. It talks about compoundable offences or matrimonial offences arising out of civil proceedings. It is difficult to make out to which class of cases reference is made here. The word "Court" is defined in Sec 3(c) to be only a civil court. This raises the question as to whether criminal courts or even police authorities are not empowered to refer matters for mediation, where offences are compoundable in nature. It is a fact that many of the disputes that are filed in police stations are actually civil disputes.
- F) The Act must put in place a system of resolving civil disputes filed in criminal jurisdictions. The provisions of the proviso to Sec 7(1) read with the 4<sup>th</sup> entry in the 1<sup>st</sup> Schedule will prevent a large number of cases from being referred to mediation. Take for example cheque bounce cases under Sec 138 of the NI Act. There is no reason at all as to why they should not be referred to mediation. It may even be advisable to have a separate chapter relating to and regulating reference of criminal complaints filed with the police station and criminal courts for mediation.

- G) Sec 8(1)- It is requested that the words “if exceptional circumstances exist” to be deleted. We already have “prima facie case, balance of convenience and grave hardship” to be satisfied. Adding one more layer which is “exceptional circumstances” to this will increase the difficulty in getting interim orders.
- H) Sec 9(1)- When court refers parties to mediation, it must leave the choice of approaching either the mediation service provider or court annexed mediation to the parties.
- I) Sec 22 – There is a slight error that must be corrected. It must read “as it deems fit” or “deemed fit”.
- J) Fourth Schedule presents an amended Sec 89. From a reading of Sec 89(a), it appears that the court is empowered to refer parties to arbitration even if there is no agreement between parties to arbitrate. Sec 89(a) may be amended to empower Courts to refer parties to arbitration only if parties so agree.
- K) The act must also have a schedule setting out rules of ethics applicable to mediation. Attached is a suggested format that may be improved on.
- L) The Act proposes that settlement in mediation proceedings can be set aside on grounds of fraud. However if everything that is part of the mediation proceeding is confidential and cannot be relied on as evidence in courts then how is fraud to be proved?
- M) During mediation proceedings parties may rely extensively on documents relating to the dispute. Now if the dispute cannot be resolved and the litigation proceeds would the provisions of Sec.23 be a bar to the parties producing these documents in mediation? Some statutory safeguard must be provided against such disadvantage.

**Suggested Code of Conduct of Mediators:**

- A) Impartiality- it is important for the mediator to be unbiased. He cannot favour one particular party. He should hear both the sides and come up with a possible settlement which is agreed by both the parties.
- B) Conflict of interest- the parties should be in no way related to the mediator. However if both parties agree in writing mediator may proceed.
- C) Principle of self-determination- self-determination is the right of the parties in mediation to make their own voluntary decision regarding the possible resolution. The

mediator is to provide the parties with the solutions to the dispute in hand and assist them throughout the process.

- D) Confidentiality- the mediator should not disclose the information of the mediation to any third parties without the consent of the parties. He may disclose information about the mediation with a written consent of the parties.
- E) Quality of the process- the mediator should make sure that the parties understand the mediation proceedings before the mediation starts. Mediators have an obligation to acquire and maintain professional skills and ability to uphold the quality of the mediation process.
- F) Agreement to Mediate- the mediator must come up with an agreement between both the parties and he must ensure that both the parties understand the terms and condition of the process. Confidentiality must be maintained in all communications.
- G) The mediator has the right to terminate or suspend the process.
- H) Termination or suspension of mediation- mediator should come up with an agreement which is both impartial or there is no conflict of interest. He shall suspend or terminate the process upon the request of either one of the both parties. He may also suspend the process in case he finds out the either one of the parties are not acting in good faith.

The above points may be considered while giving final form to the bill.





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**Ms. M. GAYATHRI**  
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**Ms. J. SASILIE**  
98842 67075

Date : 27.04.2022

To  
The Parliamentary Standing Committee  
for Personnel,  
Public Grievances, Pension,  
Law & Justice,  
New Delhi.

Respected Sir,

We bring to your kind notice that there was no separate legislation in India until now that was enacted solely for the purpose of mediation. Therefore, the initiative to have a codified law on mediation is a positive step as it will have a beneficial effect in reducing the backlog of cases in the Indian Judicial system to a great extent and shall also provide justice to the people in a timely manner.

However, there are some areas of the Bill that may require clarity which reads as follows:

Firstly, there is no reservation for women Advocates in Mediation Council. The reservation quota for women Advocates is required in the Bill.

Secondly, it is not clear in the Bill as to which entities will be recognized by the Council as mediation service providers, hence clarity on the same is required.

Thirdly, the Bill does not provide any details pertaining to the qualifications or capacities of a trained mediator. It may be mentioned in the Bill.



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.. 2 ..

Fourthly, the provision of a mandatory pre-litigation mediation mechanism could pose a challenge and would defeat the essence of mediation where the parties are unwilling to mediate and would rather prefer to litigate. To avoid this, a choice may be given in the Bill with respect to the consent of the parties to participate in the pre-litigation mediation.

Lastly, the requirement in Section 18 of the Bill that the mediator shall communicate *'the view of each party to the other to the extent agreed to by them'* could give rise to a possible conflict of interest, besides conflicting with the requirement of confidentiality of the mediation process.

Kindly consider our abovesaid requirements in the Bill as much as possible and oblige.

With regards,

Yours faithfully,

**Mrs. LOUISAL RAMESH**  
PRESIDENT







**MEDIATION AND CONCILIATION PROJECT COMMITTEE (MCPC)**

**Mr. Yajuvender Singh,  
Member Secretary, MCPC,  
Supreme Court of India**

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Room No. 127, 1<sup>st</sup> Floor, B-Block,  
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New Delhi-110001.**

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**115 /MCPC/2022**

**Date: 24<sup>th</sup> February, 2022**

To,  
Mr. Goutam Kumar,  
Deputy Secretary,  
Committee Section (PPG),  
Room No. 415, Block - B,  
Parliament Annexe Extension Building,  
New Delhi.

**Sub: Views on the Mediation Bill-2021.**


**Ref: Your mail dated 11<sup>th</sup> February, 2022**

Respected Sir,

With reference to the above captioned subject, as requested please find herewith as enclosure the views/suggestions of the Mediation and Conciliation Project Committee (MCPC), Supreme Court of India on the Mediation Bill-2021.

This is for your kind information.

Regards,

  
Yajuvender Singh  
(Member Secretary)

IEWS/SUGGESTIONS ON THE MEDIATION BILL-2021

Mr. Yajuvender Singh  
Member Secretary, MCPC

Sr. No.	Section / Clause	Text in The Mediation Bill, 2021	Comments & Recommendations
1.	Sec 3 (a)	(a) "commercial dispute" means a dispute defined in clause (c) of sub-section (1) of section 2 of the Commercial Courts Act, 2015;	<p><b>Comments:</b></p> <p>We recommend clarity that this definition be only applicable for domestic commercial disputes as the definition for International Mediation may need to align with United Nations Convention on International Settlement Agreements Resulting from Mediation ("<b>The Singapore Convention</b>").</p>
2.	Sec 3 (f)	(f) "International mediation" means mediation undertaken under this Act and relates to a commercial dispute arising out of a legal relationship, contractual or otherwise, under any law for the time being in force in India, and where at least one of the parties, is— ...	<p><b>Comments:</b></p> <p>This definition in The Mediation Bill, 2021 (the "<b>Bill</b>") will need to be considered in light of Article 1 of The Singapore Convention.</p> <p>The Singapore Convention does not apply to mediated settlement agreements related to disputes arising from transactions engaged in by one of the parties (a consumer) for personal, family or household purposes, and family, inheritance or employment law matters. The definition of international mediation in the Bill may need to be reviewed, after examining the international law implications, from the perspective of enforcement of such mediated settlement agreements.</p>

Sr. No.	Section / Clause	Text in The Mediation Bill, 2021	Comments & Recommendations
3.	Sec 6 (3) (iii)	6 (3) (iii). empaneled by an Authority constituted under the Legal Services Authorities Act, 1987; and	<p><b>Comments:</b></p> <p>We recommend replacing the word “and” with “or”, as requirements are not cumulative in nature.</p> <p><b><u>The recommended text is –</u></b></p> <p>(iii) empaneled by an Authority constituted under the Legal Services Authorities Act, 1987; <b>or</b></p>
4.	Sec 6 (5)	6 (5). The courts and an Authority constituted under the Legal Services Authorities Act, 1987, shall maintain a panel of mediators for the purposes of pre-litigation mediation.	<p><b>Comments:</b></p> <p>We recommend adding the words “<b>and mediation service provider</b>” after “mediators”. This allows for reference to mediators empaneled with private mediation service providers (registered with the council), besides ad-hoc mediators.</p> <p><b><u>The recommended text is –</u></b></p> <p>(5) The courts and an authority constituted under the Legal Services Authorities Act, 1987, shall maintain a panel of mediators and <b>mediation service providers</b> for the purposes of pre-litigation mediation.</p>

Sr. No.	Section / Clause	Text in The Mediation Bill, 2021	Comments & Recommendations
5.	Sec 16 (a)	<p>16 (a). The mediation proceedings with respect to a particular dispute shall be deemed to have commenced—</p> <p>(a) where there is an existing agreement between the parties to settle the dispute through mediation, the day on which a party issues notice to the other party or parties for mediation and settlement of their disputes; or</p>	<p><b>Comments:</b></p> <p>In our view, a time period is to be provided to the responding party to accept the invitation before mediation proceeding is construed to have commenced.</p> <p>We recommend clarity on the time period available after the first point of contact has been made by the inviting party/ies with the responding party/ies for the mediation proceedings to be deemed to have commenced. This is to give the responding party reasonable time to respond to the invitation to mediate.</p> <p>We also recommend replacing the words “issues notice to” with “<b>formally invites</b>” to encourage a collaborative tone at the start of mediation proceedings.</p> <p><b><u>The recommended text is –</u></b></p> <p>(a) where there is an existing agreement between the parties to settle the dispute through mediation, <b>15 days after the inviting party/ies formally invites the responding party/ies</b> for</p>

Sr. No.	Section / Clause	Text in The Mediation Bill, 2021	Comments & Recommendations
6.	Sec 19 (b)	<p>19. Unless otherwise agreed by the parties, -</p> <p>(b) the mediator shall not be presented by the parties as a witness in any arbitral or judicial proceeding.</p>	<p><b>Comments:</b></p> <p>Confidentiality and Privilege are effectively covered under Sections 23 and 24 of the Act.</p> <p>We recommend that Sec 19 (b) be <b>deleted</b> to avoid Mediators being involuntary summoned to court for matters not covered u/s 24 of the Act.</p>
7.	Sec 20 (1)	<p>20 (1). A party may withdraw from mediation at any time after the first two mediation sessions.</p>	<p><b>Comments:</b></p> <p>The protocols followed by private mediation service providers may include initial communication between administrator / case manager and parties / lawyers, which must not be confused with the "first two mediation sessions" with the mediator.</p> <p>We recommend adding the words "with the appointed mediator" at the end Sec 20(1).</p> <p><b>The recommended text is -</b></p> <p>20. (1) A party may withdraw from mediation at any time after the first two mediation sessions, <b>with the appointed mediator.</b></p>

Sr. No.	Section / Clause	Text in The Mediation Bill, 2021	Comments & Recommendations
8.	Sec 20 (2)	20 (2). Where any party fails to attend the first two mediation sessions without any reasonable cause which resulted in the failure of mediation, the court of tribunal, in subsequent litigation on the same subject matter between the parties, may take the said conduct of such party into consideration and impose such costs as deem fit.	<p><b>Comments:</b></p> <p>We recommend a provision for non-starter mediation. By non-starter mediation, we mean mediations that fail to commence, either due to no response from the responding party or due to a negative response (rejection) to the invitation to mediate.</p>
9.	Sec 23 (4)	<p><i>Explanation</i> — For the removal of doubts, it is hereby clarified that nothing contained in this section shall apply to the mediated settlement agreement where its disclosure is necessary for the purpose of registration, implementation, enforcement and challenge</p>	<p><b>Comments:</b></p> <p>Mediated Settlement Agreements for the purpose of registration must be held as confidential to build trust and confidence amongst parties in dispute.</p> <p>We recommend that the word "<b>registration</b>" be deleted.</p> <p><b><u>The recommended text is -</u></b></p> <p><i>Explanation</i> — For the removal of doubts, it is hereby clarified that nothing contained in this section shall apply to the mediated settlement agreement where its disclosure is necessary for the purpose of implementation, enforcement and challenge</p>

Sr. No.	Section / Clause	Text in The Mediation Bill, 2021	Comments & Recommendations
10.	Sec 28 (2)	<p>28 (2). Subject to the provisions of section 29, the mediated settlement agreement shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908, in the same manner as if it were a judgment or decree passed by a court, and may, accordingly, be relied on by any of the parties or persons claiming through them, by way of defence, set off or otherwise in any legal proceeding.</p>	<p><b>Comments:</b></p> <p>The current drafting of Sec 28(2) of the Bill precludes applicability of The Singapore Convention.</p> <p>Section 3(a)(2) of The Singapore Convention states that "This Convention does not apply to Settlement agreements that are enforceable as a judgment in the State of that court".</p> <p>Sec 28 (2) of this Mediation Bill provides that the "mediated settlement agreement shall be enforced ...in the same manner as if it were a judgement or decree passed by a court...."</p> <p>Therefore, with the current drafting of Sec 28(2) of the Bill, the Singapore Convention will not be applicable to mediated settlement agreements reached under the Bill.</p> <p>Inapplicability of The Singapore Convention will greatly impact the conduct of international mediations in India.</p> <p>We recommend amending the language by adding "Provided that settlement agreements arrived at in international mediations would be binding and enforceable under the United Nations Convention on International Settlement Agreements Resulting from Mediation, 2019."</p>


Sr. No.	Section / Clause	Text in The Mediation Bill, 2021	Comments & Recommendations
11.	First Schedule, Entry 7	Disputes which have the effect on rights of a third party who are not a party to the mediation proceedings.	<p><b>Comments:</b></p> <p>The inclusion of this clause will affect conduct of mediation in matrimonial cases where children are involved and in such similar matters</p> <p>We recommend for addition of "except in only matrimonial cases where interest of the child is involved"</p>

**The recommended text is -**  
 Sec 28 (2) Subject to the provisions of section 29, the mediated settlement agreement shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908, in the same manner as if it were a judgment or decree passed by a court, and may, accordingly, be relied on by any of the parties or persons claiming through them, by way of defence, set off or otherwise in any legal proceeding.

**Provided that settlement agreements arrived at in international mediation would be binding and enforceable under the United Nations Convention on International Settlement Agreements Resulting from Mediation, 2019.**



Sr. No.	Section / Clause	Text in The Mediation Bill, 2021	Comments & Recommendations
12.	Tenth Schedule	37. Reference to mediation — The District Commission or State Commission or the National Commission, as the case may be, shall either on an application by the parties, at any stage of proceedings refer the disputes for settlement by mediation under the Mediation Act, 2021.	<p><b>Comments:</b></p> <p>We recommend that the word “<b>or suo moto</b>” be added between “parties” and “at any stage...” as the intent is to give the tribunal an option to take the initiative in referring suitable cases to mediation.</p> <p><b><u>The recommended text is –</u></b></p> <p>Reference to mediation —The District Commission or State Commission or the National Commission, as the case may be, shall either on an application by the parties, <b>or suo moto</b>, at any stage of proceedings refer the disputes for settlement by mediation under the Mediation Act, 2021.</p>

  
 Mr. Yajuvender Singh  
 Member Secretary,  
 Mediation and Conciliation Project Committee (MCPC),  
 Supreme Court of India

	HEADINGS	SECTION	CONTENTS OF MEDIATION BILL 2021	PROPOSED SUGGESTIONS BY SAMADHAN TO THE VARIOUS PROVISIONS OF THE MEDIATION BILL 2021
<b>INTRODUCTION</b>				
			<p>An Act to promote and facilitate mediation, especially institutional mediation, for resolution of disputes, commercial or otherwise, enforce mediated settlement agreements, provide for a body for registration of mediators, to encourage community mediation and to make online mediation as acceptable and cost effective process and for matters connected therewith or incidental thereto.</p> <p>Be it enacted by Parliament in the Seventy-second Year of the Republic of India as follows:—</p>	<p>An Act to promote and facilitate mediation, especially institutional mediation, for resolution of disputes, commercial or otherwise, enforce mediated settlement agreements, provide for a body for registration of mediators, to encourage community mediation and to make online mediation as acceptable and cost effective process and for matters connected therewith or incidental thereto.</p> <p>Be it enacted by Parliament in the Seventy-second Year of the Republic of India as follows:—</p>
<b>CHAPTER I :PRELIMINARY</b>				
		<b>1</b>	<p><b>Short title, extent and commencement.</b></p> <p>(1) This Act may be called the Mediation Act, 2021.</p> <p>(2) It shall extend to the whole of India.</p>	<p><b>Short title, extent and commencement.</b></p> <p>(1) This Act may be called the Mediation Act, 2021.</p> <p>(2) It shall extend to the whole of India.</p>

			(3) It shall come into force on such date as the Central Government may, by notification, appoint and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.	(3) It shall come into force on such date as the Central Government may, by notification, appoint and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.
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**CHAPTER II : APPLICATION/ GENERAL PROVISIONS**

	<b>Application</b>	<b>2</b>	<p><b>2. (1)</b> Subject to sub-section (2), this Act shall apply where mediation is conducted in India, and—</p> <p>(i) <b>all or both</b> parties <b>habitually reside</b> in or are incorporated in or have their <b>place of business</b> in India; or</p> <p>(ii) the mediation agreement provides that any dispute shall be resolved in accordance with the provisions of this Act; or</p> <p>(iii) there is an <b>international mediation</b>.</p> <p>(2) The provisions of sub-section (1) shall <b>not</b> apply wherein one of the parties to the dispute is the Central Government or a State Government, or agencies, public bodies, corporations and local bodies, including entities controlled or owned by such Government, <b>except where the matter pertains to a commercial dispute:</b></p>	<p><b>2. (1)</b> Subject to sub-section (2), this Act shall apply where mediation is conducted in India, and—</p> <p>(i) <b>Any, both or all the</b> parties are residence or domiciled in or are incorporated in or have their <b>place of business</b> in India; or</p> <p>(ii) the mediation agreement provides that any dispute shall be resolved in accordance with the provisions of this Act; or</p> <p>(2) The provisions of sub-section (1) shall <b>also</b> apply wherein one of the parties to the dispute is the Central Government or a State Government, or agencies, public bodies, corporations and local bodies, including entities controlled or owned by such Government.</p>
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			<p>Provided that nothing shall prevent the Central Government or a State Government from notifying, such kind of dispute, as it deems appropriate for such Government, for resolution through mediation under this Act, wherein such Government, or agencies, public bodies, corporations and local bodies including entities controlled or owned by them, is a party.</p>	<p>Provided that nothing shall prevent the Central Government or a State Government from notifying, such kind of dispute, as it deems appropriate for such Government, <b>which are not fit</b> for resolution through mediation under this Act, wherein such Government, or agencies, public bodies, corporations and local bodies including entities controlled or owned by them, is a party.</p>
	Definitions	3	<p><b>3.</b> In this Act, unless the context otherwise requires,—</p> <p>(a) "commercial dispute" means a dispute defined in clause (c) of sub-section (1) of section 2 of the Commercial Courts Act, 2015;</p> <p>(b) "Council" means the Mediation Council of India established under section 33;</p> <p>(c) "court" means <b>the principal civil court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction,</b> having jurisdiction to decide the disputes forming the subject matter of mediation, if the same had been the subject matter of a suit or proceeding;</p> <p><i>Explanation.</i>—In a commercial dispute of a Specified Value as defined in the clause (i) of sub-section (1) of section 2 of the Commercial Courts Act, 2015, the court of competent jurisdiction shall be the</p>	<p><b>3.</b> In this Part, unless the context otherwise requires,—</p> <p>(a) "commercial dispute" means a dispute defined in clause (c) of sub-section (1) of section 2 of the Commercial Courts Act, 2015;</p> <p>(b) "Council" means the Mediation Council of India established under section 33;</p> <p>(c) "court" means the civil or criminal court of original or appellate jurisdiction, having jurisdiction to decide the disputes forming the subject matter of mediation, if the same had been the subject matter of a suit or proceeding;</p> <p><i>Explanation.</i>—In a commercial dispute of a Specified Value as defined in the clause (i) of sub-section (1) of section 2 of the Commercial Courts Act, 2015, the court of competent jurisdiction shall be the Commercial Court referred to in Chapter II of the said Act;</p> <p>(d) "court annexed</p>

		<p>Commercial Courts referred to in Chapter II of the said Act;</p> <p>(d) "court annexed mediation" means mediation including pre-litigation mediation conducted at the mediation centres established by any court or tribunal;</p> <p>(e) "institutional mediation" means mediation conducted under the aegis of a mediation service provider;</p> <p>(f) "international mediation" means mediation undertaken under this Act and relates to a <b>commercial</b> dispute arising out of a legal relationship, contractual or otherwise, under any law for the time being in force in India, and where at least one of the parties, is—</p> <p>(i) an individual who is a national of, or <b>habitually</b> resides in, any country other than India; or</p> <p>(ii) a body corporate including a Limited Liability Partnership of any nature, with its place of business outside India; or</p> <p>(iii) an association or body of individuals whose place of business is outside India; or</p> <p>(iv) the Government of a foreign country;</p> <p>(g) "mediation" means mediation referred to in section 4;</p> <p>(h) "mediator" means a person who is appointed to be a mediator to undertake mediation, and includes a person registered as mediator</p>	<p>mediation" means mediation including pre-litigation mediation conducted at the mediation centres established by any court or tribunal;</p> <p>(e) "institutional mediation" means mediation conducted under the aegis of a mediation service provider;</p> <p>(f) "international mediation" means mediation undertaken under this Act and relates to a dispute arising out of a legal relationship, contractual or otherwise, under any law for the time being in force in India, and where at least one of the parties, is—</p> <p>(i) an individual who is a national of, or domiciled resides in, any country other than India; or</p> <p>(ii) a body corporate including a Limited Liability Partnership of any nature, with its place of business outside India; or</p> <p>(iii) an association or body of individuals whose place of business is outside India; or</p> <p>(iv) the Government of a foreign country;</p> <p>(g) "mediation" means mediation referred to in section 4;</p> <p>(h) "mediator" means a person who is appointed to be a mediator to undertake mediation, and includes a person registered as mediator with the Council.</p> <p><i>Explanation.</i>—Where more than one mediator is appointed for a mediation, reference to a mediator under</p>
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		<p>with the Council.</p> <p><i>Explanation.</i>—Where more than one mediator is appointed for a mediation, reference to a mediator under this Act shall be a reference to all the mediators;</p> <p>(i) "mediation agreement" means a mediation agreement referred to in sub-section (I) of section 5;</p> <p>(j) "mediation communication" means communication made, whether in electronic form or otherwise, through—</p> <p>(i) anything said or done;</p> <p>(ii) any document; or</p> <p>(iii) any information provided,</p> <p>for the purposes of, or in relation to, or in the course of mediation, and includes a mediation agreement or a mediated settlement agreement;</p> <p>(k) "mediation institute" means a body or organisation that provides training, continuous education and certification of mediators and carries out such other functions under this Act;</p> <p>(l) "mediation service provider" means a body or organisation that provides for the conduct of <b>mediation under this Act and rules and regulations made thereunder, and are recognised by the Council;</b></p> <p><i>Explanation</i> I.—For the purposes of this clause, mediation service provider includes an Authority constituted under the Legal</p>	<p>this Act shall be a reference to all the mediators;</p> <p>(i) "mediation agreement" means a mediation agreement referred to in sub-section (I) of section 5;</p> <p>(j) "mediation communication" means communication made, whether in electronic form or otherwise, through—</p> <p>(i) anything said or done;</p> <p>(ii) any document; or</p> <p>(iii) any information provided,</p> <p>for the purposes of, or in relation to, or in the course of mediation, and includes a mediation agreement or a mediated settlement agreement;</p> <p>(k) "mediation institute" means a body or organisation that provides training, continuous education and certification of mediators and carries out such other functions under this Act;</p> <p>(l) "mediation service provider" means a body or organisation that provides for the conduct of mediation by the Mediator Certified by Mediation Council</p> <p><i>Explanation</i> I.—For the purposes of this clause, mediation service provider includes an Authority constituted under the Legal Services Authorities Act, 1987, or mediation centre annexed to a court, tribunal or such other forum as may be specified.</p> <p><i>Explanation</i> II.—An Authority constituted under</p>
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Services Authorities Act, 1987, or mediation centre annexed to a court, tribunal or such other forum as may be specified.

