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THE MEDIATION ACT, 2023 IMPACT, PRACTICAL CHALLENGES AND HOW TO WORK

INTRODUCTION :

Mediation, as a means of resolving disputes, has deep roots in Indian culture. Its origin can be traced back to ancient India, where scholars like Yagnavalkya and Parashar promoted peaceful dispute resolution through negotiation and dialogue. During the vedic era, mediation was considered an essential part of community life, with village councils like sabhas and elders facilitating the resolution of conflicts without the need for adversarial litigation. The idea of amicable settlement aligned with the broader philosophy of dharma, or moral duty, which encouraged harmonious relations among individuals and communities. This approach continued through the Mughal period, where informal systems of justice coexisted with the formal court structures, and mediation served as a way to resolve disputes at the grassroots level. However, during the period of British colonialism, traditional dispute resolution mechanisms, including mediation, were largely overshadowed by the introduction of English common law and formal courts. British legal reforms, focused on codification and judicial uniformity, marginalized indigenous practices, leading to a decline in the use of mediation in India. After independence, there was a resurgence of interest in Alternative Dispute Resolution (ADR) mechanisms, including mediation, as the formal judicial system became overwhelmed with a backlog of cases. The Indian

government and judiciary began recognizing the need for efficient, amicable alternatives to litigation, paving the way for the re-introduction of mediation as a formal legal mechanism. This evolution culminated in the passing of the Mediation Act, 2023, which seeks to institutionalize mediation and provide a robust framework for its practice across India.

THE EVOLUTION OF MEDIATION LAW IN INDIA :

The evolution of mediation in India reflects the gradual transition from informal dispute resolution systems to a formalized legal framework for Alternative Dispute Resolution (ADR) mechanisms. This shift has been driven by a growing recognition of mediation's potential to reduce the burden on courts, provide timely relief to disputing parties, and foster harmonious settlements without the adversarial nature of litigation. The journey of mediation's legislative evolution in India can be categorized into two significant phases: the pre-legislative framework and the judiciary's active role in promoting mediation.

(A) Pre-Legislative Framework:

The first significant legislative recognition of mediation in India came with the Industrial Disputes Act, 1947, which provided for conciliation as a means of settling disputes between employers and employees in the industrial sector. This early framework acknowledged the value of non-adversarial dispute resolution methods but was limited to labour disputes. Mediation and conciliation were employed to prevent strikes and lockouts by encouraging dialogue between disputing parties.

This law laid the foundation for mediation to be considered as part of India's legal system, even though it was initially confined to industrial disputes. As the legal system in India grew more complex, the courts became overburdened with pending cases, prompting the need for more effective Alternative Dispute Resolution mechanisms. This led to the enactment of the Arbitration and Conciliation Act, 1996, which was a landmark in formalizing Alternative Dispute Resolution in India. The Act was modeled after the UNCITRAL Model Law on International Commercial Arbitration, reflecting a shift towards global standards in arbitration and conciliation. Though the focus of the Act was primarily on arbitration, it recognized conciliation as a formal mechanism for resolving disputes outside the courts. However, conciliation, which involves a neutral third party helping to mediate disputes, was limited in its application and didn't fully harness the potential of mediation as a distinct process. The C.P.C. Amendment Act, 1999 (Section 89 of the Code of Civil Procedure) marked a turning point in the development of mediation laws in India. This amendment provided the legal basis for court-referred mediation, wherein courts could refer disputes to Alternative Dispute Resolution mechanisms such as mediation, conciliation, and arbitration, depending on the nature of the case. Section 89 was designed to reduce the burden on courts by allowing them to encourage parties to explore amicable solutions through mediation before pursuing litigation. There are some other enactments that highlighted the necessity of mediation in resolving the disputes.

Section 442 of Companies Act, 2013 deals with maintenance of panel of experts to be called as Mediation and Conciliation Panel by the central government for mediation between the parties during the pendency of any proceedings before the Central Government, or the Tribunal or the Appellate Tribunal under the Act. Further, Section 12 A of Commercial Courts Act, 2015 made the pre-litigation mediation as mandatory for a plaintiff before filing a suit which does not contemplate any urgent interim relief. The above provisions are incorporated in recognition of the need for formal Alternative Dispute Resolution mechanisms and opened the doors for mediation to become an integral part of the Indian judicial process. In addition to legislative changes, the judiciary played a pivotal role in furthering the cause of mediation through its decisions and proactive approach to Alternative Dispute Resolution.

