



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 I - REPORT)

(Presented to Hon'ble Chairman, Rajya Sabha on 13th July, 2022)

(Forwarded to Hon'ble Speaker, Lok Sabha on 13th July, 2022)



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COMPOSITION OF THE COMMITTEE
(Re-constituted on 13th September, 2021)

1. Shri Sushil Kumar Modi — *Chairman*

RAJYA SABHA

2. Shri Deepender Singh Hooda
3. Shri Mahesh Jethmalani
4. @ *Vacant*
5. Shri Sukhendu Sekhar Ray
6. Shri K. R. Suresh Reddy
7. & *Vacant*
8. ^ *Vacant*
9. Shri P. Wilson
10. *Shri Kanakamedala Ravindra Kumar

LOK SABHA

11. Shri Kalyan Banerjee
12. Shri Pradan Baruah
13. Shri Venkatesh Netha Borlakunta
14. Shri Pradeep Kumar Chaudhary
15. Shri Vinod Chavda
16. Shrimati Veena Devi
17. Shri Jasbir Singh Gill
18. Shri Choudhury Mohan Jatua
19. Dr. Ramesh Pokhriyal 'Nishank'
20. Shri Kanumuru Raghu Rama Krishna Raju
21. Shri Jyotirmay Singh Mahato
22. Shri Malook Nagar
23. Shri Suresh Kumar Pujari
24. Shri A. Raja
25. Shri Omprakash Bhupalsinh *alias* Pawan Rajenimbalkar
26. Shri Upendra Singh Rawat
27. Shrimati Sandhya Ray
28. Shri Kuldeep Rai Sharma
29. Shri Mahendra Singh Solanky
30. Shri B. Manickam Tagore
31. #Shrimati Kalaben Mohanbhai Delkar

SECRETARIAT

Shri Pradeep Chaturvedi, Joint Secretary
Shri P.Narayanan, Director
Shri Goutam Kumar, Deputy Secretary
Shri Sammer Kapoor, Deputy Secretary
Shri Prabhakar Singh, Committee Officer
Ms. I.V. Rajya Laxmi, Assistant Committee Officer

*Nominated w.e.f. 11.11.2021

#Nominated w.e.f.07.02.2022

@Vacancy caused due to retirement of Dr. Sasmit Patra on 01.07.2022

^Vacancy caused due to retirement of Shri Vivek K. Tankha on 29.06.2022

&Vacancy caused due to retirement of Shri Shiv Pratap Shukla on 04.07.2022

INTRODUCTION

I, the Chairman of the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, having been authorized by the Committee to submit the Report on its behalf, do hereby present this One Hundred Seventeenth Report on The Mediation Bill, 2021 pertaining to Department of Legal Affairs, Ministry of Law & Justice.

2. The Report of the Committee is in two Volumes, wherein Volume – I contains the report containing the analysis and recommendations of the Committee on the Bill and Volume – II contains the written memoranda/submissions received by the Committee on the Bill from the individuals/experts/institutions.

3. The Mediation Bill, 2021, was introduced in Rajya Sabha on 20th December, 2021 and the Hon'ble Chairman, Rajya Sabha referred the said Bill to the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice for examination and report, on 21st December, 2021.

4. The Committee held extensive deliberations on the Bill with the Stakeholders which included Secretary, Department of Legal Affairs and other Senior Officials of the Ministry of Law and Justice. In addition to the views of the Government, the Committee decided to seek the views/suggestions of public in general, experts/stakeholders/ organizations like the concerned citizens; lawyers; mediation experts; mediation institutions; Central and State Bar Councils; Supreme Court, High Courts and State level Bar Associations; representatives from the Indian Industries and Commerce, Academicians and Academic institutions; serving and retired High Court Judges; organizations working in the field of law and public policy; Mediation and Conciliation Project Committee (MCPC) Supreme court and some Mediation centres attached to High Courts.

5. The Committee issued a Press Communiqué on 28th January, 2022, in the leading news papers of the country inviting written memoranda from all stakeholders/public at large on the Bill. While scrutinizing these memoranda, it was observed that metropolitan cities like Mumbai, Bengaluru and Chennai are hubs of mediation and various requests from mediation experts from these metropolitan cities were received by the Secretariat. Accordingly, the Committee also undertook a Study Visit to Chennai, Bengaluru, and Mumbai from 24th to 29th April, 2022 and interacted with various stakeholders which included mediation experts, mediation institutions, Bar Councils, Bar Associations, serving Chief Justices and other Judges of the Bombay, Karnataka and Madras High Courts, etc. on the Bill.

6. The Committee appreciates the Secretaries and other officers of the Department of Legal Affairs and Legislative Department (Ministry of Law & Justice) for placing before it the material and information desired in connection with the

examination of the Bill. The Committee also acknowledges the contribution of all those who deposed before the Committee and also to those who gave their valuable feedback and suggestions, in writing, on the provisions of the Bill. The Committee would also like to express its deepest gratitude to Shri Sriram Panchu, the doyen of Mediation in India, for his continuous guidance and support to the Committee right throughout the examination of the Bill.

7. The Report is based on facts, figures and submissions (both oral and written) tendered by the Department/Institutions/Organizations/Experts to the Committee.

8. The Committee considered and adopted the Report in its sitting held on the 11th July, 2022. The report was then presented to the Hon'ble Chairman, Rajya Sabha and forwarded to the Hon'ble Speaker, Lok Sabha on 13th July, 2022.

9. For ease of reference and convenience, the observations and recommendations of the Committee have been printed in bold letters in the body of the Report.

New Delhi
13th July, 2022

SUSHIL KUMAR MODI
Chairman,
Department-related Parliamentary Standing
Committee on Personnel Public Grievances
Law and Justice

ACRONYMS

FEMA	Foreign Exchange Management Act, 1999
CAMP	CAMP Arbitration and Mediation Practice Pvt. Ltd.
LSA	Legal Services Authority
UNISA	United Nations Convention on International Settlement Agreements resulting from mediation
PLM	Pre-Litigation Mediation
NI Act	Negotiable Instruments Act, 1881
MSA	Mediated Settlement Agreement
MCI	Mediation Council of India
ADR	Alternative Dispute Resolution
MCPC	Mediation and Conciliation Project Committee
POSH Act	The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013
PIMS	Pre-Litigation Mediation and Settlement
CPC	Code of Civil Procedure, 1908
MSME Act	Micro, Small and Medium Enterprises Development Act, 2006
UNCITRAL	United Nations Commission on International Trade Law

CHAPTER - I

OVERVIEW OF THE BILL

The Background

1.0 A quick and affordable justice to all is one of the desired goals of any justice delivery system. However, the sheer size and population of the country and ever-increasing disputes in the society have led to a humongous rise in litigation which has over-burdened the Judiciary. Coupled with low judge-to-population ratio and unfilled vacancies of Judges at all levels, the caseload has risen to an unmanageable proportion. As per the data provided by the Government, cases pending at various levels of judiciary are - Supreme Court 69,855¹; High Courts 56.47 Lakhs² and District & Subordinate Courts 4.05 Crores³.

1.1 In such a scenario, Alternative Dispute Resolution (ADR) mechanisms like arbitration, conciliation and mediation come in handy. These ADR mechanisms are less adversarial and are capable of providing a better substitute to the conventional methods of resolving disputes. In January, 2020, the Supreme Court set up a panel headed by Shri Niranjan Bhat to prepare a draft legislation on Mediation. Subsequently, it was sent to the government as a suggestion from the apex court. The Government, then, on 5th November, 2021 put the draft Mediation Bill on their website for Public Consultation. Following that, on 20th December, 2021 the Mediation Bill, 2021 was introduced in the Rajya Sabha by the Government and was referred to the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law & Justice for examination and report, on 22nd December, 2021.

1.2 The objective of the Bill is to promote, encourage and facilitate mediation especially institutional mediation for resolution of civil and commercial 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.

Salient features of the Mediation Bill, 2021

1.3 The salient features of the Mediation Bill, 2021, as introduced in the Rajya Sabha are as under:

¹ as on 06.12.2021

² as on 30.12.2021

³ as on 30.12.2021

- (i) It will apply where mediation is conducted in India and under this law, provision for international Mediation has been provided for in cases where one party is other than that of Indian nationality.
- (ii) Disputes, other than commercial disputes, in which Central Government and State Government or its agency, entity etc. are a party, cannot be mediated unless the nature of disputes which can be referred to mediation are notified.
- (iii) Conciliation under Part III of Arbitration and Conciliation Act 1996 has been subsumed in Mediation as per international practice of using the terms 'conciliation' and 'mediation' interchangeably.
- (iv) Compulsory pre-litigation mediation in matters of civil or commercial disputes has been provided for, before parties approach a court or Tribunal.
- (v) In case of exceptional circumstances, a party can seek interim relief from the Court or Tribunal not only before the commencement of mediation proceedings but also during the continuation of proceedings.
- (vi) Matters which are not fit for mediation have been enumerated in an indicative list under the First Schedule to the Bill.
- (vii) Mediation can be conducted by a mediator as per the - (i) choice of the parties; (ii) e-court annexed mediation centers; (iii) empanelled by an authority constituted under the Legal Services Authority Act, 1987; and (iv) empanelled by a Mediation Service provider. While mediation conducted in terms of (i) above is ad-hoc mediation, the others are instances of institutional mediation conducted by trained mediators, as per the rules of the said Institute.
- (viii) Mediation shall take place within the territorial jurisdiction of the Court or Tribunal of competent jurisdiction unless parties agree otherwise or undertake mediation in online mode.
- (ix) For enforcement of or challenge to Mediated Settlement Agreement (MSA), parties have to approach courts having territorial jurisdiction over the subject matter of dispute.
- (x) The mediation is to be concluded in a period of one hundred and eighty days, which can be extended further for a maximum period of one hundred and eighty days with the mutual consent of the parties.
- (xi) Mediated settlement agreement (MSA) 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 judgment or decree of a Court.
- (xii) MSA may be challenged on limited grounds of fraud, corruption, impersonation etc., and no first appeal has been provided for.
- (xiii) Establishment of the Mediation Council of India (MCI) to be headed by a Chairperson to be appointed by the Central Government. A Secretariat to MCI has been provided for.

- (xiv) Duties and functions of the Mediation Council of India have been laid down, inter alia, for promoting institutional mediation, registration of mediators, grading of mediation service providers etc.
- (xv) Community Mediation is being introduced for reference of disputes with consent of parties which are likely to affect peace, harmony and tranquility amongst the residents or families of any area or locality, to community mediation.
- (xvi) The proposed Mediation Act, 2021, to have an overriding effect over other laws providing for mediation or conciliation except laws which are specified in Second Schedule to the proposed Act. Laws placed in the Second Schedule have a tested conciliation and mediation mechanism e.g. in Industrial laws etc., or Family Courts Act, 1984 and therefore have not been touched.
- (xvii) Consequential amendments to Indian Contract Act 1872, Arbitration and Conciliation Act, 1996, Code of Civil Procedure, 1908, Commercial Courts Act, 2015, Legal Services Authorities Act, 1987, Consumer Protection Act, 2019, Companies Act, 2013 and MSME Act, 2006 have been made.
- (xviii) Notwithstanding anything contained in the Act, power has been given to Central Government and State Governments to frame and implement schemes providing for conciliation and mediation for disputes involving them.

Need for a standalone law on Mediation

1.4 India has had a long engagement with Mediation in the form of its Panchayats where the village elders sat to resolve disputes within the community by consensus. They lacked formal statutory authority at the time, yet, had an effective operative power to iron out disputes that arose within the community. This ancient system went out of vogue during the British rule with the introduction of the Anglo-Saxon system of jurisprudence and adversarial litigation conducted in the Courts. The unvarying adoption of this process has led to increased friction between the parties, damaged relationships, huge backlog, and substantial delays in disposal of cases.

1.5 In fact, Section 89(1) of the Code of Civil Procedure (CPC), 1908 provides for the courts to refer a dispute for settlement either by way of arbitration, conciliation, judicial settlement including settlement through Lok Adalats or mediation where it appears that there exist elements of a settlement, which may be acceptable to the parties. Arbitration works well in technical matters where a large amount of evidence is necessary, the Lok Adalat system is being used to dispose a bulk of relatively simple cases where contentious or complex issues are not raised. Conciliation and Mediation are basically the same process where a neutral having no decision-making power engages with the parties to come to a mutually acceptable agreement.

1.6 The Country's first annexed Mediation Centre was set up in Madras High Court on April 9th, 2005. Following its notable success and the endorsement of it by the then President of India Dr. APJ Abdul Kalam who visited the centre personally and owing to the efforts of the Mediation and Conciliation Project Committee (MCPC) of the Supreme Court of India, Mediation has moved very fast through the court annexed system. Today the Supreme Court, High Courts, District Courts have Mediation Centres where a large number of trained mediators, mostly lawyers, who mediate disputes referred by the courts across a wide arc - personal, matrimonial, commercial, civil, real estate, intellectual property and so on. Mediation has also been used by the Supreme Court in significant public disputes – such as the Assam-Nagaland Border dispute and the Ayodhya Babri Masjid Ram Janmabhoomi dispute. The Mediation process has received the endorsement of the country's Senior Judges and active members of the Bar as mediators and assisting parties in mediation.

1.7 However, Mediation is also undertaken on a voluntary basis or on private basis between the parties but the same is not formalised and structured and there is no express recognition to the settlement arrived at between the parties under law. Thus, parties feel discouraged to participate in the mediation process. The aforesaid factors have hampered the growth of mediation as an effective mechanism for dispute resolution and the Mediation Bill proposed by the Government is an attempt to address the legal and procedural shortcomings in this regard. As on date, provisions for Mediation are contained in several enactments including various rules and regulations. It is, therefore, felt necessary to redefine the statutory framework on mediation by bringing a comprehensive legislation on the subject.

Provisions related to Mediation in various existing laws

1.8 Presently, the provisions related to Mediation are scattered in various enactments and finds place in the following laws:

- (i) The Code of Civil Procedure, 1908 provides for ADR under section 89(1);
- (ii) Sections 14(2) and 23(2) & (3) of Hindu Marriage Act 1955, Section 29 and 34 of the Special Marriages Act 1954 and Section 9(1) of the Family Courts Act 1984, which requires the court in the first instance to attempt reconciliation between parties;
- (iii) Section 442 of the Companies Act 2013, which provides for referral of pending disputes to mediation by the Central Government or the National Company Law Tribunal with Appellate Tribunal read with the Companies (Mediation and Conciliation) Rules, 2016 (notified on 09th September, 2016);
- (iv) Section 37 and sections 74 to 81 of the Consumer Protection Act, 2019 (which replaced the Consumer Protection Act, 1986) provides for reference of a dispute to Mediation and setting up of a Consumer

- Mediation Cell at each of the District Commissions, the State Commissions and National Commission;
- (v) Chapter VI-A titled 'Pre-Litigation Conciliation and Settlement' of Legal Services Authorities Act 1987 provides for establishment of permanent Lok Adalats and any party to a dispute relating to a public utility service may before the dispute being brought before the Court make an application to the permanent Lok Adalat for settlement of dispute.
 - (vi) Section 12A of the Commercial Courts Act, 2015 provides for Pre-Institution Mediation and Settlement

Advantages of mediation over other modes of ADR

1.9 The distinct advantages which Mediation has *vis-a-vis* other ADR mechanisms are:

- (i) It is a flexible and informal procedure.
- (ii) Voluntary process.
- (iii) Freedom to withdraw from mediation, without prejudice to the legal position.
- (iv) Direct engagement in negotiating.
- (v) Mediator is a neutral third party.
- (vi) Cost effective.
- (vii) Enhances the likelihood of the parties continuing their relationship during and after the dispute resolution proceedings.
- (viii) Confidentiality is maintained.

1.10 Certain feature of the mediation which outshines the other ADR methods of dispute resolution is its ability to settle the disputes amicably, to foster a collaborative approach between the contesting parties and preserving the relationships amongst the disputants.

Mediation vis-a-vis Conciliation

1.11 Internationally, the term 'conciliation' and 'mediation' are being used interchangeably. On conciliation there is already an "Arbitration and Conciliation Act 1996" and conciliation as an ADR mechanism has been specifically incorporated under Part-III of the said Act. As a duly recognized ADR mechanism, conciliation has not been able to gain popularity in comparison to Arbitration and has been underutilized as an ADR mechanism. However, in recent years mediation has gained popularity through court annexed mediation centres. Also, the pre-litigation mediation and settlement (PIMS) mechanism is already in vogue under the Commercial Courts Act, 2015, which provides a flexible regime for dispute resolution between the parties through mediation. Thus, to do away with the thin line of distinction between conciliation and mediation and to bring uniformity in both these procedures the

government has proposed to subsume Conciliation under the concept of mediation through this Bill. This may act as an impetus to the ADR mechanism of conciliation and mediation and help in reducing judicial caseload.

United Nations Convention on Enforcement of International Settlement Agreements resulting from Mediation

1.12 The United Nations through the United Nations Commission on International Trade Law (UNCITRAL) has been a strong supporter of Mediation and in August 2019, the Singapore Convention on Mediation, formally the 'United Nations Convention on International Settlement Agreements Resulting from Mediation' was signed. It provides that a Mediation Agreement between parties of different nationalities can be enforced in any country which is a signatory to the Convention. This makes Mediation an extremely attractive dispute resolution method for international commercial transactions, saving parties from a string of litigations.

1.13 India along with the United States of America and China was one of the first prominent signatories to the Convention. As of May, 2022, 55 countries have signed the convention, out of which, only 9 countries have ratified it. The Convention entered into force on 12th September 2020, six months after ratification by three States. This Convention provides an effective mechanism for the enforcement of international mediated settlement agreements directly through the courts of the countries that have signed and ratified the Convention after making necessary changes in their domestic laws. India signed the Singapore Convention on 7th August 2019, but has yet to ratify it. Thus, signing this convention perhaps was one of the triggers for bringing out this Bill.

1.14 One of the features of the Convention was to note the world-wide preference of the word 'Mediation' instead of 'Conciliation', recognizing that the two terms connoted the same process. It was decided by UNCITRAL to exclusively use the term "Mediation" and to define it so as to include conciliation and any other similar process.

CHAPTER – II

ISSUES AND DELIBERATIONS

2.1 The Mediation Bill, 2021 has the potential to fundamentally alter the dispute resolution landscape of the country. Against this backdrop, the Committee decided to discuss all aspects of the Bill, thread bare, with all the stakeholders concerned. It consulted and deliberated with a wide range of stakeholders comprising individuals/organizations like concerned citizens; lawyers; mediation experts; mediation institutions; Central and State Bar Councils; Supreme Court, High Courts and State level Bar Associations; representatives from Indian Commerce and industry, Academicians and Academic institutions; serving and retired High Court Judges; organizations working in the field of law and public policy; Mediation and Conciliation Project Committee (MCPC) Supreme court and some Mediation centres attached to High Courts; etc. A list of people/organizations with whom the Committee held deliberations is attached to this report as '**Annexure - I, II & III**'.

2.2 At the outset, the Committee heard the official presentation made by the Secretary, Department of Legal Affairs on 3rd January, 2022 on the Mediation Bill, 2021. He submitted to the Committee that desire for quick and affordable justice dispensation is universal. In the present times, early resolution of a dispute not only saves valuable time and money of the parties to the dispute but also promotes environment for enforcement of contract. He opined that the traditional mode of dispute resolution i.e. litigation route is a lengthy process leading to unnecessary delays in the dispensation of justice as well as over-burdening of Judiciary. In such scenario, he felt that, Alternative Dispute Resolution (ADR) mechanisms like arbitration, conciliation and mediation have come in handy.

2.3 He further submitted that these ADR mechanisms are less adversarial and are capable of providing a better substitute to the conventional method of dispute resolution. Section 89(1) of the Code of Civil Procedure (CPC), 1908 provides for the court to refer a dispute for settlement either by way of arbitration, conciliation, judicial settlement including settlement through Lok Adalats or mediation where it appears that there exist elements of a settlement, which may be acceptable to the parties.

2.4 Speaking on the advantages of Mediation *vis-a-vis* other ADR mechanisms, he submitted that mediation is flexible, the procedure followed is informal, done through voluntary process and is cost effective. He further submitted that Arbitration and Mediation, though alternative to litigation, are in fact distinct mechanisms. Arbitration, though, less formal than litigation, is still an adversarial process like a trial, and involves claims and counter-claims whereas mediation is more informal and facilitates negotiations between the disputant parties which may culminate in a settlement. Thus, mediation, in contrast to arbitration, helps people and businesses

in conflict, to preserve their relationships, as the settlement arrived at in the process are on voluntary and consensual basis.

2.5 The Law Secretary further submitted that as per the initiatives taken by the Department of Legal Affairs, the Commercial Courts (Amendment) Act, 2018 has *inter-alia* introduced the concept of Pre-Institution Mediation and Settlement (PIMS) mechanism in the Commercial Courts Act, 2015. Section 12A provides that where no urgent, interim relief is contemplated, the parties have to exhaust the remedy of PIMS, for resolving the commercial disputes, through the authorities constituted under the Legal Services Authorities Act, 1987.

2.6 He also informed the Committee that pursuant to Salem Advocate Bar Association v. Union of India, the Supreme Court had set up Mediation and Conciliation Project Committee (MCPC) under the chairmanship of Justice Jagannadha Rao for formulating a framework for regulating mediation proceedings. The Committee formulated the Civil Procedure Alternative Dispute Resolution and Mediation Rules, 2003. These Rules lay down non-binding procedural guidelines for court referred mediation. These Rules have been adopted by many of the High Courts with modifications according to the requirements of the State concerned.

2.7 Shri P Wilson, MP and member of the Committee has stated –

‘The Hon’ble Supreme Court in the case of M.R. Krishnamoorthy v. New India Assurance Company Limited and others has observed that there is a dire need to enact the Mediation Act to take care of various aspects which could be in general, resolved by the process of Mediation. Likewise in the case of K. Srinivas Rao v. D.A. Deepa, the Hon’ble Supreme Court observed that 10-15% of matrimonial disputes get settled in the Court through various mediation center, the Court also has said the idea of pre-litigation mediation is catching up and it was further suggested that if all the mediation centers set up pre-litigation desk/clinic by giving sufficient publicity and matrimonial disputes are taken up for pre-litigation settlement, many families will be saved of hardships if, at least, some of them are settled.’

Press Release and Memoranda

2.8 For soliciting views from various stakeholders on the Bill, the Committee also issued a Press Communiqué on 28th January, 2022, in leading newspapers of the country inviting written memoranda from all stakeholders. In response to the Communiqué, suggestions from mediation experts and institutions, along with requests for oral evidence before the Committee from different parts of the country, were received.

2.9 While scrutinizing these memoranda, it was observed that metropolitan cities like Mumbai, Bengaluru and Chennai are hubs of mediation and various requests from mediation experts hailing from these metropolitan cities were received by the Secretariat. Accordingly, the Committee also undertook a Study Visit to Chennai, Bengaluru, and Mumbai from 24th to 29th April, 2022 and interacted with various stakeholders on the Bill at these places.

2.10 During the course of the above-mentioned study visit, besides interacting with the mediation experts, mediation institutions, Bar Councils, Bar Associations, etc. the Committee had an opportunity to interact with the serving Chief Justices and other Judges of the Bombay, Karnataka and Madras High Courts on the Mediation Bill. The Hon'ble Judges *inter alia* highlighted many issues related to the Bill and also suggested certain amendments to the Bill. The Committee benefitted a lot from these interactions. The suggestions/opinions offered by the Hon'ble Judges, in particular, were very insightful.

2.11 The Committee hopes that this healthy practice of exchange of views between the learned Judges of the constitutional courts and the law makers on any proposed legislation continues in future also. This will enable the law makers to assess the constitutionality and the likely fall out of any proposed legislation. The Committee, accordingly, places on record its appreciation and gratitude to the Hon'ble Chief Justices and Judges of the High Courts of Bombay, Karnataka and Madras for acceding to the request of the Committee to *inter alia* hold an interaction on the Mediation Bill.

2.12 The Committee has eminent lawyers, former Solicitors General and renowned legal luminaries as its Members whose contribution during deliberations of the Committee was helpful in formulating the recommendations of the Committee. Besides this, written submissions received (**Annexure - IV**) from some of the Members have immensely benefited the Committee in this journey.

Benefits contemplated under Mediation Bill, 2021

2.13 Shri P Wilson, MP and member of the Committee has stated –

'Mediation process is quick, responsive, economical and does not involve more cost. It also leads to harmonious settlement and helps create solutions and remedies while being confidential and informal. It also provides a platform for the disputing parties where they have substantial control over the proceedings and also the outcome.'