*Explanation* II.—An Authority constituted under the Legal Services Authorities Act, 1987, or mediation centre annexed to a court or tribunal or such other forum shall be deemed to be a mediation service provider recognised by the Council;

(m) "mediated settlement agreement" means settlement agreement referred to in sub-section (1) of section 22;

(n) "notification" means notification published in the Official Gazette and the expression "notified" with its cognate meanings and grammatical variations shall be construed accordingly;

(o) "online mediation" means online mediation referred to in section 32;

(p) "participants" means persons other than the parties who participate in the mediation and includes advisers, advocates, consultants and any technical experts and observers;

(q) "party" means a party to a mediation agreement or mediation proceeding whose agreement or consent is necessary to resolve the dispute and includes their successors;

(r) "pre-litigation mediation" means a process of undertaking mediation, as provided under section 6, for settlement of disputes prior to

the Legal Services Authorities Act, 1987, or mediation centre annexed to a court or tribunal or such other forum shall be deemed to be a mediation service provider recognised by the Council;

(m) "mediated settlement agreement" means settlement agreement referred to in sub-section (1) of section 22;

(n) "notification" means notification published in the Official Gazette and the expression "notified" with its cognate meanings and grammatical variations shall be construed accordingly;

(o) "online mediation" means online mediation referred to in section 32;

(p) "participants" means persons other than the parties who participate in the mediation and includes family members, advisers, advocates, consultants and any technical experts and observers;

(q) "party" means a party to a mediation agreement or mediation proceeding whose agreement or consent is necessary to resolve the dispute and includes their successors;

(r) "pre-litigation mediation" means a process of undertaking mediation, as provided under section 6, for settlement of disputes prior to the filing of a suit or proceeding of civil, matrimonial, commercial or criminal nature in respect thereof, before a court, authority or notified tribunal under sub-section (2) of

			<p>the filing of a suit or proceeding of <b>civil or commercial</b> nature in respect thereof, before a <b>court or notified tribunal</b> under sub-section (2) of section 6;</p> <p>(s) "prescribed" means prescribed by rules made by the Central Government under this Act;</p> <p>(t) "Schedule" means the Schedule annexed to this Act;</p> <p>(u) "secure electronic signature" with reference to online mediation means, electronic signatures referred to in section 15 of the Information Technology Act, 2000; and</p> <p>(v) "specified" means specified by regulations made by the Council under this Act.</p>	<p>section 6;</p> <p>(s) "prescribed" means prescribed by rules made by the Central Government under this Act;</p> <p>(t) "Schedule" means the Schedule annexed to this Act;</p> <p>(u) "secure electronic signature" with reference to online mediation means, electronic signatures referred to in section 15 of the Information Technology Act, 2000; and</p> <p>(v) "specified" means specified by regulations made by the Council under this Act.</p>
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### CHAPTER III : MEDIATION

Mediation	<b>4</b>	<p><b>4.</b> Mediation shall be a <b>process</b>, whether referred to by the expression mediation, pre-litigation mediation, online mediation, community mediation, <b>conciliation</b> or an expression of similar import, whereby party or parties, <b>request</b> a third person referred to as mediator or mediation service provider to <b>assist</b> them in their <b>attempt</b> to reach an amicable settlement of a dispute.</p>	<p><b>4.</b> Mediation shall be a <b>voluntary</b> process, whether referred to by the expression mediation, pre-litigation mediation, online mediation, community mediation, or an expression of similar import, whereby party or parties are facilitated by a third person referred to as mediator or mediation service provider to facilitate them in their endeavour to reach an amicable settlement of a dispute.</p>
Mediation agreement.	<b>5</b>	<p>5. (1) A mediation agreement shall be in writing, by or between parties and anyone claiming through them, to submit to mediation all or certain disputes which have</p>	<p>5. (1) A mediation agreement shall be in writing, by or between parties and anyone claiming through them, to submit to mediation all or certain disputes which have</p>



			<p>arisen or which may arise between the parties.</p> <p>(2) A mediation agreement may be in the form of a mediation clause in a contract or in the form of a separate agreement. (3) A mediation agreement is in writing, if it is contained in or recorded as—</p> <p>(a) any document signed by the parties;</p> <p>(b) an exchange of communications or letters including through electronic form as provided under the Information Technology Act, 2000;</p> <p>(c) any pleadings in a suit or any other proceedings in which existence of mediation agreement is alleged by one party and not denied by the other.</p> <p>(4) A reference in any agreement containing a mediation clause shall constitute a mediation agreement if the agreement is in writing and the reference is such as to make the mediation clause as part of the agreement.</p> <p>(5) The parties may agree to submit to mediation any dispute arising between them under an agreement, whether entered prior to arising of the dispute or subsequent thereto.</p> <p>(6) A mediation agreement in case of international mediation shall refer to an agreement for resolution in matters of <b>commercial disputes referred to in clause (a) of section 3</b></p>	<p>arisen or which may arise between the parties.</p> <p>(2) A mediation agreement may be in the form of a mediation clause in a contract or in the form of a separate agreement. (3) A mediation agreement is in writing, if it is contained in or recorded as—</p> <p>(a) any document signed by the parties;</p> <p>(b) an exchange of communications or letters including through electronic form as provided under the Information Technology Act, 2000;</p> <p>(c) any pleadings in a suit or any other proceedings in which existence of mediation agreement is alleged by one party and not denied by the other.</p> <p>(4) A reference in any agreement containing a mediation clause shall constitute a mediation agreement if the agreement is in writing and the reference is such as to make the mediation clause as part of the agreement.</p> <p>(5) The parties may agree to submit to mediation any dispute arising between them under an agreement, whether entered prior to arising of the dispute or subsequent thereto.</p> <p>(6) A mediation agreement in case of international mediation shall refer to an agreement for resolution in matters of any dispute referred to in clause (f) of section 3.</p>
	Pre-litigation	<b>6</b>	<b>6.</b> (1) Subject to other provisions of this Act,	<b>6.</b> (1) Subject to other provisions of this Act,

<p>mediation.</p>		<p>whether any mediation agreement exists or not, any party before filing any suit or proceedings of <b>civilor commercial</b> nature in any court, shall take steps to settle the disputes by pre-litigation mediation in accordance with the provisions of this Act:</p> <p>Provided that pre-litigation mediation in matters of commercial disputes of Specified Value shall be undertaken in accordance with the provisions of section 12A of the Commercial Courts Act, 2015, and the rules made thereunder.</p> <p>(2) The provisions, of sub-section (1) shall be applicable to the tribunals notified by the Central Government or a State Government, as the case may be.</p> <p>(3) For the purposes, of sub-sections (1) and (2), unless otherwise agreed upon by the parties, a mediator,—</p> <p>(i) registered with the Council;</p> <p>(ii) empanelled by a court annexed mediation centre;</p> <p>(iii) empanelled by an Authority constituted under the Legal Services Authorities Act, 1987; and</p> <p>(iv) empanelled by a mediation service provider recognised under this Act, shall conduct pre-litigation mediation.</p> <p>(4) For conducting pre-litigation mediation under clauses (ii) and (iii) of sub-section (3), a party may request <b>any person</b> designated for this purpose by</p>	<p>whether any mediation agreement exists or not, any party before filing any suit or proceedings of civil, matrimonial commercial or criminal nature or any matter amenable to mediation in any court, shall take steps to settle the disputes by pre-litigation mediation in accordance with the provisions of this Act:</p> <p>Provided that pre-litigation mediation in matters of commercial disputes of Specified Value shall be undertaken in accordance with the provisions of section 12A of the Commercial Courts Act, 2015, and the rules made thereunder.</p> <p>(2) The provisions, of sub-section (1) shall be applicable to the tribunals notified by the Central Government or a State Government, as the case may be.</p> <p>(3) For the purposes, of sub-sections (1) and (2), unless otherwise agreed upon by the parties, a mediator, who is :</p> <p>(i) registered with the Council; or</p> <p>(ii) empanelled by a court annexed mediation centre; or</p> <p>(iii) empanelled by an Authority constituted under the Legal Services Authorities Act, 1987; or</p> <p>(iv) empanelled by a mediation service provider recognised under this Act, shall conduct pre-litigation mediation.</p> <p>(4) For conducting pre-litigation mediation under clauses (ii) and (iii) of sub-</p>
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			<p>the <b>High Courts</b>, or an Authority constituted under the Legal Services Authorities Act, 1987, as the case may be.</p> <p>(5) The courts and an Authority constituted under the Legal Services Authorities Act, 1987, shall maintain a panel of mediators for the purposes of pre-litigation mediation.</p> <p>(6) <b>Notwithstanding anything contained in sub-sections (1) and (2) and the Motor Vehicles Act, 1988</b>, when an application for compensation arising out of an accident is made before the Claims Tribunal, if the settlement as provided for in section 149 of that Act is not arrived at between the parties, the Claims Tribunal shall refer the parties for mediation to a mediator or mediation service provider under this Act.</p> <p>(7) Where the parties arrive at a settlement agreement under sub-section (6), it shall be placed before the Claims Tribunal for its consideration.</p> <p>(8) If the parties do not reach to settlement agreement under sub-section (6), a <b>failure</b> report prepared by the mediator shall be forwarded to the Claims Tribunal, which has referred the matter for mediation, for adjudication.</p>	<p>section (3), a party may request any person / coordinator designated for this purpose by the Court, or an Authority constituted under the Legal Services Authorities Act, 1987, as the case may be.</p> <p>(5) The courts and an Authority constituted under the Legal Services Authorities Act, 1987, shall maintain a panel of mediators for the purposes of pre-litigation mediation.</p> <p>Provided that when an application for compensation arising out of an accident is made before the Claims Tribunal under the Motor Vehicles Act, 1996, if the settlement as provided for in section 149 of that Act is not arrived at between the parties, the Claims Tribunal may in appropriate cases shall refer the parties for mediation to a mediator or mediation service provider under this Act.</p> <p>(7) Where the parties arrive at a settlement agreement under sub-section (6), it shall be placed before the Claims Tribunal for its consideration.</p> <p>(8) If the parties do not reach to settlement agreement under sub-section (6), Non Settlement report prepared by the mediator shall be forwarded to the Claims Tribunal, which has referred the matter for mediation, for adjudication.</p>
	Disputes ormattersnotfitformeditation	7	7. (1) A mediation under this Act shall not be conducted for resolution of any dispute or matter contained in the indicative list under the First	7. If the Central Government is satisfied that it is necessary or expedient so to do, it may, by notification, exclude any

			<p>Schedule:</p> <p>Provided that nothing contained herein shall prevent any court, if deemed appropriate, from referring any dispute to mediation relating to compoundable offences or matrimonial offences connected with or arising out of civil proceedings between the parties:</p> <p>Provided further that the outcome of such mediation shall not be deemed to be a judgement or decree of court referred to in sub-section (2) of section 28, and shall be further considered by the court in accordance with the law for the time being in force.</p> <p>(2) If the Central Government is satisfied that it is necessary or expedient so to do, it may, by notification, amend the First Schedule.</p>	<p>dispute from the preview of this Act.</p> <p>(Rest all can be deleted)</p>
	Interim relief by court or tribunal.	<b>8</b>	<p><b>8.</b> (1) If <b>exceptional circumstances</b> exist, a party may, before the commencement of, or during the continuation of, mediation proceedings under this Act, file suit or appropriate proceedings before a court or tribunal having competent jurisdiction for seeking urgent interim relief.</p> <p>(2) The court or tribunal shall after granting or rejecting urgent interim relief, as the case may be, refer the parties to undertake mediation to resolve the dispute, if deemed appropriate.</p>	<p><b>8.</b> (1) A party may, before the commencement of, or during the continuation of, mediation proceedings under this Act, file suit or appropriate proceedings before a court or tribunal having competent jurisdiction for seeking urgent interim relief.</p> <p>(2) The court or tribunal shall after granting or rejecting urgent interim relief, as the case may be, refer the parties to undertake mediation to resolve the dispute, if deemed appropriate.</p>
	Power of court or tribunal to refer parties to mediation.	<b>9</b>	<p><b>9.</b> (1) Notwithstanding the <b>failure</b> to reach any settlement <b>under sub-section</b></p>	<p><b>9.</b> (1) Notwithstanding the inability to reach any settlement under section 6,</p>

			<p><b>(1) of section 6</b>, the court or tribunal may, at any stage of proceeding, refer the parties to undertake mediation, if a request to this effect is made by them.</p> <p>(2) If the court or tribunal refers the parties to <b>undertake</b> mediation, it may pass suitable interim order to protect the interest of any party if <b>deemed</b> appropriate.</p> <p>(3) The parties shall not be under <b>obligation</b> to come to a settlement in the mediation pursuant to a reference under sub-section (1).</p>	<p>the court,tribunal or authority may, at any stage of proceedings, on the request of any or all the parties or if there is any element of settlement refer the parties to undertake mediation.</p> <p>(2) If the court or tribunal refers the parties to mediation, it may pass suitable interim order to protect the interest of any party in appropriate cases if deemed appropriate.</p> <p>(3) The parties shall not be under an obligation to come to a settlement in the mediation pursuant to a reference under sub-section (1).</p>
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**CHAPTER IV : MEDIATORS**

Appointment of mediators	<b>10</b>	<p><b>10.</b> (1) Unless otherwise agreed upon by the parties, a person of any nationality maybe appointed as a mediator:</p> <p>Provided that mediator of any foreign nationality shall possess such qualification, experience and accreditation as may be specified.</p> <p>(2) The parties shall be free to agree upon the name of mediator and the procedure for <b>their</b> appointment.</p> <p>(3) If the parties do not reach any agreement on a matter referred to in sub-section (2), then the party seeking initiation of mediation shall make an application to a mediation service provider for the appointment of a mediator.</p>	<p><b>10.</b> (1) Unless otherwise agreed upon by the parties, a person of any nationality maybe appointed as a mediator:</p> <p>Provided that mediator of any foreign nationality shall possess such qualification, experience and accreditation as may be specified.</p> <p>(2) The parties shall be free to agree upon the name of mediator and the procedure for the appointment.</p> <p>(3) If the parties do not reach any agreement on a matter referred to in sub-section (2), then the party seeking initiation of mediation shall make an application to a mediation service provider for the appointment of a mediator.</p>
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			<p>(4) Upon receiving an application under sub-section (3), the mediation service provider shall, within a period of <b>seven days</b>, appoint,—</p> <p>(i) the mediator as agreed by the parties; or</p> <p>(ii) in case the parties are unable to reach agreement as to the appointment of mediator or mediator agreed by them refuses to act as mediator, a mediator from the panel maintained by it, with his consent.</p> <p>(5) The person appointed under clause (i) of sub-section (4) shall communicate his willingness or otherwise within a period of seven days from the date of receipt of communication of such appointment.</p>	<p>(4) Upon receiving an application under sub-section (3), the mediation service provider shall, within a period of <b>seven days</b>, appoint,—</p> <p>(i) the mediator as agreed by the parties; or</p> <p>(ii) in case the parties are unable to reach agreement as to the appointment of mediator or mediator agreed by them refuses to act as mediator, a mediator from the panel maintained by it, with his consent.</p> <p>(5) The person appointed under clause (i) of sub-section (4) shall communicate his willingness or otherwise within a period of seven days from the date of receipt of communication of such appointment.</p>
	Preference of parties.	<b>11</b>	<p><b>11.</b> The mediation service provider shall, while appointing any person from the panel of mediators maintained by it, consider his suitability and the preference of the parties for resolving the dispute.</p>	<p><b>11.</b> The mediation service provider shall, while appointing any person from the panel of mediators maintained by it, consider his suitability and the preference of the parties for resolving the dispute.</p>
	Conflict of interest and disclosure.	<b>12</b>	<p><b>12.</b> (1) The person appointed as a mediator shall, prior to the conduct of mediation, disclose in writing to the parties regarding any circumstance or potential circumstance, personal, professional, financial, or otherwise, that may constitute any conflict of interest or that is likely to give rise to justifiable doubts as to his independence or impartiality as a mediator.</p> <p>(2) During the mediation, the mediator shall, without delay, disclose to the parties in</p>	<p><b>12.</b> (1) The person appointed as a mediator shall, prior to the conduct of mediation, disclose in writing to the parties <b>and the mediation service provider</b> regarding any circumstance or potential circumstance, personal, professional, financial, or otherwise, that may constitute any conflict of interest or that is likely to give rise to justifiable doubts as to his independence or impartiality as a mediator.</p> <p>(2) During the mediation, the mediator shall, without delay,</p>

			<p>writing any conflict of interest, referred to in sub-section (1), that has newly arisen or has come to his knowledge.</p> <p>(3) Upon disclosure under sub-section (1) or sub-section (2), the parties shall have the option to waive any objection if all of them express in writing, which shall be construed as the consent of parties.</p> <p>(4) Upon disclosure under sub-section (1) or sub-section (2), if either party desires to replace the mediator, then, in case of—</p> <p>(i) institutional mediation, such party shall apply to the mediation service provider for termination of the mandate of mediator;</p> <p>(ii) mediation other than institutional mediation, such party shall terminate the mandate of mediator.</p>	<p>disclose to the parties in writing any conflict of interest, referred to in sub-section (1), that has newly arisen or has come to his knowledge.</p> <p>(3) Upon disclosure under sub-section (1) or sub-section (2), the parties shall have the option to waive any objection if all of them express in writing, which shall be construed as the consent of parties.</p> <p>(4) Upon disclosure under sub-section (1) or sub-section (2), if either party desires to replace the mediator, then, in case of—</p> <p>(i) institutional mediation, such party shall apply to the mediation service provider for termination of the mandate of mediator;</p> <p>(ii) mediation other than institutional mediation, such party shall terminate the mandate of mediator.</p>
	<p>Termination of mandate of mediator.</p>	<p><b>13</b></p>	<p><b>13.</b> A mediation service provider may terminate the mandate of a mediator upon—</p> <p>(i) the receipt of application from a party under clause (i) of sub-section (4) of section 12; or</p> <p>(ii) the receipt of information about the mediator being involved in a matter of conflict of interest from participants or any other person; or</p> <p>(iii) his withdrawal from mediation for any reason:</p> <p>Provided that termination under clause (ii) shall be</p>	<p><b>13.</b> A mediation service provider may terminate the mandate of a mediator upon—</p> <p>(i) the receipt of application from a party under clause (i) of sub-section (4) of section 12; or</p> <p>(ii) the receipt of information about the mediator being involved in a matter of conflict of interest from participants or any other person; or</p> <p>(iii) his withdrawal from mediation for any reason:</p> <p>Provided that termination under clause (ii) shall be</p>

			effected if, after giving a hearing to the mediator, mediation service provider finds that there is justifiable doubt as to the independence or impartiality of the mediator and that the same has been brought to the notice of parties and that they desire to replace the mediator.	effected if, after giving a hearing to the mediator, mediation service provider finds that there is justifiable doubt as to the independence or impartiality of the mediator and that the same has been brought to the notice of parties and that they desire to replace the mediator.
	Replacement of mediator.	<b>14</b>	<p><b>14.</b> Upon termination of the mandate of mediator—</p> <p>(i) in case of mediation other than institutional mediation under clause (ii) of subsection (4) of section 12, the parties may, appoint another mediator within a period of seven days from such termination; and</p> <p>(ii) under section 13, the mediation service provider shall appoint another mediator from the panel maintained by it within a period of seven days from such termination.</p>	<p><b>14.</b> Upon termination of the mandate of mediator—</p> <p>(i) in case of mediation other than institutional mediation under clause (ii) of subsection (4) of section 12, the parties may, appoint another mediator within a period of seven days from such termination; and</p> <p>(ii) under section 13, the mediation service provider shall appoint another mediator from the panel maintained by it within a period of seven days from such termination.</p>