(B) The Role of Judiciary in Promoting Mediation:

Our Hon'ble Supreme Court has been instrumental in shaping mediation's trajectory in the country. One of the most significant cases that underscored the judiciary's commitment to promoting Alternative Dispute Resolution was the **Salem Advocate Bar Association v. Union of India 2005 (6) SCC 344**. In this case, the Supreme Court, while addressing the challenges of implementing Section 89 of the CPC, provided clarifications regarding the use of Alternative Dispute Resolution mechanisms. The Court directed the framing of model mediation rules and underscored the importance of mediation as a tool for dispute

resolution. The case was a watershed moment, as it led to the institutionalization of mediation in India and laid the groundwork for the establishment of mediation centers within the judicial framework. The Supreme Court's intervention in the Salem Bar Association case also led to the creation of court-annexed mediation centers across India. These centers provided structured environment for the practice of mediation, with trained mediators facilitating the resolution of disputes. The judiciary's endorsement of mediation encouraged lower courts to refer cases to these centers, fostering a culture of dispute resolution outside the adversarial court process. Over time, these court-annexed centers have played a crucial role in popularizing mediation as a viable alternative to litigation, particularly in civil and family law disputes. The judiciary's role in promoting mediation extends beyond just establishing centers and framing rules. **In Afcons Infrastructure Ltd. & Anr. Vs. Cherian Varkey Construction Co. (P) Ltd. & Ors.** reported in **(2010) 8 SCC 24**, the Hon'ble Supreme court identified and interpreted two structural anomalies in section 89 of C.P.C. and hold that the requirement of formulation of terms under section 89 C.P.C. should be read as requiring only a brief summary of the dispute, and that the definitions of judicial settlement and mediation in sub - section (2) should be interchanged to correct the drafts man's error. It has also established the categories of cases suitable and unsuitable for Alternative Dispute Resolution referral under Section 89 C.P.C., and confirmed that reference to mediation

under C.P.C. unlike reference to arbitration or conciliation does not require the consent of both parties. Through various judgments, the courts have consistently emphasized the benefits of mediation. In cases involving family law, commercial disputes, and even certain criminal matters, courts have encouraged parties to pursue mediation before engaging in lengthy litigation. The courts have also facilitated the training of mediators, ensuring that professionals guiding mediation processes are well-equipped to handle a wide range of disputes. This professionalization of mediation has been critical in establishing it as a credible alternative to litigation. One of the notable developments in the judiciary's approach to mediation was the establishment of pre-litigation mediation. This system encourages disputing parties to attempt mediation even before a case is filed in court, allowing for a resolution at an earlier stage and reducing the strain on the judicial system. The success of pre-litigation mediation in India has been notable, particularly in metropolitan cities where court-annexed mediation centers handle a significant volume of cases.

OVER VIEW OF THE MEDIATION ACT, 2023 :

This Act received the assent of Hon'ble president of India on 15.09.2023. It consists of 65 sections spread into 11 chapters. It has 10 schedules. The central government notified the enforcement of certain core provisions including the short title and definitions (sections 1 and 3), establishment of Mediation Council of India (sections 31 to 38), Mediation Fund (sections 45 to 47), non applicability of Mediation Act to the

proceedings conducted by Lok Adalat and Permanent Lok Adalat (section 26) and other miscellaneous provisions such as power to make rules and regulations under the Mediation Act (sections 51 and 52), power to remove difficulties in giving effect to the provisions of Mediation Act (section 54), non applicability to pending proceedings and transitory provisions (sections 56 and 57) on 09.10.2023. The operational provisions Section 5 (pre-litigation mediation), Section 18 (time limit), Section 19 (mediated settlement agreement), Section 27 (enforcement), and Section 28 (challenge) and some other sections are yet to be notified.

KEY PROVISIONS OF THE MEDIATION ACT, 2023 :

The Mediation Act 2023 includes several important provisions that make mediation a strong and reliable way to resolve disputes in India. These rules create a clear process, ensure mediation agreements are enforceable, and set standards for mediators to make the system work well. The following are the key provisions of the Mediation Act.

1. Application : (Section 2)

This Act applies where mediation is conducted in India, and all or both parties habitually reside or are incorporated in India; or the mediation agreement specifies that the Act applies; or there is an international mediation; or one party is the Central or a State Government in a commercial dispute. The territorial limitation is that the Act governs only mediations conducted in India.

2. Form of mediation agreement : (section 4)

Section 4 of the Act essentially require a written mediation agreement as a standalone contract or a clause within a contract agreeing for mediation or in the form of an exchange of emails/letters, or even undisputed pleadings in a case. However, courts are empowered by Section 7 to refer parties to mediation at any stage of the proceedings even if there is no prior mediation agreement, if they believe that an amicable settlement is possible. While referring the matter for mediation, the court may pass suitable interim orders protecting the interest of any party if deemed appropriate.