2.14 The Committee observes that the Government contemplates the following benefits from the Bill:

- (i) The benefits of institutionalization of the mediation process will help in lessening the burden upon the judiciary and provide opportunities to parties to a dispute to explore resolution through mediation. Resolution of disputes through mediation will bring in saving of time and money for parties while preserving their relationship. It will be to the advantage of the public and the public institutions in terms of quality of expertise and costs incurred in dispute resolution.
- (ii) It will make it easier, cheaper for the parties to a dispute to take steps for timely resolution of large number of disputes outside the ambit of courts through mediation and will promote mediation as a means to resolve both commercial and community disputes.
- (iii) It will promote, encourage and facilitate mediation especially institutional mediation for resolution of commercial as well as other civil disputes and provide for enforcement of mediation settlement agreements.
- (iv) It makes mediation a time bound process thereby leading to savings in terms of cost and time for the parties.
- (v) It recognizes online mediation as an acceptable mode of dispute resolution thereby removing the distance barrier for parties.
- (vi) A robust and effective mediation system will greatly enhance the ease of doing business in India and will improve the country's attractiveness as a destination for investment and collaboration.
- (vii) It will help in making India a hub for Institutional Mediation and facilitate citizens, business and other enterprises to concentrate on their core capacities by ushering in a new culture of dispute resolution

Key Issues for Deliberation

2.15 However, after holding extensive deliberations on the Bill, following certain key issues related to the Bill has emerged: -

- i. Absence of definitions of the terms 'habitual residence' and 'place of business' in the Bill.
- ii. Non-applicability of the provisions of the Bill to disputes/matters of non-commercial nature involving the Government and its agencies.
- iii. Non-applicability of the provisions of mediation Bill to commercial disputes whose value is less than the Specified Value under the Commercial Courts Act and Rules framed there under and the resultant dichotomy.

- iv. Restricting the definition of 'Court' to principal civil court of original jurisdiction in a district and the High Court in exercise of its ordinary original jurisdiction.
- v. Designation of an Authority constituted under Legal Services Authorities Act as a mediation service provider whereas Legal Services Authorities were instituted for a different purpose.
- vi. Treating Court annexed mediation on a different footing from mediation conducted privately and the consequences thereof
- vii. Need for ratification of Singapore convention and extending the applicability of the international mediation to civil matters
- viii. Need to rephrase the definition of 'mediation'
- ix. Need to lay down the contents of the mediation agreement and provide a sample format as an annexure to the Bill.
- x. Mandatory and coercive nature of pre-litigation mediation
- xi. Impact of the proposed Mediation law on Justice Delivery System.
- xii. Exhaustive & unnecessary list of exclusions under Schedule I (Disputes or Matters not fit for Mediation).
- xiii. Timeline for the disposal of application for interim relief by Courts and grant of interim relief in exceptional circumstances only
- xiv. Mediation Council of India to be made the nodal agency for registration and accreditation of mediators and other issues concerning mediators.
- xv. Lack of sufficient emphasis in the Bill on the fact that mediator cannot impose a settlement agreement on the parties.
- xvi. Date of commencement of mediation proceedings, time limit of mediation and other aspects relating to the mediation proceedings.
- xvii. Requirement to register mediated settlement agreement and its confidentiality
- xviii. Vague nature of Grounds on which mediated settlement agreement can be challenged & date of commencement of limitation period.
- xix. Need for a detailed chapter on online mediation
- xx. Measures needed to make Mediation Council of India an independent professional regulatory body
- xxi. Issues relating to the composition of panel of community mediators, non-enforceable nature of Mediated Settlement agreement arrived at in community mediation

2.16 These issues have been discussed in detail under relevant clauses in the next chapter of the Report. For ease of reference the Mediation Bill, 2021, as introduced in Rajya Sabha is placed at **Annexure - V**.

CHAPTER III

Clause by Clause consideration of the Bill

3.1 At the outset, the Committee considered and deliberated the issues clause-wise. However, during the course of deliberations, the Committee observed that some of the issues were spread across many clauses. Henceforth, keeping the interlinked and over lapping nature of provisions in view, the Committee in its meeting held on 19th May, 2022 took up issue-wise consideration of the Bill.

3.2 This Chapter encapsulates the major issues that emerged during the deliberations, views and opinions of various stakeholders on these issues, responses given by the Ministry thereof and observations/recommendations made by the Committee with regard to them.

3.3 In the ensuing paragraphs, the Committee has made observations / recommendations on certain clauses and in respect of other clauses, the Committee is in agreement with the provisions incorporated in the bill.

Habitual residence and Place of business - Clause 2

3.4 Clause 2 provides for the applicability of the Bill. As per the Clause, the Mediation Bill will apply to mediation proceedings conducted in India where

- 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.

3.5 Many stakeholders opined that the terms 'habitual residence' and 'place of business' used in clause 2 need to be clearly defined to bring in greater clarity and avoid controversy.

Observations/recommendations of the Committee

3.6 The Committee notes that the terms 'habitual residence' and 'place of business' are not defined in the Bill. The Committee notes that the Foreign Exchange Management Act defines the terms 'person resident in India' and 'person resident outside of India' while the Goods and Services Act defines the term 'Place of Business'. The Committee is of the considered view that lack of explicit definitions often results in ambiguity and makes multiple interpretations possible. The Committee, therefore, recommends that the terms, 'Habitual residence' and 'Place of business' should be either

appropriately defined in the Bill or should be replaced by other suitable words used in other Acts.

Government as litigant - Clause 2

3.7 Clause 2 (2) states that the provisions of Clause 2 (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. In other words, non-commercial disputes pertaining to Central and State Governments and the bodies and agencies controlled or owned by them has been kept outside the purview of the Bill.

3.8 The proviso to Clause 2 (2) enables the Central Government or a State Government to notify, 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.

3.9 There was unanimity among the stakeholders that Government is the biggest litigant in the country and keeping non-commercial disputes involving the Government outside the ambit of the Bill will render the Bill infructuous.

3.10 The Chief Justice of Bombay High Court opined that expanding the scope of the Bill to cover both civil and commercial disputes involving the Government and its agencies will bring relief to lakhs of litigants with scarce means who otherwise are constrained to approach different Courts against the Government / public bodies even for small and petty issues.

3.11 A Judge of Madras High Court has stated –

'It is estimated about 46% of the litigation involve Government & Government Agencies. There is no logic to excluding this case 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.'

3.12 Emphasizing the need for the Government to adopt mediation for the resolution of disputes involving it or its agencies as the case may be, Ms. Chitra Narayan, Mediation Expert, while appearing before the Committee said –

'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. 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 citizenry that the Government is listening to their issues and grievances and working collaboratively to resolve them. 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 of abuse of discretion, the clash of confidentiality in mediation versus the public's right to information among others. However, keeping these concerns in mind, it would be beneficial for the Government to adopt mediation for resolution of disputes-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'.

3.13 On application of Mediation where one party is Government, the Ministry opined that 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 Bill 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 and even the Commercial Courts Act, 2015 does not make any such distinction. 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. Thus, enabling provisions have been incorporated for extending mediation for resolving other disputes also wherein Government is a party.

3.14 Shri P. Wilson, MP and a Member of the Committee opined that empowering the Central / State Government to notify disputes as they deem appropriate for resolution through mediation is legally untenable and is hit by doctrine of excessive delegation. He further submitted that,

'Disputes in which government is a party should be included (like Singapore Act) with some exclusions (if needed).

There is no reason as to why the scope of mediation other than commercial disputes should not be extended to the government.

*Clause 2(2) proviso gives unbridled power to the government to notify "such kind of dispute" fit for mediation as it deems appropriate where government, its agencies, public bodies, corporation and local bodies are involved at a later point of time. **"Such kind of dispute"** bring a third type of dispute other than*

commercial and non-commercial dispute which is not mentioned in the Bill. Such vague definition and delegation of powers is hit by the doctrine of excessive legislation. Proviso reads as if a new list of disputes which government or its bodies can mediate will be notified later gives arbitrary power not to notify also. Estimated 80% of litigation involves government & government agencies. No logic to exclude cases of non-commercial related to Govt/Govt Agencies/Corporations, Undertakings. It is therefore advisable these bodies/departments/agencies be included in this clause without delegating vague powers.'

Observations/Recommendations of the Committee

3.15 The Committee notes that, as per Proviso to clause 2 (2), unless specifically notified by the Central and / or State Governments, non-commercial disputes with Government as one party, are, by and large, outside the ambit of the mediation Bill. However, keeping in view of the current infrastructural and human resource constraints of the country, the Committee recommends that the wordings of clause 2 (2) may be suitably modified so that government related disputes are not excluded from the purview of the Mediation Bill, 2021. The Committee is confident that such a move will inspire confidence in the stakeholders that mediation is a viable option, which even the government is ready to adopt for disputes where it is one of the parties.

Commercial dispute - Clause 3

3.16 The term 'Commercial Dispute' has been defined in Clause 3(a) of the Bill as dispute defined in clause (c) of the subsection (i) of section 2 of the Commercial Courts Act, 2015 which lists various types of disputes such as export or import of merchandise, ordinary transactions of merchants, issues relating to Admiralty and Maritime Law, transactions relating to aircrafts etc.

3.17 Further, the proviso to clause 6 (1) states that pre-litigation mediation in matters of commercial disputes of a Specified Value will be undertaken in accordance with the provisions of section 12A of the Commercial Courts Act, 2015, and the rules made thereunder. The Specified Value of a commercial dispute has been indicated as not less than three lakh rupees in the Section 2(1)(i) of the Commercial Courts Act, 2015.

3.18 Highlighting the anomalies created by this clause, Ms. Narayan said that under Section 12A of the Commercial Courts Act, parties to a commercial dispute will not have a choice of the mediator and will be allotted mediators from panels maintained by Authorities set out in this section. In other words, parties to a dispute of a value falling below the Specified Value and parties to civil disputes will have

access to mediators of their choice while parties to a commercial dispute of a Specified Value will necessarily have to go the Legal Services Authority / Mediation Service Provider authorized by the Central Government, and be bound to mediate through mediator selected by them.

3.19 CAMP, a Mediation Institute based in Bengaluru, submitted before the Committee that this definition of commercial dispute is applicable to domestic commercial disputes only as the definition of 'commercial dispute' with respect to international mediation needs to align with Singapore convention.

3.20 On the need for composite reference mediation in commercial matters, Shri Vivek Tankha, MP, Rajya Sabha and member of the Committee said as under:

'There are often situations, especially where parties are engaged in commercial transaction, that multiple disputes arise from various agreements carrying independent mediation clause with respect to execution of common project. Therefore, an express provision for allowing composite reference mediation may be included to facilitate quick resolution of dispute in such cases.'

Observations/recommendations of the Committee

3.21 **The Committee notes that the definition of commercial disputes has two components: one, the ordinary commercial disputes and second, commercial disputes of Specified Value as given in the Commercial Courts Act which is applicable for the purpose of this Bill. The Committee is of the view that this will create a dichotomy wherein commercial disputes of specified value are dealt with in a manner different from other commercial disputes that are not of specified value. Not only that, under Section 12A of the Commercial Courts Act, parties to a commercial dispute will not have a choice of the mediator and will be allotted mediators from panels maintained by Authorities set out in this section. The Committee infers that parties to a dispute of a value falling below the specified value and parties to civil disputes will have access to mediators of their choice while parties to a commercial dispute of a specified value will necessarily have to go the Legal Services Authority/ Mediation Service Provider authorized by the Central Government, and be bound to mediate through mediator selected by them. Although, Section 12A of the Commercial Courts Act is proposed to be amended through Ninth Schedule of the instant Bill, mediation in respect of commercial disputes of Specified Value is being conducted in a manner different from that of ordinary commercial disputes. The Committee, therefore, recommends that these facts should be clearly indicated in the definition of 'Commercial Dispute' in clause 3 (a) of the instant Bill in order to avoid any dispute.**

Definition of Court - Clause 3

3.22 Clause 3 defines 'Court' as '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'.

3.23 In this regard, various experts opined that the expression 'Court' used in various clauses of the Bill includes any Court having territorial or subject matter jurisdiction over the dispute that is the subject of mediation. Thus, reference to Court is not confined to the principal Civil Court or the High Court in exercise of its original jurisdiction. 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.

3.24 Bangalore International Mediation Arbitration and Conciliation Centre, a Mediation Institution, has opined that the definition of the term 'Court' should include High Courts and Supreme Court so as to widen the scope and ambit of mediation proceedings.

3.25 in this regard, Shri P. Wilson, MP and member of this Committee said as follows:

'Without words "or any other courts", the definition in clause 3(c) is incomplete, as dispute arising not only out of commercial relationship, but otherwise also would fall in definition of International Mediation which is seen in the Preamble of the Bill. Therefore, the Definition for "court" needs a clarification by adding "Any Court established in India including Supreme Court 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 NI Act. Presently the bill is silent qua the remedy available for conducting Mediation in Compoundable Criminal matters or Matrimonial Cases. This grey area needs to be rectified.'

Observations/recommendations of the Committee

3.26 The Committee is of the view that there is a need to widen the ambit of the definition of 'Court'. Accordingly, the Committee recommends that the term 'Court' should cover all Courts located within the territory of India, ranging from subordinate (primary) Courts to the apex Court, having territorial

and subject matter jurisdiction over the dispute that is the subject matter of mediation.

International Mediation - Clauses 3, 40

3.27 The term ‘international mediation’ defined in clause 3 covers only commercial mediation. The Bill excludes the applicability of international mediation to civil matters. Clause 40 provides that Mediation Council of India shall endeavour to develop India to be a robust centre for domestic and international mediation.

3.28 Experts opined that the definition of ‘commercial dispute’ envisaged in the Bill does not match with that envisaged under Singapore convention. As per the Bill, in case of international mediation conducted in India, settlement agreements will be enforceable in the same manner as a decree or judgement of a Court. However, this does not apply to settlements arising out of international mediations conducted abroad. Experts felt that the provisions of the Bill should be consistent with the requirements of Singapore Convention in respect of international commercial mediation since India is a signatory to it and that the Bill should also cover international civil matters.

3.29 Bringing out the ramifications of not ratifying the Singapore Convention, a legislative research institute stated –

‘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.’

3.30 Another expert Shri J.P. Sengh submitted that –

‘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.'

3.31 Stressing on the need to expand the scope and applicability of the Bill beyond commercial matters, Shri P. Wilson, MP and a Member of the Committee, said -

'International mediation may be commercial as well as non-commercial 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 cannot include other types in our Bill.

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.

Further, like clause 2, this clause also uses the terms "place of business" and "habitually resides" without clearly defining what they mean.'

3.32 On Provision of International Mediation, a Judge of Madras High Court has stated –

'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.'

3.33 On the definition of 'commercial dispute' the Ministry said that Clause 3 (f) of the Bill states that 'international mediation' 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. Further, there is no proposal to extend the application of the bill beyond international mediation conducted in India relating to commercial disputes.

3.34 On Singapore Convention, the Ministry opined that presently, it has been decided not to include the applicability of the Singapore Convention under the provisions of the Mediation Bill, 2021. Further, the UNISA or Singapore Convention on Mediation is yet to be ratified. For the present, International mediation has been defined under clause 3(f). It is applicable in cases where mediation is conducted in India between a party which is Indian and the other party may be an individual or company who habitually resides or has place of business outside India as the case

may be or Government of a foreign country. They have also clarified as to why the provisions of the bill are not aligned with those of the Singapore convention stating that UNISA or Singapore Convention on Mediation is yet to be ratified by India and it is seen that only 9 countries have ratified the convention till date, with none of them being major economies. Moreover, overall implications of UNISA are required to be examined in holistic perspective particularly of, its implication / likely consequence of bypassing the compliance of other domestic laws in the country, particularly where the process of enforcement is not challenged before a Court of law.

3.35 The Committee notes that there is a near unanimity amongst various stakeholders that provisions relating to the Singapore Convention on Mediation should be included in the Mediation Bill, 2021, to enable settlement agreements as provided for in the UNISA to be enforced in India. However, the Ministry, in their reply has conveyed that only 9 countries till date have ratified the convention with none of them being major economies and that its overall implications are required to be examined in holistic perspective. The Ministry has apprised the Committee that the Government is not averse to the idea of ratifying the convention, and in fact India was among the countries who first signed the convention. However, the Government is of the view that once the UNISA internationally gains greater acceptance and the implications of ratifications is fully understood, then only they may consider ratifying it and thereafter adequate provisions in the Bill relating to enforcement of settlement agreements under the UNISA will be incorporated.

Observations/Recommendations of the Committee

3.36 The Committee observes that the purpose of Singapore Convention is to facilitate international trade and commerce by enabling disputing parties to easily enforce and invoke settlement agreements across borders. The Committee was informed by the Ministry that India has not ratified UNISA yet. However, the Committee understands that ratification of any international convention is by way of making a domestic law on that subject in the country. Since the proposed Bill on Mediation is also the subject matter of UNISA, it may amount to partial ratification of it.

3.37 Further, the Committee has taken cognizance of the reasons given by the Ministry for not including the provisions of UNISA at this stage of the Mediation Bill but the Committee recommends that the present definition of 'International Mediation' needs to be revisited, so that, in future, the provisions of Singapore Convention can be incorporated in the enactment without any ambiguity. By doing so, the Committee feels that, as provided in Clause 40, the object of developing India into a robust centre for domestic and international mediation can be achieved. The Committee further recommends that the Bill

should have an in-built mechanism that would prohibit automatic enforcement of any international Mediated Settlement Agreement that does not conform to the public policy of India or if the agreement pertains to a dispute which is not mediatable.

Definition of Mediation - Clause 4

3.38 The term 'Mediation' is defined in Clause 4 as 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.'

3.39 An expert submitted that the global practice is to specify in the definition of mediation itself that the mediator lacks the authority to impose a settlement upon the parties. The definition of mediation should categorically declare that the mediator or mediation service provider lacks the authority to impose a settlement upon the parties.

3.40 Madras High Court, Shri P. Wilson and Shri Kanakamedala Ravindra Kumar, Members of Parliament, and Members of the Committee opined that the words, 'Party or Parties request' used in Clause 4 i.e. definition of mediation should be deleted as the Courts can also refer the matter to mediation.

3.41 With regard to the definition of Mediation, Shri P. Wilson, MP and a Member of this Committee submitted as under:

'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 be reflected in the definition of mediation in the Draft Bill to emphasize the principle of party autonomy.

The definition of Mediation under Article 2(3) of the Singapore Convention should be used after suitable modification for the Indian context that mediator is lacking the authority to impose a solution upon the parties to the dispute. Since India is a signatory to the Convention dated 20 December 2018, and the definition of mediation under it is an internationally recognized definition, it would be better to adopt that definition.'

3.42 On the definition of Mediation, the Ministry stated that 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 a settlement. 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. Accordingly, the Bill provides for provisions stating that the mediator does not have the authority to impose a settlement on the parties.

Observations/recommendations of the Committee

3.43 The Committee has taken note of the suggestions made by the experts as well as the clarification submitted by the Ministry. Keeping in view the submission of the Ministry and the provisions contained in Clauses 17 and 18, the Committee feels that the existing definition of ‘mediation’ needs to be reframed. Secondly, since all the definitions are given in Clause 3 of the Bill, the Committee feels that there is no need to define ‘mediation’ separately in Clause 4. Hence, the Committee recommends that the definition of ‘Mediation’ should be moved to the definitions under Clause 3 and the term ‘Mediation’ be redefined such that it reflects the intent of the provisions contained in Clauses 17 and 18 of the Bill.

Mediation Service Provider - Clauses 3, 27, 41 and 42

3.44 In the instant Bill, Mediation Service Provider has been defined in sub clause I of Clause 3 as a body or organisation that provides for the conduct of mediation under this Act and rules and regulations made there under and is recognized by the council. In the explanations (i) and (ii), it has been mentioned that Mediation Service Provider also includes an authority constituted under the Legal Services Authorities Act, 1987 or mediation centre annexed to a Court, tribunal or such other forum recognized by the council as a mediation service provider. In other words, there are multiple controlling authorities for various mediation service providers, i.e, a separate controlling authority in the form of Authority constituted under LSA Act, a separate controlling authority for mediation centre annexed to a Court, a separate controlling authority for mediation centre annexed to a tribunal or a separate controlling authority of any other forum as may be specified by the Mediation Council.

3.45 In this regard Ms. Narayan submitted that

‘the appropriateness of the Legal Services Authority as a designated authority to handle mandatory mediation in commercial disputes falling under Commercial Courts Act, 2015 may be reconsidered. The remit of Legal Services Authority is for a different and larger purpose, which

may not align with the objective of mandating mediation in commercial disputes.'

3.46 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.

3.47 This provision would result in a dichotomy in the practice of mediation - one type of mediation provided for in the Mediation Bill and the other under the Legal Services Authority Act.

3.48 In Chapter 9 of the Bill, Clause 41 provides that mediation service provider recognized by the Council shall be graded in the manner as may be specified by it. Clause 42 enlists the functions of mediation service providers. Under Clause 43, the Council has been empowered to recognize mediation institutes to perform such duties and exercise such functions as may be specified.

3.49 Sh P Wilson, MP and member of this Committee has stated –

'It is advisable to delete clause 41 as grading will unnecessarily create division and confusion besides breed corruption in the council. There is no necessity at all for grading as no objects will sought to be achieved by this clause.'

Observations/recommendations of the Committee

3.50 The Committee notes that the Bill provides for multiple controlling authorities for various Mediation Service Providers viz authority constituted under Legal Services Authority Act, mediation centre annexed to Court/tribunal etc. besides Mediation Council of India. On the other hand, in chapter 9, the Bill empowers the Mediation Council to recognize and grade mediation service providers as well as recognize and specify the duties and functions of Mediation Institutes. The Committee, therefore, recommends that instead of having multiple controlling authorities for various Mediation Service Providers and Mediation Institutes, there should be only one controlling authority for all types of mediation service providers and mediation institutes. The Committee also recommends that the provisions should be made to authorize Mediation Council of India only as the single nodal authority to control mediation service providers and mediation institutes.

3.51 The Committee notes that the Legal Services Authority Act was enacted to establish a nation-wide uniform network for providing free and competent legal services to weaker sections of the society on the basis of equal

opportunity. The Committee feels that designating authorities under LSA as mediation service providers will put additional burden on them. The Committee was made to understand that authorities under LSA have been chosen as mediation service providers owing to their pan-Indian presence. The Committee, therefore, recommends that apart from the authority constituted under Legal Services Authority Act, the Government may explore the feasibility of designating other bodies like State Mediation Council to act as mediation service providers.

Mediation agreement - Clause 5

3.52 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.

3.53 On Mediation Agreement, the Chief Justice of Bombay High Court said as under:

‘there is a possibility of defining the term ‘Mediation Agreement’ 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’. 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 be entered between 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.

3.54 Bombay Bar Association has suggested that clause 5 (3) should also include the order of the Court. It so happens that Courts in pending matter records agreement of parties to refer disputes to mediation. The order of the Court, therefore, serves as agreement between the parties and it will obviate signing any fresh agreement. So, if the agreement is contained in the order of Court, it should be treated as mediation agreement.

3.55 Sh P Wilson, MP and member of this Committee has stated –

‘Since the preamble of the bill talks about mediation which is commercial or otherwise, then the scope of Bill or Mediation cannot be restricted to commercial alone in international mediations. The word commercial should be deleted in clause 5(6).’

3.56 The Ministry in their replies clarified that 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.

Observations/recommendations of the Committee

3.57 The Committee notes that there is a possibility of ‘mediation agreement’ being defined in a variety of agreements in different forms in different regions of the country. Though the Ministry has stated that providing a template or format for a mediation agreement is not feasible, the Committee recommends that the Government to consider incorporating some 'important contents' such as the manner of conducting mediation, place and time of mediation, confidentiality, parties’ right to seek legal advice, manner of termination of mediation etc. in the mediation agreement. The Committee also recommends that the Government may consider not to restrict the scope of International Mediation to commercial disputes only.

Pre-Litigation Mediation and Court annexed Mediation - Clauses 3, 6, 7, 8, 9 and Schedule-1.

3.58 In Clause 3 of the Bill, the terms ‘Pre-Litigation Mediation’ and ‘Court annexed Mediation’ are defined as under:

“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.

“court annexed mediation” means mediation including pre-litigation mediation conducted at the mediation centres established by any court or tribunal.

3.59 Further, Clause 6 of the Bill provides for pre-Litigation Mediation wherein it has been mentioned that whether any mediation agreement exists or not, any party before filling 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 Bill.

3.60 Subsequently, Clause 7 provides that mediation shall not be conducted for resolution of disputes or matters contained in the First Schedule of the Bill and two provisos under the Bill made exception of certain cases which can be referred by the court for mediation such as disputes relating to compoundable offences or matrimonial offences connected with or arising out of civil proceedings between the parties. It also provides that outcome of such mediations shall not be deemed to be a decree or judgment of court as per the provision of the Bill. This clause also provides that Central Government may amend the First Schedule by way of executive order if it is satisfied that it is necessary or expedient to do so.

3.61 Clause 8 (1) 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 Act, file suit or appropriate proceedings before a court or tribunal having competent jurisdiction for seeking urgent interim relief. Clause 8(2) provides that 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.