**CHAPTER V : CONDUCT OF MEDIATION PROCEEDINGS**

	Territorial jurisdiction outside mediation.	<b>15</b>	<p><b>15.</b> Every mediation under this Act shall be undertaken within the territorial jurisdiction of the court or tribunal of competent jurisdiction to decide the subject matter of dispute:</p> <p>Provided that <b>on</b> the mutual consent of the parties, mediation may be conducted at any place outside the territorial jurisdiction of the court or tribunal, or by way of online mediation.</p> <p>Explanation.—<b>For the removal of doubts, it is</b></p>	<p><b>15.</b> Every mediation under this Act shall be undertaken within the territorial jurisdiction of the court or tribunal of competent jurisdiction to decide the subject matter of dispute:</p> <p>Provided that with the mutual consent of the parties, mediation may be conducted at any place outside the territorial jurisdiction of the court or tribunal, or by way of online mediation.</p> <p>Explanation.— Where the parties agree to conduct the</p>
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			<p><b>clarified that</b> where the parties agree to conduct the mediation at any place outside the territorial jurisdiction or online, for the purpose of enforcement challenge <b>and registration</b> of the mediated settlement agreement, the same shall be deemed to have been undertaken within the territorial jurisdiction of the court or tribunal of competent jurisdiction.</p>	<p>mediation at any place outside the territorial jurisdiction or online, for the purpose of enforcement or to challenge the mediated settlement agreement, the same shall be deemed to have been undertaken within the territorial jurisdiction of the court, authority or tribunal of competent jurisdiction.</p>
	Commencement of mediation.	<b>16</b>	<p><b>16.</b> The mediation proceedings with respect to a particular dispute shall be deemed to have commenced—</p> <p>(a) where there is an existing agreement between the parties to settle the dispute through mediation, the day on which <b>a party issues notice to the other party or parties</b> for mediation and settlement of their disputes; or</p> <p>(b) in other cases—</p> <p>(i) on the day the parties <b>have agreed to appoint</b> a mediator of their choice for mediation and settlement of disputes between them; or</p> <p>(ii) on the day when one of the parties applies to a mediation service provider for settlement of disputes through mediation by appointment of a mediator.</p>	<p><b>16.</b> The mediation proceedings with respect to a particular dispute shall be deemed to have commenced—</p> <p>(a) where there is an existing agreement between the parties to settle the dispute through mediation, the day on which <b>both the parties first meet</b> for mediation and settlement of their disputes; or</p> <p>(b) in other cases—</p> <p>(i) on the day the parties <b>meet</b> a mediator of their choice for mediation and settlement of disputes between them; or</p> <p>(ii) on the day when one of the parties applies to a mediation service provider for settlement of disputes through mediation by appointment of a mediator.</p>
	Conduct of mediation.	<b>17</b>	<p><b>17. (1)</b> The mediator shall assist the parties in an independent, neutral and impartial manner in their <b>attempt</b> to reach an amicable settlement of their dispute.</p> <p>(2) The mediator shall at all</p>	<p><b>17. (1)</b> The mediator shall assist the parties in an independent, neutral and impartial manner in their endeavour to reach an amicable settlement of their dispute.</p>

			<p>times be guided by the principles of objectivity and <b>fairness and protect the voluntariness, confidentiality, and self-determination of the parties, and the standards for professional and ethical conduct as may be specified.</b></p> <p>(3) The mediation process may include the mediator taking such measures as may be considered appropriate, taking into account the circumstances of the case, including meeting with parties or participants, jointly or separately, as frequently as deemed fit by the mediator, both in order to convene the mediation, and during the mediation for the orderly and timely conduct of the process and to maintain its integrity.</p> <p>(4) The mediator shall not be bound by the <b>Code</b> of Civil Procedure, 1908, or the Indian Evidence Act, 1872.</p> <p>(5) The mediator with the consent of the parties shall determine the language or languages to be used in the mediation process</p>	<p>(2) The mediator shall at all times be guided by the principles of objectivity and fairness; follow the standards and ethical conduct as may be specified; protect the voluntariness, confidentiality, and self-determination of the parties</p> <p>(3) The mediation process may include the mediator taking such measures as may be considered appropriate, taking into account the circumstances of the case, including meeting with parties or participants, jointly or separately, as frequently as deemed fit by the mediator, both in order to convene the mediation, and during the mediation for the orderly and timely conduct of the process and to maintain its integrity.</p> <p>(4) The mediator shall not be bound by the procedure of Civil Procedure, 1908, or the Indian Evidence Act, 1872 while conducting mediation.</p> <p>(5) The mediator with the consent of the parties shall determine the language or languages to be used in the mediation process</p>
	Role of Mediator.	<b>18</b>	<b>18.</b> (1) The mediator shall attempt to facilitate voluntary resolution of the dispute by the parties and communicate the view of each party to the other to the extent agreed to by them, assist them in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of <b>compromise</b> and generating options in an <b>attempt</b> to	<b>18.</b> (1) The mediator shall attempt to facilitate voluntary resolution of the dispute by the parties and communicate the view of each party to the other to the extent agreed to by them, assist them in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of settlement and generating options in an endeavour to

			<p>resolve the dispute expeditiously, emphasising that it is the responsibility of the parties to take decision regarding their claims.</p> <p>(2) The parties shall be informed expressly by the mediator that he only facilitates in arriving at a decision to resolve a dispute and that he may not impose any settlement nor give any assurance that the mediation may result in a settlement.</p>	<p>resolve the dispute expeditiously, emphasising that it is the responsibility of the parties to take decision regarding their claims.</p> <p>(2) The parties shall be informed expressly by the mediator that he only facilitates in arriving at a decision to resolve a dispute and that he may not impose any settlement nor give any assurance that the mediation may result in a settlement.</p>
	Role of mediator in Other proceedings.	<b>19</b>	<p><b>19.</b> Unless otherwise agreed by the parties,—</p> <p>(a) the mediator shall not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceeding in respect of a dispute that is the subject matter of the mediation proceedings;</p> <p>(b) the mediator shall not be presented by the parties as a witness in any <b>arbitrator judicial proceedings.</b></p>	<p>Unless otherwise agreed by the parties,—</p> <p>(a) the mediator shall not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceeding in respect of a dispute that is the subject matter of the mediation proceedings;</p> <p>(b) the mediator shall not be presented by the parties as a witness in any arbitration or judicial proceedings.</p>
	Withdrawal by parties from mediation.	<b>20</b>	<p><b>20.</b> (1) A party may withdraw from mediation at any time after the first two mediation sessions.</p> <p>(2) Where any party fails to attend the first two mediation sessions without any reasonable cause which <b>resulted</b> in the failure of mediation, the court or tribunal, in subsequent litigation on the same subject matter between the parties, may take the <b>said</b> conduct of such party into consideration and impose such costs as</p>	<p>(1) A party may withdraw from mediation at any time after the first two mediation sessions.</p> <p>(2) Where any party fails to attend the first two mediation sessions without any reasonable cause which results in the failure of mediation, the court or tribunal, in subsequent litigation on the same subject matter between the parties, may take the conduct of such party into consideration and impose such costs as deems</p>

			deems fit.	fit.
	Time-limit for completion of mediation.	21	<p><b>21.</b> (1) Notwithstanding anything contained in any other law for the time being in force, mediation under this Act shall be completed within a period of one hundred and eighty days from the date fixed for the first appearance before the mediator.</p> <p>(2) The period for mediation mentioned under sub-section (1) may be <b>extended for a further period</b> as agreed by the parties, but not exceeding one hundred and eighty days.</p>	<p>(1) Notwithstanding anything contained in any other law for the time being in force, mediation under this Act shall be completed within a period of one hundred and eighty days from the date fixed for the first appearance before the mediator.</p> <p>(2) The period for mediation mentioned under sub-section (1) may be extended further for a period as agreed by the parties, but not exceeding one hundred and eighty days.</p>
	Mediated Settlement Agreement.	22	<p><b>22.</b> (1) A mediated settlement agreement means and includes an agreement in writing between some or all of the <b>parties resulting from mediation</b>, settling some or all of the disputes between such parties, and <b>authenticated</b> by the mediator;</p> <p>Provided that the terms of the mediated settlement agreement may extend beyond the disputes referred to mediation.</p> <p><i>Explanation.</i>—A mediated settlement agreement which is void under the Indian Contract Act, 1872, shall not be deemed to be lawful settlement agreement within the meaning of mediated settlement agreement.</p> <p>(2) Where a mediated</p>	<p><b>22.</b> (1) A mediated settlement agreement means and includes an agreement in writing between some or all of the parties as a result of mediation settling some or all of the disputes between such parties, and <b>authenticated</b> by the mediator;</p> <p>Provided that the terms of the mediated settlement agreement may extend beyond the disputes referred to mediation.</p> <p><i>Explanation.</i>—A mediated settlement agreement which is void under the Indian Contract Act, 1872, shall not be deemed to be lawful settlement agreement within the meaning of mediated</p>

			<p>settlement agreement is reached between the parties in regard to all or some of the disputes, the same shall be reduced in writing and signed by the parties.</p> <p>(3) Subject to the provisions of sections 26 and 27, the mediated settlement agreement so signed—</p> <p>(i) in case of institutional mediation, shall be submitted to the mediator, who shall, after authenticating the same <b>and</b> forward it with a covering letter signed by him, to the mediation service provider and also provide a copy to the parties;</p> <p>(ii) in all other cases, shall be submitted to the mediator who shall, after <b>authenticating</b> the settlement agreement, provide a copy to all the parties.</p> <p>(4) Subject to provisions of sections 26 and 27, where no agreement is arrived at between the parties, within the time period as provided under section 21, or where, the mediator is of the view that no settlement is possible,—</p> <p>(i) the mediator shall submit a failure report to this effect to the mediation service provider in writing in case of institutional mediation;</p> <p>(ii) in all other cases, the mediator shall prepare a <b>failure</b> report to this effect and provide a signed copy to all the parties:</p> <p>Provided that the report referred under this sub-section shall not disclose the</p>	<p>settlement agreement.</p> <p>(2) Where a mediated settlement agreement is reached between the parties in regard to all or some of the disputes, the same shall be reduced in writing and signed by the parties.</p> <p>(3) Subject to the provisions of sections 26 and 27, the mediated settlement agreement so signed—</p> <p>(i) in case of institutional mediation, shall be submitted to the mediator, who shall, after authenticating the same forward it with a covering letter signed by him, to the mediation service provider and also provide a copy to the parties;</p> <p>(ii) in all other cases, shall be submitted to the mediator who shall, after authenticating the settlement agreement, provide a copy to all the parties.</p> <p>(4) Subject to provisions of sections 26 and 27, where no agreement is arrived at between the parties, within the time period as provided under section 21, or where, the mediator is of the view that no settlement is possible,—</p> <p>(i) the mediator shall submit a failure report to this effect to the mediation service provider in writing in case of institutional mediation;</p> <p>(ii) in all other cases, the mediator shall prepare a non-settlement report to this effect and provide a signed copy to all the parties:</p> <p>Provided that the report</p>
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cause of **failure** of the parties to reach a settlement, or any other matter or thing referring to their conduct, during mediation.

(5) The parties, may, at any time during the mediation process, make an agreement with respect to any of the disputes which is the subject matter of mediation.

(6) Any mediated settlement agreement under this section shall also include a settlement agreement resulting from online mediation and duly signed by the parties by way of secure electronic signature or otherwise authenticated by the mediator in the like manner.

(7) For the purposes of record, mediated settlement agreement arrived at between the parties, other than those arrived in a court or tribunal referred mediation **or award of Lok Adalat or final award of Permanent Lok Adalat under section 21 or section 22E of the Legal Services Authorities Act, 1987**, shall be **registered** with an Authority constituted under the Legal Services Authorities Act, 1987, in such manner as may be specified and such Authority shall issue a unique **registration** number to such settlements:

Provided that the mediated settlement agreement under this section shall be **registered** with such Authority situated within the territorial jurisdiction of the court or tribunal of competent jurisdiction to decide the

referred under this subsection shall not disclose the cause of inability of the parties to reach a settlement, or any other matter or thing referring to their conduct, during mediation.

(5) The parties, may, at any time during the mediation process, make an agreement with respect to any of the disputes which is the subject matter of mediation.

(6) Any mediated settlement agreement under this section shall also include a settlement agreement resulting from online mediation and duly signed by the parties by way of secure electronic signature or otherwise authenticated by the mediator in the like manner.

(7) For the purposes of record, mediated settlement agreement arrived at between the parties, other than those arrived in a court, authority or tribunal referred mediation, shall be deposited with an Authority constituted under the Legal Services Authorities Act, 1987, in such manner as may be specified and such Authority shall issue a unique deposit number to such settlements:

Provided that the mediated settlement agreement under this section shall be deposited with such Authority situated within the territorial jurisdiction of the court or tribunal of competent jurisdiction to decide the subject matter of dispute:

Provided further that such deposit shall not be

		<p>subject matter of dispute:</p> <p>Provided further that such <b>registration</b> shall not be mandatory till the time regulations under this sub-section are made.</p> <p><i>Explanation.</i>—<b>For the removal of doubts, it is clarified that</b> nothing contained in this sub-section shall affect the rights of parties to enforce the mediated settlement agreement under section 28 or challenge the same as provided under section 29.</p> <p><b>(8) For the purposes of registration of mediated settlement agreement, in matters other than commercial disputes, wherein mediation is not conducted by a mediation service provider, the presence of parties to the mediated settlement agreement or their authorised representative shall be mandatory before the Authority referred to in sub-section (7).</b></p> <p>(9) The <b>registration</b> referred to in sub-section (7) shall be made by the parties, mediator or mediation service provider within a period of <b>one hundred and eighty days</b> from the date of receipt of authenticated</p> <p>copy of mediated settlement agreement:</p> <p>Provided that mediated settlement agreement may be allowed to be registered after the expiry of period of one hundred and eighty days on payment of such fee as may be specified in consultation</p>	<p>mandatory till the time regulations under this sub-section are made.</p> <p><i>Explanation</i>-Nothing contained in this sub-section shall affect the rights of parties to enforce the mediated settlement agreement under section 28 or challenge the same as provided under section 29.</p> <p>(8) can be deleted completely.</p> <p>(9) The deposit referred to in sub-section (7) shall be made by the parties or the mediator, within a period of 90 days from the date of receipt of signed</p> <p>copy of mediated settlement agreement:</p> <p>Provided that mediated settlement agreement may be allowed to be deposited after the expiry of period of 90 days on payment of such fee as may be specified in consultation with the Authority referred to in sub-section (7).</p> <p>(9) The <b>registration</b> referred to in sub-section (7) shall be made by the parties, mediator or mediation service provider within a period of <b>one hundred and eighty days</b> from the date of receipt of authenticated</p> <p>copy of mediated settlement agreement:</p> <p>Provided that mediated settlement agreement may be allowed to be registered after the expiry of period of <b>one hundred and eighty days</b> on payment of such fee as may</p>
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			with the Authority referred to in sub-section (7).	be specified in consultation with the Authority referred to in sub-section (7).
	Confidentiality.	<b>23</b>	<p><b>23.</b> (1) Subject to the other provisions of this Act, the mediator, mediation service provider, the parties and participants in the mediation shall keep confidential the following matters relating to the mediation proceedings, namely:—</p> <p>(i) acknowledgements, opinions, suggestions, promises, proposals, apologies and admissions made during the mediation;</p> <p>(ii) acceptance of, or willingness to, accept proposals made or exchanged in the mediation;</p> <p>(iii) documents prepared solely for the conduct of mediation or in relation thereto.</p> <p>(2) No audio or video recording of the mediation proceedings shall be made or maintained by the parties or the participants including the mediator and mediation service provider, whether conducted in person or <b>online</b> to ensure confidentiality of the conduct of mediation proceedings.</p> <p>(3) No party to the mediation shall in any proceeding before a court or tribunal including arbitral tribunal, rely on or introduce as evidence any information or communication set forth in clauses (i) to (iii) of sub-section (1), including any information in electronic form, or verbal communication and the court</p>	<p><b>23.</b> (1) Subject to the other provisions of this Act, the mediator, mediation service provider, the parties and participants in the mediation shall keep confidential the following matters relating to the mediation proceedings, namely:—</p> <p>(i) acknowledgements, opinions, suggestions, promises, proposals, apologies and admissions made during the mediation;</p> <p>(ii) acceptance of, or willingness to, accept proposals made or exchanged in the mediation;</p> <p>(iii) documents prepared solely for the conduct of mediation or in relation thereto.</p> <p>(2) No audio or video recording of the mediation proceedings shall be made or maintained by the parties or the participants including the mediator and mediation service provider, whether conducted in person or online, to ensure confidentiality of the conduct of mediation proceedings.</p> <p>(3) No party to the mediation shall in any proceeding before a court or tribunal including arbitral tribunal, rely on or introduce as evidence any information or communication set forth in clauses (i) to (iii) of sub-section (1), including any information in electronic form, or verbal communication and the court</p>



			<p>or tribunal including arbitral tribunal shall not take cognizance of such information or evidence.</p> <p>(4) The provisions of this section shall not prevent the mediator from compiling or disclosing general information concerning matters that have been subject of mediation, for research, reporting or training purposes, if the information does not expressly or indirectly identify a party or participants or the specific disputes in the mediation.</p> <p><i>Explanation.—For the removal of doubts, it is hereby clarified that</i> nothing contained in this section shall apply to the mediated settlement agreement where its disclosure is necessary for the purpose of <b>registration</b>, implementation, enforcement and challenge.</p>	<p>or tribunal including arbitral tribunal shall not take cognizance of such information or evidence.</p> <p>(4) The provisions of this section shall not prevent the mediator from compiling or disclosing general information concerning matters that have been subject of mediation, for research, reporting or training purposes, if the information does not expressly or indirectly identify a party or participants or the specific disputes in the mediation.</p> <p><i>Explanation-</i> Nothing contained in this section shall apply to the mediated settlement agreement where its disclosure is necessary for the purpose of deposit, implementation, enforcement and challenge.</p>
	<p>Admissibility and privilege against disclosure.</p>	<p><b>24</b></p>	<p><b>24.</b> (1) No mediator or participant in the mediation, including experts and advisers engaged for the purpose of the mediation and persons involved in the administration of the mediation, shall at any time be permitted, or compelled to disclose to any court or tribunal, or in any adjudicatory proceedings, by whatever description, any communication in mediation, or to state the contents or conditions of any document or nature or conduct of parties during mediation including the content of negotiations or offers or counter offers with which they have become acquainted during the</p>	<p><b>24.</b> (1) No mediator or participant in the mediation, including experts and advisers engaged for the purpose of the mediation and persons involved in the administration of the mediation, shall at any time be permitted, or compelled to disclose to any court or tribunal, or in any adjudicatory proceedings, by whatever description, any communication in mediation, or to state the contents or conditions of any document or nature or conduct of parties during mediation including the content of negotiations or offers or counter offers with which they have become acquainted during the</p>

			<p>mediation:</p> <p>Provided that nothing in this section and section 23 shall protect from disclosure, information sought or provided to prove or dispute a claim or complaint of professional misconduct of mediator or malpractice based on conduct occurring during the mediation.</p> <p>(2) There shall be no privilege or confidentiality that will attach to—</p> <p>(a) a threat or statement of a plan to commit an offence punishable under any law for the time being in force;</p> <p>(b) information relating to domestic violence or child abuse; and</p> <p>(c) statements made during a mediation showing a significant imminent threat to public health or safety.</p>	<p>mediation:</p> <p>Provided that nothing in this section and section 23 shall protect from disclosure, information sought or provided to prove or dispute a claim or complaint of professional misconduct of mediator or malpractice based on conduct occurring during the mediation.</p> <p>(2) There shall be no privilege or confidentiality that will attach to—</p> <p>(a) a threat or statement of a plan to commit an offence punishable under any law for the time being in force;</p> <p>(b) information relating to domestic violence or child abuse; and</p> <p>(c) statements made during a mediation showing a significant imminent threat to public health or safety.</p>
Termination of mediation.	25	<p><b>25.</b> The mediation proceedings under this Act shall be deemed to terminate—</p> <p>(a) on the date of signing and authentication of the mediated settlement agreement; or</p> <p>(b) on the date of the written declaration of the mediator, after consultation with the parties or otherwise, to the effect that further efforts at mediation are no longer justified; or</p> <p>(c) on the expiry of seven days from the date of the second mediation session, where a party fails to appear before the mediator</p>	<p><b>25.</b> The mediation proceedings under this Act shall be deemed to terminate—</p> <p>(a) on the date of signing and authentication of the mediated settlement agreement; or</p> <p>(b) on the date of the written declaration of the mediator, after consultation with the parties or otherwise, to the effect that further efforts at mediation are no longer justified; or</p> <p>(c) on the expiry of seven days from the date of the second mediation session, where a party fails to appear before the mediator</p>	

			<p>consecutively for the first two mediation sessions, and the mediator has not received any communication from such party; or</p> <p>(d) on the date of the communication by a party or parties in writing, addressed to the mediator and the other parties to the effect that the party wishes to opt out of mediation:</p> <p>Provided that the parties shall have to attend <b>at least two mediation sessions</b> before giving such communication; or</p> <p>(e) on the expiry of time limit under section 21.</p>	<p>consecutively for the first two mediation sessions, and the mediator has not received any communication from such party; or</p> <p>(d) on the date of the communication by a party or parties in writing, addressed to the mediator and the other parties to the effect that the party wishes to opt out of mediation:</p> <p>Provided that the parties shall have to attend <b>at least two mediation sessions</b> before giving such communication; or</p> <p>(e) on the expiry of time limit under section 21.</p>
	<p>Court annexed mediation.</p>	<p><b>26</b></p>	<p><b>26.</b> (1) For the purposes of court annexed mediation including pre-litigation mediation, the procedure of conducting mediation shall be such as may be determined under the practice directions or rules, <b>by whatever name called</b>, framed by the Supreme Court or the High Courts.</p> <p>(2) For the purposes of subsection (1), the Supreme Court or the High Courts, as the case may be, may constitute mediation committee.</p> <p>(3) The mediation committee shall, for the purposes of conducting mediation, in all courts, maintain a panel of mediators in accordance with the practice directions or rules, <b>by whatever name called</b>, framed by the Supreme Court or the High Courts, as the case may be, and such mediators may also</p>	<p><b>26.</b> (1) For the purposes of court annexed mediation including pre-litigation mediation, the procedure of conducting mediation shall be such as may be determined under the practice directions or rules, framed by the Supreme Court or the High Courts.</p> <p>(2) For the purposes of subsection (1), the Supreme Court or the High Courts, as the case may be, may constitute mediation committee.</p> <p>(3) The mediation committee shall, for the purposes of conducting mediation, in all courts, maintain a panel of mediators in accordance with the practice directions or rules, framed by the Supreme Court or the High Courts, as the case may be, and such mediators may also conduct mediation other than those referred by the court.</p>

			<p>conduct mediation other than those referred by a court.</p> <p>(4) Where the parties to a mediation referred by the court or tribunal arrive at settlement agreement in respect of some or all of the disputes, a copy of settlement agreement shall be placed before the said court or tribunal for consideration and in cases, other than court referred mediation provided, to the parties.</p> <p>(5) If the parties do not reach settlement agreement referred to in sub-section (4), a <b>failure</b> report shall be forwarded by the mediator—</p> <p>(i) to the court or tribunal, as the case may be, which has referred the matter for mediation;</p> <p>(ii) to the parties in all other cases.</p>	<p>(4) Where the parties to a mediation referred by the court or tribunal arrive at settlement agreement in respect of some or all of the disputes, a copy of settlement agreement shall be placed before the said court or tribunal for consideration and in cases, other than court referred mediation provided, to the parties.</p> <p>(5) If the parties do not reach settlement agreement referred to in sub-section (4), a Non-Settlement report shall be forwarded by the mediator—</p> <p>(i) to the court or tribunal, as the case may be, which has referred the matter for mediation;</p> <p>(ii) to the parties in all other cases.</p>
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Proceedings of Lok Adalat and Permanent Lok Adalat not to be affected.	<b>27</b>	<b>27.</b> The provisions of this Act shall not apply to the proceedings conducted by Lok Adalat and Permanent Lok Adalat under the Legal Services Authorities Act, 1987.	<b>It is contradictory to Sections 22(7) and 44(2) as at various places the Bill refers to Legal Services Authority Act.</b>
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**CHAPTER VI : ENFORCEMENT OF MEDIATED SETTLEMENT AGREEMENT**

Enforcement of mediated settlement agreement.	<b>28</b>	<b>28. (1)</b> A mediated settlement agreement resulting from a mediation signed by the parties and authenticated by the mediator shall be final and binding on the parties and persons claiming under them respectively and enforceable as per the provisions of sub-section (2).	The aspect of Stamp Duty payable is very important otherwise it will create confusion and lead to further litigation
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			<p>(2) Subject to the provisions of section 29, the mediated settlement agreement shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908, in the same manner <b>as if it were a judgment or decree passed by a court</b>, and may, accordingly, be relied on by any of the parties or persons claiming through them, by way of defence, set off or otherwise in any legal proceeding.</p>	<p>This is not in consonance with Article 1(3) of the Singapore Convention. If separate Chapter for International Mediation needs to be made.</p>
Challenge to mediated settlement agreement.	<b>29</b>	<p><b>29.</b> (1) Notwithstanding anything contained in any other law for the time being in force, in any case in which the mediated settlement agreement is arrived at between the parties other than in court referred mediation or by Lok Adalat or Permanent Lok Adalat under the Legal Services Authorities Act, 1987, and is sought to be challenged by either of the parties, such party may file an application before the court or tribunal of competent jurisdiction.</p> <p>(2) A mediated settlement agreement may be challenged only on all or any of the following grounds, namely:—</p> <p>(i) fraud;</p> <p>(ii) corruption;</p> <p>(iii) impersonation;</p> <p>(iv) where the mediation was conducted in disputes or matters not fit for mediation under section 7.</p> <p>(3) An application for challenging the mediated settlement agreement shall</p>	<p><b>29.</b> (1) Notwithstanding anything contained in any other law for the time being in force, in any case in which the mediated settlement agreement is arrived at between the parties other than in court referred mediation or by Lok Adalat or Permanent Lok Adalat under the Legal Services Authorities Act, 1987, and is sought to be challenged by either of the parties, such party may file an application before the court or tribunal of competent jurisdiction.</p> <p>(2) A mediated settlement agreement may be challenged only on all or any of the following grounds, namely:—</p> <p>(i) fraud;</p> <p>(ii) corruption;</p> <p>(iii) impersonation;</p> <p>(iv) where the mediation was conducted in disputes or matters not fit for mediation under section 7.</p> <p>(3) An application for challenging the mediated settlement agreement shall not be made after ninety days</p>	

			<p>not be made after ninety days have elapsed from the date on which the party making that application has received the copy of mediated settlement agreement under sub-section (3) of section 22:</p> <p>Provided that if the court or tribunal, as the case may be, is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of ninety days, it may entertain the application within a further period of ninety days.</p>	<p>have elapsed from the date on which the party making that application has received the copy of mediated settlement agreement under sub-section (3) of section 22:</p> <p>Provided that if the court or tribunal, as the case may be, is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of ninety days, it may entertain the application within a further period of ninety days.</p>
	Costs.	<b>30</b>	<b>30.</b> Unless otherwise agreed by the parties, all costs of mediation, including the fees of the mediator and the charges of the mediation service provider shall be borne equally by the parties.	<b>30.</b> Unless otherwise agreed by the parties, all costs of mediation, including the fees of the mediator and the charges of the mediation service provider shall be borne equally by the parties.
	Limitation.	<b>31</b>	<p><b>31.</b> Notwithstanding anything contained in the Limitation Act, 1963 or in any other law for the time being in force, in computing the period of limitation fixed for any proceedings in respect of which a mediation has been undertaken under this Act, the period from the date of commencement of mediation under section 16, and up to—</p> <p>(i) submission of report under sub-section (4) of section 22; or</p> <p>(ii) termination of mediation</p>	<p><b>31.</b> Notwithstanding anything contained in the Limitation Act, 1963 or in any other law for the time being in force, in computing the period of limitation fixed for any proceedings in respect of which a mediation has been undertaken under this Act, the period from the date of commencement of mediation under section 16, and up to—</p> <p>(i) submission of report under sub-section (4) of section 22; or</p> <p>(ii) termination of mediation</p>

			<p>under section 25; or</p> <p>(iii) the settlement agreement arrived at in terms of sub-section (4) of section 26, in case of mediation other than court referred mediation; or</p> <p>(iv) forwarding of <b>failure</b> report in terms of clause (ii) of sub-section (5) of section 26, shall be excluded.</p>	<p>under section 25; or</p> <p>(iii) the settlement agreement arrived at in terms of sub-section (4) of section 26, in case of mediation other than court referred mediation; or</p> <p>(iv) forwarding of Non-Settlement report in terms of clause (ii) of sub-section (5) of section 26, shall be excluded.</p>
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## CHAPTER VII : ONLINE MEDIATION

Onlinemediation.	<b>32</b>	<p><b>32. (1)</b> Online mediation including pre-litigation mediation may be conducted at any stage of mediation under this Act, with the written consent of the parties including by the use of electronic form or computer networks but not limited to an encrypted electronic mail service, secure chat rooms or conferencing by video or audio mode or both.</p> <p>(2) The process of online mediation shall be in such manner as may be specified.</p> <p>(3) The conduct of online mediation shall be in the circumstances, which ensure that the essential elements of integrity of proceedings and confidentiality are maintained at all times and the mediator may take such appropriate steps in this regard as he deems fit.</p> <p>(4) Subject to the other provisions of this Act, the mediation communications in the case of online mediation</p>	<p><b>32. (1)</b> Online mediation including pre-litigation mediation may be conducted at any stage of mediation under this Act, with the written consent of the parties including by the use of electronic form or computer networks but not limited to an encrypted electronic mail service, secure chat rooms or conferencing by video or audio mode or both.</p> <p>(2) The process of online mediation shall be in such manner as may be specified.</p> <p>(3) The conduct of online mediation shall be in the circumstances, which ensure that the essential elements of integrity of proceedings and confidentiality are maintained at all times and the mediator may take such appropriate steps in this regard as he deems fit.</p> <p>(4) Subject to the other provisions of this Act, the mediation communications in the case of online mediation</p>
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			shall, ensure confidentiality of mediation.	shall, ensure confidentiality of mediation.
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CHAPTER VIII : MEDIATION COUNCIL OF INDIA

<p>Establishment and incorporation of Mediation Council.</p>	<p><b>33</b></p>	<p><b>33.</b> (1) The Central Government shall, by notification, establish for the purposes of this Act, a Council to be known as the Mediation Council of India to perform the duties and discharge the functions under this Act.</p> <p>(2) The Council shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to enter into contract, and shall, by the said name, sue or be sued.</p> <p>(3) The head office of the Council shall be at Delhi or at such other place as may be notified by the Central Government.</p> <p>(4) The Council may, in consultation with the Central Government, establish offices at other places in India and abroad.</p>	<p><b>33.</b> (1) The Central Government shall, by notification, establish for the purposes of this Act, a Council to be known as the Mediation Council of India to perform the duties and discharge the functions under this Act.</p> <p>(2) The Council shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to enter into contract, and shall, by the said name, sue or be sued.</p> <p>(3) The head office of the Council shall be at Delhi or at such other place as may be notified by the Central Government. The council shall also have regional office in every state to carry out the functions of the Council in that state.</p> <p>(4) The Council may, in consultation with the Central Government, establish offices at other places in India and abroad.</p>
<p>Composition of Council.</p>	<p><b>34</b></p>	<p><b>34.</b> (1) The Council shall consist of the following members, namely:—</p> <p>(a) a person of ability,</p>	<p><b>34.</b> (1) The Council shall consist of the following members, namely:—</p> <p>(a) Chairperson: of ability,</p>



			<p>integrity and standing having adequate knowledge and professional experience or shown capacity in dealing with problems relating to law, <b>alternate dispute resolution, public affairs or administration to be appointed by the Central Government—Chairperson;</b></p> <p>(b) a person having knowledge and experience in law related to mediation or alternate dispute resolution mechanisms, to be appointed by the Central Government—<b>Full-Time Member;</b></p> <p>(c) an eminent person having experience in research or teaching in the field of mediation and alternate dispute resolution laws, to be appointed by the Central Government—<b>Full-Time Member;</b></p> <p>(d) <b>Secretary</b> to the Government of India in the Department of Legal Affairs, Ministry of Law and Justice or his representative not below the rank of Joint Secretary—<b>Member, ex officio;</b></p> <p>(e) Secretary to the Government of India in the Department of Expenditure, Ministry of Finance or his representative not below the rank of Joint Secretary—<b>Member, ex officio;</b></p> <p>(f) Chief Executive Officer—Member-Secretary, <i>ex officio</i>; and</p> <p>(g) one representative of a recognised body of commerce and industry, chosen by the Central Government—<b>Part-</b></p>	<p>integrity and standing having adequate knowledge and professional experience or shown capacity in dealing with problems relating to law, arbitration or mediation, public affairs or administration to be appointed by the Central Government;</p> <p>(b) Full-Time Member: (i) a person having knowledge and experience in law related to mediation or alternate dispute resolution mechanisms, to be appointed by the Central Government;</p> <p>(ii) an eminent person having experience in research or teaching in the field of mediation and alternate dispute resolution laws, to be appointed by the Central Government;</p> <p>(c) Ex-officio Member</p> <p>(i) Secretary to the Government of India in the Department of Legal Affairs, Ministry of Law and Justice or his representative not below the rank of Joint Secretary;</p> <p>(ii) Secretary to the Government of India in the Department of Expenditure, Ministry of Finance or his representative not below the rank of Joint Secretary;</p> <p>(f) Chief Executive Officer—Member-Secretary, <i>ex officio</i>; and</p> <p>Part-Time Member</p> <p>(g) one representative of a recognised body of commerce and industry, chosen by the</p>
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			<p><b>Time Member.</b></p> <p>(2) The Chairperson, Full-Time Member and Part-Time Member of the Council, other than <i>ex officio</i> members, shall hold office as such, for a term of four years from the date on which they enter upon their office and shall be eligible for re-appointment:</p> <p>Provided that no Chairperson, Full-Time Member or Part-Time Member, other than <i>ex officio</i> member, shall hold office as such after he has attained the age of seventy years in the case of Chairperson and sixty-seven years in the case of Full-Time or Part-Time Member.</p> <p>(3) The salaries, allowances and other terms and conditions of the Chairperson and Full-Time members referred to in clauses (b) and (c) of sub-section (1) shall be such as maybe prescribed.</p> <p>(4) The Part-Time Member shall be entitled to such travelling and other allowances as may be prescribed.</p>	<p>Central Government.</p> <p>(2) The Chairperson, Full-Time Member and Part-Time Member of the Council, other than <i>ex officio</i> members, shall hold office as such, for a term of four years from the date on which they enter upon their office and shall be eligible for re-appointment:</p> <p>Provided that no Chairperson, Full-Time Member or Part-Time Member, other than <i>ex officio</i> member, shall hold office as such after he has attained the age of seventy years in the case of Chairperson and sixty-seven years in the case of Full-Time or Part-Time Member.</p> <p>(3) The salaries, allowances and other terms and conditions of the Chairperson and Full-Time members referred to in clauses (b) and (c) of sub-section (1) shall be such as maybe prescribed.</p> <p>- (4) The Part-Time Member shall be entitled to such travelling and other allowances as may be prescribed.</p>
	Vacancies, etc., not to Invalidate proceedings of Council.	<b>35</b>	<p><b>35.</b> No act or proceeding of the Council shall be invalid merely by reason of—</p> <p>(a) any vacancy or any defect, in the constitution of the Council;</p> <p>(b) any defect in the appointment of a person acting as a Chair person or Full-Time Member or Part-Time Member of the Council; or</p> <p>(c) any irregularity in the procedure of the Council not affecting the merits of the</p>	<p><b>35.</b> No act or proceeding of the Council shall be invalid merely by reason of—</p> <p>(a) any vacancy or any defect, in the constitution of the Council;</p> <p>(b) any defect in the appointment of a person acting as a Chair person or Full-Time Member or Part-Time Member of the Council; or</p> <p>(c) any irregularity in the procedure of the Council not affecting the merits of the</p>

			case.	case.
	Resignation.	<b>36</b>	<p><b>36.</b> The Chairperson or the Full-Time Member or Part-Time Member may, by notice in writing, under his hand addressed to the Central Government, resign his office:</p> <p>Provided that the Chairperson or the Full-Time Member or Part-Time Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is earlier.</p>	<p>(b) a person having knowledge and experience in law related to mediation or alternate dispute resolution mechanisms, to be appointed by the Central Government— Full-Time Member;</p>
	Removal.	<b>37</b>	<p><b>37.</b> (1) The Central Government may, remove the Chairperson or Full-Time Member or Part-Time Member from his office, if he—</p> <p>(a) is an undischarged insolvent; or</p> <p>(b) has engaged at any time, during his term of office, in any paid employment without the permission of the Central Government; or</p> <p>(c) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or</p> <p>(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Chairperson or such Member; or (e) has so abused his position as to render his continuance in</p>	<p><b>37.</b> (1) The Central Government may, remove the Chairperson or Full-Time Member or Part-Time Member from his office, if he—</p> <p>(a) is an undischarged insolvent; or</p> <p>(b) has engaged at any time, during his term of office, in any paid employment without the permission of the Central Government; or</p> <p>(c) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or</p> <p>(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Chairperson or such Member; or (e) has so abused his position as to render his continuance in</p>

			<p>office prejudicial to the public interest; or</p> <p>(f) has become physically or mentally incapable of acting as a Chairperson or Full-Time Member or Part-Time Member:</p> <p>Provided that where a Chairperson or Full-Time Member or Part-Time Member is proposed to be removed on any ground, he shall be informed of charges against him and given an opportunity of being heard in respect of those charges.</p>	<p>office prejudicial to the public interest; or</p> <p>(f) has become physically or mentally incapable of acting as a Chairperson or Full-Time Member or Part-Time Member:</p> <p>Provided that where a Chairperson or Full-Time Member or Part-Time Member is proposed to be removed on any ground, he shall be informed of charges against him and given an opportunity of being heard in respect of those charges.</p>
	Appointment of experts and constitution of Committees.	<b>38</b>	<b>38.</b> The Council may, appoint such experts and constitute such committees of experts as it may consider necessary to discharge its functions on such terms and conditions as may be specified.	<b>38.</b> The Council may, appoint such experts and constitute such committees of experts as it may consider necessary to discharge its functions on such terms and conditions as may be specified.
	Secretariat and Chief Executive Officer of Council.	<b>39</b>	<p><b>39. (1) There shall be</b> a Chief Executive Officer of the Council, <b>who</b> shall be responsible for the day to day administration and implementation of the decisions of the Council.</p> <p>(2) The qualification, appointment and other terms and conditions of service of the Chief Executive Officer shall be such as may be specified.</p> <p>(3) The Chief Executive Officer shall discharge such functions and perform such duties as may be specified.</p> <p>(4) There shall be a Secretariat to the Council consisting of such number of officers and employees as may be specified.</p>	<p><b>39. (1) Chief Executive Officer</b> of the Council, who shall be responsible for the day to day administration and implementation of the decisions of the Council.</p> <p>(2) The qualification, appointment and other terms and conditions of service of the Chief Executive Officer shall be such as may be specified.</p> <p>(3) The Chief Executive Officer shall discharge such functions and perform such duties as may be specified.</p> <p>(4) There shall be a Secretariat to the Council consisting of such number of officers and employees as may be specified.</p> <p>(5) The qualification,</p>

			<p>(5) The qualification, appointment and other terms and conditions of the service of the <b>employees and other officers</b> of the Council shall be such as may be specified.</p> <p>(6) The Central Government shall provide such number of officers and employees as may be necessary for the functioning of the Council till regulations are made under this section.</p>	<p>appointment and other terms and conditions of the service of the officers and other employees of the Council shall be such as may be specified.</p> <p>(6) The Central Government shall provide such number of officers and employees as may be necessary for the functioning of the Council till regulations are made under this section.</p>
	<p>Duties and Functions of the Council.</p>	<p><b>40</b></p>	<p><b>40.</b> The Council shall—</p> <p>(a) endeavour to promote domestic and international mediation in India through appropriate guidelines;</p> <p>(b) endeavour to develop India to be a robust centre for domestic and international mediation;</p> <p>(c) lay down the guidelines for the continuous education, certification and assessment of mediators by the recognised mediation institutes;</p> <p>(d) provide for manner of registration of mediators and renew, withdraw, suspend or cancel registration on the basis of conditions as may be specified;</p> <p>(e) lay down standards for professional and ethical conduct of mediators under sub-section (2) of section 17;</p> <p>(f) hold trainings, workshops and courses in the area of mediation in collaboration with mediation service providers, law firms and universities and other stakeholders, both Indian and international, and any other</p>	<p><b>40.</b> The Council shall—</p> <p>(a) endeavour to promote domestic and international mediation in India through appropriate guidelines;</p> <p>(b) endeavour to develop India to be a robust centre for domestic and international mediation;</p> <p>(c) lay down the guidelines for the continuous education, certification and assessment of mediators by the recognised mediation institutes;</p> <p>(d) provide for manner of registration of mediators and renew, withdraw, suspend or cancel registration on the basis of conditions as may be specified;</p> <p>(e) lay down standards for professional and ethical conduct of mediators under sub-section (2) of section 17;</p> <p>(f) hold trainings, workshops and courses in the area of mediation in collaboration with mediation service providers, law firms and universities and other stakeholders, both Indian and international, and any other</p>

			<p>mediation institutes;</p> <p>(g) enter into memoranda of understanding or agreements with domestic and international bodies or organisations or institutions;</p> <p>(h) recognise mediation institutes and mediation service providers and renew, withdraw, suspend or cancel such recognition;</p> <p>(i) specify the criteria for recognition of mediation institutes and mediation service providers;</p> <p>(j) call for any information or record of mediation institutes and mediation service providers;</p> <p>(k) lay down standards for professional and ethical conduct of the mediation institutes and mediation service providers;</p> <p>(l) publish such information, data, research studies and such other information as may be required;</p> <p>(m) maintain an electronic depository of the mediated settlement agreements made in India and for such other records related thereto in such manner as may be specified; and</p> <p>(n) perform any other function as may be assigned to it by the Central Government.</p>	<p>mediation institutes;</p> <p>(g) enter into memoranda of understanding or agreements with domestic and international bodies or organisations or institutions;</p> <p>(h) recognise mediation institutes and mediation service providers and renew, withdraw, suspend or cancel such recognition;</p> <p>(i) specify the criteria for recognition of mediation institutes and mediation service providers;</p> <p>(j) call for any information or record of mediation institutes and mediation service providers;</p> <p>(k) lay down standards for professional and ethical conduct of the mediation institutes and mediation service providers;</p> <p>(l) publish such information, data, research studies and such other information as may be required;</p> <p>(m) maintain an electronic depository of the mediated settlement agreements made in India and such other records related thereto in such manner as may be specified; and</p> <p>(n) perform any other function as may be assigned by the Central Government</p>
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**CHAPTER IX : MEDIATION SERVICE PROVIDERS AND MEDIATION INSTITUTES**

	Mediation Service Providers.	<b>41</b>	<b>41.</b> The mediation service provider recognised by the Council shall be graded by it	<b>41.</b> The mediation service provider recognised by the Council shall be graded by it
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			in the manner as may be specified.	in the manner as may be specified.
	Functions of Mediation Service providers.	<b>42</b>	<p><b>42.</b> The mediation service providers shall perform the following functions, namely:—</p> <p>(a) <b>accredit mediators</b> and maintain panel of mediators;</p> <p>(b) provide the services of mediator for conduct of mediation;</p> <p>(c) provide all facilities, secretarial assistance and infrastructure for the efficient conduct of mediation;</p> <p>(d) promote professional and ethical conduct amongst mediators;</p> <p>(e) facilitate registration of settlement agreements in accordance with the provisions of section 22; and</p> <p>(f) such other functions as may be specified.</p>	<p><b>42.</b> The mediation service providers shall perform the following functions, namely:—</p> <p>(a) maintain panel of mediators;</p> <p>(b) provide the services of mediator for conduct of mediation;</p> <p>(c) provide all facilities, secretarial assistance and infrastructure for the efficient conduct of mediation;</p> <p>(d) promote professional and ethical conduct amongst mediators;</p> <p>(e) facilitate registration of settlement agreements in accordance with the provisions of section 22; and</p> <p>(f) such other functions as may be specified.</p>
	Mediation institutes.	<b>43</b>	<p><b>43.</b> The Council shall recognise mediation institutes to perform such duties and exercise such functions as may be specified.</p>	<p><b>43.</b> The Council shall recognise mediation institutes to perform such duties and exercise such functions as may be specified.</p>