3.62 Section 9 enables the courts or tribunals to refer any case for mediation at any stage whether the case was earlier subject to the pre-litigation mediation or not. In fact, Section 9 provides the powers to the court to refer the case for mediation even if the earlier mediation was failed.

3.63 After a close scrutiny of the above-mentioned clauses (clauses 6 to 9), the Committee notes that the Bill provides for following types of mediation:

- (a) Pre-litigation mediation wherein parties have to undergo mediation proceedings before filing any suit or proceeding of civil or commercial nature in any court. As per the Bill, this provision is mandatory in nature.
- (b) Court annexed mediation wherein the court can refer any case to mediation even if it includes matters or disputes specified in the First Schedule which are not fit for pre-litigation mediation.
- (c) Court annexed mediation wherein the court has been empowered to refer any case to mediation on the request of parties at any stage even if the earlier mediation has failed.

3.64. The Committee further notes that although the pre-litigation mediation has been made mandatory under Clause 6 but most of the provisions of clauses 6 to 9 are focused on the court-annexed mediation and the spirit of the Bill is to promote resolution of disputes through mediation either by way of pre-Litigation mediation or Court annexed mediation. **The Committee has given its recommendations on these clauses in subsequent paragraphs after analyzing the views of various experts.**

3.65 Expressing concern about the mandatory nature of pre-litigation mediation, a Mediation Expert opined that the Bill imposes pre-litigation mediation even if parties are not willing 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, till they first resort to mediation. Clauses 20 and 25 of the Bill also 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'. This, translated, in actual practice, would imply that a party, who is unwilling to mediate, has to tide over two mediation sessions, may have to wait for several months before being allowed to approach courts or tribunals. He suggested that Pre-litigation mediation should be offered as an option only to those who are willing to mediate.

3.66 Bar Council of India opined that compulsory pre-litigation mediation will just add an additional layer of litigation, and, requires the litigant to engage a mediator, incur expenses, and, after failure of mediation again knock at the doors of the Court which would mean bearing more and additional expenses for filing Court case. It further opined that Clause 20 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. Mediation proceedings being confidential, no evidence can be available to the Court to cull out any substantive reason to impose the cost.

3.67 On the mandatory nature of Pre-litigation Mediation, a legislative research institution submitted as under:

'Mediation is a voluntary dispute resolution process. 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.'

3.68 An NGO submitted before the Committee that making pre-litigation mediation mandatory will mean parties who are not interested in settling will have to pay for two mediation sessions and for Court adjudication in the event that they move the case before a Court. If pre-litigation mediation is to be made mandatory, on the scale envisaged in the Bill, there should be sufficient number of trained mediators to meet the demand. It also felt that it is 'coercive' to impose costs on parties or failure to

mediate and it takes away parties' rights to participate in a proceeding of their choice (mediation or court process).

3.69 It has further suggested that all pre-litigation mediation cases should be recorded in the existing e-Courts system under Pre-litigation mediation category. This will enable the tracking of these proceedings 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.

3.70 An expert suggested that mandatory mediation may be introduced for a narrow category of disputes under the Bill and its efficacy and utility may be reviewed, and extended to other categories based on the learning from this.

3.71 On the contrary, another Mediation Expert, opined that mandatory pre-litigation mediation is not violative of the Fundamental Right to invoke the jurisdiction of Courts because parties are not being 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. The Bill also provides for urgent relief if so required and parties can go for mediation after securing their immediate interests. Stressing on the need for mandatory pre-litigation mediation, he stated that the dissonance induced by 200 years of 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.

3.72 Sharing research findings of NITI Aayog, a legislative research institute submitted as under: -

'NITI Aayog noted that the 'opt-out model' of mandatory pre-litigation mediation has been successfully implemented in countries such as Italy, Brazil and Turkey. NITI Aayog observed that the success of 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. 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.'

3.73 The Research Institute also stated that NITI Aayog noted that a framework for mandatory pre-litigation mediation in India must be planned keeping in mind the number of mediators available. 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.

3.74 On compulsory pre-litigation, Shri P. Wilson, MP & Member of the Committee, said as under:

‘Access to justice is a constitutional right and flows from Art 21. Therefore, there cannot be a rider or a fetter to have access to justice. Therefore, compulsory or mandatory mediation amounts to denial to justice where the parties are unwilling to mediate. Clause 18(1) define role of mediator that “the mediator shall attempt to facilitate voluntary resolution of the dispute by the parties ...”. Therefore, when mediation object is voluntary resolution, parties cannot be compelled for mediation and do an involuntary process. Hence clause 6 (1) instead of the word “shall take steps to settle the disputes” the word “may take steps to settle the disputes” be amended.’

3.75 Emphasizing on the fact that in the absence of impact assessment study on the justice delivery system on the law and need to introduce pre-litigation mediation in a phased manner, Sh P Wilson, MP stated:

‘Since India has not much mediators at the level of State, District, Taluk and if the Mediation Act is introduced suddenly, there will be dearth of mediators and complete chaos and confusion would prevail. No impact assessment of this act on the litigating system is carried or studied as such. How many mediators are required at each court viz Munsiff, Sub Court, District Court, High Court, Supreme Court is not known. How many mediators at Panchayat, Union, District or State level are required is also not studied or data collected. There is also no data of likelihood of the demand the Bill will create for the Mediators, Mediations Institutes, Mediation Service Providers. Therefore, it is suggested that Pre litigation mediations at the first instance could be introduced for a narrower category of disputes and its efficacy and utility maybe reviewed periodically and extended to other categories. State has to be delegated with power to notify category wise of disputes and depending upon the availability of the mediators.

Access to Justice is a fundamental right and protected under Art 21. Since compulsory mediation is thrust on the parties and access to immediate justice is denied, Article 21 stands violated. Any law to regulate 21 should be just fair and reasonable. Therefore, compelling an unwilling parties to mediation may not be a just, fair and reasonable law. Hence there cannot be any mandatory mediation. When the concept is that there should be a free consent and mind to discuss

about the disputes, there cannot be a compulsion to sit for mediation. The very concept of mediation and its underlying object stands defeated. Hence mediation cannot be thrust on the parties and should be left to the discretion of the willing parties.'

3.76 The Ministry responded by stating that Pre-litigation mediation has been made mandatory before approaching courts or tribunals with an aim to unclog the judiciary which at present is burdened with more than 4.5 crores 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 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 of the parties or otherwise in the arrival of a settlement through mediation has not been interfered with, under the provisions of the Bill. This provision relating to pre-litigation is incorporated to facilitate in bringing the required behavioral change amongst the litigants i.e. from pro-litigation to pro-mediation approach.

3.77 Further, many experts recommended that the first Schedule should be amended to include mediatable disputes such as compoundable offences, offences committed under sec 138 of Negotiable Instruments Act, offences of mild criminal nature such as fraud, forgery etc. as inclusion of these offences will bring down the case load considerably.

3.78 On Entry 2 in the first schedule, an expert said that allegations of fraud, forgery, etc., are routine in commercial, contractual and company disputes. Therefore, these disputes should be made amenable to mediation.

3.79 Referring to the Judgements delivered by the Supreme Court in Vidya Drolia v Durga Trading Corporation, (2021) 2 SCC 1; Booz Allen and Hamilton Inc. v SBI Home Finance Limited (2011) 5 SCC532; Ayyasamyv. A. Paramasivam (2016) 10 SCC 386, another expert said that the Hon'ble 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. These principles provide sufficient guidance on the use of mediation in different types of disputes.

3.80 It was also opined by an expert that 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. An omnibus exclusion of all criminal cases may be reconsidered.

3.81 Entry 3 of the first schedule takes away the rights of persons with intellectual disabilities, person with disabilities having high support needs, persons with mental

illness and persons of unsound mind to participate in the mediation process. Experts submitted that the United Nations Convention on Rights of Persons with Disabilities recognizes that individuals with intellectual and developmental disabilities have the right to recognition as persons before the law and to enjoy legal capacity on an equal basis with individuals who do not have disabilities. This provision could exacerbate existing systemic inequalities including access to legal representation and also goes against the spirit of the Rights of Persons with disabilities Act, 2016.

3.82 Entry 7 excludes disputes which have effect on rights of a third party who are not a party to mediation proceedings from the purview of the Bill. Experts opined that inclusion of this entry will affect the conduct of mediation in matrimonial cases where children are involved and in such similar matters.

3.83 Bombay Bar Association suggested that disputes pertaining to land acquisition and determination of compensation under land acquisition laws should be made mediatable as these disputes can be settled quickly via mediation thereby reducing delay in commencement of development projects which benefit public at large.

3.84 Stressing on the need to strike a balance between cases suitable and not suitable for mediation, Shri Sriram Panchu said as under: -

The proper way to do it is to carve out different areas.

i) Cases which cannot be referred to mediation

ii) Cases which can be referred but only at the instance of the judicial authority hearing the matter. This body can be trusted to look at the facts and circumstances and see if this is proper matter for referral to mediation.

iii) All other cases which parties of their own accord can take to mediation

3.85 With regard to First schedule and about few entries in this Schedule, Shri P. Wilson, MP and a Member of the Committee said,

'Schedule -I is extremely restrictive, most disputes contained therein can be easily resolved through mediation. Indicative list excludes certain disputes which have otherwise been successfully resolved through existing mechanism of mediation. First proviso excludes non compoundable offence such as Section 498A which are quashed upon settlement. Second proviso renders the outcome of mediation as unenforceable and leaves it on the court. This would make settlements unenforceable.

Entry 2 - Quite often in litigation there are allegations of fraud etc. 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.

Mere allegation in civil matter of serious and specific fraud, fabrication of documents, forgery, impersonation, coercion will make the matter unfit for mediation.

Entry 3 - Law permits litigation qua minors, disabled, mentally ill persons etc., through a guardian ad litem or next friend and so all disputes relating them need not made unfit for mediation. Courts should be empowered to allow these settlements.

Entry 6 - Mediation would serve most effectively for conflicts and disputes arising in professional bodies, statutory authorities and professionals governed by them should not be deprived of their rights to exercise the option Mediation provided under Legal Services Authority Act.

Complaints against lawyers, CAs etc., Doctors, Builders stem from civil or commercial transactions. No reason to treat such complaints or proceedings as unfit for mediation.

3.86 On the matters included in first schedule, Shri Vivek Tankha, MP and a Member of the Committee said as under:

‘the question that arises is that who will decide what type of matters are “serious” or not as stated in Entry 2. Moreover, I opine that certain disputes, which have both civil and criminal essence to it, such as disputes under Negotiable Instruments Act, Motor Vehicle Act, Domestic Violence, defamation, fraud etc. should also be included under the purview of this act. Similarly, disputes relating to tax and property should also be included in mediation, as they consume a substantial amount of courts’ time and can be easily resolved out of the court. Hence, a lot of entries in this Schedule that are not to be considered for Mediation should be removed and made fit for mediation.’ Furthermore, in my opinion the Fifth Entry in the First Schedule must include the word ‘constitutional’ before ‘morality’ reading as follows:

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

3.87 Further, Shri Tankha, MP said on the scope of the Bill as under:

‘Clause 6 of the Bill encompasses nearly all kinds of cases to be considered under mediation. This should be reconsidered and initially a set or category of cases should be brought under mediation till the time proper infrastructure is not developed to withstand the heavy load of all cases. Simultaneously, emphasis should be placed on expeditious development of infrastructure to cater to mediation.’

3.88 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’.

3.89 An Expert opined that 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 / 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. Also, it defies comprehension as to how such drastic provisions will help in reducing the pendency of the 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’. Such litigation will, in all likelihood, be pursued through constitutional remedies under Article 227 to the High Court, and then under Article 136 upto the Apex Court, more so, in light of the uncertainty as to what constitutes ‘exceptional circumstances’. He also said that no right of appeal has been provided by the Bill from any judicial decision that may be taken by the Court or tribunal under clause 8, rendering this provision constitutionally vulnerable as well.

3.90 The Chief Justice of Bombay High Court opined that 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, so that at all material times, the settlement interest of the party’s stands protected.

3.91 Shri P. Wilson, MP and a Member of the Committee is of the view that the term ‘exceptional circumstances’ may be substituted with ‘prima facie case balance of convenience and irreparable loss and hardships’ which are well settled parameters based on which interim orders can be granted. He also felt that the words ‘if deemed appropriate’ used in clause 8(2) give discretion to the Court or tribunal to refer the parties for mediation after granting or rejecting urgent interim relief. Since mediation is a voluntary process, clause 8(2) should be amended and the matter should be left to the parties.

3.92 On exceptional circumstances, the Ministry specified that Right to recourse to judicial forum has not been barred by the Bill. The purpose is to encourage mediation to resolve the disputes but at the same time to safeguard the interest of the parties and not compromising them. Section 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 circumstances would constitute exceptional will depend on case-to-case basis. Further, sub-section (2) of section 8 empowers the court to refer the parties to mediation, if it deems fit, after granting or rejecting the interim relief. This provision ensure that plea of interim relief is not used by parties to avoid mediation.

Observations/recommendations of the Committee

3.93 The Committee notes with concern that clauses 6, 7, 8, 9 & Schedule 1 are interconnected and contradictory at the same time. The Committee further notes that the provisions of clause 6 also states that pre-litigation mediation shall be made applicable to the matters pending before the Tribunals also. The Committee fails to understand as to how the matter pending before a tribunal will be treated as pre-litigation mediation. The definition of pre-litigation mediation and court annexed mediation needs further clarity. The Committee, therefore, recommends that the clauses 6, 7, 8 and 9 needs to be rearranged to have better clarity on the provisions of ‘pre-litigation mediation’ and ‘court annexed mediation’ and the Committee has given further recommendations in the succeeding paras.

3.94 The Committee recommends that the bill should have one clause focused on Pre-litigation Mediation as the spirit of bill to unclog the pending cases before the courts. Hence the existing provisions of Clause 6 should remain limited to Pre-litigation Mediation and other provisions of this clause should be put under the clause meant for Court Annex Mediation as recommended in succeeding paras.

3.95 The Committee notes that Section 6 of the Bill provides for mandatory pre-litigation mediation before any party files any suit or proceedings of civil or commercial nature in any Court. The Committee also notes that the Bill provides for pre-litigation mediation even if parties do not agree to mediate, and block 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, till they first resort to mediation. The Committee further notes that Section 20 and Section 25 of the Bill make such unwilling parties to stay in mediation for at least two mediation sessions and compels 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”. Consequently, the parties

have to wait for several months before being allowed to approach courts or tribunals.

3.96 The Committee further notes that making pre-litigation mediation mandatory may actually result in delaying of cases and may prove to be an additional tool in hands of litigants to delay the disposal of cases. The Committee also notes the views of few experts that not only pre-litigation mediation should be made optional but also be introduced in a phased manner instead of introducing it with immediate effect for all civil and commercial disputes and the challenges faced in implementing Pre-Litigation Mediation under the Commercial Courts Act, 2015 should be studied before mandating it across other categories of cases.

3.97 Against this background, the Committee recommends that the compulsory provision of Pre-litigation mediation should be reconsidered.

3.98 The Committee notes that provisions of First Schedule pertain to cases which are not fit for Mediation and understands these provisions are for Pre-litigation Mediation. Hence, the Committee recommends that First Schedule should be made part of the clause having provisions of Pre-litigation Mediation and not for the clause where it linked in the instant bill.

3.99 Further the Committee agrees with the opinions expressed by experts that the entries of First Schedule may be pruned as far as possible to include maximum disputes should go through Pre-litigation Mediation.

3.100 With regard to entry 3 of First Schedule, the Committee notes that India is a signatory to the United Nations Convention on the Rights of Persons with Disabilities which recognizes the right of individuals with intellectual and developmental disabilities to recognition as persons before the law and to enjoy legal capacity on an equal basis with individuals who do not have disabilities. The Committee also notes that law permits litigation involving persons with disabilities through a guardian ad litem or next friend. Therefore, the Committee recommends that all disputes involving persons with disabilities should not be outrightly excluded from the purview of mediation and Courts should be empowered to refer suitable cases to mediation.

3.101 The Committee is also concerned on one entry in the First Schedule which states that '*disputes which have effects on rights of a third party who are not a party to the mediation proceedings*' will affect conduct of mediation in matrimonial cases where children are involved. Therefore, the Committee recommends that the clause be modified as '*Disputes which have effects on rights of a third party who are not a party to the mediation proceedings except in only matrimonial cases where the interest of child is involved*'.

3.102 Therefore, the Committee recommends that entries of First Schedule should be revisited in the lights of suggestions of experts and observations of the Committee given above. The Committee also recommends that the prohibited list should not indicate specially those cases which though falls under the category of criminal offences but are the offences limited to parties only without having element of public interest involving State and Society.

3.103 The Committee also notes that in sub-clause 2 of clause 7 has the provision enabling the Central Government to amend the First Schedule by way executive orders. The Committee feels that although this provision is not against the spirit of law-making process but certainly falls under the category of excessive delegation in terms of subordinate legislation. Hence, the Committee recommends that this type of provisions should have been avoided especially when the Schedule indicates exhaustive list of exclusions.

3.104 The Committee further notes that provisions of Clauses 7 & 9 pertain to two categories of Court Annex Mediation. Therefore, the Committee recommends that all the provisions of both the categories of Court Annex Mediation should be placed at one place for better implementation at later stage.

3.105 The Committee also notes that provision of Clause 8 also relates with Pre-litigation Mediation and hence recommends that provisions of Clause should be placed appropriately with the provisions of Pre-litigation Mediation.

3.106 The Committee notes that under Clause 8 of the Bill, dealing with interim relief, the term "*exceptional circumstances*", has not been defined. This, the Committee feels, can lead to wide interpretation and use by parties to approach court for interim relief by contending various situations under "*exceptional circumstances*". Further it has emerged from the experience of implementation of pre-litigation mediation under the Commercial Courts. Act, 2015, that the provisions of interim relief was being used by the parties to delay pre-litigation mediation, wherein the party files an application for interim relief, which does not get decided for a long period of time. The Committee therefore, recommends that an insertion to be made in the Bill for grant of interim relief wherein the ingredients such as prima facie case, irreparable loss and balance of convenience, etc. would have to be made out by the parties, praying for such relief, for ensuring that the term "*exceptional circumstances*" is not stretched for filing applications for interim relief before Court or Tribunal.

3.107 The Committee further recommends that a provision may be considered for inclusion in the Bill that courts would decide the interim relief application within a fixed time period to be provided. Further, it is also recommended that a

time period should be added within which the mediation should commence after receiving interim order from the court.

3.108 Clause 3 of the Bill defines Court annexed mediation as mediation including pre-litigation mediation conducted at the mediation centres established by any Court or tribunal. Clause 26 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 Court. Also, the clause provides for the Supreme Court or High Courts to constitute mediation Committee for the empanelment of mediators who shall conduct mediation in all Courts.

3.109 On this issue, a mediation expert said that the Bill treats Court annexed mediation on a different footing from mediations conducted privately. The 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 clause 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 code of civil procedure. He further suggested that 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.

3.110 Shri P. Wilson, MP and a Member of the Committee opined that delegating powers to High Courts and the Supreme Court to frame separate Rules to govern Court annexed mediation including pre-litigation mediation will lead to anomalies and inconsistencies. He also suggested that Court annexed mediation centres should be brought within the definition of mediation service provider. He further submitted as under:

'No absolute powers can be given to the Supreme Court or High court to deviate from the Mediation Act. This will lead to different type of rules framed by each High court and Supreme Court in so far as the procedure of conducting mediation is concerned and leads to anomalies. The substantive provisions in the Act have laid down the procedure and it should be uniform. Formation of mediation committee, maintaining of a panel of mediators in court annexed mediations can be left to the High court and Supreme Court. However, all other provisions should uniformly apply to court annexed mediation centers which carries out Prelitigation Mediation. The delegation of power will lead to inconsistencies and there will be no uniformity in Prelitigation mediation.'

3.111 The Committee notes with concern that provisions of clause 26 is against the spirit of the Constitution. In the countries which follow Common Law system of jurisprudence, it is healthy tradition that in the absence of any specific statutes, the judgements or decisions taken by Apex Courts has the same bearing as that of Statue. But the moment any law is made on the subject that becomes guiding force and not directions & judgment given by the Courts. In the instant case the bill proposes the law on Mediation and one clause giving the powers to court to make rules for Court Annexed Mediation make it Unconstitutional. Hence, the Committee recommends that specific provisions should be made about Court Annex Mediation in place of existing provisions of clause 26.

Mediator - Clauses 3(h), 6(3) and Clauses 10 - 14

3.112 Clause 3 (h) defines ‘mediator’ as a person who is appointed to be a mediator to undertake mediation, and it includes a person registered as mediator with the council.

3.113 Clause 6 (3) mentions that a mediator should be registered with the Council, empaneled by a Court annexed mediation Centre, empaneled by an Authority constituted under the legal Services Authorities Act and empaneled by a mediation service provider recognized under this Act in order to conduct pre-litigation mediation.

3.114 Clause 10 provides for the appointment of mediator. Clause 11 provides that mediation service provider while appointing mediator shall consider his suitability and the preference of the parties for resolving the dispute. Clause 12 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 provides for the termination of the mandate of the mediator.

3.115 CAMP recommended that the word ‘and’ should be replaced by ‘or’ as requirement is not cumulative in nature. Clause 6 (3) would read as, unless otherwise agreed upon by the parties, a mediator

- i. registered with the council
- ii. empaneled by a Court annexed mediation Centre
- iii. empaneled by an Authority constituted under the Legal Services Authorities Act; **or**

- iv. empaneled by a mediation service provider recognised under this Act shall conduct pre-litigation mediation.

3.116 An NGO suggested that the qualification, experience and accreditation described in the proviso to clause 10(1) for foreign mediators should be made applicable to domestic mediators too. The different kinds of mediators envisaged in the Bill i.e. those registered with the Council, empaneled by a Court annexed mediation Centre, empaneled by an Authority constituted under the Legal Services Authorities and empaneled by a mediation service provider need to have training on skills needed for mediation as well as on the technical aspects of the subject matter of the dispute.

3.117 Shri P. Wilson, MP and a Member of the Committee opined that –

‘Provision would create dispute as to the process of how to register, qualification of mediator, whether full time or part time mediator etc. All mediators should be mandatorily asked to register with State Mediation Councils (Bill to be amended suitably to establish State Mediation Council like State Dental, Medical, Nursing and Bar Councils) Mediator should be a person trained in accredited mediation institute and registered with State Mediation Council (to be established) for the mediations sought to be conducted in accordance with this Act.’

3.118 Bar Council of India suggested that there should be adequate provisions for regulating the fee of mediators and expenses of mediation process.

Observations and recommendations of the Committee

3.119 The Committee notes that in the definition clause of the Bill, ‘Mediator’ is defined as a person registered with the Council (Mediation Council) whereas Clause 6(3) mandates that the mediator should be registered with the following in order to conduct pre-litigation mediation:

- i. registered with the Council**
- ii. empaneled by a Court annexed mediation Centre**
- iii. empaneled by an Authority constituted under the Legal Services Authorities Act, 1987**
- iv. empaneled by a mediation service provider recognised under this Act.**

3.120 The Committee observes that the provision of Clause 6(3) has gone beyond the definition of Mediator under Clause 3(h). Therefore, the Committee recommends that instead of multiple bodies registering Mediators, Mediation Council of India should be made the nodal authority for the registration and

accreditation of Mediators. Further, each mediator should be given a unique registration number by the Mediation Council. The Committee also recommends that the provisions be made in bill to empower the Mediation Council to continuously evaluate the Mediator by holding training sessions periodically and the mediator must earn a minimum number of credit points on a yearly basis in order to be eligible to conduct mediation.

3.121 The Committee feels that domestic and foreign mediators should be treated on equal terms. Therefore, the Committee recommends that the qualification, experience and accreditation prescribed in the proviso to clause 10(1) for foreign mediators should be made applicable to domestic mediators also. Besides that, foreign mediators willing to mediate in India should be required to be registered with the Mediation council of India as their Indian counterparts.

Role of Mediator -Clauses 18 and 19

3.122 Clauses 18 and 19 of the Bill provide for the role of mediator during mediation and in other proceedings. Clause 18 provides that 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, reduce misunderstandings, clarifying priorities, exploring areas of compromise and generating options in an attempt to resolve the dispute. Clause 19 provides 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 of the mediation proceedings and he shall not be presented by the parties as a witness in any arbitral or judicial proceeding.

3.123 Experts suggested that in clause 18(1), the terms 'reduce misunderstanding' and 'exploring areas of compromise' may be replaced with 'promote better understanding' and 'exploring areas of settlement'.

3.124 Clause 18(2) states that the mediator 'may not' impose any settlement or give any assurance that the mediation may result in a settlement. Experts also suggested that the words 'may not' should be replaced by 'shall not' to emphasize that it is the responsibility of the parties to decide and to inform them that he only facilitates in arriving at the decision.

3.125 Clause 19 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 mediation. 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.

3.126 In this regard, the Chief Justice of Bombay High Court said –

‘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. Irrespective of whatever be 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 the justice’

3.127 The Ministry replied that the intention of the clause is to discourage the mediator from being associated with the parties in any additional capacity in later arbitration or judicial proceedings at the instance of one party unless both (or all) parties agree to it specifically. However, under clause 19 (b), it is felt that if with consent of parties the mediator may have to present himself as a witness, it may cause hardship to the mediator. Therefore, the Hon’ble Committee may consider to omit the words “unless otherwise agreed by the parties”, to clarify the position about no role of mediator in subsequent arbitration or judicial proceedings, concerning that case.

Observations and Recommendations of the Committee

3.128 The Committee is of the opinion that the terms ‘misunderstanding’ and ‘compromise’ used in clause 18 (1) carry a negative connotation. Therefore, the Committee recommends that in clause 18(1), the terms ‘*reducing misunderstanding*’ and ‘*exploring areas of compromise*’ may be replaced with the terms ‘*advancing better understanding*’ and ‘*exploring areas of settlement*’ respectively.

3.129 The Committee notes that mediation is a voluntary process and the role of a mediator is to merely facilitate the process of mediation. The mediator cannot impose any settlement on the parties concerned. The Committee is of the view that clause 18 (2) should be emphatic about it. Therefore, the Committee recommends that the term ‘may not’ used in clause 18 (2) should be replaced with ‘shall not’.

3.130 The Committee notes that clause 19 of the Bill provides 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 mediation proceedings and that the mediator shall not be presented by the parties as a witness in any arbitral or judicial proceeding. The intent of the provision is to clarify that the mediator has no role in subsequent arbitral or judicial proceedings. However, inclusion of the terms ‘Unless otherwise agreed by the parties’ gives rise to an interpretation that the parties are free to remove such restrictions on the mediator and waive such requirement, which goes against the very ethos of mediation besides violating the principle of confidentiality. The Committee recommends that the terms ‘unless otherwise agreed by the parties’ should be deleted from the clause to avoid confusion.

3.131 The Committee further notes that Clause 19(a) bars the mediator from acting as an arbitrator or a representative or counsel of a party in arbitral or judicial proceedings in respect of a dispute that is the subject matter of proceedings. However, the Bill provides for the Authority constituted under Legal Services Authority Act to function as a mediation service provider and empanel mediators. The Committee understands that the authorities constituted under LSA Act are manned by judicial officers who are not barred from functioning as mediators. The Committee observes that the bill does not prohibit the judicial officers manning authorities constituted under LSA from functioning as mediators later to preside over judicial proceedings. The Committee, therefore, recommends that judicial officers, who act as mediators, should also be barred to preside judicial proceedings in same case on the lines as mediators are prohibited from acting as arbitrators / counsels / representatives in arbitral and judicial proceedings. The Committee recommends the Government to look into this aspect and incorporate a provision to that effect in the Bill.

Mediation Proceedings - Clauses 15, 16, 17, 20 & 21

3.132 Clauses 15, 16, 17, 20 and 21 provide for the procedural aspect of mediation proceedings. Clause 15 provides that mediation 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 states 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

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.

3.133 Clause 20 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 states 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.

3.134 On territorial jurisdiction to undertake mediation, Shri P. Wilson, MP and a Member of the Committee stated –

‘Linking mediation with territorial jurisdiction restricts the process. The application of section 16 and 20 of CPC will come in to play and will restrict the process. Possible for the parties to arrive at a settlement anywhere regardless of where the original agreement is executed or the place where the dispute arose.’

3.135 With regard to territorial jurisdiction, the Chief Justice of Bombay High Court submitted as follows

‘Clause 15 confers a liberty on 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 may be made in regard to the ‘seat of mediation’ 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 place/seat of mediation, as the parties may select. Therefore, in both the clause 15 and explanation below it, the words ‘to decide the subject matter of the dispute’ may be followed by ‘or, where the seat of mediation is situated’.

3.136 With regard to the date of commencement of mediation proceedings, many stakeholders submitted that in cases where there is an existing agreement between the parties concerned, mediation proceedings should be deemed to have commenced on the date of receipt of notice by the other party rather than on the date of issuance of notice by the first party. In other cases, mediation proceedings should be deemed to have commenced on the date the mediator gives his consent to mediate the matter and not on the date the parties agree to appoint a mediator.

3.137 As regards time limit of mediation, Bar Council of India felt that the period of 180 days is excessive. With regard to this provision, Shri Tankha, MP said as under:

'in Clause 21, the time limit mentioned in the bill for completion of mediation process is too long. It would serve the object of the bill better if the time limit is reduced to 90 days plus an extended 60 days (also mentioned in the Commercial Courts Act), instead of 180 days and further extension of 180 days with consent of parties (as stipulated in the Bill)'

3.138 Shri P. Wilson, MP and a Member of the Committee, suggested that the time period may be fixed as 120 days plus an extended 90 days. For international mediation, it should be 180 days plus an extended 120 days.

3.139 On the date of commencement of mediation proceedings, the Ministry has clarified that, as per the extant provision, 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 is construed as the date of commencement of 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. However, the same can be reformulated in consultation with Legislative Department that it may commence from the day the notice is received, by the other party or parties.

3.140 Explaining the rationale behind having a fixed time limit for mediation in the Bill, the Ministry said that 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.

Observations and recommendations of the Committee

3.141 The Committee notes that as per the extant provisions of the Bill, where there is an existing agreement between the parties to settle the dispute through mediation, mediation proceedings are deemed to have commenced from the date on which a party issues notice to the other party or parties for mediation and settlement of their disputes. The Committee recommends that in these cases mediation proceedings should be deemed to have commenced from the date on which the notice is received by the party or parties rather

than from the date on which a party issues notice to the other party or parties for mediation and settlement of their dispute.

3.142 The Committee also notes that, as per clause 16 (b) of the bill, where there is no existing agreement, mediation proceedings are deemed to have commenced on the day on which parties have agreed to appoint a mediator of their choice for mediation or 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. The Committee is of the opinion that the consent of the mediator should also be taken into account. Therefore, the Committee recommends that in cases where there is no existing agreement, mediation proceedings should be deemed to have commenced on the day on which the mediator has given his consent to such appointment.

3.143 The Committee feels that the time limit provided for the completion of mediation process in clause 21 of the Bill is too long. Though, some of the stakeholders felt that there should not be any time limit prescribed for completion of mediation process, the Committee is not in agreement with this open-ended clause. The Committee, therefore, recommends that it would serve the object of the bill better if the time limit is reduced, say to *90 days plus an extended period of 60 days* (also mentioned in the Commercial Courts Act), instead of 180 days and further extension of 180 days with consent of parties (as stipulated in the Bill). The Committee accordingly, recommends that the provisions of the Bill may be suitably amended.

Mediated Settlement Agreement - Clauses 22, 23, 24 & 50

3.144 Clauses 22, 23 and 24 provide for the aspects of the Mediated Settlement Agreement and its confidentiality. Clause 22 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.

3.145 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.

3.146 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.

3.147 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.

3.148 The Chief Justice of Bombay High Court felt that this is too long a provision and suggested that Clause 22 may be rearranged into three parts -

- a) the first part may deal with the details of mediated settlement agreement and its procedure,
- b) the second part may deal with the submission of non-settlement report,
- c) the third portion may deal with the registration of MSA.

3.149 Many stakeholders opined that registration of MSA should be voluntary. The registration of the same must be left to the discretion of parties. This would also help in keeping the confidentiality and uphold party autonomy. Experts opined that the Bill is silent on the consequences of the settlement agreement not being registered.

3.150 Shri Kanakamedala Ravindra Kumar, an MP and a Member of the Committee, suggested that clause 22(4) should address situations of partial agreement or partial settlement also.

3.151 Shri Vivek Tankha, an MP and a Member of the Committee further opined that Clause 23 deals about confidentiality but does not have any express punishment in case of any breach. It should have sanctions, penal or otherwise in case of breach of confidentiality. Absence of the same will lead to violation of confidentiality clause deterring parties from coming for mediation in future.

3.152 With regard to the requirement of registration of Mediated Settlement Agreement, Shri P. Wilson, MP and Member of the Committee said as follows:

‘By creating a requirement for registration of all mediated settlement agreements, an unwarranted layer of bureaucracy and formality is being introduced and confidentiality is breached. 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 requires any registration.’

3.153 The Chief Justice of Bombay High Court suggested that the Bill should provide situations and circumstances where a waiver of confidentiality can be made, for instance, in the interest of sovereignty and integrity of India or in matters concerning issues of immense public interest.

3.154 Bar Council of India opined that the definition of Mediated Settlement Agreement should clearly state that the terms of Mediated settlement Agreement should be lawful and not be barred by any law.

3.155 Bombay Bar Association opined that the term ‘Authorized representative’ used in Clause 22(8) should be defined. It has also opined that the Bill does not prescribe any penalty/consequences for a party not attending before the registering authority without sufficient reason. A provision may be made, for instance, disentitling the party not attending for registration from disputing the same. It also recommended that a model format of mediated settlement agreement may be appended as a schedule to the Act.

3.156 Shri Vivek Tankha, an MP and a Member of the Committee opined that the settlement agreement in Clause 50 of the bill must necessarily include a time limit within which a written consent from competent authority shall be sought before signing of the settlement agreement.

3.157 Explaining the rationale behind making registration of mediated settlement agreement mandatory, the Ministry said that registration of mediated settlement agreements would enable having the repository of the said agreement and also lend authenticity/credibility to the mediated settlement agreement, if either of the parties used to enforce it or challenge it.

3.158 On the confidentiality clause, the Ministry has said that, 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.

Observations and Recommendations of the Committee

3.159 The Committee agrees with the opinion of the experts that Clause 22 is too long and contains too many provisions. Therefore, the Committee recommends that Clause 22 should be rearranged into three clauses,

- i.** the first Clause should deal with the details of mediated settlement agreement and its procedure
- ii.** the second Clause should deal with the submission of non-settlement report,
- iii.** the third Clause should deal with the registration of MSA.

3.160 The Committee further recommends that Clause 25 which deals with the termination of mediation should be placed immediately after the abovementioned clauses.

3.161 The Committee recommends that sub-clauses 7, 8 & 9 of Clause 22 must suitably be amended and the registration of the same must be left to the discretion of parties. This would help in keeping the confidentiality and uphold party's autonomy. Also, the term 'Failure Report' may be positively worded as 'Non-settlement Report'.

3.162 The Committee notes that clause 23 provides for confidentiality but does not stipulate any punishment / liability or consequences which can be imposed on one who willfully infringes the confidentiality, thereby defeating the objective of maintaining the confidentiality prescribed in the Bill. Therefore, the Committee recommends that there must be an express provision for any case of breach of confidentiality in the Bill itself.

3.163 The Committee further recommends that the Bill should prescribe penalty / consequences for a willing party for not attending before the registering authority without sufficient reason.

3.164 The Committee notes that Clause 50 of the bill also provides for the settlement agreement where government is party and hence recommends that provision of Clause 50 should be made part of Clause 22, which is recommended to amend above, and it should necessarily include a time limit within which a written consent from competent authority shall be sought before signing of the settlement agreement.

Enforcement of Mediated Settlement Agreement -- Clauses 28 - 31

3.165 Clauses 28 to 31 of the Bill contain provisions relating to Mediated Settlement Agreement and the grounds on which it can be challenged and the time limit within which it can be challenged.

3.166 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.

3.167 Experts opined that in addition to the existing grounds for challenging Mediated Settlement Agreement, some more grounds may be added such as (i) incapacity; and (ii) any term of agreement is not enforceable; (iii) the settlement agreement is in contravention with the fundamental policy of Indian Law; (iv) the settlement agreement is in conflict with the most basic notions of morality and justice.

3.168 On Clause 29, Shri Vivek Tankha, MP said as under:

‘Clause 29 is a very broad provision wherein the importance of Mediation is put into question, since it has not been given a binding effect. Mediation proceedings should be such as to restrict unnecessary litigation in courts, hence, approaching the courts should be made more difficult after mediation, so that parties take mediation seriously.’

3.169 Shri K. Ravindra Kumar, MP said as under:

‘this provision amounts to opening of pandora box. If one of the parties to the mediated settlement agreement intends to avoid the said agreement, it makes an allegation on one of the grounds mentioned above. Therefore, only in exceptional and limited circumstances, challenge has to be permitted, as the non-availability of the same may result in miscarriage of justice. As such it requires restrictions and clarification’

3.170 With regard to the date of commencement of limitation period, Shri P. Wilson, MP and a Member of the Committee submitted as under:

‘The period of limitation for challenge is 90 days from the date of receipt, of the mediated settlement agreement and not the usual 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). Hence there should be an amendment to the effect that 90 days starts from date of discovery of fraud or mistake.'

3.171 Stakeholders also opined that there should be a provision that if the Court finds an application to be frivolous or without merit, or if the allegations in the application are held to be unproved, the applicant should be liable to pay exemplary costs to the other parties to the mediation settlement as may be determined by the Court. They also felt that the statutory period of limitation runs from the date of discovery of fraud and not from the date of receipt of a copy of mediated settlement agreement.

3.172 With regard to the grounds for challenging the Mediated Settlement Agreement, the Ministry said that the grounds are intended to provide adequate remedy for challenging mediated settlement agreement under exceptional and limited circumstances only. Regarding the period of limitation, the Ministry clarified that 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 of the fraud would makes it subjective and amenable to requirement of proving the same.

Observations and recommendations of the Committee

3.173 The Committee feels that the grounds provided in Clause 29(2) for challenging the mediated settlement agreement need to be broad based and not limited to just four grounds as contained in the Bill. Therefore, the Committee recommends that Clause 29 (2) should be reworded so as to reflect that the Mediated Settlement Agreement can be challenged on the grounds as may be specified by the Central Government from time to time.

3.174 The Committee recommends that the Government should consider incorporating a provision which allows the Court to act if it finds an application to be frivolous or without merit, or if the allegations in the application are held to be unproved.

3.175 The Committee notes that Clause 29(3) of the Bill provides limitation for challenging a mediated settlement agreement, say on the ground of fraud, would run from the date of receiving of a copy of the settlement agreement. This provision runs contrary to the general principle wherein the statutory period of limitation runs from the date of the cause of action and not from the

date of receiving a copy of the settlement agreement. The Committee, therefore, recommends that the said provision should be reconsidered in light of provisions of act governing the Limitation.

Online Mediation - Clause 32

3.176 Clause 32 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.

3.177 Experts suggested that a separate chapter should be dedicated to online mediation. Appropriate Rules should be annexed as a separate schedule to the Act.

3.178 Shri Vivek Tankha, an MP and a Member of the Committee, suggested that the bill should also have a provision for free Online Mediation as a relief to parties involved in dispute who are not financially well off. The Mediation Council should also enable easy and prompt online mediation facilities by developing the necessary infrastructure.

Observations/Recommendations of the Committee

3.179 The concept of Online dispute resolution has gained traction during the COVID 19 pandemic. Online mediation delivers speedy justice in a cost-effective manner. The Committee notes that the instant bill contains only clause dedicated to online mediation. Keeping in view the emerging requirements, the Committee recommends that detailed provisions and modalities for online mediation should be incorporated in the Bill appropriately.

Mediation Council of India - Clause 33 to 40

3.180 Clauses 33 to 40 of the Bill contain provisions relating to the Composition, duties and functions of the Mediation Council of India.

3.181 Supreme Court Bar Association opined that the Mediation Council should consist of one member to be nominated by the Bar Council of India and one member to be nominated by the Supreme Court Bar Association. Some Members opined that Mediation Council should be made more independent.

3.182 On the composition of Mediation Council, Shri P. Wilson, MP and a Member of this Committee, opined --

'Necessary amendments in clause 35(1) to have chairperson as Retired Chief Justice of Supreme Court; A Senior Advocate who is a trained mediator and to be nominated by Central Government; one nominee from All India Bar Council; one Mediator; Representatives from each of professional bodies who would be potential users of mediation and mediators like, Mediation institutions, Chambers of Commerce, Chartered Accountant, Cost Accountant, Engineers, Doctors should also be included in the Mediation council at National Level. one representative of Mediation organizations.

Further, the Chairperson be appointed by the Central Government in consultation with the Chief Justice of India.

State Mediation Council should be established by inserting necessary Amendments. The Chairperson being a retired Chief Justice of a High Court and similar composition as stated above at National level. There should be a representative from the State Bar Council besides a Senior Advocate, mediator, meditation organization, and State government officials from departments mentioned in Clause 34(1) (c, d, e, f, g). All the members of State Mediation Council including the Chairperson have to be nominated by respective state governments.'

3.183 Stressing on the need for State Mediation Councils, Shri P. Wilson, MP and a Member of this Committee, submitted as under:

'There should be a Mediation council in Every state and there is no mention of constitution of one Mediation Council in every state, which would perform daily affairs within the state including awareness programs and trainings which would communicate with the Central Body and be under Mediation Council of India's regulations as it would be difficult for Central Council to oversee and manage all the activities throughout India'

3.184 The Ministry has clarified that the composition of MCI has been devised after consultation with the stakeholders as well as with different Ministries and Departments. The eligibility of person to be appointed as 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 Bill is on engaging domain experts as Members.

3.185 Assuaging the concerns of mediation experts about bureaucratization of the set-up, the Ministry has clarified that experts in the field of mediation and other modes of ADR are included as Full time Members of MCI. Besides, there is one representative of a recognised body of commerce and industry who will be a Part Time Member. Out of seven members there are only two government representatives in the MCI who will be ex-officio members.

3.186 On Mediation Councils / Centres in states, the Ministry said that a central level body in the form of Mediation Council of India has been proposed in the Bill to ensure uniformity of standards across the country. The State Governments are also not debarred from establishing bodies / mediation centres to promote mediation in states.

3.187 On the issue of autonomy, the Ministry stated that the Mediation Council has been given wide powers to regulate mediation proceedings including formulation of applicable rules and regulations. The provision is intended to ensure that there are adequate checks and balances in the Bill and there is due deliberation on the regulations being issued by the Mediation Council. Also, this is as per legislative precedents available in other laws.

Observations and Recommendations of the Committee

3.188 The Committee notes that Clause 34 provides for the qualifications and appointment of the Chairperson and Members of the Council. It provides that the Chairperson and Full time Members to have 'shown capacity' and 'knowledge & experience' in dealing with problems relating to 'Alternative Dispute Resolution' and 'Mediation or Alternative Dispute Resolution' respectively. However, the Committee feels that this may lead to a situation where a person having expertise or shown capacity in Alternative Dispute resolution mechanisms other than mediation may be appointed to the Council. Therefore, the Committee recommends that the term 'Alternative Dispute Resolution' and 'Mediation or Alternative Dispute Resolution mechanisms' in clause 34 may be considered for substitute by the term 'Mediation'.

3.189 The Committee recommends that the appointment of the Chairperson and Members of the Mediation Council of India should be made on the recommendation of a selection Committee constituted by the Central Government.

3.190 Keeping in view the wide spectrum of duties and responsibilities assigned to the Mediation Council of India, the Committee recommends that mediation councils should be instituted in the states as well. These State Mediation Councils should function under the overall superintendence, direction and control of Mediation Council of India and discharge such functions as may be specified by it.

Community Mediation - Clauses 44 & 45

3.191 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 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.

3.192 Experts opined that 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.

3.193 Many stakeholders suggested that the Panel must include a qualified and trained mediator in order to guide the disputants to a legally sound settlement. The option of writing down a mediated settlement agreement should be left to the parties concerned.

3.194 Shri Kanakamedala Ravindra Kumar, an MP and a Member of the Committee suggested that the sentence 'But shall not be enforceable as judgement or decree of civil court' in clause 45(4) be deleted.

3.195 Shri P. Wilson, an MP and a Member of the Committee suggested that the Bill should provide that upon receipt of an application for community mediation, the Authority constituted under the Legal Services Authorities Act, 1987 or District Magistrate/Sub-Divisional Magistrate in areas, where no such Authority has been constituted, will first determine whether the dispute is fit for mediation.

3.196 Shri Vivek Tankha, an MP and a Member of the Committee opined that the number of mediators on the panel should not be restricted to three as it unnecessarily infringes on the party autonomy which is the basic tenet of Alternate Dispute Resolution. It doesn't include possibility where due to technical expertise or other reasons there may arise a requirement of more than 3 mediators.

3.197 The Ministry replied that 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 in absence thereof, the District Magistrate or Sub-Divisional Magistrate, have been mandated to only facilitate community mediation. Community mediation is based more on trust of the parties.

3.198 The Ministry opined that considering the provision is widely worded and the panel of mediators could include any suitable person including mediation experts. The role of the local administration or the concerned authority under the Legal Service Authorities Act, 1987, is limited to facilitating notification of permanent panel and appointment of panel of three mediators for each reference for community mediation received.

3.199 The Ministry clarified that since community mediation involves interest of large number of local citizens and sensitive matters, provision of permanent panel of mediators is incorporated to ensure that a pool of mediators is available for appointment and crucial time is not wasted in identifying and appointing the mediators, which may result in escalating the tension between the parties. Thus, the intention of permanency is attached with the availability of a panel and not the persons who are listed in the panel. The list of persons on the panel is not permanent and can be revised from time to time, as per need.

Observations and Recommendations of the Committee

3.200 The Committee appreciates the Ministry for instituting a framework for resolution of disputes that are likely to affect the peace, harmony and tranquility in the society. The Committee is of the view that the term ‘mediator’ used in sections 44 and 45 of the Bill need to be substituted by the term ‘Community mediator’ as the mediators engaged in community mediation are not trained and qualified mediators as defined in clause 3 of the bill.

3.201 The Committee notes that Clause 44(3) of the Bill provides for a panel of three mediators for the purpose of conducting Community Mediation. However, there is no justification for having just three mediators as it will bring rigidity in the mediation process. The number of mediators in the panel could be more, based on the requirement of the case. Therefore, the Committee recommends that the provision should be appropriately worded ensuring a panel of three or more mediators. Though, the clause 44(5) (d) provides for "any other person deemed appropriate", the Committee recommends that there must be a provision for a trained mediator or a person having legal background, in the panel, to guide the disputants to a legally sound settlement.

3.202 The Committee fully understands the rationale behind making the settlement agreement arrived at through the process of community mediation non-enforceable. However, the Committee feels that making an explicit statement regarding the non-enforceable character of the settlement agreement will defeat the very purpose of community mediation. Therefore, the Committee recommends that clause 45 (4) may be deleted.

LIST OF INSTITUTIONS & INDIVIDUAL EXPERTS WHO INTERACTED WITH COMMITTEE IN MEETINGS HELD AT PARLIAMENT HOUSE, NEW DELHI

PHD Chamber of Commerce & Industry:

1. Shri Sudhanshu Batra, Sr. Advocate, Supreme Court of India and Mediator;
2. Ms. Priya Hingorani, Sr. Advocate;
3. Ms. Lalit Mohini Bhat, Advocate; and
4. Dr. Jatinder Singh, Asst. Secretary General.

Associated Chambers of Commerce and Industry of India (ASSOCHAM):

1. Shri K.K Sharma, Chairman;
2. Shri Venket Rao, Council Member; and
3. Shri Santosh Parashar, Additional Director and Head Corporate Affairs.

Confederation of Indian Industry (CII):

1. Ms Pallavi Shroff, Chairperson, CII Centre for Arbitration and Mediation Committee & Managing Partner, National Practice Head, Dispute Resolution Shardul Amarchand Mangaldas & Co;
2. Shri Tejas Karia, Member, CII Centre for Arbitration and Mediation Committee & Partner, Head - Arbitration Shardul Amarchand Mangaldas & Co;
3. Shri Pramod Rao, Member, CII National Committee on Regulatory Affairs & Group General Counsel ICICI Bank, ICICI Group;
4. Shri Sidharth Sharma, Member, CII National Committee on Regulatory Affairs & General Counsel Tata Sons Pvt. Ltd; and
5. Mr Vikkas Mohan, Executive Director.

Federation of Indian Chambers of Commerce & Industry (FICCI):

1. Ms. Geeta Luthra, Sr. Advocate, Supreme Court of India & Vice President, Indian Council of Arbitration(ICA); and
2. Shri Amit Padhi, Registrar, ICA.

Mediation and Conciliation Project Committee, Supreme Court of India

1. Shri Yajuvender Singh, Member Secretary ; and
2. Ms. Sonal Suniljeet Patil, OSD

Delhi High Court Mediation and Conciliation Centre

1. Ms. Veena Ralli, Organising Secretary

National Law University (NLU) Delhi

1. Dr. Ruhi Paul, Professor of Law & Director, Centre for ADR

Vidhi Centre for Legal Policy, Delhi

1. Ms. Deepika Kinhal, Lead (Judicial Reforms) & Senior Resident Fellow; and
2. Ms. Apoorva, Senior Resident Fellow

A Society for Alternative Dispute Resolution Mediators, Arbitrators, & Advocates (AMIKA)

1. Dr. P. Madhava Rao, General Secretary

Asia Pacific Centre for Arbitration and Mediation

1. Shri Anil Xavier, Chairman; and
2. Ms. Iram Majid, Director.

Supreme Court Bar Association

1. Shri Vikas Singh, President

The Bar Council of India

1. Shri Manan Kumar Mishra, Sr. Advocate, Chairman;
2. Shri Ved Prakash Sharma, Co-Chairman;
3. Shri Srimanto Sen, Secretary; and
4. Shri Ashok Kumar Pandey, Joint Secretary.