**CHAPTER X : COMMUNITY MEDIATION**

	Community Mediation.	<b>44</b>	<p>44. (1) Any dispute likely to affect peace, harmony and tranquility amongst the residents or families of any area or locality may be settled through community</p>	<p>44. (1) Any dispute likely to affect peace, harmony and tranquility amongst the residents or families of any area or locality may be settled through community</p>
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		<p>mediation with prior mutual consent of the parties to the dispute.</p> <p>(2) For the purposes of sub-section (1), any of the parties shall make an application before the concerned Authority constituted under the Legal Services Authorities Act, 1987 or District Magistrate or Sub-Divisional Magistrate in areas where no such Authority has been constituted, for referring the dispute to mediation.</p> <p>(3) In order to facilitate settlement of a dispute for which an application has been received under sub-section (2), the concerned Authority constituted under the Legal Services Authorities Act, 1987 or the District Magistrate or Sub-Divisional Magistrate, as the case may be, shall constitute panel of <b>three</b> mediators.</p> <p>(4) For the purpose of this section, the Authority or District Magistrate or the Sub-Divisional Magistrate, as the case may be, shall notify a permanent panel of mediators, which may be revised from time to time.</p> <p>(5) The <b>following persons</b>, may be included in the panel referred to in sub-section (4)—</p> <p>(a) persons of standing and integrity who are respectable in the community;</p> <p>(b) any local person whose contribution to the society has been recognised;</p> <p>(c) representative of area or</p>	<p>mediation with prior mutual consent of the parties to the dispute.</p> <p>(2) For the purposes of sub-section (1), any of the parties shall make an application before the concerned Authority constituted under the Legal Services Authorities Act, 1987 or District Magistrate or Sub-Divisional Magistrate in areas where no such Authority has been constituted, for referring the dispute to mediation.</p> <p>(3) In order to facilitate settlement of a dispute for which an application has been received under sub-section (2), the concerned Authority constituted under the Legal Services Authorities Act, 1987 or the District Magistrate or Sub-Divisional Magistrate, as the case may be, shall constitute panel of two or more mediators.</p> <p>(4) For the purpose of this section, the Authority or District Magistrate or the Sub-Divisional Magistrate, as the case may be, shall notify a permanent panel of mediators, which may be revised from time to time.</p> <p>(5) The following persons who have been trained as Mediators may be included in the panel referred to in sub-section (4)—</p> <p>(a) persons of standing and integrity who are respectable in the community;</p> <p>(b) any local person whose contribution to the society has been recognised;</p> <p>(c) representative of area or</p>
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			<p>resident welfare associations; and</p> <p>(d) Any other person deemed appropriate.</p> <p>(6) While making panel referred to in sub-section (4) the representation of women or any other class or category of persons may be considered.</p>	<p>resident welfare associations; and</p> <p>(d) Any other person deemed appropriate.</p> <p>(6) While making panel referred to in sub-section (4) the representation of women or any other class or category of persons may be considered.</p>
	<p>Procedure for community mediation.</p>	<p><b>45</b></p>	<p><b>45.</b> (1) Any community mediation shall be conducted by the panel of <b>three</b> mediators referred to in sub-section (3) of section 44 who shall devise suitable procedure for the purpose of resolving the dispute.</p> <p>(2) The mediators shall endeavour to resolve disputes through community mediation and provide assistance to parties for resolving disputes amicably.</p> <p>(3) In every case where a settlement agreement is arrived at through mediation under this Act, the same may be reduced into writing with the signature of the parties and <b>authenticated</b> by the mediator, a copy of which <b>he</b> provided to the parties and in <b>cases</b> where no settlement agreement is arrived at, a <b>failure</b> report may be submitted by the mediator to the Authority or the District Magistrate or the <b>Sub-Divisional Magistrate</b>, as the case may be, and to the parties.</p> <p>(4) Any settlement agreement arrived at under this Chapter shall be for the purpose of maintaining the peace, harmony and tranquility amongst the residents or</p>	<p><b>45.</b> (1) Any community mediation shall be conducted by the panel of two or more mediators referred to in sub-section (3) of section 44 who shall devise suitable procedure for the purpose of resolving the dispute.</p> <p>(2) The mediators shall endeavour to resolve disputes through community mediation and provide assistance to parties for resolving disputes amicably.</p> <p>(3) In every case where a settlement agreement is arrived at through mediation under this Act, the same may be reduced into writing with the signature of the parties and parties and signed by the mediator, a copy of which be provided to the parties and in case where no settlement agreement is arrived at, a Non-Settlement report may be submitted by the mediator to the Authority or the District Magistrate or the Sub-Divisional Magistrate or Mediation service provider, as the case may be, and to the parties.</p> <p>(4) Any settlement agreement arrived at under this Chapter shall be for the purpose of maintaining the peace, harmony and tranquility</p>

			<p>families of any area or locality <b>but shall not be enforceable as a judgment or decree</b> of a civil court.</p> <p>(5) The provisions of sub-sections (7) and (8) of section 22 shall, <i>mutatis mutandis</i> apply, in relation to the <b>registration</b> of mediated settlement agreement under this section.</p>	<p>amongst the residents or families of any area or locality and shall be enforceable as a judgment or decree of a civil court.</p> <p>(5) The provisions of sub-sections (7) and (8) of section 22 shall, <i>mutatis mutandis</i> apply, in relation to the deposit of mediated settlement agreement under this section.</p>
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CHAPTER XI : MISCELLANEOUS

	Mediation Fund.	<b>46</b>	<p>46. (1) There shall be a fund to be called "Mediation Fund" (hereinafter referred to as the "Fund") for the purposes of promotion, facilitation and encouragement of mediation under this Act, which shall be administered by the Council.</p> <p>(2) There shall be credited to the Fund the following, namely:—</p> <p>(a) all monies provided by the Central Government;</p> <p>(b) all fees and other charges received from mediation service provider, mediation institutes or bodies or persons;</p> <p>(c) all monies received by the Council in the form of donations, grants, contributions and income from other sources;</p> <p>(d) grants made by the Central Government or the State Government for the purposes of the Fund;</p> <p>(e) amounts deposited by persons as contributions to</p>	<p>46. (1) There shall be a fund to be called "Mediation Fund" (hereinafter referred to as the "Fund") for the purposes of promotion, facilitation and encouragement of mediation under this Act, which shall be administered by the Council.</p> <p>(2) There shall be credited to the Fund the following, namely:—</p> <p>(a) all monies provided by the Central Government;</p> <p>(b) all fees and other charges received from mediation service provider, mediation institutes or bodies or persons;</p> <p>(c) all monies received by the Council in the form of donations, grants, contributions and income from other sources;</p> <p>(d) grants made by the Central Government or the State Government for the purposes of the Fund;</p> <p>(e) amounts deposited by persons as contributions to the Fund;</p>

			<p>the Fund;</p> <p>(f) amounts received in the Fund from any other source; and</p> <p>(g) interest on the above or other income received out of the investment made from the Fund.</p> <p>(3) The Fund shall be applied towards meeting the salaries and other allowances of Chairperson, Full-Time Member, Part-Time Member, Chief Executive Officer, Officers and employees and the expenses of the Council including expenses incurred in the exercise of its powers and discharge of its duties under this Act.</p>	<p>(f) amounts received in the Fund from any other source; and</p> <p>(g) Interest on the above or other income received out of the investment made from the Fund.</p> <p>(3) The Fund shall be applied towards meeting the salaries and other allowances of Chairperson, Full-Time Member, Part-Time Member, Chief Executive Officer, Officers and employees and the expenses of the Council including expenses incurred in the exercise of its powers and discharge of its duties under this Act.</p> <p>.</p>
Accounts and Audit.	47	<p>47. (1) The Council shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, including the balance sheet, in such form and manner as may be prescribed in consultation with the Comptroller and Auditor-General of India.</p> <p>(2) The accounts of the Council shall be audited by the Comptroller and Auditor-General of India and any expenditure incurred by him in connection with such audit shall be payable by the Council to the Comptroller and Auditor-General of India.</p> <p>(3) The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of the Council shall have the same rights,</p>	<p>47. (1) The Council shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, including the balance sheet, in such form and manner as may be prescribed in consultation with the Comptroller and Auditor-General of India.</p> <p>(2) The accounts of the Council shall be audited by the Comptroller and Auditor-General of India and any expenditure incurred by him in connection with such audit shall be payable by the Council to the Comptroller and Auditor-General of India.</p> <p>(3) The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of the Council shall have the same rights,</p>	

			<p>privileges and authority in connection with such audit as the Comptroller and Auditor-General of India as in connection with the audit of the Government accounts, and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other</p> <p>documents and papers and to inspect the offices of the Council.</p> <p>(4) The accounts of the Council as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report hereon shall be forwarded annually to the Central Government and the Central Government shall cause the same to be laid before each House of Parliament.</p>	<p>privileges and authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the audit of the Government accounts, and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other</p> <p>documents and papers and to inspect the offices of the Council.</p> <p>(4) The accounts of the Council as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and the Central Government shall cause the same to be laid before each House of Parliament.</p>
	<p>Power of Central Government to issue directions.</p>	<p><b>48</b></p>	<p><b>48.</b> (1) Without prejudice to the foregoing provisions of this Act, the Council shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from</p> <p>time to time:</p> <p>Provided that the views of the Council shall be taken into consideration before any direction is given under this sub-section.</p> <p>(2) The decision of the Central Government whether a question is one of policy or</p>	<p><b>48.</b> (1) Without prejudice to the foregoing provisions of this Act, the Council shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from</p> <p>time to time:</p> <p>Provided that the views of the Council shall be taken into consideration before any direction is given under this sub-section.</p> <p>(2) The decision of the Central Government whether a question is one of policy or</p>

			not shall be final.	not, shall be final.
	Power of Governments to frameschemesorguidelines.	<b>49</b>	<b>49.</b> Nothing contained in this Act shall prevent the Central Government or State Government, as the case may be, from framing any scheme or guidelines, to be notified, for resolution of any dispute through mediation or conciliation in cases where the Central Government or State Government or any of its entity or agencies is one of the parties and in such cases mediation or <b>conciliation</b> may be conducted in accordance with such scheme or guidelines.	<b>49.</b> Nothing contained in this Act shall prevent the Central Government or State Government, as the case may be, from framing any scheme or guidelines, to be notified, for resolution of any dispute through mediation or conciliation in cases where the Central Government or State Government or any of its entity or agencies is one of the parties and in such cases mediation or conciliation may be conducted in accordance with such scheme or guidelines.
	Mediatedsettlement Agreementwhere Governmentor its, agency,etc., is a party.	<b>50</b>	<b>50.</b> Notwithstanding anything contained in this Act, no dispute including a commercial dispute, wherein the Central Government or State Government or any of its agencies, public bodies, corporations and local bodies including entities controlled or owned by them is a party, the settlement agreement arrived at shall be signed only after obtaining the prior written consent of the competent authority of such Government or any of its entity or agencies, public bodies, corporations and local bodies, as the case may be.	<b>50.</b> Notwithstanding anything contained in this Act, no dispute including a commercial dispute, wherein the Central Government or State Government or any of its agencies, public bodies, corporations and local bodies including entities controlled or owned by them is a party, the settlement agreement arrived at shall be signed only after obtaining the prior written consent of the competent authority of such Government or any of its entity or agencies, public bodies, corporations and local bodies, as the case may be.
	Protection of factiontakenin good faith.	<b>51</b>	<b>51.</b> No suit, prosecution or other legal proceeding shall lie against the Central Government or a State Government or any officer of such Government, or the Chairperson, Full-Time Member or Part-Time Member or Officer or employee of the Council or a	<b>51.</b> No suit, prosecution or other legal proceeding shall lie against the Central Government or a State Government or any officer of such Government, or the Chairperson, Full-Time Member or Part-Time Member or Officer or employee of the Council or a

			mediator, mediation institutes, mediation service providers, which is done or is intended to be done in good faith under this Act or the rules or regulations made thereunder.	mediator, mediation institutes, mediation service providers, which is done or is intended to be done in good faith under this Act or the rules or regulations made there under.
	Power to make rules.	<b>52</b>	<p><b>52.</b> (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.</p> <p>(2) In particular, and without prejudice to the generality of the foregoing power, such rules may make provision for—</p> <p>(a) the salaries and allowances and the terms and conditions of the Chairperson and Full-time Members under sub-section (3) of section 34;</p> <p>(b) the travelling and other allowances payable to the Part-Time Member under sub-section (4) of section 34;</p> <p>(c) the form and manner of annual statement of accounts, including the balance sheet under sub-section (1) of section 47; and</p> <p>(d) Any other matter which is to be, or may be prescribed.</p>	<p><b>52.</b> (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.</p> <p>(2) In particular, and without prejudice to the generality of the foregoing power, such rules may make provision for—</p> <p>(a) the salaries and allowances and the terms and conditions of the Chairperson and Full-time Members under sub-section (3) of section 34;</p> <p>(b) the travelling and other allowances payable to the Part-Time Member under sub-section (4) of section 34;</p> <p>(c) the form and manner of annual statement of accounts, including the balance sheet under sub-section (1) of section 47; and</p> <p>(d) Any other matter which is to be, or may be prescribed.</p>
	Power to make regulations.	<b>53</b>	<p><b>53.</b> (1) The Council may, with the previous approval of the Central Government, by notification, make regulations consistent with this Act and the rules made there under to carry out the provisions of this Act.</p> <p>(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may make</p>	<p><b>53.</b> (1) The Council may, with the previous approval of the Central Government, by notification, make regulations consistent with this Act and the rules made there under to carry out the provisions of this Act.</p> <p>(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may make</p>

		<p>provision for—</p> <p>(a) such other forum under <i>Explanation I</i> to clause (l) of section 3;</p> <p>(b) qualification, experience and accreditation for mediators of foreign nationality under the proviso to sub-section (1) of section 10;</p> <p>(c) standards for professional and ethical conduct of mediators under sub-section (2) of section 17;</p> <p>(d) manner of registration of mediated settlement agreement under sub-section (7) of section 22;</p> <p>(e) fees for registration of mediated settlement agreement under the proviso to sub-section (9) of section 22;</p> <p>(f) manner of process of conducting online mediation under sub-section (2) of section 32;</p> <p>(g) the terms and conditions of experts and committees of experts under section 38;</p> <p>(h) qualifications, appointment and other terms and conditions of service of the Chief Executive Officer under sub-section (2) of section 39;</p> <p>(i) functions and duties to be performed by the Chief Executive Officer under sub-section (3) of section 39;</p> <p>(j) the number of officers and employees of the Secretariat of the Council under sub-section (4) of section 39;</p>	<p>provision for—</p> <p>(a) such other forum under <i>Explanation I</i> to clause (l) of section 3;</p> <p>(b) qualification, experience and accreditation for mediators of foreign nationality under the proviso to sub-section (1) of section 10;</p> <p>(c) standards for professional and ethical conduct of mediators under sub-section (2) of section 17;</p> <p>(d) manner of registration of mediated settlement agreement under sub-section (7) of section 22;</p> <p>(e) fees for registration of mediated settlement agreement under the proviso to sub-section (9) of section 22;</p> <p>(f) manner of process of conducting online mediation under sub-section (2) of section 32;</p> <p>(g) the terms and conditions of experts and committees of experts under section 38;</p> <p>(h) qualifications, appointment and other terms and conditions of service of the Chief Executive Officer under sub-section (2) of section 39;</p> <p>(i) functions and duties to be performed by the Chief Executive Officer under sub-section (3) of section 39;</p> <p>(j) the number of officers and employees of the Secretariat of the Council under sub-section (4) of section 39;</p>
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			<p>(k) the qualification, appointment and other terms and conditions of the employees and other officers of the Council under sub-section (5) of section 39;</p> <p>(l) conditions for registration of mediators and renewal, withdrawal, suspension or cancellations of such registrations under clause (d) of section 40;</p> <p>(m) criteria for recognition of mediation institutes and mediation service providers under clause (i) of section 40;</p> <p>(n) manner of maintenance of electronic depository of mediated settlement agreement under clause (m) of section 40;</p> <p>(o) manner for grading of mediation service provider under section 41;</p> <p>(p) such other functions of mediation service provider under clause (f) of section 42;</p> <p>(q) duties and functions to be performed by mediation institutes under section 43; and</p> <p>(r) Any other matter in respect of which provision is necessary for the performance of functions of the Council under this Act.</p>	<p>(k) the qualification, appointment and other terms and conditions of the employees and other officers of the Council under sub-section (5) of section 39;</p> <p>(l) conditions for registration of mediators and renewal, withdrawal, suspension or cancellations of such registrations under clause (d) of section 40;</p> <p>(m) criteria for recognition of mediation institutes and mediation service providers under clause (i) of section 40;</p> <p>(n) manner of maintenance of electronic depository of mediated settlement agreement under clause (m) of section 40;</p> <p>(o) manner for grading of mediation service provider under section 41;</p> <p>(p) such other functions of mediation service provider under clause (f) of section 42;</p> <p>(q) duties and functions to be performed by mediation institutes under section 43; and</p> <p>(r) Any other matter in respect of which provision is necessary for the performance of functions of the Council under this Act.</p>
	Laying.	54	54. Every notification under sub-section (2) of section 7, sub-section (2) of section 56, rule and regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in	54. Every notification under sub-section (2) of section 7, sub-section (2) of section 56, rule and regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in



			<p>session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification, rule or regulation or both Houses agree that the notification, rule or regulation should not be made, the notification, rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification, rule or regulation</p>	<p>session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification, rule or regulation or both Houses agree that the notification, rule or regulation should not be made, the notification, rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification, rule or regulation</p>
	Power to removedifficulties.	<b>55</b>	<p><b>55.</b> (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to it to be necessary for removing the difficulty:</p> <p>Provided that no such order shall be made under this section after the expiry of a period of three years from the date of commencement of this Act.</p> <p>(2) Every order made under sub-section (1) shall be laid,</p>	<p><b>55.</b> (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to it to be necessary for removing the difficulty:</p> <p>Provided that no such order shall be made under this section after the expiry of a period of three years from the date of commencement of this Act.</p> <p>(2) Every order made under sub-section (1) shall be laid,</p>

			as soon as may be after it is made, before each House of Parliament.	as soon as may be after it is made, before each House of Parliament.
	Provisions of Act to Have overriding effect on mediation or conciliation contained in other laws.	<b>56</b>	<b>56.</b> (1) Subject to the enactments mentioned in the Second Schedule, the provisions of this Act shall have overriding effect for conduct of mediation or conciliation notwithstanding anything inconsistent therewith contained in any other law for the time being in force, and any instrument having force of law.  (2) If the Central Government is satisfied that it is necessary or expedient so to do, it may, by notification, amend the Second Schedule and thereupon it shall be deemed to have been amended accordingly.	Sec 56 impliedly bars mediation in relation to 'The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (14 of 2013)'. This needs to be reconsidered as there are many such cases that have been settled through the Mediation process or are capable of settlement.
	Act not to apply to pending proceedings.	<b>57</b>	<b>57.</b> This Act shall not apply to, or in relation to, any mediation or conciliation commenced before the coming into force of this Act.	<b>57.</b> This Act shall not apply to, or in relation to, any mediation or conciliation commenced before the coming into force of this Act.
	Amendment of Act 9 of 1872.	<b>58</b>	<b>58.</b> The Indian Contract Act, 1872, shall be amended in the manner specified in the Third Schedule.	<b>58.</b> The Indian Contract Act, 1872, shall be amended in the manner specified in the Third Schedule.
	Amendment of Act 5 of 1908.	<b>59</b>	<b>59.</b> The Code of Civil Procedure, 1908, shall be amended in the manner specified in the Fourth Schedule.	<b>59.</b> The Code of Civil Procedure, 1908, shall be amended in the manner specified in the Fourth Schedule.
	Amendment of Act 39 of 1987.	<b>60</b>	<b>60.</b> The Legal Service Authorities Act, 1987, shall be amended in the manner specified in the Fifth Schedule.	<b>60.</b> The Legal Service Authorities Act, 1987, shall be amended in the manner specified in the Fifth Schedule.

	Amendment of Act 26 of 1996.	<b>61</b>	<b>61.</b> The Arbitration and Conciliation Act, 1996, shall be amended in the manner specified in the Sixth Schedule.	<b>61.</b> The Arbitration and Conciliation Act, 1996, shall be amended in the manner specified in the Sixth Schedule.
	Amendment of Act 27 of 2006.	<b>62</b>	<b>62.</b> The Micro, Small and Medium Enterprises Development Act, 2006, shall be amended in the manner specified in the Seventh Schedule.	<b>62.</b> The Micro, Small and Medium Enterprises Development Act, 2006, shall be amended in the manner specified in the Seventh Schedule.
	Amendment of Act 18 of 2013.	<b>63</b>	<b>63.</b> The Companies Act, 2013, shall be amended in the manner specified in the Eighth Schedule.	<b>63.</b> The Companies Act, 2013, shall be amended in the manner specified in the Eighth Schedule.
	Amendment of Act 4 of 2016.	<b>64</b>	<b>64.</b> The Commercial Courts Act, 2015, shall be amended in the manner specified in the Ninth Schedule.	<b>64.</b> The Commercial Courts Act, 2015, shall be amended in the manner specified in the Ninth Schedule.
	Amendment of Act 35 of 2019.	<b>65</b>	<b>65.</b> The Consumer Protection Act, 2019, shall be amended in the manner specified in the Tenth Schedule.	<b>65.</b> The Consumer Protection Act, 2019, shall be amended in the manner specified in the Tenth Schedule.

**Interaction by the Parliamentary Standing Committee on Personnel, Public Grievances, Law & Justice with Tamil Nadu Mediation and Conciliation Centre, High Court, Madras on 27.04.2022**

**Suggestions regarding Mediation Bill, 2021**

**Section 21:**

The proposed Section 21 fixes 180 days from the date of first appearance before the mediator as the time limit for completion of mediation process. It provides for a further period as agreed by the parties, but not exceeding 180 days, thereby the outer limit of 360 days is fixed as maximum limit for completion of mediation process.

**Tamil Nadu Mediation Rules, 2010 framed by the High Court of Madras under Section 122 of CPC notified by G.O.(Ms).No.833, Home (Courts-IV ) dated 22.09.2010.**

Rule 19 of the above Rules deals with “**time limit for completion of mediation**”. Under this Rule, the period of 60 days is fixed for completion of mediation process and on expiry of the 60 days from the date fixed for the first appearance of the parties before the mediator, the proceedings shall be posted before the Court for further orders of extension, upon the request of the mediator or any of the parties.

Further, **the Mediation and Conciliation Project Committee, Supreme Court of India by its communication in No.79-115/MCPC/2017, dated 17.02.2017** has informed that the Competent Authority has given a direction of a time limit of 60 days from the first date and in exceptional situations, with the consent of the parties, the time limit can be extended by 30 days. However, the time may be extended by another 30 days beyond 90 days (60 + 30 days), only with the permission of the Referral Judge, provided both parties agreed to it. Thus the outer limit of 120 days is fixed for completion of mediation process.

The present outer limit of 120 days is reasonable and would not delay the process and the parties are encouraged to opt for mediation.

### **Suggestions:**

The proposed outer time limit of 360 days (180+180) is too long (almost one year) and if implemented, the parties would be discouraged to opt for mediation as they would waste one year duration in case of "Failure". Further, **the success mantra of Mediation is "Saving of Time and Cost"**. If the time is very extensive and one year is to be fixed, then the very purpose of Mediation would be defeated and the mediation would slowly die a natural death, since the parties will be reluctant to opt for mediation because of the long time involved therein.

### **The Ninth Schedule:**

#### **Amendment to Section 12A of the Commercial Courts Act, 2015**

The proposed amendment to Section 12A of the Commercial Courts Act, 2015 provides a time limit of 6 months from the date of application made by the plaintiff, which would be extended for a further period of 6 months, with the consent of the parties, thereby an outer time limit for 1 year (6 months + 6 months) is given under the proposed bill.

Whereas the time limit originally fixed under Section 12A of the Commercial Courts Act, 2015 is 3 months from the date of application made by the plaintiff, which may be extended for a further period of 2 months with the consent of the parties. Thus, an outer time limit of 5 months (3+2 months) is fixed for completion of mediation for the Commercial Disputes.