Individual Experts

1. Shri J.P. Sengh, Sr. Advocate;
2. Dr. Aman Hingorani, Advocate & Mediation Expert;
3. Justice M.L. Mehta (Retd).;
4. Shri Arun Mohan, Sr. Advocate; and
5. Dr. Renu Raj, International Mediation Expert

**LIST OF INSTITUTIONS & EXPERTS WITH WHOM COMMITTEE INTERACTED
DURING STUDY VISIT TO MUMBAI, BENGALURU AND CHENNAI**

MUMBAI

Hon'ble Chief Justice and Hon'ble Judges of the Bombay High Court

1. Hon'ble Chief Justice Dipankar Dutta;
2. Justice A. A. Sayed;
3. Justice S.S. Shinde;
4. Justice Nitin Jamdar;
5. Justice Ravindra Ghughe;
6. Justice G.S. Kulkarni;
7. Justice A.K. Menon; and
8. Justice Manish Pitale

Bombay Bar Association

1. Nitin Thakkar, President

Bar Council of Maharashtra & Goa

1. Pravin Yadavrao Ranpise, Secretary

Advocates Association of Western India, Bombay High Court

1. Shri Sanjeev Kadam, President

**Centre for Mediation and Conciliation (CMC), Bombay Chamber of Commerce
& Industry**

1. Ms. Ekta Bahl;
2. Mr. Maulik Vyas;
3. Mr. Sandeep Khosla;
4. Mr. R. Ganesh;
5. Mr. Ashok Barat
6. Ms. Neha Chaturvedi; and
7. Mr. Vineet Unnikrishnan

IMC International ADR Centre 'Functioning of ADR' Mechanism

1. Mr. Prathamesh D. Popat;
2. Mr. Parimal Shah;
3. Mr. Gautam T. Mehta;
4. Mr. Bhavesh V. Panjuani;
5. Ms. Bhakti P. Popat;
6. Mr. Ajit Mangrulkar;
7. Ms. Sia Wagle; and
8. Mr. Prajakt Palladwar

BENGALURU

Hon'ble Chief Justice and Hon'ble Judges of the Karnataka High Court

1. Hon'ble Justice Ritu Raj Awasthi; and
2. Hon'ble Justice K.S.Mudagal

Karnataka State Bar Council

1. Shri Motakpalli Kashinath, Bar Council Chairman

The Advocates Association, Bengaluru

1. Shri Vivek Subba Reddy, President;
2. Shri T. G. Ravi, Gen. Secretary; and
3. Shri Harisha M T, Treasurer

Bangalore International Mediation Arbitration & Conciliation Centre (BIMACC)

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1. Hon'ble Justice Munishwar Nath Bhandari (Chief Justice) ;
2. Hon'ble Justice D. Krishnakumar ;
3. Hon'ble Justice M. Sundar;
4. Hon'ble Dr. Justice Anita Sumanth ;
5. Hon'ble Justice A.D. Jagadish Chandira ;
6. Hon'ble Justice G.R. Swaminathan (sitting at Madurai bench- through video conference);
7. Hon'ble Justice C. Saravanan (sitting at Madurai bench- through video conference);
8. Hon'ble Justice Senthilkumar Ramamooorthy ; and
9. Hon'ble Justice D. Bharatha Chakravarthy

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1. G. Mohana Krishnan, President; and
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Tamil Nadu Advocates Association

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Tamil Nadu Senior Advocates Forum

1. N. L. Rajah, President & Secretary

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4. Shri Sankaranarayan, ASG, Govt. of India; and
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- 16 Dr.Vijay Kumar Singh
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- 17 Ms. Vaishnavi Jayakumar, Co-founder, Disability Rights Activist.

Suggestions/views of Shri Vivek K. Tankha, M.P., Rajya Sabha on the Mediation Bill, 2021

It is my opinion that the present bill should be a standalone law to govern all the mediation so conducted in India and abroad (where the parties in dispute are of Indian origin), overriding all other existing provisions contained in various other laws. This will provide a uniform procedure which will be followed for mediation thereby removing the nuances of having a different procedure for mediation under various enactments. In order to increase the chances of success it is extremely important that the parties involved in mediation find themselves in a safe environment where they are sure that their interest is secured. In order to move further towards that goal I suggest the following changes in the Bill:

1. The Central Government and the State Governments should also undergo mandatory mediation for all kinds of disputes, since State is the biggest litigant in the country. Therefore I strongly recommend that **Clause 2** must be suitably modified to the extent that the government and its agencies and disputes involving them are also included.
2. **Clause 6** of the Bill encompasses nearly all kinds of cases to be considered under mediation. This should be reconsidered and initially a set or category of cases should be brought under mediation till the time proper infrastructure is not developed to withstand the heavy load of all cases. Simultaneously, emphasis should be placed on expeditious development of infrastructure to cater to mediation.
3. In **Clause 21**, the time limit mentioned in the bill for completion of mediation process is too long. It would serve the object of the bill better if the time limit is reduced to *90 days plus an extended 60 days* (also mentioned in the Commercial Courts Act), instead of 180 days and further extension of 180 days with consent of parties (as stipulated in the Bill).
4. **Clause 22(7), (8) and (9)** must suitably be substituted so as to not mandate the registration mediation agreement. The registration of the same must be left at the discretion of parties. This would also help in keeping the confidentiality and uphold party autonomy.
5. **Clause 23** deals about confidentiality but does not have any express punishment in case of any breach. It should have sanctions, penal or otherwise in case of breach of confidentiality. Absence of the same will lead to violation of confidentiality clause deterring parties from coming for mediation in future.
6. **Clause 29** is a very broad provision wherein the importance of Mediation is put into question, since it has not been given a binding effect. Mediation proceedings should be such as to restrict unnecessary litigation in courts, hence, approaching the courts should be made more difficult after mediation, so that parties take mediation seriously.
7. Under **Clause 32**, the bill should also have a provision for free Online Mediation as a relief to parties involved in dispute who are not financially well off. The Mediation Council should also enable easy and prompt online mediation facilities by developing the necessary infrastructure.

8. There should be an experienced Mediator too in the Mediation Council formed under **Clause 34**. Furthermore, the Council as per the draft bill, can be seen as an extension of government's whims and fancies, as the Central Government has all the say in appointing the members. The Council should be made more independent and free from government shackles.
9. The number of members in community mediation is restricted to 3 under **Clause 45(1)**. I find no reason to restrict the number to three as it unnecessarily infringes on the party autonomy which is the basic tenet of Alternate Dispute Resolution. It doesn't include possibility where due to technical expertise or other reasons there may arise a requirement of more than 3 mediators.
10. The settlement agreement in **Clause 50** of the bill must necessarily include a time limit within which a written consent from competent authority shall be sought before signing of the settlement agreement.
11. The **First Schedule** talks about the disputes which are not fit for mediation. The question that arises is that who will decide what type of matters are "serious" or not as stated in Entry 2. Moreover, I opine that certain disputes, which have both civil and criminal essence to it, such as disputes under Negotiable Instruments Act, Motor Vehicle Act, Domestic Violence, defamation, fraud etc. should also be included under the purview of this act. Similarly, disputes relating to tax and property should also be included in mediation, as they consume a substantial amount of courts' time and can be easily resolved out of the court. Hence, a lot of entries in this Schedule that are not to be considered for Mediation should be removed and made fit for mediation.
12. Furthermore, in my opinion the **Fifth Entry in the First Schedule** must include the word '*constitutional*' before '*morality*' reading as follow:
*"5. Settlement of matters which are prohibited being in conflict with public policy or is opposed to basic notions of **CONSTITUTIONAL** morality or justice or under any law for the time being in force."*
13. In my experience there are often situations, especially where parties are engaged in commercial transaction, that multiple dispute arise from various agreements carrying independent mediation clause with respect to execution of common project. Therefore an express provision for allowing composite reference mediation may be included to facilitate quick resolution of dispute in such cases.

The above suggestions may be considered by the Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice. Besides this, any other residuary point may be raised at the time of discussion.

Views/Queries of Smt. Kalaben Delkar, MP (LS) on the Mediation Bill, 2021

1. विधेयक के खंड 6 में मुकदमा-पूर्व मध्यस्थता अनिवार्य कर दी गई है। क्या यह प्रावधान माध्यकता के स्वैच्छिक प्रकृति के नियम के विरुद्ध नहीं है?
2. विधेयक के खंड 29 में कहा गया है कि सीमा अवधि उस तारीख से शुरू होती है जब किसी पक्षकार को मध्यस्थता समझौते की प्रति प्राप्त होती है। इसमें मेरा सुझाव है कि धारा 29 (3) में संशोधन किया जाना चाहिए ताकि यह कहा जा सके कि धोखाधड़ी, प्रतिरूपण या भ्रष्टाचार के मामले में सीमा अवधि की गणना उस तारीख से की जानी चाहिए जिस दिन पक्षकार को इसके बारे में पता चला।
3. खंड 44 की" सामुदायिक मध्यस्थता "से संबंधित खंड में मेरा यह सुझाव है की एक प्रशिक्षित मध्यस्थ को पैनलिस्टों में शामिल किया जाना चाहिए और सामुदायिक मध्यस्थता के दायरे में पर्यावरण, भूमि अधिग्रहण जैसे मुद्दों को भी शामिल किया जान चाहिए ।
4. खंड 2 के उप-खंड) 2) में उन विवादों में जिन में पक्षकारों में से एक सरकार या सरकारी संस्था है को इस कानून से बहार रखा गया है .इस पर पुनर्विचार किया जाना चाहिए क्योंकि देश में सबसे ज्यादा कोर्ट में मसले सरकारों द्वारा ही दाखिल किये जाते है .
5. मध्यस्थता विधेयक अति-केंद्रीकरण को बढ़ावा देता है। विधेयक में कोई राज्य स्तरीय निकाय निर्धारित क्यों नहीं है?
6. खंड 44 में सामुदायिक मध्यस्थता के लिए मध्यस्थ का स्थायी पैनल कैसे संभव है? इसकी क्या रूपरेखा होगी.

**Draft Proposal by
Kanakamedala Ravindra Kumar, MP (RS)
Committee Member - PPG and Law**

THE MEDIATION BILL 2021

Clause 2(1):-

- Clause 2(1)(i) “Both Parties habitually Reside”
- The term habitually reside or place of Business shall be defined specifically, Since the scope of the mediation has been reduced and excludes Non-Commercial International Mediation.
- This Bill appears to have excluded the status and enforcement of the mediated settlement agreement governed by the part implementing the Singapore Convention.
- The Proposed Act deems an International Mediation Settlement Agreement also to be a Decree of the Court but the same would not be enforceable under the Singapore Convention.
- 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.
- The bill does not provide for any enforcement of International Mediation that takes places outside India.

Clause 2(2):-

- This clause excludes the Central Government, State Government agencies, local bodies including all entities controlled or owned by the Government.
- The main object of the bill is to reduce the burden of the Courts.
- The Government is the largest litigant. If the Government is excluded from this Bill the purpose of the Bill itself is defeated. It does not inspire confidence as an effective and wholesome process for resolving disputes. Mediation has special advantages in the case of Government disputes.
- Therefore disputes in which Government is a Party should be included like Singapore Mediation Act, if necessary with certain exemptions.

Clause 3(f):-

- Section 3(f) confines to International Mediation relating to Commercial disputes arising out of legal relationship, contractual or otherwise.
- The Bill should cover entire field of International Mediations. The Bill should address the Singapore Convention.

Clause 4:-

- Clause 4 specified as follows:
- “Mediation shall be a process.....where by party or parties, request a third person referred to as mediator or mediation service provider”.
- It requires court also may refer other than party, parties or request of a third person.

Clause 6:-

- Pre-Litigation Mediation shall be optional and voluntary. It shall not be made mandatory.

Clause 7 r/w 1st Schedule:-

- Disputes or matters not fit for Mediation.
- The matters mentioned in Clause 2, 4, 14 of the 1st Schedule are specifically excluded from this Bill
- Clause 2 of the 1st Schedule excludes most of the disputes by making an allegation or fraud, fabrication of documents, forgery, impersonation and coercion. Most of the disputes involves any one of the allegations. Simply because such allegations are there the disputes shall not be excluded from the mediation. As such clarifications are required.
- Clause 4 of the 1st schedule excluded disputes involving prosecution of Criminal Offences. Matters such as Cheque bouncing, Matrimonial matters, Corporate Criminal matters, Civil Criminal matters also excluded under clause 4.
- Therefore it would be advisable that the parties be able to mediate on matters that are compoundable without requiring permission of the court.
- Clause 14 of the 1st Schedule of the bill also to be included in the mediation. Since there is a provision for consent award. Apart from that most of the cases under Land Acquisition and determination of compensation can be settled by way of mediation.
- It is better to revise the 1st schedule r/w Clause 7.

Clause 8:-

- There should be time limit for the Interim relief like section 9 of Arbitration Act.
- The Interim relief shall be subjected to process of mediation and parties may undertake mediation to resolve the disputes.

Clause 22(4):-

- Clause 22(4) requires that “Situations of partial agreement or partial settlement should also be addressed by clause 22(4)”.

Clause 22(7):-

- Clause 22(7) mandated for registration of agreements. By creating a requirement for registration of all mediated settlement agreements an unwarranted layer of Bureaucracy and involves additional cost to the parties.
- In fact the requirement of compulsory registration is also contrary to the principles of confidentiality.
- Clause 22(7) should make registration optional either with the sub-registrar or with institutional mediation centre if necessary.

Clause 29(2):-

- A mediated settlement agreement may be challenged only on any of the following grounds, namely:
Fraud, corruption, impersonation and exempted under Clause 7 r/w 1st schedule.
- This provision amounts opening of Pandora box. If any one of the party to the mediated settlement agreement intends to avoid the said agreement generally makes allegation of any one of the above.
- Therefore the purpose /object of mediation bill will be defeated.

- Therefore in order to safe guard any party from being misled, only in exceptional and limited circumstances challenge has to be permitted, as the non availability of it may result in miscarriage of justice.
- As such it requires restrictions and clarifications.

Clause 34:-

- Specific qualifications, knowledge and experience in Law to mediation and ADR mechanism to be specified.

Clause 44:-

- Clause 44 related to community mediation requires to be clarified by way of definitions and its functions. It appears the language used in clause 44 is vague.

Clause 45:-

- Clause 45(4) the sentence that “But shall not be enforceable as judgement or decree of a civil court” shall be deleted.

**RECOMMENDATIONS AND SUGGESTIONS OF P. WILSON, SENIOR
ADVOCATE AND MEMBER OF RAJYA SABHA ON THE MEDIATION BILL 2021**

The Committee has extensively and elaborately heard the various stakeholders including Hon'ble Chief Justice of Mumbai High Court, Hon'ble Mr Justice Deepankar Datta, Hon'ble Chief Justice of Karnataka High court Hon'ble Mr Justice Ritu Raj Awasthi and Hon'ble Chief Justice of Madras High Court Hon'ble Mr Justice Munishwar Nath Bhandari, few Hon'ble Judges of the above High Courts, Senior Advocates, All India Bar Council Chairman Mr Mannan Kumar Mishra, Tamilnadu and Pudhucherry Bar Council Chairman Mr Amalraj, Madras Bar Association president Mr VK Kamalanathan, Secretary Mr Seenivasan, Madras High Court Advocates Association President Mr Mohanakrishnan, Vice President Ms Sudha, Secretary Mr Krisha Kumar, Woman Lawyers Association President Luisal Ramesh and other office bearers , Tamilnadu Advocate Association President Mr S Prabhakaran, Tamilnadu Mediation and conciliation Center, Madras High Court, Supreme Court Bar Association President Mr Vikas Singh, Chairman of various State Bar Councils of Karnataka and Mumbai, various Advocate Associations, Advocates, Senior mediators Mr Sriram Panchu, mediators Mrs Chitra Narayan various chambers of commerce and industries, Mediation committee, Supreme Court of India, Delhi High Court Mediation and Conciliation Center, National Law University, Individual experts, Thiruvengadam, Bangalore International Mediation Arbitration and conciliation center, representatives from various industries and others.

It is a matter of record that the Hon'ble Minister of State Law and Justice while introducing the Mediation Bill 2021 in Rajya Sabha on 20.12.2021 requested the Hon'ble Chairman of Rajya Sabha to refer the Mediation Bill after introduction to the Department related Parliamentary Standing Committee on Personnel, Public Grievances law and Justice for Examination and report of the Bill. Therefore, the Bill is referred to the Standing Committee.

The intention of the Government under the Mediation Bill is to facilitate settlement of disputes through mediation before entering into adjudicatory process in the Courts/Tribunals.

In a democratic system, the medium of dialogue is the best medium for not allowing a disagreement to become a dispute. Dialogue and discussions is the best way to resolve any problems. It is the only way to reach decisions that are acceptable to both parties. Dialogue is the primary means of avoiding, or resolving, conflict. What separates democracy from other political philosophies is the principle and practice of solving differences first and foremost through voluntary dialogues and discussions.

The breakdown of governance in ancient times was primarily due to unresolved dissent within the state structure. This was mainly due to the failure of dialogues between the monarch and a small but influential group. In democratic societies, where the entire adult population is involved in governance, dissent is likely to be more extensive. Regularly elected Parliaments, written constitutions, independent judicial and religious institutions, and freedom of expression are ways

of harnessing this dissent by interaction through dialogue. Every relevant view needs due respect, time and attention.

In arena of litigation till today, there was no comprehensive law regulating pre-litigation mediation. There were no complete codified statutory platform for a organised, meaningful dialogues and discussion between two parties before they enter in to adjudicatory process. To have organised, meaningful dialogue and discussions between disputing parties, an unbiased independent facilitator is required who may be referred to as a Mediator. Above all, the mediation should be voluntary and with the consensus of both parties.

This mediation process is nothing new to India. Mahatma Gandhi, the father of our nation used his mediation skills to stop riots and foster unity and to fight the British by using purely non-violent means. Thus, Mahatma Gandhi was a master mediator. Mediation therefore was in fact adopted in pre-independent India through Gandhian philosophy.

Considering the fact that the cases relating to commercial matters are pending for long years in the Courts, it is a welcome measure that the parties are encouraged for a pre-litigation dialogue which is facilitated by a trained mediator. There will be a negotiating table and a favorable atmosphere to talk and express the views of disputing parties. This will enable the parties to discuss freely and come to a conclusion and if it fruitfully ends, they need not go to the adjudicatory process. This is the real intention of Pre-litigation mediation. Thus, the pith and substance of the bill is settlement through dialogues and discussions between disputing parties before entering in to Courts/tribunals.

Time and time again, the Apex Court has been suggesting a mechanism to be in place by way of an Act for this pre litigation dialogues and discussions among disputing parties before they could knock the doors of the Court. This will also reduce the docket explosions and strain on the courts and justice delivery system.

The Hon'ble Supreme Court in the case of *M.R. Krishnamoorthy v. New India Assurance Company Limited and others* has observed that there is a dire need to enact the Mediation Act to take care of various aspects which could be in general, resolved by the process of Mediation. Likewise in the case of *K.Srinivas Rao v. D.A. Deepa*, the Hon'ble Supreme Court observed that 10-15% of matrimonial disputes get settled in the Court through various mediation center, the Court also has said the idea of pre-litigation mediation is catching up and it was further suggested that if all the mediation centers set up pre-litigation desk/clinic by giving sufficient publicity and matrimonial disputes are taken up for pre-litigation settlement, many families will be saved of hardships if, at least, some of them are settled.

The Hon'ble Supreme Court in the case *B.S. Krishnamoorthy and other v. B.S. Nagarajan* has observed that the lawyer should advice their clients to try for mediation for resolving the disputes especially with regards to relationship since litigation drags on for years and decades, often ruining both the parties.

Thus, the need of a compulsory pre-litigation mediation was enunciated by the various Courts in India including the Supreme Court.

Functioning under an institutional charter and Scheme, the Tamil Nadu Mediation and Conciliation Centre is India's first Court-annexed-mediation center and is prominently located in the High Court Buildings, Chennai, which was inaugurated on 09.04.2005 and was later extended to the Madurai Bench of Madras High Court.

Therefore, it is not in dispute that Mediation as part of Court proceedings emanated from the soil of Tamil Nadu and the state has been the front runner for Mediation.

What is Mediation?

The word Mediation is now commonly used and described as a voluntary, binding process in which an impartial and independent mediator help facilitates disputing parties in reaching a settlement. A mediator does not impose a solution but creates a conducive environment in which disputing parties can resolve all their disputes. Mediation is tried and tested alternative method of dispute resolutions.

Mediation is a structured process where an impartial person uses specialized communication and negotiation techniques in order to allow for disputing parties to come to an amicable settlement thereby resolving their disputes. It is a settlement process whereby disputing parties arrive at a mutually acceptable agreement. Being informal in nature, there are no strict or binding rules of procedure. It further enables disputing parties to interact on a one-to-one basis with each other and is both confidential and voluntary.

Mediation enables the parties to be the key players in the dispute settlement process and is an inexpensive and speedy mode of dispute resolution. Mediation is also an interest based exercise rather than a rights based exercise thereby enabling the parties to settle on their own terms.

Benefits of Mediation

Mediation process is quick, responsive, economical and does not involve more cost. It also leads to harmonious settlement and helps create solutions and remedies while being confidential and informal. It also provides a platform for the disputing parties where they have substantial control over the proceedings and also the outcome.

During mediation, there is no loss of time and it requires minimal financial investment while attempting to preserve ongoing business or personal relationships. Further, mediation allows flexibility, control and participation of the disputing parties. Mediation is a far more satisfactory way of resolving disputes as compared to litigation. There is no appeal or revision in a mediated case and all disputes get settled in finality.

Mediation should be a voluntary process

It is undeniable that Mediation has had a significant impact all over the world and therefore requires no second opinion with regards to the intention of the Government to bring a pre-litigation mediation which is created through the Mediation Bill, so that the parties before approaching Court could resolve to settle their issue by mediation in a congenial atmosphere.

However, in my considered view the Mediation cannot be made mandatory and a precondition to approach courts. Mediation cannot be thrust on the parties and cannot be made as a prerequisite for approaching Courts and Tribunals.

Access to Justice is a fundamental right and same flows from Article 21 of the Constitution of India. Thrusting mediation without willingness of parties by a law may amount to denial of immediate access to justice. Right to access justice is a fundamental right, that can only be regulated by a law which should be just, fair and reasonable and not arbitrary. These are the main judicial parameters on which a law made to regulate Article 21 is judicially tested. An unwilling party cannot be expected to give his consent for mediation and Law cannot force a person to go for a Mediation when his mind doesn't permit him to do so. There will be no involvement in the mediation process and this would only be an empty formality exercise leading to no results. It would be waste of time for this useless formality. It is well known fact that the parties after exhausting all options as a last resort approach the Court. If they're willing, they can go for pre litigation mediation. But since, mediation should be a voluntary process and law cannot force the parties to go for mediation as a precondition to litigate and such law is of no consequence.

Impact of the proposed Mediation Law on the Justice delivery system

Clause 6 of The Bill is quite exhaustive as it covers suits or proceedings of civil or commercial nature except as stated in Clause 7. The effect of this Bill when it becomes an Act on the Justice delivery system will be like a Tsunami for which no impact assessment on the courts, litigants and justice delivery system has been undertaken till today. It ought to be noted that there are not enough mediators, Mediation institutes and Mediation service providers to deal with the sudden demand which the Act is bound to create. The only possible way for implementation of a Prelitigation mediation is to have enough infrastructure at all levels viz Supreme Court, High Courts, District Courts, Sub courts and Munsiff courts. A study should also be undertaken before implementation as there is no data provided to us about the number of mediators, mediation institute and Mediation service providers at all levels in the country.

There are special enactments which provide for a remedy of filing suits like Election Petitions. How can mediation apply in these types of cases?

The Mediation Bill also does not speak about the State Mediation Council which has to be established in every State to regulate the Mediators, Mediation Institutes and Mediation Service Providers. All powers cannot be centralized with Mediation Council of India particularly when Mediation is sought to be regulated and made applicable as a Pre litigation process.

The Mediation Bill should be comprehensive and should bind all authorities. The Mediation Bill covers substantively the process and procedure of mediation. Therefore, delegation of powers to High Courts and the Supreme Court to frame separate Rules for procedure will lead to confusion and conflicting rules in each State.

The present Bill as such is in conflict with the Singapore convention which more than 55 countries have adopted. India has to ratify the Singapore Convention at the earliest. The recommendations are aimed to be in consonance with Singapore conventions whether India ratifies the same or not. India if it ratifies can be made as a robust hub for international commercial mediation especially since the Bill also deals with international mediation.