If the present proposal of time limit under the Bill is implemented, then the very purpose of formation of Commercial Courts for speedy disposal would be defeated and it would lead to exploitation by unscrupulous litigants thereby defeating and delaying the remedy under the Act. This again would take away the confidence of the parties on the mediation process and would eventually discourage them to opt for mediation.

**Suggestions:**

The Hon'ble Committee has to make suitable amendment in the Proposed Bill under the relevant provisions to retain the present period of time limit for completion of mediation process so as to encourage the parties to opt for mediation, since the consumption of time in the process of mediation should be very reasonable. This would avoid pendency of cases both before the Mediation Service Institutions and the Courts.

Thus, the outer time limit for completion of mediation shall be fixed as 120 days in all cases and in commercial disputes the present outer time limit of 5 months shall be fixed.

The Tamil Nadu Mediation Rules, 2010 framed by the Hon'ble High Court and the Guidelines framed and approved by the Hon'ble Committee for Tamil Nadu Mediation and Conciliation Centre and Hon'ble Chief Justice are enclosed herewith.

  
Director (TNMCC)  
28/10/17

# **Suggestions of KSMCC on Mediation Bill, 2021**

**Before the Parliamentary Standing Committee on**

**Personal, Public Grievances, Law and Justice**

.....

**Johny Sebastian**

**District Judge & Director, KSMCC**

**[Director, ADR Centre, High Court]**

**Ram Mohan Palace,**

**High Court of Kerala.**



**PART - I**  
**DOMESTIC MEDIATION**

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**CHAPTER 1 - APPLICABILITY AND DEFINITIONS**

**S. 3 Definitions**

In this Part unless the context otherwise requires:

- (a) *“Council”* means the Mediation Council of India established under section 35 of this Act.

**Suggestions of KSMCC: -**

*After mentioning the definition for “Council” should give the definition for the “Authority”.*

*“Authority” Means the State Mediation Authority and District Mediation Authority constituted under this Act.*

*The Mediation should get separate statutory right to implement every matter related to Mediation.*

*It is to be noted that as per Sec.89 of CPC, the ADR mechanism,*

*Arbitration - There is one Enactment that Arbitration and Conciliation Act, 1996.*

*Lok Adalat – The Legal Services Authorities Act, 1987*

*Judicial Settlement – Follow such procedures prescribed by the central Government in this behalf.*

*Mediation – Mediation Act, 2021*

*Here Mediation also coming under a new enactment which has separate*

*body and power and then why to merge some of the activities with other authority and enactment like, Legal Services Authorities Act.*

*So, from the Reference of a matter to Mediation and till the final settlement agreement registration and its filing process and other allied things should be done by the state and district authorities. The central authority will have the final decision making power and entire monitoring rights over the state. The Accreditation of Mediator and all other rights conferred as per this Bill should be maintained as such and should done by the Mediation Council of India.*

- (b) (i) "Court" for the purpose of mediation under this Part means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its Ordinary Original Civil Jurisdiction, having jurisdiction to decide the disputes forming the subject matter of mediation if the same had been the subject matter of a suit.
- (ii) *in the case of international mediation* - the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the mediation if the same had been the subject-matter of a suit, and in other cases. a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court."

**Suggestions of KSMCC: -**

*This Sec. 3 (b) (i) is contradictory to Sec.29 (1) of this Mediation Act. Hence should make a change in this section and add this provision of Sec.3 (b) (i) into the "Court" means – Any Court or Tribunal established in India as per the provisions of law to try any such cases in civil or criminal in nature of competent jurisdiction before which the subject matter of dispute or other proceeding would lie. So that the reference of criminal matters to Mediation is also will be possible.*

*In the present Bill it is not specifically mentioned anywhere else for the remedy of conducting mediation in compoundable criminal matters, matrimonial matters criminal in nature, 138 N.I Act matters, The*

*Protection of Women from Domestic Violence Act, Maintenance and Welfare of Parents and Senior Citizens Act, etc.*

## CHAPTER 2 - MEDIATION

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### S.6 Pre litigation Mediation and Settlement

- (1) Subject to other provisions of this Act, irrespective of the existence of any mediation agreement or otherwise, any party before filing any suit or proceeding in any Court or Tribunal shall, take steps to settle the disputes by pre litigation mediation in accordance with the provisions of this Act.

#### *Suggestions of KSMCC: -*

*Is consent of parties required for conducting pre-litigation Mediation? This is not clear from the provisions of the bill.*

- (2) Unless otherwise agreed upon by the parties, a mediator registered with the Mediation Council of India or a Court Annexed Mediation Center or a Mediation Service Provider recognized under the provisions of this Act are authorized to conduct pre-litigation mediation.

### S.8 Interim relief by Court or Tribunal

- (1) If exceptional circumstances exist, a party may, before the commencement of or during the continuation of mediation proceedings under this Part, file an application before a Court or Tribunal of competent jurisdiction for seeking urgent interim measures.
- (2) The Court or Tribunal shall after granting or rejecting urgent interim relief, as the case may be, refer the parties to undertake mediation to resolve the dispute, if deemed appropriate.

**Suggestions of KSMCC: -**

*The provision is silent whether consent of parties is required before they could be referred to mediation.*

*It is to be noted and specified in this Mediation Bill that there is no Appeal remedy to either party from any settlement arrived on account of Mediation and in other cases the aggrieved party can approach the jurisdictional appeal court to challenge any order other than the matters which directly or indirectly affected the Mediation process.*

*It is also to be clarified that no appeal remedy is available to either party from challenging any Mediation Settlement Agreement in any manner and the challenge raised by either party before the jurisdictional court will be final. The resolution of disputes through Mediation must be final and the finality is very important and that also to be highlighted in the Mediation Bill.*

**S.9 Power of Court or Tribunal to refer parties to mediation.**

- (1) Notwithstanding anything contained in any other law for the time being in force, a Court or Tribunal, before which an action is brought in a matter which is the subject of an agreement to submit to mediation shall, if a party to such agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, refer the parties to mediation as per the provisions of this Act, unless it finds that *prima facie* no valid agreement exists, or there is good reason why, notwithstanding such agreement, the parties should not be referred to mediation.

**Suggestions of KSMCC: -**

*In Sec. 9 (1) Notwithstanding anything contained in any other law for the time being in force, a Court or Tribunal, before which an action is brought in a matter which is the subject of an agreement to submit to Mediation shall, if a party to such agreement or any person claiming through or under him so applies not later than the date of submitting his first statement on the substance of the dispute have to be omitted. Without applying by the parties if there is any such*

*Mediation Agreement the matter should be referred to Mediation without consent or willingness of any other parties thereto.*

### CHAPTER 3 – MEDIATOR

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#### **S.10 Appointment of mediator**

- (1) Unless otherwise agreed by the parties, a person of any nationality may be a mediator.

Provided that mediator of any foreign nationality shall possess such equivalent qualification, experience and accreditation as may be specified for domestic mediators by the Council by way of regulations.

#### **Suggestions of KSMCC: -**

*This provision will pave the way for introduction of foreign nationals in the legal sector, through the route of mediation, which is not desirable and this is likely to be opposed by legal fraternity.*

- (2) The parties are free to agree on a procedure for appointing the mediator or mediators.

#### **Suggestions of KSMCC: -**

*Here we have to make it clear that whether the consent of the parties is necessary for the reference to Mediation or not?*

*If Consent is necessary then it must be a written agreement and by whom it will be taken and when and where it will be taken who will keep those documents and its confidentiality. These matters must be clarified in the Mediation Bill itself.*

*If the consent is not mandatory for conducting Mediation, then it will affect the conducting of Pre-Litigation Mediation as per this Mediation Bill.*

*If the Pre-Litigation Mediation is compulsory and mandatory in any civil proceedings or any other compoundable criminal proceedings which has the civil flavor, the consent of parties will become immaterial.*

*These aspects should be clarified and specified in this Mediation Bill.*

*It is also to be clarified that how a person can initiate the Pre-Litigation Mediation proceedings and what are the procedures to be complied with by the parties.*

#### **CHAPTER 4 - MEDIATION PROCESS**

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##### **S.20 Time-limit for completion of mediation**

- (1) Notwithstanding anything contained in any other law for the time being in force, mediation under this Act shall be completed within a period of ninety days from the date of commencement of mediation.
- (2) The period for mediation prescribed under sub- section (1) may be extended for a further period of ninety days with the consent of parties.

##### **Suggestions of KSMCC: -**

*The time limit is too long and can be limited to 60+60 days*

##### **S.21 Mediated Settlement Agreement**

- (1) Mediated Settlement Agreement means and includes an agreement or interim agreement in writing between some or all of the parties resulting from mediation, settling some or all of the disputes between such parties, and authenticated by the mediator.

Provided that the terms of the mediated settlement agreement may extend beyond the disputes referred to mediation.

**Explanation.** – A mediated settlement agreement which is void under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful settlement agreement within the meaning of mediated settlement

agreement.

- (2) Where a Mediated Settlement Agreement referred to in sub- section (1) is reached between the parties in regard to all the issues or some of the issues, the same shall be reduced in writing and signed by the parties.
- (3) Subject to provisions of section 26 and 27, the agreement of the parties so signed
  - (i) in case of institutional mediation shall be submitted to the mediator who shall, after authenticating the settlement agreement, forward the same with a covering letter signed by him, to the mediation service provider and also provide a copy of the same to the parties.
  - (ii) in all other cases, shall be submitted to the mediator who shall, after authenticating the settlement agreement, provide a copy of the mediated settlement agreement to all the parties .

**Suggestions of KSMCC: -**

*It is not clear as to who should be the custodian of Mediation settlement agreement in case of Adhoc' Mediation.*

*Here we need some clarifications. If the Mediation is conducted through an Ad-Hoc Mediation process, what should be done by the Mediator with the original settlement agreement? The Accredited Mediator should mention his Accreditation Number issued by the Mediation Council of India while authenticating the Settlement Agreement and also producing for registration before the District Mediation Authority.*

*The District Mediation Authority should maintain a list of Accredited Mediators in the District as well as whole State and verify with the same while producing the Settlement Agreement for Registration by anybody at any point of time.*

*Who should keep the original after furnishing the authenticated copies to the parties? These aspects to be clarified in the Mediation Bill.*

*As per Sec. 21 (8) who can produce this settlement agreement for effecting registration before the District Mediation Authority.*

(4) Subject to provisions of section 26 and 27, where no agreement is arrived at between the parties, within the time period specified in section 20 or where, the mediator is of the view that no settlement is possible,-

- (i) The Mediator shall submit a report to this effect to the mediation service provider in writing in case of institutional mediation.
- (ii) In all other cases the mediator shall prepare a report to this effect and provide a signed copy to all the parties.

Provided that the report referred to in clause (i) or (ii) above shall not disclose the cause for failure of the parties, to reach a settlement, or any other matter or thing referring to their conduct, during mediation.

(5) The parties, may, at any time during the mediation process, make an interim or partial agreement with respect to any of the issues forming part of the subject matter of the mediation.

(1) Any mediated Settlement Agreement under this section shall also include a settlement agreement resulting from online mediation and duly signed by the parties by way of secure electronic signature or otherwise and authenticated by the mediator in the like manner.

(7) For the purpose of record, mediated settlement agreement arrived at between the parties other than those arrived in Court annexed mediation centres or under section 21 and 22E of the Legal Services Authorities Act, 1987 shall be registered with the Authorities constituted under the Legal Services Authorities Act, 1987 and such Authorities shall issue a unique registration number to such settlements as specified by regulations to be made by the Authorities.

Provided that the mediated settlement agreement reached between the parties under sub-section (2) shall be registered within the territorial jurisdiction of the Court or Tribunal of competent jurisdiction to decide the subject matter of dispute.

**Suggestions of KSMCC: -**

*There is no mediation for Lok Adalat or Permanent Lok Adalat. Hence reference to S.21 and 22E is misplaced.*



*Here it is very much necessary to clarify that in a case of court annexed mediation what to do with this settlement agreement and all such procedures before the Court also should mention in this Bill. Otherwise it will create problem in future.*

*It is to be noted that as per this Mediation Bill it is clear that the Mediated Settlement Agreement is equallent to judgment and decree and if that be so there need not pass any further decree in a matter considering the settlement agreement in case of court annexed mediation.*

*This has to be clarified and explained as proviso to this section.*

- (8) Registration referred to in sub-section (7) shall be made by either of the parties, mediator or mediation service provider within a period of ninety days from the date of receipt of copy of mediated settlement agreement:

Provided that mediated settlement agreement may be registered after expiry of period of ninety days on payment of such fee as may be specified by the Authorities by way of regulations.

**Suggestions of KSMCC: -**

*This provision may give rise to illegal activity insofar as there is likelihood of parties bringing fraudulent settlements for registration. There has to be a mechanism for ensuring the authenticity of settlement agreement. All mediators can be given a registration number/Accreditation number, like Bar Council Roll No. and Mediators should be directed to mandatorily give the roll number in the settlement agreement.*

*Is the original should be produced for registration? The bill is silent on this aspect.*

*Thereafter the District Mediation Authority should give a Certificate bearing the details of parties, summary of settlement including the name of competent court jurisdiction, the registration number, the Accreditation Number/ Enrolment Number of the Mediator and by whom it was produced and accepted from the Authority including the registration. The party concerned can file the execution petition and should insist to produce*

*this registration certificate along with the E.P. Any court should not accept the E.P. in file without producing the Registration Certificate issued by the District Mediation Authority as contemplated in the Bill. Otherwise any party may create any fake settlement agreement and produce it for the registration and if it is registered that cannot be challenged later.*

## **S.22 Confidentiality**

- (1) Subject to the exceptions provided in this Act, the mediator, the parties and participants in the mediation shall keep confidential the following matters relating to the mediation proceedings:
  - (i) acknowledgements, opinions, suggestions, promises, proposals, apologies and admissions made during the mediation;
  - (ii) acceptance of or willingness to accept proposals made or exchanged in the mediation;
  - (iii) documents prepared solely for the purpose of mediation.
- (2) Notwithstanding anything contained in any other law for the time being in force, the mediator, the mediation service provider and the parties to the mediation agreement shall maintain confidentiality of all mediation proceedings except mediated settlement agreement.
- (3) Any audio or video recording of the mediation proceedings shall be kept confidential by the parties and the participants including the mediator.

### **Suggestions of KSMCC: -**

*Mediation proceedings are to be confidential. There is no question of audio or video recording of mediation. So this provision is to be deleted.*

- (4) No party to the mediation shall in any proceedings before a Court or Tribunal, rely on or introduce as evidence any information or communication set forth in clauses (i) to (iii) of sub-section (1), including any information in electronic form, or verbal communication and the Court or Tribunal shall not take cognizance of such information or evidence.

Provided that evidence or information that is otherwise admissible or subject to discovery in proceedings will not become inadmissible or protected from discovery solely by reason of its disclosure or use in a mediation.

**Suggestions of KSMCC: -**

*Proviso is vague and likely to give rise to litigation. We need some clarification in this proviso.*

**S.23 Admissibility, Privilege against Disclosure**

- (1) No mediator or participant in the mediation, including experts and advisors engaged for the purpose of the mediation and persons involved in the administration of the mediation, shall at any time be permitted, or compelled to disclose to any Court or Tribunal, or in any adjudicatory proceedings by whatsoever description, any communication in mediation, or to state the contents or conditions of any document or nature or conduct of parties during mediation including the content of negotiations or offers or counter offers with which they have become acquainted during the mediation.

Provided that nothing in this section and section 22 shall protect from disclosure information sought or provided to prove or dispute a claim or complaint of professional misconduct or malpractice based on conduct occurring during the mediation.

**Suggestions of KSMCC: -**

*Mediator should be given protection from prosecution and Civil liability for anything done in mediation or for the consequences of settlement agreement.*

**CHAPTER - 5**  
**STATUS OF MEDIATED SETTLEMENT AGREEMENT**  
.....

**S.28 Status of mediated settlement agreement**

- (1) A mediated settlement agreement resulting from a mediation under this part signed by the parties and authenticated by the mediator shall be final and binding on the parties and persons claiming under them respectively and enforceable in law.
- (2) Subject to the provisions of section 29, it shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908, in the same manner as if it were a judgment and/ or decree passed by a court, and may accordingly be relied on by any of parties or persons claiming through them, by way of defense, set off or otherwise in any legal proceedings.

**Suggestions of KSMCC: -**

**S. 29[2] – *What about criminal matters settled in mediation?***

*Is it possible that if the Mediation Bill provides a provision that the Settlement Agreement executed in Mediation with respect to the criminal matters by way of Pre Litigation Mediation or Court Referred Mediation will have the same effect and status of the Award which may be passed as per Sec.21 of The Legal Services Authorities Act.*

*For the settlement of criminal cases compoundable in nature, the non-compoundable cases which the court gives permission, all the matters related to the offences under Sec.138 of Negotiable Instruments Act, all the matrimonial matters including the petitions filed under Protection of Women from Domestic Violence Act 2005, Maintenance and Welfare of Parents and Senior Citizens Act 2007, and which are all the other criminal cases having civil flavor and disputes which are personal in nature which may be permitted by any court of law including any Appellate or Revisional Court, may be referred to Mediation as an ADR mode of resolution of the disputes. For this purpose, one new provision may be added as **Sec.320A in the Code of Criminal Procedure**. All the settlement arrived in mediation under this provision shall have the same effect and status as equivalent to the Award under Section 21 of the Legal Services Authorities Act. Hence sufficient amendments also to be carried out in the Code of Criminal Procedure for the strict compliance of this provision and by which the Pre-Litigation Mediation rights also will be protected under this provision. For the purpose of execution of the Award which are executed under this provision shall be either criminal or civil in nature/manner which may be opted by the parties concerned and the court concerned can initiate deterrent punishment by awarding sentence for 2 years which may be extended to 3 years in accordance with the gravity of offence and the court can pass any order for the recovery of any amount as compensation from any party for the compliance of the settlement terms arrived between the parties in Mediation.*

*This aspect should be clarified here.*

*There should be a corresponding amendment in the concerned Stamp Act providing for the stamp duty payable for the MSA or provide the stamp duty payable in this bill itself.*

*Here it should be clarified that who can produce the stamp paper for preparing the settlement agreement. The time/period of production of stamp paper is also to be clarified. Since it is a Settlement Agreement, the stamp duty payable may prefer for preparing a valid agreement and the same can be considered while drafting the Rules in the Act.*

### **S.29 Challenge to mediated settlement agreement**

- (1) Notwithstanding anything contained in any other law, in any case in which the mediated settlement agreement is arrived between the parties and is sought to be challenged by either of the parties, he may apply to the Court or Tribunal of competent jurisdiction before which the subject-matter of dispute or other proceeding would lie.
- (2) A mediated settlement agreement can be challenged only on all or any of the following ground of:
  - (i) Fraud; or
  - (ii) Corruption; or
  - (iii) Gross impropriety; or Impersonation.
- (3) An application for challenging the mediated settlement agreement may not be made after three months have elapsed from the date on which the party making that application has received the copy of mediated settlement agreement under section 21(3) of this Act.

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

#### **Suggestions of KSMCC: -**

*There is no point in providing that MSA can be challenged only within 120 days. Once the party comes to know that the MSA is vitiated, he should be permitted to challenge it within so many days from date of knowledge.*

### **S.30 Costs**

Unless otherwise agreed by the parties all costs of mediation, including

the fees of the mediator and the charges of the mediation service provider shall be borne equally by the parties.

**Suggestions of KSMCC: -**

*Needs clarity on costs of Adhoc mediation.*

**CHAPTER 7  
MEDIATION COUNCIL OF INDIA**

.....

**S.35 Establishment and Incorporation of Mediation Council of India**

- (1) The Central Government shall, by notification in the Official gazette, establish for the purposes of this Act, a Council to be known as Mediation Council of India to perform duties and discharge functions specified under this Act.

**Suggestions of KSMCC: -**

*Now it is clear that only one Council is going to establish for the entire activities of Mediation in India. It may create many issues in future and the sole body cannot control all over India all the matters related to Mediation. So as a matter of reality we can divide the entire nation as 4 or 5 Zones and select one participant from each Zones from the Mediators*

*Fraternity and include them also in the Mediation Council of Indian to represent the entire Nation for the development of Mediation.*

*Apart from constitution of the State Mediation Authority and District Mediation Authority also should be included as another provision in this Mediation Bill.*

*While drafting the Rules and regulations the rights and liabilities and constitution of the State Authority and District Authority may be mentioned in detail.*

*Effective functioning of the mediation mechanism requires Mediation council at the National level, State Authority at State level and District authority at district level. See for ex. LSA Act, 1986, Consumer protection Act, 2019.*

*When the entire nation is trying to decentralize the power, Mediation Bill attempts to concentrate power in one body, which will not be conducive from growth of Mediation in India. Mediation activities all over the nation cannot be controlled by one Council at the national level.*

*Ideally, the State Authority should have a High Court judge as the President and one District Judge as the Executive Director. Three Mediators can be nominated as Member of the State Authority.*

*Similarly in district authority, the PDJ can be the President, the Sub Judge can be the Secretary and three mediators can be included as members.*

- (2) The Council shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both moveable and immovable, and to enter in to contract, and shall, by the said name, sue or be sued.
- (3) The head office of the Council shall be at Delhi or at such other place as may be notified by the Central Government.
- (4) The Council may, in consultation with the Central Government, establish offices at other places in India and abroad.



### S.36 Composition of the Mediation Council of India

(1) The Council shall consist of the following members:

- (a) A person who has been, a Judge of the Supreme Court or, Chief Justice of a High Court or, a Judge of a High Court or an eminent person, having special knowledge and experience in the conduct or administration of mediation, to be appointed by the Central Government–Chairperson;
- (b) a person having knowledge and experience in law related to alternate dispute resolution mechanisms, to be appointed by the Central Government–Full Time Member;
- (c) an eminent academician having experience in research and teaching in the field of mediation and alternate dispute resolution laws, to be appointed by the Central Government- Full Time Member;
- (d) Secretary to the Government of India in the Department of Legal Affairs, Ministry of Law and Justice or his representative not below the rank of Joint Secretary–Member, *ex officio*;
- (e) Secretary to the Government of India in the Department of Expenditure, Ministry of Finance or his representative not below the rank of Joint Secretary– Member, *ex officio*; and
- (f) Chief Executive Officer – Member - Secretary, *ex officio*.

#### Suggestions of KSMCC: -

*The composition of the Mediation Council does not have space for mediators. This is a patent lacunae which should be cured. Mediators from each Zone of the Country should be made members of the Council.*

**CHAPTER - 8**  
**MEDIATION SERVICE PROVIDER AND MEDIATION INSTITUTES**  
.....

**S.44 Functions of Mediation Service Providers**

The Mediation Service Providers shall perform the following functions, namely –

- (a) Accreditation of mediators and maintain panel of mediators.
- (b) to provide the services of mediator for conduct of mediation.
- (c) to provide all facilities, secretarial assistance and infrastructure for the efficient conduct of mediations.
- (d) to promote good professional and ethical conduct amongst mediator.
- (e) Registration of mediated settlement agreement in accordance with the provisions of section 21.

- (f) Filing of mediated settlement agreement in depository as per the provisions of section 25 of this Act.
- (g) such other functions as may be provided by the Council by way of regulations.

**Suggestions of KSMCC: -**

S.44 (f) to be deleted as S.25 is seen deleted.

**SCHEDULE - II**

**[Refer section 7]**

**DISPUTES WHICH MAY NOT BE FIT FOR RESOLUTION THROUGH  
MEDIATION UNDER PART 1**

.....

- (i) *Disputes of serious and specific allegations of fraud, fabrication of documents, forgery, impersonation, coercion.*
- (ii) *Disputes relating to claims against minors, deities, persons with intellectual disabilities, [under clause (2) of the schedule and persons with disability having high support needs (as defined in Section 2 (t)) of the Rights of Persons with Disabilities Act, 2016, persons with mental illness, as defined by Section 2 (s) of the Mental Health Care Act, 2017, persons of unsound mind, in relation to whom proceedings are to be conducted under Order 32 Code of Civil Procedure, 1908 and suits for declaration of title against government.*

- (iii) *Disputes involving prosecution for non- compoundable criminal offences except with the permission of the court.*
- (iv) *Disputes matters which are prohibited under any law or is in conflict with public policy or is opposed to basic notions of morality or justice;*
- (v) *Complaints or proceedings, initiated before any statutory authority or body, in relation to registration, discipline, misconduct of any practitioner, or other registered professional, of whatever description, such as legal practitioner, medical practitioner, dentist, architect, chartered accountant, or any in relation to any other profession, which is regulated by provisions of law.*
- (vi) *Disputes which have the effect on rights of a third party who are not a party to the mediation proceedings.*
- (vii) *Any dispute relating to the validity of a patent, or proceedings relating to applications for compulsory licensing under the Patent Act, 1970;*
- (viii) *Any dispute or proceeding in relation to validity of registration under the Copyright Act, 1957, or application for grant of license, or fixation of any fee under the said Act;*
- (ix) *Any proceeding in relation to any subject matter, falling within any enactment, over which the tribunal constituted under the National Green Tribunals Act, 2010, has jurisdiction;*
- (x) *Any dispute relating to levy, collection, penalties or offences, in relation to any direct or indirect tax or refunds, enacted by any state legislature or the Parliament of India;*
- (xi) *Any investigation, inquiry or proceeding, under the Competition Act, 2002, including proceedings before the Director General, under the Act; proceedings before the Telecom Regulatory Authority of India, under the Telecom Regulatory Authority of India Act, 1997 or Telecom Disputes Settlement and Appellate Tribunal(TDSAT),*
- (xii) *Proceedings before appropriate Commissions, and the Appellate Tribunal for Electricity, under the Electricity Act,2003;*
- (xiii) *Proceedings before the Petroleum and Natural Gas Regulatory Board, and appeals therefrom before the Appellate Tribunal under the*

*Petroleum and Natural Gas Regulatory Board Act,2006;*

*Proceedings before the Securities Exchange Board of India, and the Securities Appellate Tribunal, under the Securities Exchange Board of India Act, 1992;*

- (xv) Land acquisition and determination of compensation under land acquisition laws, or any provision of law providing for land acquisition;*
- (xvi) Any other subject-matter of dispute which may be notified by the Central Government in the Official Gazette.*

*Explanation: The above list is indicative and not exhaustive.*

**Suggestions of KSMCC: -**

*Disputes relating to claim against minors..... This should be removed and effect amendment like this .....*

*those matters relating to the claims against and in favour of minors which are not permitted or consented by the competent Court.*

**SCHEDULE - IV**

(See Section 64)

Amendments to Arbitration and Conciliation Act, 1996

.....

1. Part III of the Arbitration and Conciliation Act, 1996 containing Section 61-81 shall be substituted as follows:

61. (1) Any provision, in any other enactment for the time being in force, providing for resolution of disputes through conciliation in accordance with the provisions of Arbitration and Conciliation Act, 1996 shall be construed as reference to mediation as provided for under the Mediation Act, 2021.

- (2) The Conciliation as provided for under this Act or the code of Civil procedure shall be construed as mediation as defined in the Mediation Act, 2021.
62. Saving.- Notwithstanding anything contained in section 61 any conciliation proceedings initiated under part III of the Arbitration and Conciliation Act, 1996 before the commencement of the Mediation Act, 2021 shall be continued as such and the Mediation Act, 2021 shall not have any bearing on status and effect of any settlement arrived through such conciliation proceedings.¶

**Suggestions of KSMCC: -**

*In this Schedule we have to add one sub Section as ..*

*Sub Section 3. The Words Mediation and Conciliation referred in Sec.43D of Arbitration and Conciliation Act, 1996 shall stand omitted.*

**SCHEDULE - V**

(See Section 65)

Amendment to the Code of Civil Procedure, 1908.

.....

1. For section 89 following shall be substituted:

89. Settlement of disputes outside the Court. —

- (1) Where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court may at the first instance or at any stage thereafter, refer the parties for a

possible settlement through:- –

- (a) arbitration;
- (b) conciliation or mediation;
- (c) judicial settlement including settlement through Lok Adalat.

(2) Were a dispute has been referred –

- (a) for arbitration, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration were referred for settlement under the provisions of that Act;
- (b) for conciliation or mediation, the provisions of the Mediation Act, 2021 shall apply as if the proceedings for conciliation or mediation were referred for settlement under the provisions of that Act;
- (c) to Lok Adalat, the Court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (1) of section 20 of the Legal Services Authority Act, 1987 (39 of 1987) and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;
- (d) for judicial settlement, the Court shall effect a compromise between the parties and shall follow such procedure as may be prescribed by the Central Government.

**Suggestions of KSMCC: -**

*In S.89[b] the word 'conciliation' is not required'.*

*In S.89[c] Judicial settlement and Lok Adalat should be separated and Lok Adalat should be included in (d)*

*Herein after in CPC also we need not mention anything about Conciliation. So, after Sub section (a) in Sec.89 need to mention only "Mediation".*

**SEVENTH SCHEDULE**

**(See Section 67)**

Legal Services Authorities Act, 1987

.....

1. Clause (f) of section 4 of the Act shall be substituted as follows:

(f) encourage the settlement of disputes, including by online mode, by way of negotiations, arbitration, mediation and conciliation;

*Suggestions of KSMCC: -*



*The word 'conciliation' may be deleted.*

**Suggestions of KSMCC: -**

*Schedule VIII may added to bring in amendment to Cr. P.C. by adding S. 320A to it so that criminal cases can be mediated and to give status of award to order passed pursuant to MSA.*

**Sec. 320 A of the Code of Criminal Procedure: -**

*For the settlement of criminal cases compoundable in nature, the non-compoundable cases which the court gives permission, all the matters related to the offences under Sec.138 of Negotiable Instruments Act, all the matrimonial matters including the petitions filed under Protection of Women from Domestic Violence Act 2005, Maintenance and Welfare of Parents and Senior Citizens*

*Act 2007, and which are all the other criminal cases having civil flavor and disputes which are personal in nature which may be permitted by any court of law including any Appellate or Revisional Court, may be referred to Mediation as an ADR mode of resolution of the disputes. All the settlement arrived in mediation under this provision shall have the same effect and status as equalent to the Award under Section 21 of the Legal Services Authorities Act. Pre-Litigation Mediation rights also will be protected under this provision.*

*Provided that for the purpose of execution of the Award which are executed under this provision shall be either criminal or civil in nature/manner which may be opted by the parties concerned and the court concerned can initiate deterrent punishment by awarding sentence for 2 years which may be extended to 3 years in accordance with the gravity of offence and the court can pass any order for the recovery of any amount as compensation for the compliance of the settlement terms arrived between the parties in Mediation.*

### **Suggestions of KSMCC: -**

#### **SCHEDULE - IX - To be added**

*Sufficient amendments to be effected in Family Court Act 1984, for encouraging the Settlement through Mediation. All the Settlement Agreements arrived in Mediation with respect to any of the family disputes civil in nature which are not excluded as per the Schedule – II of this Act shall have the same status and effect as if it was an order, judgment or decree of a civil court as per Sec.9 (4) of this Act.*

*All Settlement Agreements arrived in Mediation with respect to the matters criminal in nature shall have the same status and effect as if it was an*

*Award under Sec.21 of the Legal Services Authority and also will follow the provisions of Sec.320A of Code of Criminal Procedure as mentioned in Schedule VIII under this Act.*

**Suggestions of KSMCC: -**

**SCHEDULE - X: - may be added. Amendment in The Consumer Protection Act.**

*All Mediations mentioned in this Act comes under this enactment shall be governed by the provisions of the Mediation Act 2021.*

**Suggestions of KSMCC: -**

**SCHEDULE - XI:- may be added. Amendment in The Companies Act, 2013**


*All mediations mentioned in The Companies Act, 2013 will be governed by the Mediation Act 2021. For that purpose, Sec.442 of The Companies Act should be amended so as to give effect to the Mediation Act to conduct the Mediation and Conciliation referred in Section 442. The word conciliation also should be removed from this provision by amending it.*

**Note submitted on behalf of Arbitration & Conciliation Centre,  
Bengaluru to the Standing Committee on personnel, public  
grievances, law and justice on proposed Mediation Bill 2021**

Respected Sirs & Madams,

The proposed amendment to Arbitration & Conciliation Act, 1996 as proposed in Section 61 and Sixth Schedule of the Mediation Bill 2021 is appropriate and welcome move.

However, if said amendment is carried out, then the title of both Mediation Bill 2021 and Arbitration & Conciliation Act, 1996 need to be amended. In the Arbitration & Conciliation Act, 1996, the word 'Conciliation' has to be omitted and in Mediation Bill word 'Conciliation' has to be inserted.

  
**DIRECTOR**  
Arbitration & Conciliation Centre,  
Bengaluru  
Director  
Arbitration & Conciliation Centre - Bengaluru  
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## Department of Legal Affairs

### CLAUSE-WISE RESPONSES TO THE COMMENTS RECEIVED FROM THE VARIOUS STAKEHOLDERS

S.No	SUGGESTIONS AND PUBLIC COMMENTS – CLAUSE WISE	MEMO NOS. AND NAMES OF THE STAKEHOLDERS WHO HAVE PROVIDED THE SUGGESTIONS	COMMENTS OF DEPARTMENT OF LEGAL AFFAIRS
1	<p>Clause 3 (a) – Definition of commercial dispute – recommendation on clarity that definition be applicable only for domestic commercial disputes as the definition for International Mediation may need to align with the Singapore Convention.</p> <p>Provisions exclude applicability of the Bill to non-commercial international arbitration.</p> <p>Clause 3 (f) – Definition of international mediation - this definition needs to be considered in light of Article 1 of the Singapore Convention - the definition of international mediation in the Bill may need to be reviewed, after examining the international law implications, from the perspective of enforcement of such mediated settlement agreements.</p>	<p>Memo No. 19 – MCPC, Supreme Court of India, Memo No. 11 – Shri Sriram Panchu, Memo No. 2 – CII, Memo No. 9, Justice (Retd.) M.L. Mehta for Delhi Dispute Resolution Society, Memo No. 16 – CAMP.</p> <p>Memo No. 17 – NLU Delhi, Memo No. 5 – Shri Lalit Mohan Bhat, Advocate in collaboration with PHD Chamber of Commerce, Memo No. 6 – Shri Sudhanshu Batra, Senior Advocate in collaboration with PHD Chamber of Commerce, Memo No. 7 – Dr. Aman M. Hingorani, Advocate, Memo No. 8 – Mr. JP Sengh – For Maadhyam International Council for Conflict Resolution, Memo No. 9, Justice (Retd.) M.L. Mehta for Delhi Dispute Resolution Society, Memo No. 10 – Chitra Narayan, Advocate, Memo No. 13 – APCAM, Memo No. 16</p>	<p>Clause 2 (1) of the Bill states that subject to sub-section (2) of the said clause, the Act shall apply, inter-alia to mediation conducted in India including international mediation. Clause 3 (f) of the Bill states that “international mediation” means mediation undertaken under this Act and relates to a commercial dispute arising out of a legal relationship and where at least one of the parties resides in or has a place of business in the country other than India. Accordingly, international mediation relating to commercial disputes, conducted in India would also fall within the purview of the present Bill.</p> <p>There is no proposal to extend the application of the bill beyond international mediation conducted in India relating to commercial disputes.</p> <p>As stated in Serial No. 35 of the issue-wise responses to the comments received from the various stakeholders in the past (enclosed as <b>Annexure I</b> and hereinafter referred to as “<b>Previous Comments</b>”), presently it has been decided not to include the applicability of Singapore Convention to the Bill.</p>

		<p>– CAMP, Memo No. 20 – Vidhi Centre for Legal Policy.</p>	
2	<p>Clause 2 (2) – recommend that exclusion of cases from mediation, where government is a party be done away with.</p>	<p>Memo No. 17 – NLU Delhi, Memo No. 10 – Chitra Narayan, Advocate.</p>	<p>As stated in Serial No. 36 of the Previous Comments, disputes involving government are not barred from resolution by way of mediation. Sub- clause (2) of clause 2 of the Bill provides that the Mediation Act will not apply to a dispute other than commercial disputes, wherein one of the parties to the dispute is the Central Government or a State Government, or agencies, public bodies, corporations and local bodies, including entities controlled or owned by such Government. In other words, commercial disputes involving Government as a party are covered for being resolved by recourse to mediation as even the Commercial Courts Act, 2015 does not make any such distinction.</p> <p>Further, proviso to sub- clause (2) of clause 2 provides that the Central Government or a State Government may notify disputes other than commercial which it deems appropriate for resolution through mediation.</p> <p>This provision also contemplates to factor in while notifying that all disputes where government is one of the parties are not referred to mediation but only those matters are referred which are capable of resolution through mediation including pre-litigation mediation.</p>
3	<p>Clause 3 (1) – Definition of “mediation service provider” means a body or organization that provides for the conduct of mediation under this Act and rules and regulations made thereunder, and <b>are</b> recognized by the Council” – Recommend that the word ‘<b>are</b>’ may be replaced by ‘<b>is</b>’</p>	<p>Memo No. 20 – Vidhi Centre for Legal Policy.</p>	<p>May be considered as the intent of the law is for being definite and determinative of a class of mediation service providers.</p>
4	<p>Clause 4 - mediator needs to be neutral and should not have ability to impose a solution upon the parties - recommend to add the words “lacking the authority to impose a solution upon the parties to the dispute”.</p>	<p>Memo No. 11 – Shri Sriram Panchu, Memo No. 7 – Dr. Aman M. Hingorani, Advocate, Memo No. 20 – Vidhi Centre for Legal Policy.</p>	<p>Clause 18 of the Bill lays down the role of mediator and sub-section 2 of Section 18 states that the parties shall be informed expressly by the mediator that he only facilitates in arriving at a decision to resolve a dispute and that he may not impose any settlement nor give any assurance that the mediation may result in</p>

			<p>a settlement.</p> <p>Clause 17 (2) further states that the mediator shall at all times be guided by the principles of objectivity and fairness and protect the voluntariness, confidentiality and self-determination of the parties, and the standards of professional ethical conduct as may be specified.</p> <p>Accordingly, the Bill provides for provisions stating that the mediator does not have the authority to impose a settlement on the parties.</p>
5	<p>Clause 5 (3) - recommend addition of another subsection with the words, “the order of the court”</p> <p>Clause 5 (5) - recommended that this requires reconsideration as it limits the application of the Clause to disputes arising out of agreement - further stated that there could be disputes which may arise other than out of agreement.</p> <p>Recommend clubbing of sub-section 1 and sub-section 5.</p>	<p>Memo No. 22 – Bombay Bar Association, Memo No. 2 – CII</p> <p>Memo No. 2 – CII</p>	<p>Clause 9 of the Bill provides for power of court or tribunal to refer parties to mediation. The said Clause further provides for the procedure in such cases as well. Accordingly, there may not be a requirement of inclusion of the recommendation in Clause 5.</p> <p>The reference herein is to a mediation agreement and not the substantive agreement under which the dispute may arise. The present sub-clause is intended to allow the parties to enter into a mediation agreement either prior to or subsequent to the disputes having arisen between the parties.</p> <p>The said sub-sections have been separated to avoid ambiguity and retain clarity.</p>
6	<p>Clause 6 – recommend avoiding making pre-litigation mediation compulsory.</p>	<p>Memo No. 15 –Bar Council of India, Memo No. 17 – NLU Delhi, Memo No. 5 – Shri Lalit Mohan Bhat, Advocate in collaboration with PHD Chamber of Commerce, Memo No. 1 – ASSOCHAM, Memo No. 7 – Dr. Aman M. Hingorani, Advocate, Memo No. 9, Justice (Retd.) M.L. Mehta for Delhi Dispute Resolution Society, Memo No. 13 –</p>	<p>As stated in Serial No. 1 of the Previous Comments, pre-litigation mediation has been made mandatory before approaching courts or tribunals and to unclog the judiciary which at present is burdened with more than 4.5 crore pending cases. It may however be noted that parties are under no obligation to arrive at a settlement. Further parties have been allowed not only to withdraw from the mediation after the two sessions but also to seek interim relief from the court or tribunals before undertaking or during the continuation of mediation to safeguard their interest. Thus, the voluntariness in the arrival of settlement has not been interfered with under the provisions of the</p>

	<p>Clause 6 (3) (iii) - recommend replacing the word “and” with “or”, as requirements are not cumulative in nature.</p> <p>Clause 6 (5) - recommend adding the words “<b>and mediation service provider</b>” after “mediators”- thereby allowing for reference to mediators empanelled with private mediation service providers (registered with the Council), besides ad hoc mediators.</p>	<p>APCAM, Memo No. 20 – Vidhi Centre for Legal Policy.</p> <p>Memo No. 19 – MCPC, Supreme Court of India</p>	<p>Bill.</p> <p>As submitted in Serial No. 5 of the Previous Comments, the intent is that mediator should meet either of the criteria.</p> <p>For further clarity, the addition of the word “either” may be considered pursuant to which subclause (3) would read as follows, “for the purposes, of subsections (1) and (2), unless otherwise agreed upon by the parties, a mediator <b>either</b> –.....</p> <p>As submitted in Serial No. 27 of the Previous Comments, Clause 6(5) has to be read along with clause 6(4) and for the purpose of clause 6 (5), the Courts or the authorities would be the mediation service provider (MSP), hence there may not be a requirement of reference to any other MSP. Even otherwise, section 42 (a) includes the function of the mediation service provider as “accredit and maintain panel of mediators” as well.</p>
7	<p>Clause 7 – Recommend reduction of exclusions – modifications – First proviso excludes non-compoundable offences such as Section 498-A, IPC, which are otherwise quashed upon settlement by Courts under inherent powers.</p> <p>Proviso in Clause 7 – “Provided further that the outcome of such mediation shall not be deemed to be a <b>judgment</b> or decree of court referred to in sub-section (2) of Section 28 and</p>	<p>Memo No. 17 – NLU Delhi, Memo No. 6 – Shri Sudhanshu Batra, Senior Advocate in collaboration with PHD Chamber of Commerce, Memo No. 7 – Dr. Aman M. Hingorani, Advocate, Memo No. 8 – Mr. JP Sengh – For Maadhyaam International Council for Conflict Resolution., Memo No. 11 – Shri Sriram Panchu</p> <p>Memo No. 20 – Vidhi Centre for Legal Policy.</p>	<p>Clause 7(2) stipulates that if the Central Government is satisfied that it is necessary or expedient so to do, it may, by notification amend the First Schedule. Accordingly, based on the implementation and review of the working, suitable modifications can be carried out by the Central Government under Clause 7 (f).</p> <p>Additionally, the power to quash proceedings for offences by using inherent powers of constitutional courts is distinguishable from settlement in mediation. The said power continues to be available with the constitutional courts.</p> <p>The typographical error would be required to be rectified.</p>



	shall be further considered by the court in accordance with the law for the time being in force.”- the word ‘judgement’ may be replaced with ‘judgment’		
8	<p>Clause 8 – recommend that a time period should be added within which the mediation should commence after receiving interim order as provided for in Section 9 of the Arbitration and Conciliation Act, 1996.</p> <p>Recommend that the term “exceptional circumstances” in Clause 8 (1) may be deleted and the details of the interim relief that can be sought similar to Section 9 of the Arbitration and Conciliation Act, 1996 may be included.</p> <p>Clause 8 (2) – recommend deletion of the term “if deemed appropriate”.</p> <p>Recommend providing of a provision for appeal from orders under Section 8.</p>	<p>Memo No. 17 – NLU Delhi.</p> <p>Memo No. 2 – CII</p> <p>Memo No. 2 – CII, Memo No. 13 – APCAM, Memo No. 20 – Vidhi Centre for Legal Policy.</p> <p>Memo No. 2 – CII, Memo No. 13 – APCAM</p>	<p>Suggestion may be suitably considered by the Committee.</p> <p>As stated in Serial No. 28 of the Previous Comments, Clause 8 of the Bill empowers the parties to seek interim relief in case of exceptional circumstances both before the commencement of or during the continuation of mediation. What circumstance would constitute exceptional will depend on case to case basis.</p> <p>Accordingly, the details of what relief can be granted, has not been stipulated in/limited by the Bill.</p> <p>The intention for inclusion of the term is to allow the Court to retain the discretion, while granting or rejecting interim relief, to consider referring the disputes to mediation based on the existent circumstances and keeping in view party autonomy.</p> <p>As stated in Serial No. 15 of the Previous Comments, the intention is to limit the litigation trail for any such interim orders and focus on settlement through mediation. In the absence of any specific provision for appeal, no appeal would admittedly lie.</p>
9	Clause 9 (1) - recommend to add the following, “or if the court deems it fit that it is appropriate for the parties to settle the dispute”	Memo No. 22 – Bombay Bar Association, Memo No. 17 – NLU Delhi.	<p>Suggestion may be considered by the Committee by addition of the words “suo moto”.</p> <p>Since the parties have been unable to resolve their disputes in pre-litigation mediation, subsequent reference to mediation, which is meaningful, should be upon their request. However, the suggestion may be considered in light of</p>