Bearing in mind the Himalayan task of introducing a valid and legally tenable Mediation Bill which was entrusted by the Rajya Sabha to this Committee, the Standing Committee took it upon ourselves to even hear the members of the Higher Judiciary and elicit the views from them, and hence this committee is thankful for the patient and well-reasoned perspective of the Judiciary in this law-making process.

After hearing the stake holders referred above, I am of the considered view that the present Bill requires certain fine tuning.

If the Bill as such is allowed to be returned back to be tabled in the Parliament and in the event of such a bill being passed, the consequences may be catastrophic as it will lead to great hardships to the litigants, lawyers, mediators, stakeholders and even to the Courts and administration of Justice. I am doubtful whether the Bill in its present form may be able withstand the test of judicial scrutiny if challenged.

There are many discrepancies and lacunae in the Bill which I have detailed below after the analysis of the Bill clause by clause.

Therefore, I am of the considered view that the following clauses in the mediation bill 2021 (Bill No. XLIII of 2021) requires the following amendments/inclusions/deletions. I have also given the reasons for amending the clauses, then and there.

S. No.	Clause	Reasons for amendment/deletion of the clause and Suggestions	Remarks
1.	Clause 2(1)	<p>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 Clause 3(f) of the Bill. Like wise in clause 2(2) only commercial disputes relating to government can be mediated.</p> <p>Since the preamble of the bill talks about mediation which is</p>	<p>Since the preamble of the bill talks about mediation which is commercial or otherwise, the scope of Mediation cannot be restricted to commercial disputes alone in so far as mediation relating to government disputes or international mediations.</p> <p>The Bill should be consistent with the requirements of Singapore</p>

		<p>commercial or otherwise, then the scope of Bill or Mediation cannot be restricted to commercial alone in so far as mediation relating to government disputes or international mediations are concerned.</p>	<p>Convention even though India has not adopted the said convention. Only then India can be made as a robust hub for international commercial mediation. The non commercial matters should also be included in the Bill. Otherwise, there will be mediation in noncommercial if the matter reaches court under section 89 CPC; on the other hand no such noncommercial mediation is permissible under this Act which violates Art 14. Hence the restrictions to application of this Bill only to commercial matters should be amended suitably so as to include all matters except those barred under law and which are referred in Clause 7(1)</p>
2.	Clause 2(2)	<ol style="list-style-type: none"> 1. Disputes in which government is a party should be included (like Singapore Act) with some exclusions (if needed). 2. There is no reason as to why the scope of mediation other than commercial disputes should not be extended to the government. 3. Clause 2(2) proviso gives unbridled power to the government to notify "such kind of dispute" fit for mediation as it deems appropriate where government, its agencies, public bodies, corporation and local bodies are involved at a later point of time. "Such kind of dispute" bring a third type of dispute other than commercial and non commercial dispute which is not mentioned in the Bill. Such vague definition and delegation of powers is hit by the doctrine of excessive 	<p>This clause 2(2) has to be amended.</p> <p>Excluding non commercial matters where one of the parties is the Central Government/State Government/agencies, public bodies, corporations and local bodies form the purview of mediation and enabling the Central Government/State Government from notifying such kind of disputes as they deem appropriate for resolution through mediation is legally untenable and hit by doctrine of excessive delegation.</p> <p>There are many types of non commercial cases involving Government and their agencies/bodies etc which can be settled through mediation. Example: cases relating to planning permissions, service matters etc.</p>

		<p>legislation. Proviso reads as if a new list of disputes which government or its bodies can mediate will be notified later gives arbitrary power not to notify also. .</p> <p>4. Estimated 80% of litigation involves government & government agencies. No logic to exclude cases of non commercial related to Govt/Govt Agencies/Corporations, Undertakings. It is therefore advisable these bodies/ departments/agencies be included in this clause without delegating vague powers.</p>	
3.	Clause 3 (b)	Provisions should be made to establish State Mediation councils with power of registration of mediators in the State.	Necessary Amendments for establishment of State Mediation Councils should be done in clause 3(b). They would strengthen the objects and intention of the Bill
4.	Clause 3(c)	1. Without words “or any other courts”, the definition in clause 3(c) is incomplete, as dispute arising not only out of commercial relationship, but otherwise also would fall in definition of International Mediation which is seen in the Preamble of the Bill. Therefore the Definition for “court” needs a clarification by adding “Any Court established in India including Supreme Court 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 NI Act. Presently the bill is silent qua the remedy available for conducting Mediation in Compoundable	Amend clause 3(c) and make the definition of court wider to include all courts including Supreme Court, and Criminal courts.

		Criminal matters or Matrimonial Cases. This grey area needs to be rectified.	
5.	Clause 3(f)	<ol style="list-style-type: none"> 1. International mediation may be commercial as well as non-commercial 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 cannot include other types in our Bill. 2. 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. 3. Further, like clause 2, this clause also uses the terms "place of business" and "habitually resides" without clearly defining what they mean. 	International mediations should not be confined only to commercial disputes alone. Therefore, the word "commercial" in clause 3(f) has to be deleted.
6.	Clause 3(f) (i)		Substitute it with "An individual who is not a resident of India"
7.	Clause 3(f)(ii)		Substitute with "with its place of incorporation outside India"
8.	Clause 3(h)	<ol style="list-style-type: none"> 1. Provision would create dispute as to the process of how to register, qualification of mediator, whether full time or part time mediator etc. 2. All mediators should be mandatorily asked to register with State Mediation Councils (Bill to be amended suitably to establish State Mediation Council like State Dental, 	<ol style="list-style-type: none"> 1. Should be read as "Mediator means an individual who is trained in mediation by an accredited institution and registered with the State Mediation Council. 2. It should be mandatory for all mediators to be registered with State Mediation Council, whether they are trained by accredited Mediation institutes

		<p>Medical, Nursing and Bar Councils)</p> <p>3. Mediator should be a person trained in accredited mediation institute and registered with State Mediation Council (to be established) for the mediations sought to be conducted in accordance with this Act.</p>	<p>or registered with MSP (Mediation Service Provider) and mentioning of their registration number on all documents should be a must except the mediated agreements. A Unique number for each mediator should be given by State Mediation Council.</p>
9.	Clause 3 (k) (l)	<p>1. Bill does not include such Mediation Institutes/Mediation Service provider established by the Centre or any State Government or any other authority. Considering the present Bill is going to bring sea change in the justice delivery system making the Pre-litigation mediation as mandatory, the State and Central Government should also be given powers to establish mediation institutes, mediation service providers in order to train more mediators. Mediation institute should be permitted to be established by both the Central and State government and accordingly clause 3(k) and 3(l) should be amended.</p> <p>2. Court annexed mediation centers should also be brought under definition of Mediation Service Providers in the Bill and accordingly clause 3(l) has to be amended.</p>	<p>1. Explanation I to Clause 3 (l) can be deleted and Explanation II be renumbered as Explanation I as existing Explanation II will cover I.</p> <p>2. Include Mediation Institutes/ mediation service provider established by the Centre or any State Government or any other authority under definition of Mediation institute/ Mediation Service Provider and amend clause 3 (k) and (l)</p> <p>3. Court annexed mediation centers should be included in definition of Mediation Service provider in clause 3(l)</p>
10.	Clause 3(q)	<p>The expression “parties claiming through them” may be added to the definition to include assignees and other legal representatives.</p>	<p>Add the expression “parties claiming through them” in clause 3(q)</p>
11.	CHAPT ER III	<p>1. India to ratify the Singapore Convention at the earliest.</p> <p>2. Part III of the Draft Bill dated 29 October 2021 (“Draft Bill”)</p>	<p>Steps be taken to ratify the Singapore convention at the earliest. Be that as it may necessary amendments have</p>

		<p>set out various provisions that gave effect to the Singapore Convention.</p> <p>3.</p>	<p>been carried out so as to avoid any conflict with Singapore Conventions.</p>
12.	Clause 4	<p>1. 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 be reflected in the definition of mediation in the Draft Bill to emphasize the principle of party autonomy.</p> <p>2. The inclusion of ‘conciliation’ within the definition of mediation is problematic since the concepts of mediation and conciliation are fundamentally different.</p>	<p>1. Since the Bill aims to have a comprehensive and wider mediation either referred by parties or court, words “party or parties request” maybe deleted as the court also sends the matter to mediation under Clause 8(2).</p> <p>2. The definition of Mediation under Article 2(3) of the Singapore Convention should be used after suitable modification for the Indian context that mediator is lacking the authority to impose a solution upon the parties to the dispute. Since India is a signatory to the Convention dated 20 December 2018, and the definition of mediation under it is an internationally recognized definition, it would be better to adopt that definition.</p> <p>3. The word “conciliation” should be deleted.</p> <p>4. 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)</p>
13.	Clause 5(1) and Clause 5(5)	<p>The contents of Clause 5(5) are covered under Clause 5(1) which states “to submit to mediation all or certain disputes which have arisen, or which may arise”.</p>	<p>1. Clause 5(5) is repetitive and should be deleted because it is already mentioned in Clause 5(1) and Clause 5(1) should be amended subsuming the possibilities mentioned in Clause 5(5)</p> <p>2. Proposed amendments Clause 5(1) as under: “(1) A mediation agreement shall be in writing, whether executed</p>

			<i>prior to arising of dispute or subsequent thereto, 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>
14.	Clause 5(6)	Since the preamble of the bill talks about mediation which is commercial or otherwise , then the scope of Bill or Mediation cannot be restricted to commercial alone in international mediations.	Since the preamble of the bill talks about mediation which is commercial or otherwise , then the scope of Bill or Mediation cannot be restricted to commercial alone international mediations. The word commercial should be deleted in clause 5(6) and if it is other disputes the same could be included.
15.	Clause 6	1. Since India has not much mediators at the level of State, District, Taluk and if the Mediation Act is introduced suddenly, there will be dearth of mediators and complete chaos and confusion would prevail. No impact assessment of this act on the litigating system is carried or studied as such. How many mediators are required at each courts viz Munsiff, Sub Court, District Court, High Court, Supreme Court is not known. How many mediators at Panchayat, Union, District or State level are required is also not studied or data collected. There is also no data of likelihood of the demand the Bill will create for the Mediators, Mediations Institutes, Mediation Service Providers. Therefore it is suggested that Pre litigation mediations at the first instance could be introduced for a narrower category of disputes and its efficacy and utility	1. Access to Justice is a fundamental right and protected under Art 21. Since compulsory mediation is thrust on the parties and access to immediate justice is denied, Article 21 stands violated. Any law to regulate 21 should be just fair and reasonable. Therefore compelling an unwilling parties to mediation may not be a just, fair and reasonable law. Hence there cannot be any mandatory mediation. When the concept is that there should be a free consent and mind to discuss about the disputes, there cannot be a compulsion to sit for mediation. The very concept of mediation and its underlying object stands defeated. Hence mediation cannot be thrust on the parties and should be left to the discretion of the willing parties. 2. Clause 18 defines the role of mediator in. Facilitating voluntary resolution. If it is so

		<p>maybe reviewed periodically and extended to other categories. State has to be delegated with power to notify category wise of disputes and depending upon the availability of the mediators</p> <p>2. Legal Services Authority is for a different and larger purpose which may not align with the objective of mandating 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. Courts have interpreted that Section 12 A is directory and not mandatory.</p> <p>3. The clause does not provide for parties to opt out of Pre-litigation Mediation (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 and there is no clarity in the types of disputes.</p> <p>4. Access to justice is a constitutional right and flows from Art 21. Therefore, there cannot be a rider or a fetter to have access to justice. Therefore, compulsory or mandatory mediation amounts to denial to justice where the parties are unwilling to mediate. Clause 18(1) define role of mediator that <i>“the mediator shall attempt to</i></p>	<p>how can a party be forced with mediation and make it mandatory and prerequisite for approaching civil courts and tribunals ?</p> <p>3. Similar provision viz section 12 A in The Commercial Courts Act , the courts have held it to be directory and not mandatory.</p> <p>4. Clause 8(2) gives option to the court itself to refer mediation if deemed appropriate, when they are before the court. More so pending litigations section 89 CPC the mediation is optional.</p> <p>5. Be that as it may, no impact assessment on imposing mandatory mediation in all civil and commercial matters has been studied. There are not enough mediators to handle all cases. Hence Pre litigation mediation should be introduced in a phased manner instead of introducing it with immediate effect for all civil and commercial disputes.</p> <p>6. Pre Litigation Mediation should be kept optional 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.</p> <p>7. No one should be compelled or coerced to do any thing. Therefore the Bill should clearly state that parties can opt out of PLM any time if they're not willing for mediation due to changed circumstances after they agree at initial stage. The consent for mediation should subsist</p>
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		<p><i>facilitate voluntary resolution of the dispute by the parties ...</i>". Therefore, when mediation object is voluntary resolution, parties cannot be compelled for mediation and do an involuntary process. Hence clause 6 (1) instead of the word "<i>shall take steps to settle the disputes</i>" the word "<i>may take steps to settle the disputes</i>" be amended.</p>	<p>always and law cannot dictate that withdrawal can be only after two sittings. clause 20(1) provides for opting out of mediation any time after the first two mediation sessions. The option to opt-out any time should also form part of section 6.</p> <p>8. Bill should provide a list of the types of disputes subjected to Pre-Litigation Mediation in a Schedule.</p> <p>9. The bill doesn't take care of suits filed under Special Enactments.</p>
16.	Clause 6(3)		<p>Clause 3(h) has defined mediator which has to be amended and should state that mediator should compulsorily register with State Mediation council. Applying the same the regulatory body in the State should be State Mediation council and therefore Clause 6(3) has to be amended accordingly. There should be only one body to register and assign unique number to each of the Mediator. This will prevent unnecessary confusion and mediators can be easily regulated.</p>
17.	Clause 6(5)		<p>Recommend adding the words "and mediation service provider registered with State Mediation Council" after "mediators" in second line.</p>
18.	Clause 6(6) to 6(8)		<p>Provisions should be re-drafted as proposed amendments to the Motor Vehicles Act, 1988 and moved to a Schedule to the Bill. This would ensure parity with the language of that Act and recourse to mediation as a part of the legislative policy of the Bill</p>
19.	Clause 7		<p>The list of disputes which can be mediated can be given in First Schedule..</p>

20.	Clause 7(1)	<ol style="list-style-type: none"> 1. Schedule -I is extremely restrictive, most disputes contained therein can be easily resolved through mediation. 2. Indicative list excludes certain disputes which have otherwise been successfully resolved through existing mechanism of mediation. 3. First proviso excludes non compoundable offence such as Section 498A which are quashed upon settlement. 4. Second proviso renders the outcome of mediation as unenforceable and leaves it on the court. This would make settlements unenforceable. 	
21.	Clause 7(2)		Pre-decisional public debate, hearing, opinions of practicing Mediators, other stakeholder including end users must be made mandatory while amending the first schedule.
22.	Clause 8(1)	Mediation process should be voluntary and not mandatory. If mediation is not made compulsory, this clause 8(1) can be ignored.	<p>As stated above access to justice is a fundamental right and if mediation is thrust it would amount to denial of justice and violative of Art 21. This provision can be read down as directory and not mandatory. Hence mediation should not be forced on the parties and it should be voluntary.</p> <p>In alternate, 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.</p> <p>There should not be any court intervention during the ongoing mediation as it will impact the requirement of good faith participation in mediation and/or will create mistrust with other party and resultantly the other</p>

			party will discard the mediation. The word Exceptional circumstance can be substituted with “-prima facie case balance of convenience and irreparable loss and hardships” which are well settled parameters based on which interim orders can be granted..
23.	Clause 8(2)	Mediation should be voluntary. 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. This is contrary to clause 6(1) which makes mediation mandatory. Therefore correspondingly clause 6(1) should be amended to leave it to the option of the parties.	Since mediation is voluntary, correspondingly clause 6(1) requires amendment.
24.	CHAPT ER-IV		<ol style="list-style-type: none"> 1. Giving preference to the parties for appointment of mediator registered with State Mediation Council themselves shall make the process smooth, less expensive and less strenuous. 2. The qualifications of the mediator must be provided in the Bill or the Rules framed there under, without which the quality of mediation may get compromised.
25.	Clause 13 Termination	<ol style="list-style-type: none"> 1. Justification of ground for termination of a mediator or the need for giving a mediator a fair hearing is not required. 2. Where parties or any of them are of the view that the mediator is conflicted, such assessment should be given when due and not subject to hearing the mediator as this not only delays the commencement of mediation but also derogates from party autonomy in the choice of 	<ol style="list-style-type: none"> 1. Hearing for a mediator is not required and should not affect the parties seeking for a fresh mediator. 2. Powers to blacklisting and removal of mediators/mediation organizations/ Mediation Service Providers should be given to State Mediation Council by bringing necessary amendments.

		<p>mediator and in particular imposing a mediator upon whom the reservations are expressed. The moment parties confidence is breached, the disqualification of continuing in this mediation by a mediator sets in and has to result in termination.</p> <p>3. Withdrawal from mediation shall have no bearing on the conduct or accreditation of the mediator.</p>	
26.	Clause 15	Linking mediation with territorial jurisdiction restricts the process. The application of section 16 and 20 of CPC will come in to play and will restrict the process. Possible for the parties to arrive at a settlement anywhere regardless of where the original agreement is executed or the place where the dispute arose.	Deletion of the clause as in situations where parties don't reach a consensus with regard to a mediator and mediation service provider, this clause would discourage courts in referring cases to the mediation services providers in India for such parties who may have their offices outside the territorial jurisdiction of the court. This will also affect international mediation.
27.	Clause 17(1)	Delete the word "neutral" in clause 17(1) as it runs counter to clause 17(2)	Delete the word neutral in clause 17(1). Word neutral is not the apt word to be used when mediator is expected to be impartial and independent.
28.	Clause 18(1)		If mediation is voluntary process, how can the parties be compelled with mandatory mediation as stated under clause 6(1)
29.	Clause 19(1)	A Mediator cannot be called as a witness in a dispute, even with the consent of parties.	Clause 19(b) requires deletion.
35	Clause 20(1)	Need To add "with the appointed mediator" at the end of Clause 20(1).	Recommend adding the words "with the appointed mediator" at the end of Clause 20(1)
30.	Clause 20(2)	A provision is needed for non-starter mediation i.e. such 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.	Recommend a provision for non-starter mediation i.e. such 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.

31.	Clause 21(1) &(2)	Under Clause 21(1) the initial time period may be fixed as 120 days' time and in so far as the extended period in clause 21(2) is concerned, there should be 90 days. For international mediation 180 may be fixed with extended time of 120 days	<ol style="list-style-type: none"> 1. Recommend 120 days as the period for mediation initially with further time of 90 days of extension period for domestic mediation. 2. International mediation should be assigned a separate time frame 180 may be fixed with extended time of 120 days.
32.	Clause 22(1) and clause 22(2)	The signature of parties in the mediated settled agreement can be referred in clause 22(1) and clause 22(2) can be deleted.	In clause 22(1) in 3 rd line after the word "parties" the following be added." which is signed by them". Clause 22(2) can be deleted
33.	Clause 22(4)(1)	Add end of clause 22(4)(1) and provide a signed copy to all the parties	Add end of clause 22(4)(1) and provide a signed copy to all the parties
34.	Clause 22(7)	<ol style="list-style-type: none"> 1. By creating a requirement for registration of all mediated settlement agreements, an unwarranted layer of bureaucracy and formality is being introduced and confidentiality is breached. 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. 2. It may be noted that under the Arbitration and Conciliation Act. 1996 neither an arbitration award nor a conciliation award requires any registration. 	These provisions pertaining to registration should be deleted in its entirety.
35.	Clause 22(7) r/w Clause 22(9)	<ol style="list-style-type: none"> 1. Clause 22(7) r/w Clause 22(9) of the bill impose an onerous obligation upon parties, mediators, or mediation service providers to register the mediated settlement agreement. This is also in conflict with the confidentiality obligation in Clause 23 of the Bill. 2. In any case, the Bill does not 	Clause 22(7) and Clause 22(9) should be deleted altogether.

		mention any consequences for such non-registration provided in the Bill.	
36.	Clause 24(1)	<ol style="list-style-type: none"> 1. The bill takes away the aspect of confidentiality. Proviso permits disclosure in the guise of “proving” and “disputing” the claim. 2. Makes the information relating to domestic violence or child abuse as non-confidential, likely to break the faith of parties. 3. “Public health safety” is vague and would lead to multiplicity of litigation. 	<ol style="list-style-type: none"> 1. The word “ parties” should be added after “mediator or participant” 2. The following should be substituted with the following: <i>“24. (1) No Mediator or participant, parties 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.</i> <i>In case the mediator or the mediation service provider breaches the rules of confidentiality, independence and impartiality, 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.”</i>
37.	Clause 24(2)(b) & (c)		Taken care by sub-clause 24(2)(a) and hence 24(2)(b) and (c) can be deleted.
38.	Clause 26(1)	No absolute powers can be given to the Supreme Court or High court to deviate from the Mediation Act. This will lead to different type of rules framed by each High court and Supreme Court in so far as the procedure of conducting mediation is concerned and leads to anomalies. The substantive provisions in the Act has laid down the procedure and it should be uniform. Formation of	Clause 26(1) should read as follows:- 26(1)” All provisions of this act shall apply <i>mutandis mutatis</i> to the mediators and court annexed mediation centers in all courts including the Supreme Court and High Courts for conducting pre litigation mediation”

		<p>mediation committee, maintaining of a panel of mediators in court annexed mediations can be left to the High court and Supreme Court. However all other provisions should uniformly apply to court annexed mediation centers which carries out Prelitigation Mediation.</p> <p>The delegation of power will lead to inconsistencies and there will be no uniformity in Prelitigation mediation.</p>	
39.	Clause 28 (1) and (2)	<ol style="list-style-type: none"> 1. Precludes applicability of the Singapore Conventions. As per Clause 3(a)(2), the Singapore Convention does not apply to Settlement Agreements that are enforceable as a judgment in the State of that court. 2. Bill should enable parties to an international commercial mediation conducted in India to be enforced under the Singapore Convention before the Courts of other member countries, else India will lose out on being a hub for such mediations. 3. Since mediated agreements are signed and authenticated by parties, if the parties resile, they can enforce it in a court of law in so far as international mediations are concerned. 	<ol style="list-style-type: none"> 1. Status and enforcement of an agreement arising from international commercial mediation maybe excluded from the consequence provided in this Clause as the Singapore convention does not permit for enforcement through court process. 2. An amendment can be brought to Clause 28(2) with the following proviso <i>“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”</i>
40.	Clause 29(2)	<p>Onus to challenge the Mediated Settlement Agreement would be on the party against whom the settlement is sought to enforced, present provision is vague.</p>	<ol style="list-style-type: none"> 1. The word ‘Public Policy’ ‘Law of the Land’ must be added. 2. Incapacity should also be added as a ground for a challenge since incapacity is fatal to any agreement. 3. The word “impersonation” has no relevance, as such it should not be made a part of the Bill. 4. Proposed Changes in clause 29(2):

			<p>(2) <i>The court may refuse to execute the Mediation Settlement, if the party against whom enforcement is sought, furnishes proof that:</i></p> <p><i>(i) The Mediated Settlement Agreement is vitiated by;</i></p> <p><i>(a) Fraud; or</i></p> <p><i>(b) Corruption; or</i></p> <p><i>(c) Gross Impropriety; or</i></p> <p><i>(d) Impersonation</i></p> <p><i>(ii) The terms of Mediated Settlement Agreement</i></p> <p><i>(a) Are null and void, illegal of inoperative or incapable of being performed under the laws of India or</i></p> <p><i>(b) Has been subsequently performed or</i></p> <p><i>(c) Are not clear and comprehensible or</i></p> <p><i>(d) Are against the public policy</i></p> <p><i>(iii) The Subject matter of the dispute is not capable of settlement by mediation under laws of India</i></p>
41.	Clause 29(3)	<p>The period of limitation for challenge is 90 days from the date of receipt, of the mediated settlement agreement and not the usual 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>Hence there should be an amendment to the effect that 90 days starts from date of discovery of fraud or mistake.</p>	<p>1. The 90 days period should be computed from the date on which a party becomes aware of the fraud, corruption, gross impropriety or impersonation.</p> <p>2. Under Section 17 of the Limitation Act, time period starting from the date of discovery of fraud or mistake or the date when parties could have discovered it. Therefore It should 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 (i) in the case of fraud, corruption or impersonation, becoming aware of the same; and (in) in any other</i></p>

			<i>case, has received the copy of mediated settlement agreement under sub-clause (3) of Clause 22.”</i>
42.	Clause 30	By allowing the fee structure to be fixed on parties, the mediator may demand more fees.	<p>1. The fees payable to the mediator shall be in accordance with as per fee structure to be fixed to mediators and same can be included in a separate schedule to Bill which can be assigned as Schedule XI of the Bill.</p> <p>2. Schedule XI can be similar to the Fourth Schedule in the Arbitration and Conciliation Act, 1996 (The same should however, be mandatory in nature)</p>
43.	Clause 33,34, 35	<p>1. Considering the fact that the entire concept of litigation is going to be changed and pre litigation mediation is to be made mandatory, the Mediation council should necessarily have the Chairperson as a Retired Chief Justice of the Supreme Court.</p> <p>2. The council should necessarily have a member from the legal fraternity preferably a Senior Advocate who is trained Mediator to be nominated by Central Government.</p> <p>3. The council should have a nominee from All India Bar Council in order to bring confidence on the litigants and advocates and also voice the problems of the members of the bar in the council. Representatives from each of professional bodies who would be potential users of mediation and mediators like, Mediation institutions,</p>	<p>11. Necessary amendments in clause 35(1) to have chairperson as Retired Chief Justice of Supreme Court; A Senior Advocate who is a trained mediator and to be nominated by Central Government; one nominee from All India Bar Council; one Mediator; Representatives from each of professional bodies who would be potential users of mediation and mediators like, Mediation institutions, Chambers of Commerce, Chartered Accountant, Cost Accountant, Engineers, Doctors should also be included in the Mediation council at National Level. one representative of Mediation organizations.</p> <p>Further, the Chairperson be appointed by the Central Government in consultation with the Chief Justice of India.</p> <p>State Mediation Council should be established by inserting</p>

		<p>Chambers of Commerce, Chartered Accountant, Cost Accountant, Engineers, Doctors should also be included in the Mediation council at National Level.</p> <ol style="list-style-type: none"> 4. There are representations for mediators or mediation organizations. 5. No requirement mentioned for full-time members with respect to their prior mediation experience. 6. Composition of Mediation Council of India is aligned more to being a Governmental Regulator. 7. There should be a Mediation council in Every state and there is no mention of constitution of one Mediation Council in every state, which would perform daily affairs within the state including awareness programs and trainings which would communicate with the Central Body and be under Medical Council of India's regulations as it would be difficult for Central Council to oversee and manage all the activities throughout India. 8. Need of training and awareness programs in each State should be decided by the State Mediation Council in consultation with the Central Body. 9. Matters in relation to the Mediation process including quality, experience, expertise, retirement, panel and number of mediators should be kept under the ambit of functions of the state body and the State Mediation Council shall function as per the regulations 	<p>necessary Amendments. The Chairperson being a retired Chief Justice of a High Court and similar composition as stated above at National level. There should be a representative from the State Bar Council besides a Senior Advocate, mediator, meditation organization, and State government officials from departments mentioned in Clause 34(1) (c,d,e,f,g). All the members of State Mediation Council including the Chairperson have to be nominated by respective state governments</p> <p>Clause 34(1)(b) the word "or" should be substituted with "and". A person having experience in mediation and ADR mechanisms is permissible as there is vast variations in the requirements of mediations and arbitration.</p> <p>The term of the members should be 3 years instead of 4 years.</p> <p>The age limit of the Chairperson could be fixed as 70 years and 65 for members.</p>
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		<p>made by the State under direct control of Mediation Council of India.</p> <p>10. The Council should be a self-regulatory body comprising mediators with governance and leadership being matters that are determined by the mediators and a professional body.</p>	
44.	Clause 40(m)	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	Delete this Sub- Clause 40(m) because it is against the principles of confidentiality.
45.	Clause-40(O), NEW PROVISION		Pursuant to the amendment suggested to Clause 13, a new clause may be added to Clause 40 (Duties and Functions of the Council) to empower the State Mediation Council (to be established) to prescribe a detailed procedure for deciding the termination of a mediator appointed in an institutional mediation and the Mediator Service Providers/ mediator organizations.
46.	CHAPTER IX	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 regulate at a micro-level with substantial infrastructural inputs.	To monitor these Mediation Service providers, the Mediation Council of India should be empowered.
47.	Clause 41	It is advisable to delete clause 41 as grading will unnecessarily	1. Provisions relating to grading of mediation service providers

		create division and confusion besides breed corruption in the council. There is no necessity at all for grading as no objects will sought to be achieved by this clause.	maybe deleted, the work of service providers will generate the necessary goodwill and reputation to enable disputants to make their choices. 2. Gradation will further create a divide and confuse disputants.
48.	CHAPTER X	<ol style="list-style-type: none"> 1. No definition provided qua Community Mediation or its structure or discusses the qualifications of the Mediators on the Panel. 2. Several key provisions from other chapters of the Bill do not find mentioned in Chapter X of the Bill dealing with community mediation. This will make community mediation less effective. A list of such key provisions is as follows: <ol style="list-style-type: none"> i. Clause 5 (Mediation Agreement). ii. Clause 7 (Cases are not fit for mediation); iii. Clause 8 (Interim relief by Court or Tribunal); iv. Clause 9 (Power of Court or Tribunal to refer parties to mediation). v. Clause 12 (Conflict of Interest and Disclosure) vi. Clause 15 (Territorial Jurisdiction to undertake mediation). vii. Clause 16 (Commencement of mediation). viii. Clause 17 (Conduct of mediation) ix. Clause 18 (Role of Mediator) x. Clause 19 (Role of Mediator in other proceedings). xi. Clause 20 (Withdrawal by parties from mediation) xii. Clause 21 (Time -limit for completion of mediation). xiii. Clause 22 – (Mediated Settlement Agreement). 	<ol style="list-style-type: none"> 1. Provisions to be amended to: <ol style="list-style-type: none"> a. Give the community members the choice of the mediators to be appointed. b. Trained and qualified members with good standing and integrity who are respectable in the community, representative of area, resident of welfare associations, local person whose contribution to the society has been recognized or person from the same community may also be included in the panel. 2. Chapter X of the Bill may be amended to incorporate the required provisions of other chapters by reference as under by inserting a new provision, being Clause44(7): <i>“The provisions of the other chapters of the Bill, to the extent that they are applicable and not inconsistent therewith, shall apply mutatis mutandis to this Chapter X”</i>

		<p>xiv. Clause 23 (Confidentiality);</p> <p>xv. Clause 24 (Admissibility, Privilege against Disclosure).</p> <p>xvi. Clause 25 (Termination of Mediation).</p> <p>xvii. Clause 26 (Court annexed mediation).</p> <p>xviii. Clause 27 (Mediation by Lok Adalat and Permanent Lok Adalat).</p> <p>xix. Clause 28 (Status of Mediated Settlement Agreement).</p> <p>xx. Clause 29 (Challenge to Mediated Settlement Agreement).</p> <p>xxi. Clause 30 (Costs)</p> <p>xxii. Clause 31 (Limitation).</p> <p>xxiii. Clause 32 (Online mediation).</p>	
49.	Clause 44(3)	<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>1. The proposed amendment to Clause 44(3):</p> <p><i>“In order to facilitate settlement of a dispute for which an application has been received under sub-clause (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 after determining that the community dispute is fit to be resolved by mediation constitute panel of three mediators.”</i></p>
50.	Clause 44 (5)		Empanelled mediators should be trained mediators.
51.	Clause 45(1)		No need of having a panel of three mediators of all types of community disputes as having a smaller number of mediators will make it less cost and time efficient.
52.	Clause 45(3)		The following sub-clause should be substituted:

			<i>“In every case where a settlement agreement is arrived at through mediation under this Act, the same <u>shall be</u> reduced into writing with the signature of the parties and authenticated by the mediator, a copy of which <u>is to be</u> provided to the parties and in cases where no settlement agreement is arrived at, a failure report- <u>shall be</u> 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.”</i>
53.	Clause 50		Word ‘no’ in first line appears to be typographical error.
54.	Clause 53(2)		Transparency in framing Regulations should be observed. Objections, comments and views of stakeholders on draft Regulations and consideration thereof before being made as final regulations. Hence Clause 53(1) should read as “ The council may, after hearing the stake holders, with the previous approval of the central government..”
55.	Clause 53 (n)		Delete this Sub-Clause because it is against the principles of confidentiality.
56.	New Clause 66 be added	“To include the motor vehicles, act and corresponding amendment”	New clause 66 to be added to include motor Vehicles Act in this new clause 66 to sustain clause 6(3)(6) to 6(3)(8) of the Bill.
57.	First Schedule	List of exclusions is quite large. This schedule excludes many disputes which can be resolved by mediation.	<ol style="list-style-type: none"> 1. Intellectual property disputes arising from contractual relationships such as licenses maybe resolved through mediation. 2. Settlement agreements in the context of validity of intellectual property rights are permitted in the USA, subject to disclosure of such agreements and independent review by statutory authorities.

58.	First Schedule Entry 2	Quite often in litigation there are allegations of fraud etc. 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. Mere allegation in civil matter of serious and specific fraud, fabrication of documents, forgery, impersonation, coercion will make the matter unfit for mediation.	. Could be deleted as the medium process is consensual.
59.	First Schedule Entry 3	Law permits litigation qua minors, disabled, mentally ill persons etc, through a guardian ad litem or next friend and so all disputes relating them need not made unfit for mediation. Courts should be empowered to allow these settlements.	<ol style="list-style-type: none"> 1. Such agreements should be inserted which 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. 2. Any settlement arrived at shall be subject to certificate given by court that the settlement is for the benefit of such classes of person as provided in Order 33 Rule 7. 3. Last sentence of declaration having effect of right in rem is excluded. Three types of declarative suits where mediations are possible are: <ol style="list-style-type: none"> i. Mortgage suits (could be referred to mediation) ii. Admiralty suits (be referred to mediation where monetary reliefs are claimed. Order of arrest maybe left for courts of decide. iii. Testamentary Petitions (the dispute between heirs about share in the property maybe allowed to be mediated)

60.	First Schedule Entry 4	<ol style="list-style-type: none"> 1. Very vague. 138 NI matters constitute large number of pending matters. These matters be added as permissible matters to be decided by the parties by mediated settlement. 2. Offences like criminal breach of trust, cheating should be permitted to be settled by mediation. 3. No distinction made between compoundable and non-compoundable offences. The courts have in a number of cases quashed even non-compoundable cases by exercising inherent powers 	<p>Should be replaced as “Disputes involving prosecution for non-compoundable criminal offences except with the permission of court.</p> <p>Most matrimonial offenses relate to domestic violence. The legislative policy in treating these offenses through non-compoundable as offenses across the bar that can be settled diminishes the seriousness of these offenses and ignores the vulnerable and disempowered conditions of women</p>
61.	First Schedule Entry 5		<p>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.</p>
62.	First Schedule Entry 6	<ol style="list-style-type: none"> 1. Mediation would serve most effectively for conflicts and disputes arising in professional bodies, statutory authorities and professionals governed by them should not be deprived of their rights to exercise the option Mediation provided under Legal Services Authority Act. 2. Complaints against lawyers, CAs etc, Doctors, Builders stem from civil or commercial transactions. No reason to treat such complaints or proceedings as unfit for mediation. 	<p>Recommend deletion of entry 6.</p>
63.	First Schedule Entries	<p>Mediation can serve all Commissions, Tribunals, Regulatory Agencies and Bodies of all Kinds and all the bodies</p>	<p>Recommend deletion of these clauses.</p>

	(8-14)	mentioned herein would be served well by mediation and an option to exercise such choice should be provided. Would also set a stellar example for the corporates and other sectors of the society and help achieve all the laudable intent of the Bill. Disputes relating to taxes and land acquisition problems can be subject matter of mediations	
64	To include in First Schedule	Mediation of suits where it is an appeal against an order by a statutory authority may not be proper.	All cases where filing of a suit has been prescribed as an appellate mechanism in a special enactment
64.	Fifth Schedule	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.	
65.	Seventh Schedule	1. 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 2. 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.	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. The conflicting clause should be accordingly amended.
66.	Eighth Schedule	Where there is a reference to mediation of a matter falling within the ambit of NGT, nothing precludes mediation.	Mediation can also be included in eight schedule matters.
67.	Ninth Schedule	The mediators for Commercial Mediation shall not be limited and Parties should have the same options as provided in Clause 6 (3).	

68.	Tenth Schedule	<p>1. Proposed Section 37 amendment: Recommend that the word “or suo moto” 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>2. 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.</p>	<p>Recommended Text: Reference to mediation—The District Commission or State Commission or the National Commission, as the case maybe, shall either on an application by the parties, or suo moto, at any stage of proceedings refer the disputes for settlement by mediation under the Mediation Act, 2021</p>
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The Bill is not comprehensive and following lacunae needs to be redressed; -

Bill must provide for Registration, Accreditation, Gradation, Recognition for Mediation Institutes, Service Providers and Mediators along with a prescribed set of performance standards and code of conduct by way of separate schedule:

Clause 17(2) of the Draft Mediation Bill, 2021 stipulates 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 for professional and ethical conduct as may be specified. This clause empowers the government to specify standards for professional and ethical conduct of a mediator. The Bill as in the present draft does not provide for any such standards. Furthermore, there are standards with respect to registration, accreditation and gradation of Mediation institutes, Mediation Service providers and mediators. In a mediation proceeding, the mediator’s role is predominant. A mediator acts a facilitator helping parties to reach for an amicable settlement. Therefore, ensuring impartiality and independence of the mediator is one of the cornerstones of successful mediation.

Furthermore, it is important to highlight that neutrality and impartiality have a subtle difference that distinguishes one from the other. Impartiality is more concerned with the absence of bias in a mediator’s behavior, neutrality focuses on previous or current relationships between a mediator and each of the two disputants. So long as the mediators favor no particular disputant in the dispute, the mediators are considered as impartial. Neutral mediators on the other hand are those who have not had any previous relationship with disputants.

In order to achieve mediator impartiality, a robust system of registration, accreditation and gradation of mediators has to be established along with specified standards for professional and ethical conduct.

Since mediated agreement assumes much significant in the justice delivery system, standards, qualification and benchmark should be fixed for Mediation institute, mediation service providers. The mediators should be regulated Therefore establishment of State Mediation Council is much needed in this bill.

The Mediation Bill which aims to provide a robust framework needs to provide for a model draft of such regulations/provisions beforehand as the Bill is in its nascent stage. When the Bill is enacted, it would face similar hurdles at the time of implementation which were seen when the Insolvency and Bankruptcy Code was introduced. The nascent stage of the Bill necessitates the presence of standards for professional and ethical conduct in the Bill in order to facilitate further discussion.

While doing so, the following aspects have to be covered:

Grounds for raising challenge to Mediator's Impartiality and Neutrality based on his relationship with the Parties and Ineligibility:

A mediator's previous relationship with the parties is a crucial aspect while considering impartiality. As such concerns could be raised by any of the parties even at the later stages of mediation. Specific grounds should be included in the Bill for raising justifiable doubts with regard to the independence or impartiality of the mediator based on his prior relationship. Further, the Bill needs to envisage specific provisions containing conditions rendering a mediator ineligible for appointment. These provisions could be of a nature similar to the Fifth and Seventh Schedule appended to the Arbitration and Conciliation Act 1996. Furthermore, the Bill should also envisage a mandatory declaration cum undertaking by the mediator at the time of his appointment that he is not covered under such specified grounds.

Code of Conduct

The Bill needs a consolidated set of provisions prescribing the code of conduct which prescribe a performance standard. Standards of self-determination, impartiality, conflict of interest, competence, quality of process have to be properly defined as any violation of the same would attract disciplinary proceedings. Provisions akin to the First Schedule of Insolvency Professional Regulations 2016 and Model Standards of Conduct of Mediators adopted by American Arbitration Association in 2005 should be included in the draft.

Mediated Settlement Agreements need not be enforced through Court in so far as international Mediations are concerned:

The Mediation Bill in its present form under Clause 28(2), allows for its enforcement in the same manner as if it were a judgment or decree passed by a Court. Due to such a clause, these mediated settlement agreements are already excluded from the Singapore Convention. These settlement agreements when excluded from

Singapore Convention would make it difficult for enforcement when different jurisdictions are involved. Furthermore, there are no provisions laying down the procedure for enforcing cross-border mediated settlement agreements leaving ambiguity for such parties who have entered into such agreements.

Mediated Settlement Agreements are by nature private contracts. They are different from an ordinary contract in three ways; firstly, parties to a mediated settlement agreement were involved in a dispute; secondly, they engaged in a consensual dispute resolution process, negotiated in good faith and thirdly reached a voluntary settlement. The settlement agreement represents full and final settlement of the dispute that was the subject matter of mediation. It extinguishes the right to pursue legal remedies to which the parties would otherwise be entitled. Therefore, they deserve a distinct procedure for enforcement when compared to a judgement or a decree in so far as International Mediation is concerned.

Enforcing such settlement agreements as a decree would go against the purpose of mediation as it would be akin to an Arbitral Award which would get entangled into multiple litigation. A party to whom an obligation is owed as per the agreement would have to initiate enforcement proceedings which could be affected by further challenges and such challenges may allow satellite litigation to sprout which would have no relationship with the original dispute. All the communication which was supposed to be confidential would have to be disclosed before the Court under the excuse of enforcement therefore, destroying the confidentiality principal. The whole process would make the mediation process similar to an arbitration constraining the parties to take the arbitration instead of mediation.

The prime objective of a mediation is to save the parties the time and cost in dispute resolution as compared to traditional litigation and Arbitration. This characteristic would be lost if the parties are approaching Courts to enforce their mediated settlement agreements.

Instead of enforcing mediated settlement agreements as a decree, they could be construed to be as binding agreements between the parties and in case of non-performance, an affected party can sue the other for specific performance or seek any remedy which is sought in an ordinary contractual dispute. In case, such issues are absent and the parties simply execute such agreement, the need to go to court would not arise at all which would save legal costs and time. A mediated settlement agreement like an ordinary agreement could have enforcement/performance issues. Issues such as inability of performance, change in circumstances/law, impossibility of performance etc. would always be there when agreements are involved. While enforcing such an agreement as a decree, the court competent to do so may or may not go into such issues and simply act as a debt collector for the party which owes the other party an obligation. However, when a party sues another for specific performance, the concerned Court could go into the merits of the agreement and consider such issues.

If Clause 28(2) is amended and a proviso with the following words *“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” is inserted such mediated settlement agreements would not be in conflict with Singapore Convention. Such inclusion would come to the rescue of such parties in cross-border disputes as such agreements could be easily enforced in the jurisdictions who have also ratified the Singapore Convention.

My recommendations and suggestions shall form the part of committee report.

P.Wilson
Senior Advocate
Member of Parliament (Rajya Sabha)

THE MEDIATION BILL, 2021

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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 for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Seventy-second Year of the Republic of India as follows:—

CHAPTER I

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.

CHAPTER II

APPLICATION

Application. **2.** (1) Subject to sub-section (2), this Act shall apply where mediation is conducted in India, and— 5

(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 10

(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: 15

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. **3.** In this Act, unless the context otherwise requires,— 20

(a) "commercial dispute" means a dispute defined in clause (c) of sub-section (1) of section 2 of the Commercial Courts Act, 2015; 4 of 2016.

(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; 25

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; 30 4 of 2016.

(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; 35

(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— 40

(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 45

(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) "mediation agreement" means a mediation agreement referred to in sub-section (1) of section 5;

10 (j) "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,

15 for the purposes of, or in relation to, or in the course of mediation, and includes a mediation agreement or a mediated settlement agreement;

(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;

20 (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;

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.

25 39 of 1987. *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;

30 (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;

35 (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;

40 (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 or commercial nature in respect thereof, before a court or notified tribunal under sub-section (2) of section 6;

45 (s) "prescribed" means prescribed by rules made by the Central Government under this Act;

(t) "Schedule" means the Schedule annexed to this Act;

(u) "secure electronic signature" with reference to online mediation means, electronic signatures referred to in section 15 of the Information Technology Act, 2000; and 21 of 2000.

(v) "specified" means specified by regulations made by the Council under this Act. 5

CHAPTER III

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 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, 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: 35

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. 4 of 2016.

(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. 40

(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 45
39 of 1987.

(iv) empanelled by a mediation service provider recognised under this Act, shall conduct pre-litigation mediation.

39 of 1987. 5 (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.

39 of 1987. (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.

59 of 1988. 10 (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.

15 (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.

20 **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:

Disputes or matters not fit for mediation.

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:

25 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.

30 **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.

Interim relief by court or tribunal.

35 (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.

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.

Power of court or tribunal to refer parties to mediation.

40 (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).

CHAPTER IV

MEDIATORS

45 **10.** (1) Unless otherwise agreed upon by the parties, a person of any nationality may be appointed as a mediator:

Appointment of mediators.

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, 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) the receipt of information about the mediator being involved in a matter of conflict of interest from participants or any other person; or 40

(iii) his withdrawal from mediation for any reason:

Provided that termination under clause (ii) shall be 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. 45

14. Upon termination of the mandate of mediator—

Replacement
of mediator.

(i) in case of mediation other than institutional mediation under clause (ii) of sub-section (4) of section 12, the parties may, appoint another mediator within a period of seven days from such termination; 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 V

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, 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.

20 **16.** The mediation proceedings with respect to a particular dispute shall be deemed to have commenced—

Commencement
of mediation.

(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—

25 (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.

30 **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.

Conduct of
mediation.

(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.

35 (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 (4) The mediator shall not be bound by the Code of Civil Procedure, 1908, or the Indian
1 of 1872. 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. 5

Role of mediator in other proceedings.

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; 10

(b) the mediator shall not be presented by the parties as a witness in any arbitral or judicial proceeding.

Withdrawal by parties from mediation.

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. 15

Time-limit for completion of mediation.

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. 20

(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.

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: 25

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. 30 9 of 1872.

(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— 35

(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. 40

(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; 45

(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 (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.

10 (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
39 of 1987. 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
15 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:

20 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.

25 (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).

30 (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 authentic 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).

35 **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:— Confidentiality.

(i) acknowledgements, opinions, suggestions, promises, proposals, apologies and admissions made during the mediation;

40 (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.

45 (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.

5

(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.

10

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.

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:

15

20

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.

25

(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.

30

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

35

(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

40

(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

45

(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.

Court annexed mediation.

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.

10 (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.

Proceedings of Lok Adalat and Permanent Lok Adalat not to be affected.

CHAPTER VI

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).

Enforcement of mediated settlement agreement.

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.

35 **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.

Challenge to mediated settlement agreement.

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

40 (i) fraud;

(ii) corruption;

(iii) impersonation;

(iv) where the mediation was conducted in disputes or matters not fit for mediation under section 7.

45 (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.

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.	5
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 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 VII

ONLINE MEDIATION

Online mediation.	32. (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.	20
	(2) The process of online mediation shall be in such manner as may be specified.	
	(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, the mediation communications in the case of online mediation shall, ensure confidentiality of mediation.	

CHAPTER VIII

MEDIATION COUNCIL OF INDIA

Establishment and incorporation of Mediation Council.	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.	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.	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;	45

(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;

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—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*;

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 four years from the date on which they enter upon their office and shall 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.

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; or

(d) has acquired such financial or other interest as is likely to 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 IX

10 MEDIATION SERVICE PROVIDERS AND MEDIATION INSTITUTES

41. The mediation service provider recognised by the Council shall be graded by it in the manner as may be specified. Mediation service providers.

42. The mediation service providers shall perform the following functions, namely:— Functions of mediation service providers.

(a) accredit mediators and maintain panel of mediators;

15 (b) provide the services of mediator for conduct of mediation;

(c) provide all facilities, secretarial assistance and infrastructure for the efficient conduct of mediation;

(d) promote professional and ethical conduct amongst mediators;

20 (e) facilitate registration of settlement agreements in accordance with the provisions of section 22; and

(f) such other functions as may be specified.

43. The Council shall recognise mediation institutes to perform such duties and exercise such functions as may be specified. Mediation institutes.

CHAPTER X

25 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. Community mediation.

39 of 1987. 30 (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 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.

40 (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.

Procedure for
community
mediation.

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. 5

(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. 10

(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. 15

(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.

CHAPTER XI

MISCELLANEOUS

Mediation
Fund.

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. 20

(2) There shall be credited to the Fund the following, namely:—

(a) all monies provided by the Central Government; 25

(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; 30

(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. 35

(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. 40

(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. 45

(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.

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) manner of registration of mediated settlement agreement under sub-section (7) of section 22;

(e) fees for registration of mediated settlement agreement under the proviso to sub-section (9) of section 22;

(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.

Laying.

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 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, 40

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.

56. (1) Subject to the enactments mentioned in the Second Schedule, the provisions
15 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.

Provisions of Act to have overriding effect on mediation or conciliation contained in other laws.

(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
20 been amended accordingly.

57. This Act shall not apply to, or in relation to, any mediation or conciliation commenced before the coming into force of this Act.

Act not to apply to pending proceedings.

58. The Indian Contract Act, 1872, shall be amended in the manner specified in the Third Schedule.

Amendment of Act 9 of 1872.

25 **59.** The Code of Civil Procedure, 1908, shall be amended in the manner specified in the Fourth Schedule.

Amendment of Act 5 of 1908.

60. The Legal Service Authorities Act, 1987, shall be amended in the manner specified in the Fifth Schedule.

Amendment of Act 39 of 1987.