			the intention.
10	<p>Clause 10 – recommend preference to Indian nationals as mediators by stating “unless otherwise agreed by the parties, a person of Indian nationality shall be the mediator”</p> <p>Timelines prescribed under Clause 10 (4) relating to appointment of mediator are short.</p> <p>Clause 10 states that qualifications etc. of the mediators would be determined by the Council – recommend that the qualification etc. should be decided in consultation with judiciary.</p> <p>Recommend deletion of the term “<i>provided that mediator of any foreign nationality shall possess such qualification, experience and accreditation as may be specified</i>”</p> <p>Recommend that it should be stated that appointment of mediator needs to be by a written agreement and in case of opting out of pre-litigation mediation, the said act should result in costs being imposed.</p>	<p>Memo No. 15 –Bar Council of India, Memo No. 17 – NLU Delhi.</p> <p>Memo No. 5 – Shri Lalit Mohan Bhat, Advocate in collaboration with PHD Chamber of Commerce.</p> <p>Memo No. 1 – ASSOCHAM, Memo No. 3 – FICCI.</p> <p>Memo No. 2 – CII</p> <p>Memo No. 8 – Mr. JP Sengh – For Maadhyam International Council for Conflict Resolution.</p>	<p>As stated in Serial No. 24 of the Previous Comments, the intent is to allow greater scope and participation of pool of mediators. Limiting the scope as stated would restrict the said pool largely to mediators of Indian nationality only. The provision also upholds the principle of party autonomy.</p> <p>Considering that the Mediation Service Provider are intended to be professionally managed, the timelines are intended to enable expeditious appointment of mediators.</p> <p>The Mediation Council, which would be laying down the qualifications, would be a professional body having members of varied experience as per Clause 34 of the bill.</p> <p>The term has been included to ensure that the mediators of foreign nationality are equipped with certain minimum qualification, skills, experience and accreditation to deal with disputes. The qualifications in this regard would be as specified by the Mediation Council keeping in view the treatment meted out to India based mediators dealing with mediations in foreign jurisdictions.</p> <p>Clause 5 states that the mediation agreement should be in writing and Clause 20 provides for costs in case any party fails to attend first two sessions of mediation to protect voluntariness of the parties.</p>
11	<p>Clause 11 and Clause 12 – recommend that the mediation service provided not bound by views of the parties, time period of disclosure by mediator and</p>	<p>Memo No. 2 – CII</p>	<p>The objective of the Bill is to facilitate the regime of mediation by allowing party autonomy in matters of mediation. With the said objective in mind, the Bill intends to allow leeway for procedural aspects.</p>

	other time periods to be specified in the statute.		
12	<p>Clause 13 (ii) – recommend that there is no need to allow “any other person” to be able to challenge the mandate of a mediator.</p> <p>Recommend that the procedure for termination of mandate of a mediator by the mediation service provider may be specified in regulations to be formulated by the Mediation Council to enable uniformity-consequent amendment in Clause 13 and 40 of the Bill.</p>	<p>Memo No. 17 – NLU Delhi.</p> <p>Memo No. 2 – CII</p>	<p>Clause 13 enables only the mediation service provider to consider terminating the mandate of mediator upon receipt of information from various categories of persons. Per se there is no challenge procedure and the discretion is conferred on the mediation service provider.</p> <p>There is ample clarity in the Bill with regard to termination of the mandate of the mediators in certain eventualities. It is for the Mediation Service Provider to deal with the provisions under their rules.</p>
13	<p>Clause 14 – recommend that provision be made for appointment of substituted mediator the parties don’t agree on the name of substituted mediator within the stipulated period.</p>	<p>Memo No. 22 – Bombay Bar Association.</p>	<p>In such a situation, the procedure as stipulated in Clause 10 (3) would apply.</p>
14	<p>Clause 15 – Linking the mediation process with territorial jurisdiction restricts the process itself.</p>	<p>Memo No. 5 – Shri Lalit Mohan Bhat, Advocate in collaboration with PHD Chamber of Commerce.</p>	<p>As stated in Serial No. 29 of the Previous Comments, proviso to section 15 provides that parties may undertake mediation either online or outside the aforementioned territorial jurisdiction also. Further, explanation to section 15 specifies that mediation conducted outside the territorial jurisdiction or by way of online mode will be deemed to have taken place within the territorial jurisdiction of the court or tribunal of competent jurisdiction.</p> <p>Accordingly, there may not be any restriction as suggested.</p>
15	<p>Clause 16 (a) – recommend further clarity on the time periods for acceptance/commencement of mediation.</p>	<p>Memo No. 19 – MCPC, Supreme Court of India.</p>	<p>In cases, where there is an existing agreement between the parties to settle the dispute to mediation, the intent is to respect the said agreement and therefore it is proposed that mediation is deemed to have commenced on the day on which the party issues a notice to the other party without there being any requirement of any interregnum period.</p>
16	<p>Clause 17 – recommend adding the definition of voluntariness to convey to the parties that they are themselves in charge of the</p>	<p>Memo No. 4 – Ms. Geeta Luthra, Senior Advocate</p>	<p>Clause 18(2) states that the parties shall be informed expressly by the mediator that he only facilitates in arriving at a decision resolve a dispute and that he may not impose any settlement not give any</p>

	mediation proceedings etc.		assurance that the mediation may result in a settlement. Clause 17 read with Clause 18 (2) conveys the voluntariness of the procedure of mediation to the parties appropriately.
17	<p>Clause 19 (b) – confidentiality and privilege are effectively covered under Sections 23 and 24 of the Act – recommend that Section 19 (b) be deleted to avoid mediators being involuntarily summoned to court for matters not covered under clause 24 of the Bill.</p> <p>Clause 51 - Mediators immunity</p>	<p>Memo No. 19 – MCPC, Supreme Court of India, Memo No. 11 – Shri Sriram Panchu.</p>	<p>As submitted in Serial No. 31 of the Previous Comments, these two clauses, i.e. clause 19 (b) and clause 24 deal with two different possible situations. Clause 19 (b) deals with the situation wherein the parties may explicitly agree to present the mediator as a witness or otherwise in an arbitral or judicial proceeding. Thus, it deals with the rights of parties to do so and accordingly party autonomy prevails. Clause 24 on the other hand deals with the situation wherein mediator and others are not to disclose or withhold information on any communication to which they may be privy during the mediation proceedings and it contemplates situations beyond the purview of clause 19 (b).</p> <p>As stated in Serial No. 7 of the Previous Comments, Clause 51 of the Bill provides for aspects relating to immunity including for mediators.</p>
18	<p>Clause 20 (1) - recommend addition of the words “with the appointed mediator” at the end of clause 20 (1).</p> <p>Clause 20 (2) – recommend a provision for non-starter mediation.</p> <p>Clause 20-costs in case of failure to attend first two mediation sessions, Does it apply to all mediations or only compulsory pre-litigation mediation as provided for in Clause 6.</p> <p>Clause 20 (2) – Where any party fails to attend the first two mediation sessions without any reasonable clause which resulted in the</p>	<p>Memo No. 19 – MCPC, Supreme Court of India</p> <p>Memo No. 16 – CAMP.</p> <p>Memo No. 15 –Bar Council of India, Memo No. 17 – NLU Delhi, Memo No. 1 – ASSOCHAM, Memo No. 10 – Chitra Narayan, Advocate.</p>	<p>Clause 21 states that the time limit for completion of mediation commences from the date fixed for the first appearance before the mediator. Clause 21 read with clause 20 can be said to clarify that the mediation sessions are to be understood as being before the mediator only.</p> <p>As stated in Serial No. 14 of the Previous Comments, the procedural aspects on timelines etc. with respect to nonstarter mediations can be considered at the time of adoption of institutional rules by the Mediation Service Providers.</p> <p>As stated in Serial No. 14 of the Previous Comments, the provision is incorporated to ensure that parties get sufficient time to understand the nuances of mediation process before opting out. This provision will also help in bringing the required behavioral change amongst the litigants <i>i.e.</i> from pro-litigation to pro-mediation approach.</p> <p>The imposition of costs for failure to attend initial two mediation sessions</p>

	failure of mediation, the court or tribunal, in subsequent litigation on the same subject matter between the parties, may take the said conduct of party into consideration and impose such costs as <b>it</b> deems fit.” – the word “ <b>it</b> ” may be added as aforesaid.		applies for all types of mediations including pre-litigation mediation.  The said suggestion can be considered by the Committee for further clarity.
19	<p>Clause 21 - period of 180 days is excessive.</p> <p>Clause 21 (2) – both sub-sections stipulate 180 days – typographical error.</p> <p>Clause 21 – Recommend that parties should be allowed to extend the period at their discretion in order to enable settlement of complex disputes.</p>	<p>Memo No. 15 – Bar Council of India, Memo No. 4 – Ms. Geeta Luthra, Senior Advocate, Memo No. 17 – NLU Delhi, Memo No. 1 – ASSOCHAM.</p> <p>Memo No. 17 – NLU Delhi.</p> <p>Memo No. 13 – APCAM, Memo No. 20 – Vidhi Centre for Legal Policy.</p>	<p>As stated in Serial No. 10 of the Previous Comments, the intention is to give the parties sufficient outer limit of time to consider settling the matter through mediation, especially complex matters. There is no bar to the parties settling the matter in mediation prior to the expiry of the outer limit of time provided.</p> <p>In subsection (2), the word “further” has been used and therefore, the said period of 180 days therein may be read together with the said word “further” meaning thereby that the further extended period beyond the original 180 days period can be by a maximum of additional 180 days.</p> <p>The intent is to ensure the mediation procedure is time bound. Therefore, a fixed time period has been stipulated. In case it is left to the discretion of the parties, the intent of expeditious and time bound settlement may get diluted.</p>
20	<p>Clause 22 (1) – recommend deletion of sub-section 2 and addition of words “signed by then in sub-section 1”</p> <p>Clause 22 (3) to include various aspects such as not barred by law, to be signed etc.</p> <p>Clause 22 (7) - recommend that registration of mediated settlement agreements should not be compulsory and there should be a depository created where mediated settlement agreements can be voluntarily and without any</p>	<p>Memo No. 22 – Bombay Bar Association</p> <p>Memo No. 15 –Bar Council of India.</p> <p>Memo No. 11 – Shri Sriram Panchu, Memo No. 17 – NLU Delhi, Memo No. 5 – Shri Lalit Mohan Bhat, Advocate in collaboration with PHD</p>	<p>The separation of the provision of signature in a sub-section is intended to avoid ambiguity and prolixity.</p> <p>The said provisions are provided for in the Explanation to Clause 22 (1) and Clause 22 (2)</p> <p>As stated in Serial No. 6 of the Previous Comments, registration of mediated settlement agreements would enable having the repository of the said agreement is and also lend authenticity/credibility to the mediated</p>

	<p>compulsion be electronically uploaded at the discretion of the parties.</p> <p>Clause 22 (8) – recommend define authorized representative and consequence of non-registration</p>	<p>Chamber of Commerce, Memo No. 2 – CII, Memo No. 7 – Dr. Aman M. Hingorani, Advocate, Memo No. 9, Justice (Retd.) M.L. Mehta for Delhi Dispute Resolution Society, Memo No. 10 – Chitra Narayan, Advocate Memo No. 12 – AMIKA.</p>	<p>settlement agreement, if either of the parties used to enforce it or challenge it.</p> <p>As submitted in Serial No. 6 of the Previous Comments, the detailed mode and manner of registration, including recommendations, may be adopted by the Mediation Council after due consultation with the Central Government.</p>
21	<p>Clause 23 (4) – recommend deletion of the word “registration” be deleted.</p> <p>Recommend providing consequences for not maintaining confidentiality.</p> <p>Recommend addition of another sub-clause stating that disclosure would be allowed in case warranted for overriding considerations of public policy notwithstanding confidentiality obligations provided in Section 23</p>	<p>Memo No. 19 – MCPC, Supreme Court of India</p> <p>Memo No. 1 ASSOCHAM</p> <p>Memo No. 4 – Geeta Luthra, Senior Advocate.</p>	<p>As stated in Serial No. 16 of the Previous comments, Clause 22 (7) of the Bill that the mediated agreement shall be registered in such manner as may be specified. The regulations/rules relating to the registration to be adopted by the Council, may if deemed appropriate, consider specifying the extent to which the content of mediated settlement agreement may be disclosed therein.</p> <p>In case the mediator or mediation service provider breaches confidentiality obligations as provided under the Bill, the consequences could be detailed in the regulations to be adopted relating to the said entities.</p> <p>There may not be a large possibility of public policy being involved in disputes submitted for mediation. Any such wide exception to confidentiality may dilute the intent of protection of confidentiality.</p>
22	<p>Clause 24 – Recommend deletion of certain phrases since they dilute confidentiality in mediation.</p> <p>The word “party” should be added after “mediator or participant” in clause 24 (1)</p>	<p>Memo No. 6 – Shri Sudhanshu Batra, Senior Advocate in collaboration with PHD Chamber of Commerce.</p> <p>Memo No. 20, VIDHI</p>	<p>Confidentiality in mediation proceedings is protected and only in situations such as professional misconduct of mediator, threat of offences being committed, information relating to domestic violence or child abuse, matters of public health or safety etc., could a disclosure be required. Accordingly, only in serious and limited conditions would such disclosures be required.</p>

			The intent is to apply the section only to mediators and participants.
23	Clause 25 (c) – recommend replacement of the words “has not received any communication from such party” by the words “makes a declaration under (b) above”	Memo No. 22 – Bombay Bar Association.	The subsections (b) and (c) are intended for different situations and therefore it may not be appropriate to link the said subsections.
24	Clause 28 (2) - recommend applicability of the Singapore Convention to the provisions of the Bill.	Memo No. 19 – MCPC, Supreme Court of India.  Memo No. 11 – Shri Sriram Panchu.	As stated in Serial No. 35 of the Previous Comments, presently it has been decided not to include the applicability of the Singapore Convention to the Bill.
25	Clause 29 (3) - recommend that the period of challenge as provided being 90 days, shall be computed from the date on which a party becomes aware of the fraud, corruption, gross impropriety, impersonation.  Clause 29 – recommend adding grounds where court may refuse to record a mediated settlement agreement.  Clause 29 – Recommend addition of definition of “ <i>sufficient cause</i> ” for delay in filing challenge and the ground being “ <i>gross impropriety</i> ”  Recommend removal of challenge to mediated settlement agreement.	Memo No. 11 – Shri Sriram Panchu, Memo No. 17 – NLU Delhi, Memo No. 7 – Dr. Aman M. Hingorani, Advocate.  Memo No. 4 – Ms. Geeta Luthra, Senior Advocate, Memo No. 17 – NLU Delhi.  Memo No. 3 – FICCI, Memo No. 1 – ASSOCHAM  Memo No. 1 – ASSOCHAM, Memo No. 7 – Dr. Aman M. Hingorani, Advocate.	As stated in Serial No. 13 of the Previous Comments, Clause 29 states that the limitation period begins from the date when a party has received the copy of the mediated settlement agreement. The suggestion of making it from the date on which the party becomes aware would make its objective and amenable to requirement of proving the same.  The explanation to Clause 22 (1) states that a mediated settlement agreement which is void under the Indian Contract Act, 1872, shall not be deemed to be lawful settlement agreement within the meaning of mediated settlement agreement. Further Clause 29 also provides for challenge to a mediated settlement agreement on certain grounds.  There is no requirement of a court to record a mediated settlement agreement under the present Bill.  The circumstances that could constitute “ <i>sufficient cause</i> ” will depend on case to case basis. Accordingly, it may be difficult to have wide definition for the term.  The grounds are intended to provide adequate remedy for challenging mediated

			settlement agreement under exceptional and limited circumstances only.
26	Clause 30 – recommend not leaving the mediators fees to discretion of parties.	Memo No. 17 – NLU Delhi.	<p>Party autonomy is intended to be protected by inclusion of Clause 30. Further, the fees of mediators would vary based on the location, type and nature of disputes etc.</p> <p>Additionally, since the objective is to promote institutional mediation, greater emphasis would be on the competition amongst the Mediation Service Providers, which can ensure that discretion given to them to provide for the fees to be charged for the mediation conducted by them and others, do not cross a reasonable level and is affordable.</p>
27	<p>Clause 34 - Constitution of the Council- various recommendations such as 9 members to be appointed to the Council, appointment of the Chairperson to be in consultation with the Chief Justice of India, term of the members to be three years etc.</p> <p>State level Mediation Councils.</p>	<p>Memo No. 11 – Shri Sriram Panchu, Memo No. 15 –Bar Council of India, Memo No. 17 – NLU Delhi, Memo No. 6 – Shri Sudhanshu Batra, Senior Advocate in collaboration with PHD Chamber of Commerce, Memo No. 8 – Mr. JP Sengh – For Maadhyam International Council for Conflict Resolution, Memo No. 10 – Chitra Narayan, Advocate, Memo No. 20 – Vidhi Centre for Legal Policy.</p> <p>Memo No. 9, Justice (Retd.) M.L. Mehta for Delhi Dispute Resolution Society.</p>	<p>As stated in Serial No. 3 of the Previous Comments, the composition of the Council has been revised after consultation with stakeholders as well as the different Ministries and Departments. They eligibility of a person to be appointed as a Chairperson has been expanded to include not only judges but any person having adequate knowledge and professional experience in dealing with problems relating to law alternate dispute resolution public affairs or administration. Similarly, to make it a professional body emphasis of the bill is on engaging domain experts as Members. Thus, experts in the field of mediation and other modes of Alternative Dispute Resolution are included as full-time Members of the Council. Besides, there is one representative of a recognised body of commerce and industry who will be a part-time Member.</p> <p>The central level body in the form of Mediation Council of India has been proposing the bill to ensure uniformity of standards across the country. The State Governments are also not be barred from establishing bodies/mediation centres to promote mediation in states.</p>
28	Clause 44 and 45 – Community mediation – recommend having mediation service providers to do community mediation as well, training of such mediators and need to revisit	Memo No. 17 – NLU Delhi, Memo No. 5 – Shri Lalit Mohan Bhat, Advocate in collaboration with PHD Chamber of Commerce, Memo No. 6 – Shri	Considering the nature of community mediation wherein it would involve interest of large number of local citizens, the concerned Authority under Legal Services Authorities Act, 1987 or the District Magistrate or Sub-Divisional Magistrate, well versed with the ground



	<p>three member panel – recommend deletion of provisions relating to community mediation.</p> <p>Recommend that Settlement Agreement in community mediation should be enforceable as a court decree.</p>	<p>Sudhanshu Batra, Senior Advocate in collaboration with PHD Chamber of Commerce, Memo No. 2 – CII, Memo No. 8 – Mr. JP Sengh – For Maadhyam International Council for Conflict Resolution, Memo No. 9, Justice (Retd.) M.L. Mehta for Delhi Dispute Resolution Society, Memo No. 13 – APCAM, Memo No. 20 – Vidhi Centre for Legal Policy.</p> <p>Memo No. 7 – Dr. Aman M. Hingorani, Advocate.</p>	<p>realities has been given the mandate to facilitate carrying out community mediation by a diverse panel of mediators.</p> <p>The role of the local administration is limited to facilitating appointment of panel.</p> <p>Under clause 45 (4), considering the purpose of community mediation, which is to maintain the peace, harmony and tranquility amongst residents or families of an area or locality, settlement agreement in community mediation has not been made enforceable under the Bill.</p>
29	<p>First Schedule, Entry 7- inclusion of this clause may affect conduct of mediation in matrimonial cases where children are involved and in such similar matters – recommend addition of “except in only matrimonial cases where the interest of the child is involved”</p>	<p>Memo No. 19 – MCPC, Supreme Court of India</p>	<p>The suggestion may be considered by the Committee.</p>
30	<p>Seventh Schedule – Mediation by the Facilitation Council under the MSME Act, 2006 – recommend that same body mediates should not be entitled to arbitrate as well.</p>	<p>Memo No. 11 – Shri Sriram Panchu.</p>	<p>Section 18 of the MSMED Act, 2006 has been proposed to be amended by the present Bill only to the extent of the replacing the provisions relating to conciliation as provided earlier, with provisions relating to mediation.</p>
31	<p>Eighth Schedule – mediator fees under Section 442 of the Companies Act, 2013 - recommend that fees should be mutually agreed between the parties and the mediator – Sub-Clause (5) in the Eighth Schedule provides as follows “The fees of the mediator shall be such as may be prescribed”</p>	<p>Memo No. 11 – Shri Sriram Panchu.</p>	<p>The Companies Act, 2013 has been proposed to be amended by the present Bill to the extent of aligning the said Act with the provisions of the Bill.</p>

32	Ninth Schedule – Mediation under Commercial Court Act, 2015 – recommend that mediators doing mediation under the Commercial Courts Act, 2015 should not be limited and parties should have the same options as provided in Section 6 (3)	Memo No. 11 – Shri Sriram Panchu.	Mediation Service Provider can enable carrying out such mediations as per Section 12A of the Commercial Courts Act, 2015 and the definition of the Mediation Service Provider as provided therein relates back to Section 3 (1) of the Bill.
33	Tenth Schedule - recommend that the word “or suo moto” be added, as the intent is to give the tribunal an option to take the initiative in referring suitable cases to mediation.	Memo No. 19 – MCPC, Supreme Court of India	As stated in Serial No. 34 of the Previous Comments and Serial No. 9 hereinabove, the suggestion may be suitably considered by the Committee.
34	Recommend format of mediated settlement agreement is a schedule to the Bill.	Memo No. 22 – Bombay Bar Association.	Considering the wide gamut of disputes which could be referred to mediation and the consequent mediated settlement agreements being required to be in consonance with intricacies of such disputes, a common model format of mediated settlement agreement catering to such various disputes may not be feasible.
35	Recommend keeping private players out from the ambit of Mediation Service Providers	Memo No. 15 –Bar Council of India.	The Bill intends to create an environment and framework for Institutional Mediation which is competitive and efficient. Therefore, the inclusion of various Mediation Service Providers is proposed so that the stakeholders can enable a competitive and efficient regime of Institutional Mediation.
36	Clause 26 - Recommend reduction of Role of Legal Services Authority, further exclusion of court annexed mediation and mediation under the Legal Service Authority Act does not serve the purpose bringing uniform law governing practice of mediation.	Memo No. 17 – NLU Delhi	The intent is to continue with the pre-established role of Legal Service Authorities and court annexed mediation centers so that the implementation of mediation regime can be smoothed with assistance from the said pre-established infrastructure/institutions.
37	Recommend existence of mediation and conciliation as separate concepts	Memo No. 2 – CII	The concept of conciliation has been subsumed within mediation as per the provisions of the Bill in order to have a consolidated law relating to the subject.
38	Interplay between pre-litigation mediation under the Bill and the Commercial Courts Act, 2015 (especially vis a vis Specified Value under the Commercial Courts Act, 2015, urgent interim relief vs interim relief under exceptional circumstances) may be	Memo No. 10 – Chitra Narayan.	The procedure for mediation under the Bill and the Commercial Courts Act, 2015 are distinctive only in certain procedural aspects.

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