30 **61.** The Arbitration and Conciliation Act, 1996, shall be amended in the manner specified in the Sixth Schedule.

Amendment of Act 26 of 1996.

62. The Micro, Small and Medium Enterprises Development Act, 2006, shall be amended in the manner specified in the Seventh Schedule.

Amendment of Act 27 of 2006.

63. The Companies Act, 2013, shall be amended in the manner specified in the Eighth Schedule.

Amendment of Act 18 of 2013.

35 **64.** The Commercial Courts Act, 2015, shall be amended in the manner specified in the Ninth Schedule.

Amendment of Act 4 of 2016.

65. The Consumer Protection Act, 2019, shall be amended in the manner specified in the Tenth Schedule.

Amendment of Act 35 of 2019.

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 (I) 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.

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 either conduct mediation itself or 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 Council or the centre providing alternative dispute resolution services shall have jurisdiction to act as an Arbitrator or mediator 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 may be prescribed."

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, the Central Government may, by notification, authorise—

(i) the Authority, constituted under the Legal Services Authorities Act, 1987 (39 of 1987); or

(ii) a mediation service provider as defined under clause (l) of section 3 of the Mediation Act, 2021.

(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 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 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.

4. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 14th December, 2021.

KIREN RIJJU.

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 immovable, 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.

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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

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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,—

(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,—

(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.

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Role of conciliator in other proceedings.

Admissibility of evidence in other proceedings.

EXTRACT FROM THE MICRO, SMALL AND MEDIUM ENTERPRISES DEVELOPMENT ACT, 2006
(27 OF 2006)

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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.

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EXTRACT FROM THE COMPANIES ACT, 2013

(18 OF 2013)

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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.

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EXTRACT FROM THE COMMERCIAL COURTS ACT, 2015

(4 OF 2016)

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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 .

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EXTRACTS FROM THE CONSUMER PROTECTION ACT, 2019

(35 OF 2019)

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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;

* * * * *

(z) 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.

(Shri Kiren Rijiju, Minister of Law and Justice)

MGIPMRND—1609RS—15-12-2021.

RECOMMENDATIONS/OBSERVATIONS AT A GLANCE

Habitual residence and Place of business - Clause 2

3.6 The Committee notes that the terms ‘habitual residence’ and ‘place of business’ are not defined in the Bill. The Committee notes that the Foreign Exchange Management Act defines the terms ‘person resident in India’ and ‘person resident outside of India’ while the Goods and Services Act defines the term ‘Place of Business’. The Committee is of the considered view that lack of explicit definitions often results in ambiguity and makes multiple interpretations possible. The Committee, therefore, recommends that the terms, ‘Habitual residence’ and ‘Place of business’ should be either appropriately defined in the Bill or should be replaced by other suitable words used in other Acts.

Government as litigant - Clause 2

3.15 The Committee notes that, as per Proviso to clause 2 (2), unless specifically notified by the Central and / or State Governments, non-commercial disputes with Government as one party, are, by and large, outside the ambit of the mediation Bill. However, keeping in view of the current infrastructural and human resource constraints of the country, the Committee recommends that the wordings of clause 2 (2) may be suitably modified so that government related disputes are not excluded from the purview of the Mediation Bill, 2021. The Committee is confident that such a move will inspire confidence in the stakeholders that mediation is a viable option, which even the government is ready to adopt for disputes where it is one of the parties.

Commercial dispute - Clause 3

3.21 The Committee notes that the definition of commercial disputes has two components: one, the ordinary commercial disputes and second, commercial disputes of Specified Value as given in the Commercial Courts Act which is applicable for the purpose of this Bill. The Committee is of the view that this will create a dichotomy wherein commercial disputes of specified value are dealt with in a manner different from other commercial disputes that are not of specified value. Not only that, under Section 12A of the Commercial Courts Act, parties to a commercial dispute will not have a choice of the mediator and will be allotted mediators from panels maintained by Authorities set out in this section. The Committee infers that parties to a dispute of a value falling below the specified value and parties to civil disputes will have access to mediators of their choice while parties to a commercial dispute of a specified value will

necessarily have to go the Legal Services Authority/ Mediation Service Provider authorized by the Central Government, and be bound to mediate through mediator selected by them. Although, Section 12A of the Commercial Courts Act is proposed to be amended through Ninth Schedule of the instant Bill, mediation in respect of commercial disputes of Specified Value is being conducted in a manner different from that of ordinary commercial disputes. The Committee, therefore, recommends that these facts should be clearly indicated in the definition of 'Commercial Dispute' in clause 3 (a) of the instant Bill in order to avoid any dispute.

Definition of Court -Clause 3

3.26 The Committee is of the view that there is a need to widen the ambit of the definition of 'Court'. Accordingly, the Committee recommends that the term 'Court' should cover all Courts located within the territory of India, ranging from subordinate (primary) Courts to the apex Court, having territorial and subject matter jurisdiction over the dispute that is the subject matter of mediation.

International Mediation - Clauses 3, 40

3.36 The Committee observes that the purpose of Singapore Convention is to facilitate international trade and commerce by enabling disputing parties to easily enforce and invoke settlement agreements across borders. The Committee was informed by the Ministry that India has not ratified UNISA yet. However, the Committee understands that ratification of any international convention is by way of making a domestic law on that subject in the country. Since the proposed Bill on Mediation is also the subject matter of UNISA, it may amount to partial ratification of it.

3.37 Further, the Committee has taken cognizance of the reasons given by the Ministry for not including the provisions of UNISA at this stage of the Mediation Bill but the Committee recommends that the present definition of 'International Mediation' needs to be revisited, so that, in future, the provisions of Singapore Convention can be incorporated in the enactment without any ambiguity. By doing so, the Committee feels that, as provided in Clause 40, the object of developing India into a robust centre for domestic and international mediation can be achieved. The Committee further recommends that the Bill should have an in-built mechanism that would prohibit automatic enforcement of any international Mediated Settlement Agreement that does not conform to the public policy of India or if the agreement pertains to a dispute which is not mediatable.

Definition of Mediation - Clause 4

3.43 The Committee has taken note of the suggestions made by the experts as well as the clarification submitted by the Ministry. Keeping in view the submission of the Ministry and the provisions contained in Clauses 17 and 18, the Committee feels that the existing definition of 'mediation' needs to be reframed. Secondly, since all the definitions are given in Clause 3 of the Bill, the Committee feels that there is no need to define 'mediation' separately in Clause 4. Hence, the Committee recommends that the definition of 'Mediation' should be moved to the definitions under Clause 3 and the term 'Mediation' be redefined such that it reflects the intent of the provisions contained in Clauses 17 and 18 of the Bill.

Mediation Service Provider - Clauses 3, 27, 41 and 42

3.50 The Committee notes that the Bill provides for multiple controlling authorities for various Mediation Service Providers viz authority constituted under Legal Services Authority Act, mediation centre annexed to Court/tribunal etc. besides Mediation Council of India. On the other hand, in chapter 9, the Bill empowers the Mediation Council to recognize and grade mediation service providers as well as recognize and specify the duties and functions of Mediation Institutes. The Committee, therefore, recommends that instead of having multiple controlling authorities for various Mediation Service Providers and Mediation Institutes, there should be only one controlling authority for all types of mediation service providers and mediation institutes. The Committee also recommends that the provisions should be made to authorize Mediation Council of India only as the single nodal authority to control mediation service providers and mediation institutes.

3.51 The Committee notes that the Legal Services Authority Act was enacted to establish a nation-wide uniform network for providing free and competent legal services to weaker sections of the society on the basis of equal opportunity. The Committee feels that designating authorities under LSA as mediation service providers will put additional burden on them. The Committee was made to understand that authorities under LSA have been chosen as mediation service providers owing to their pan-Indian presence. The Committee, therefore, recommends that apart from the authority constituted under Legal Services Authority Act, the Government may explore the feasibility of designating other bodies like State Mediation Council to act as mediation service providers.

Mediation agreement - Clause 5

3.57 The Committee notes that there is a possibility of 'mediation agreement' being defined in a variety of agreements in different forms in different regions of the country. Though the Ministry has stated that providing a template or format for a mediation agreement is not feasible, the Committee recommends that the Government to consider incorporating some 'important contents' such as the manner of conducting mediation, place and time of mediation, confidentiality, parties' right to seek legal advice, manner of termination of mediation etc. in the mediation agreement. The Committee also recommends that the Government may consider not to restrict the scope of International Mediation to commercial disputes only.

Pre-Litigation Mediation and Court annexed Mediation - Clauses 3, 6, 7, 8, 9 and Schedule-1.

3.93 The Committee notes with concern that clauses 6, 7, 8, 9 & Schedule 1 are interconnected and contradictory at the same time. The Committee further notes that the provisions of clause 6 also states that pre-litigation mediation shall be made applicable to the matters pending before the Tribunals also. The Committee fails to understand as to how the matter pending before a tribunal will be treated as pre-litigation mediation. The definition of pre-litigation mediation and court annexed mediation needs further clarity. The Committee, therefore, recommends that the clauses 6, 7, 8 and 9 needs to be rearranged to have better clarity on the provisions of 'pre-litigation mediation' and 'court annexed mediation' and the Committee has given further recommendations in the succeeding paras.

3.94 The Committee recommends that the bill should have one clause focused on Pre-litigation Mediation as the spirit of bill to unclog the pending cases before the courts. Hence the existing provisions of Clause 6 should remain limited to Pre-litigation Mediation and other provisions of this clause should be put under the clause meant for Court Annex Mediation as recommended in succeeding paras.

3.95 The Committee notes that Section 6 of the Bill provides for mandatory pre-litigation mediation before any party files any suit or proceedings of civil or commercial nature in any Court. The Committee also notes that the Bill provides for pre-litigation mediation even if parties do not agree to mediate, and block 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, till they first resort to mediation. The Committee further notes that Section 20 and Section 25 of the Bill make such unwilling parties to stay in mediation for at

least two mediation sessions and compels 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”. Consequently, the parties have to wait for several months before being allowed to approach courts or tribunals.

3.96 The Committee further notes that making pre-litigation mediation mandatory may actually result in delaying of cases and may prove to be an additional tool in hands of litigants to delay the disposal of cases. The Committee also notes the views of few experts that not only pre-litigation mediation should be made optional but also be introduced in a phased manner instead of introducing it with immediate effect for all civil and commercial disputes and the challenges faced in implementing Pre-Litigation Mediation under the Commercial Courts Act, 2015 should be studied before mandating it across other categories of cases.

3.97 Against this background, the Committee recommends that the compulsory provision of Pre-litigation mediation should be reconsidered.

3.98 The Committee notes that provisions of First Schedule pertain to cases which are not fit for Mediation and understands these provisions are for Pre-litigation Mediation. Hence, the Committee recommends that First Schedule should be made part of the clause having provisions of Pre-litigation Mediation and not for the clause where it linked in the instant bill.

3.99 Further the Committee agrees with the opinions expressed by experts that the entries of First Schedule may be pruned as far as possible to include maximum disputes should go through Pre-litigation Mediation.

3.100 With regard to entry 3 of First Schedule, the Committee notes that India is a signatory to the United Nations Convention on the Rights of Persons with Disabilities which recognizes the right of individuals with intellectual and developmental disabilities to recognition as persons before the law and to enjoy legal capacity on an equal basis with individuals who do not have disabilities. The Committee also notes that law permits litigation involving persons with disabilities through a guardian ad litem or next friend. Therefore, the Committee recommends that all disputes involving persons with disabilities should not be outrightly excluded from the purview of mediation and Courts should be empowered to refer suitable cases to mediation.

3.101 The Committee is also concerned on one entry in the First Schedule which states that ‘*disputes which have effects on rights of a third party who are not a party to the mediation proceedings*’ will affect conduct of mediation in matrimonial cases where children are involved. Therefore, the Committee

recommends that the clause be modified as ‘Disputes which have effects on rights of a third party who are not a party to the mediation proceedings except in only matrimonial cases where the interest of child is involved’.

3.102 Therefore, the Committee recommends that entries of First Schedule should be revisited in the lights of suggestions of experts and observations of the Committee given above. The Committee also recommends that the prohibited list should not indicate specially those cases which though falls under the category of criminal offences but are the offences limited to parties only without having element of public interest involving State and Society.

3.103 The Committee also notes that in sub-clause 2 of clause 7 has the provision enabling the Central Government to amend the First Schedule by way executive orders. The Committee feels that although this provision is not against the spirit of law-making process but certainly falls under the category of excessive delegation in terms of subordinate legislation. Hence, the Committee recommends that this type of provisions should have been avoided specially when the Schedule indicates exhaustive list of exclusions.

3.104 The Committee further notes that provisions of Clauses 7 & 9 pertain to two categories of Court Annex Mediation. Therefore, the Committee recommends that all the provisions of both the categories of Court Annex Mediation should be placed at one place for better implementation at later stage.

3.105 The Committee also notes that provision of Clause 8 also relates with Pre-litigation Mediation and hence recommends that provisions of Clause should be placed appropriately with the provisions of Pre-litigation Mediation.

3.106 The Committee notes that under Clause 8 of the Bill, dealing with interim relief, the term “*exceptional circumstances*”, has not been defined. This, the Committee feels, can lead to wide interpretation and use by parties to approach court for interim relief by contending various situations under “*exceptional circumstances*”. Further it has emerged from the experience of implementation of pre-litigation mediation under the Commercial Courts. Act, 2015, that the provisions of interim relief was being used by the parties to delay pre-litigation mediation, wherein the party files an application for interim relief, which does not get decided for a long period of time. The Committee therefore, recommends that an insertion to be made in the Bill for grant of interim relief wherein the ingredients such as prima facie case, irreparable loss and balance of convenience, etc. would have to be made out by the parties, praying for such relief, for ensuring that the term “*exceptional circumstances*” is not stretched for filing applications for interim relief before Court or Tribunal.

3.107 The Committee further recommends that a provision may be considered for inclusion in the Bill that courts would decide the interim relief application within a fixed time period to be provided. Further, it is also recommended that a time period should be added within which the mediation should commence after receiving interim order from the court.

3.111 The Committee notes with concern that provisions of clause 26 is against the spirit of the Constitution. In the countries which follow Common Law system of jurisprudence, it is healthy tradition that in the absence of any specific statutes, the judgements or decisions taken by Apex Courts has the same bearing as that of Statue. But the moment any law is made on the subject that become guiding force and not directions & judgment given by the Courts. In the instant case the bill proposes the law on Mediation and one clause giving the powers to court to make rules for Court Annexed Mediation make it Unconstitutional. Hence, the Committee recommends that specific provisions should be made about Court Annex Mediation in place of existing provisions of clause 26.

Mediator - Clauses 3(h), 6(3) and Clauses 10 - 14

3.119 The Committee notes that in the definition clause of the Bill, 'Mediator' is defined as a person registered with the Council (Mediation Council) whereas Clause 6(3) mandates that the mediator should be registered with the following in order to conduct pre-litigation mediation:

- i.** registered with the Council
- ii.** empaneled by a Court annexed mediation Centre
- iii.** empaneled by an Authority constituted under the Legal Services Authorities Act, 1987
- iv.** empaneled by a mediation service provider recognised under this Act.

3.120 The Committee observes that the provision of Clause 6(3) has gone beyond the definition of Mediator under Clause 3(h). Therefore, the Committee recommends that instead of multiple bodies registering Mediators, Mediation Council of India should be made the nodal authority for the registration and accreditation of Mediators. Further, each mediator should be given a unique registration number by the Mediation Council. The Committee also recommends that the provisions be made in bill to empower the Mediation Council to continuously evaluate the Mediator by holding training sessions periodically and the mediator must earn a minimum number of credit points on a yearly basis in order to be eligible to conduct mediation.

3.121 The Committee feels that domestic and foreign mediators should be treated on equal terms. Therefore, the Committee recommends that the

qualification, experience and accreditation prescribed in the proviso to clause 10(1) for foreign mediators should be made applicable to domestic mediators also. Besides that, foreign mediators willing to mediate in India should be required to be registered with the Mediation council of India as their Indian counterparts.

Role of Mediator -Clauses 18 and 19

3.128 The Committee is of the opinion that the terms ‘misunderstanding’ and ‘compromise’ used in clause 18 (1) carry a negative connotation. Therefore, the Committee recommends that in clause 18(1), the terms ‘*reducing misunderstanding*’ and ‘*exploring areas of compromise*’ may be replaced with the terms ‘*advancing better understanding*’ and ‘*exploring areas of settlement*’ respectively.

3.129 The Committee notes that mediation is a voluntary process and the role of a mediator is to merely facilitate the process of mediation. The mediator cannot impose any settlement on the parties concerned. The Committee is of the view that clause 18 (2) should be emphatic about it. Therefore, the Committee recommends that the term ‘may not’ used in clause 18 (2) should be replaced with ‘shall not’.

3.130 The Committee notes that clause 19 of the Bill provides 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 mediation proceedings and that the mediator shall not be presented by the parties as a witness in any arbitral or judicial proceeding. The intent of the provision is to clarify that the mediator has no role in subsequent arbitral or judicial proceedings. However, inclusion of the terms ‘Unless otherwise agreed by the parties’ gives rise to an interpretation that the parties are free to remove such restrictions on the mediator and waive such requirement, which goes against the very ethos of mediation besides violating the principle of confidentiality. The Committee recommends that the terms ‘unless otherwise agreed by the parties’ should be deleted from the clause to avoid confusion.

3.131 The Committee further notes that Clause 19(a) bars the mediator from acting as an arbitrator or a representative or counsel of a party in arbitral or judicial proceedings in respect of a dispute that is the subject matter of proceedings. However, the Bill provides for the Authority constituted under Legal Services Authority Act to function as a mediation service provider and empanel mediators. The Committee understands that the authorities constituted under LSA Act are manned by judicial officers who are not barred from functioning as mediators. The Committee observes that the bill does not

prohibit the judicial officers manning authorities constituted under LSA from functioning as mediators later to preside over judicial proceedings. The Committee, therefore, recommends that judicial officers, who act as mediators, should also be barred to preside judicial proceedings in same case on the lines as mediators are prohibited from acting as arbitrators / counsels / representatives in arbitral and judicial proceedings. The Committee recommends the Government to look into this aspect and incorporate a provision to that effect in the Bill.

Mediation Proceedings - Clauses 15, 16, 17, 20 & 21

3.141 The Committee notes that as per the extant provisions of the Bill, where there is an existing agreement between the parties to settle the dispute through mediation, mediation proceedings are deemed to have commenced from the date on which a party issues notice to the other party or parties for mediation and settlement of their disputes. The Committee recommends that in these cases mediation proceedings should be deemed to have commenced from the date on which the notice is received by the party or parties rather than from the date on which a party issues notice to the other party or parties for mediation and settlement of their dispute.

3.142 The Committee also notes that, as per clause 16 (b) of the bill, where there is no existing agreement, mediation proceedings are deemed to have commenced on the day on which parties have agreed to appoint a mediator of their choice for mediation or 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. The Committee is of the opinion that the consent of the mediator should also be taken into account. Therefore, the Committee recommends that in cases where there is no existing agreement, mediation proceedings should be deemed to have commenced on the day on which the mediator has given his consent to such appointment.

3.143 The Committee feels that the time limit provided for the completion of mediation process in clause 21 of the Bill is too long. Though, some of the stakeholders felt that there should not be any time limit prescribed for completion of mediation process, the Committee is not in agreement with this open-ended clause. The Committee, therefore, recommends that it would serve the object of the bill better if the time limit is reduced, say to *90 days plus an extended period of 60 days* (also mentioned in the Commercial Courts Act), instead of 180 days and further extension of 180 days with consent of parties (as stipulated in the Bill). The Committee accordingly, recommends that the provisions of the Bill may be suitably amended.

Mediated Settlement Agreement - Clauses 22, 23, 24 & 50

3.159 The Committee agrees with the opinion of the experts that Clause 22 is too long and contains too many provisions. Therefore, the Committee recommends that Clause 22 should be rearranged into three clauses,

- i.** the first Clause should deal with the details of mediated settlement agreement and its procedure
- ii.** the second Clause should deal with the submission of non-settlement report,
- iii.** the third Clause should deal with the registration of MSA.

3.160 The Committee further recommends that Clause 25 which deals with the termination of mediation should be placed immediately after the abovementioned clauses.

3.161 The Committee recommends that sub-clauses 7, 8 & 9 of Clause 22 must suitably be amended and the registration of the same must be left to the discretion of parties. This would help in keeping the confidentiality and uphold party's autonomy. Also, the term 'Failure Report' may be positively worded as 'Non-settlement Report'.

3.162 The Committee notes that clause 23 provides for confidentiality but does not stipulate any punishment / liability or consequences which can be imposed on one who willfully infringes the confidentiality, thereby defeating the objective of maintaining the confidentiality prescribed in the Bill. Therefore, the Committee recommends that there must be an express provision for any case of breach of confidentiality in the Bill itself.

3.163 The Committee further recommends that the Bill should prescribe penalty / consequences for a willing party for not attending before the registering authority without sufficient reason.

3.164 The Committee notes that Clause 50 of the bill also provides for the settlement agreement where government is party and hence recommends that provision of Clause 50 should be made part of Clause 22, which is recommended to amend above, and it should necessarily include a time limit within which a written consent from competent authority shall be sought before signing of the settlement agreement.

Enforcement of Mediated Settlement Agreement -- Clauses 28-31

3.173 The Committee feels that the grounds provided in Clause 29(2) for challenging the mediated settlement agreement need to be broad based and not limited to just four grounds as contained in the Bill. Therefore, the

Committee recommends that Clause 29 (2) should be reworded so as to reflect that the Mediated Settlement Agreement can be challenged on the grounds as may be specified by the Central Government from time to time.

3.174 The Committee recommends that the Government should consider incorporating a provision which allows the Court to act if it finds an application to be frivolous or without merit, or if the allegations in the application are held to be unproved.

3.175 The Committee notes that Clause 29(3) of the Bill provides limitation for challenging a mediated settlement agreement, say on the ground of fraud, would run from the date of receiving of a copy of the settlement agreement. This provision runs contrary to the general principle wherein the statutory period of limitation runs from the date of the cause of action and not from the date of receiving a copy of the settlement agreement. The Committee, therefore, recommends that the said provision should be reconsidered in light of provisions of act governing the Limitation.

Online Mediation - Clause 32

3.179 The concept of Online dispute resolution has gained traction during the COVID 19 pandemic. Online mediation delivers speedy justice in a cost-effective manner. The Committee notes that the instant bill contains only clause dedicated to online mediation. Keeping in view the emerging requirements, the Committee recommends that detailed provisions and modalities for online mediation should be incorporated in the Bill appropriately.

Mediation Council of India - Clause 33 to 40

3.188 The Committee notes that Clause 34 provides for the qualifications and appointment of the Chairperson and Members of the Council. It provides that the Chairperson and Full time Members to have 'shown capacity' and 'knowledge & experience' in dealing with problems relating to 'Alternative Dispute Resolution' and 'Mediation or Alternative Dispute Resolution' respectively. However, the Committee feels that this may lead to a situation where a person having expertise or shown capacity in Alternative Dispute resolution mechanisms other than mediation may be appointed to the Council. Therefore, the Committee recommends that the term 'Alternative Dispute Resolution' and 'Mediation or Alternative Dispute Resolution mechanisms' in clause 34 may be considered for substitute by the term 'Mediation'.

3.189 The Committee recommends that the appointment of the Chairperson and Members of the Mediation Council of India should be made on the recommendation of a selection Committee constituted by the Central Government.

3.190 Keeping in view the wide spectrum of duties and responsibilities assigned to the Mediation Council of India, the Committee recommends that mediation councils should be instituted in the states as well. These State Mediation Councils should function under the overall superintendence, direction and control of Mediation Council of India and discharge such functions as may be specified by it.

Community Mediation - Clauses 44 & 45

3.200 The Committee appreciates the Ministry for instituting a framework for resolution of disputes that are likely to affect the peace, harmony and tranquility in the society. The Committee is of the view that the term 'mediator' used in sections 44 and 45 of the Bill need to be substituted by the term 'Community mediator' as the mediators engaged in community mediation are not trained and qualified mediators as defined in clause 3 of the bill.

3.201 The Committee notes that Clause 44(3) of the Bill provides for a panel of three mediators for the purpose of conducting Community Mediation. However, there is no justification for having just three mediators as it will bring rigidity in the mediation process. The number of mediators in the panel could be more, based on the requirement of the case. Therefore, the Committee recommends that the provision should be appropriately worded ensuring a panel of three or more mediators. Though, the clause 44(5) (d) provides for "any other person deemed appropriate", the Committee recommends that there must be a provision for a trained mediator or a person having legal background, in the panel, to guide the disputants to a legally sound settlement.

3.202 The Committee fully understands the rationale behind making the settlement agreement arrived at through the process of community mediation non-enforceable. However, the Committee feels that making an explicit statement regarding the non-enforceable character of the settlement agreement will defeat the very purpose of community mediation. Therefore, the Committee recommends that clause 45 (4) may be deleted.