3. Excluded Disputes (Section 6 and First Schedule):

The First Schedule lists disputes not fit for mediation. Criminal offences; matters involving rights of third parties not party to the mediation; land acquisition and compensation matters are not fit for mediation under this Act. Proceedings before the Competition Commission, Securities Appellate Tribunal, S.E.B.I., Petroleum and Natural Gas Regulatory Board, Commissions and the appellate Tribunal for Electricity under Electricity Act, 2003 are also not amenable for settlement through mediation. Any dispute relating to levy, collection, penalties of offences in relation to any direct or indirect tax or refunds, enacted by any state legislature, or the parliament, any proceeding or complaint initiated before any statutory authority or body in relation to registration, discipline, misconduct of any practitioner or other registered

professional, such as a legal practitioner, medical practitioner, dentist, architect, chartered accountant or any other profession regulated under any law for the time being in force are not fit for mediation. Section 6 contains a significant proviso that courts may refer disputes relating to compoundable offences including compoundable matrimonial offences to mediation, though the outcome is not deemed a judgment or decree and must be further considered by the court under applicable law.

4. Form and Authentication of mediation settlement agreement

(Section 19) :

A mediated settlement agreement must be in writing, signed by the parties, and authenticated by the mediator. The terms may extend beyond the disputes referred to mediation. In institutional mediation, the authenticated agreement is forwarded by the mediator to the mediation service provider with a covering letter; in non-institutional mediation, the mediator provides a copy directly to all parties.

5. Registration of mediation settlement agreement :(Section 20)

Under Section 20(1) of The Mediation Act, 2023, parties engaging in independent (or "out-of-court") mediation have the option to register their signed and authenticated settlement agreements with an Authority established under the Legal Services Authorities Act, 1987 or any other body notified by the central government within the time limit of 180 days of receiving the original copy of the agreement. Such registration may be permitted beyond the stipulated time on payment of such fee as may be

specified. Under the Mediation Act, 2023, it is not mandatory to register the Mediated Settlement Agreement. However, it certainly provides an option for it and not only for the sake of it, as the same has its advantages, such as :

1. It provides additional evidence of the agreement's authenticity.
2. It becomes part of the public record, making it easily verifiable.
3. It can make the process of enforcement way easier.

6. Enforcement of mediation settlement agreement (Section 27):

A mediated settlement agreement authenticated under Section 19 is final and binding on the parties. Subject to the provisions of Section 28, it shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908, in the same manner as if it were a judgment or decree passed by a court. This is the most significant change from the Pre-Act position. Before the Mediation Act 2023, a settlement reached in private mediation had no independent legal standing. After the Act, the mediated settlement agreement itself is the decree. However, the enforcement mechanism routes through Order 21 CPC's execution provisions, which involves court proceedings, cost, and delay.

7. Challenge to mediated settlement agreement (Section 28):

A party may challenge a mediated settlement agreement on four grounds only:

1. Fraud;
2. Corruption;

3. Impersonation; or

4. The mediation was conducted in a dispute not fit for mediation under Section 6.

The challenge must be made within 90 days from receipt of the agreement, extendable by a further 90 days for sufficient cause. The Act is silent on whether initiation of challenge proceedings under Section 28 automatically stays enforcement under Section 27 or any specific stay order is required from a court of law.

8. Statutory framework for establishment of mediation council of India: (Sections 31-38)

The Mediation Council of India (MCI) is established under Section 31 as a statutory body corporate with perpetual succession. Its composition under Section 32 consists of a Chairperson of high standing in law, mediation, public affairs, or administration; two full-time members with ADR expertise; ex-officio members (Law Secretary and Expenditure Secretary level); and one part-time industry representative. The MCI's principal functions under Section 38 are: registering mediators and setting qualification and ethical standards; recognising mediation service providers and mediation institutes; promoting domestic and international mediation; maintaining an electronic depository of mediated settlement agreements; and publishing annual implementation reports.

Strengths and Achievements

1. Comprehensive Legal Framework:

The dedicated Act on Mediation fills a longstanding void by providing legal certainty, ending the ambiguous, fragmented regime. Section 48-50 of the Act also gives power to Government to frame schemes and guidelines for mediation where the Government or its agency is a party, and protects actions taken in good faith. This will encourage mediation in commercial cases where government is a party as also businesses, who like certainty.

2. Promotes pre-litigation mediation :

Section 5 of the Mediation Act 2023 empowers the parties to take steps to settle the disputes by pre-litigation mediation before filing any suit or proceedings of civil or commercial in nature in any court whether there exists any prior mediation agreement or not if they have come forward voluntarily and with the mutual consent. Under this Act, matters of commercial disputes of specified value shall be undertaken for pre-litigation mediation in accordance with the section 12 A of Commercial Courts Act, 2015. Under this section, claims tribunal constituted under Motor Vehicles Act, 1988, is empowered to refer the parties for mediation if the settlement as provided for in section 149 of the Act is not arrived at between the parties. A mediator empanelled by court annexed mediation center or an authority constituted under Legal Services Authorities Act

1987; or by a mediation service provider recognised under this Act, or a mediator registered with council shall conduct the pre-litigation mediation unless the parties agreed otherwise.

3. Enforceability and Finality:

Making mediated settlements enforceable and final as a court decree under section 27 of the Act is one of the biggest strengths of the Act. This will improve confidence in mediated outcomes and encourage greater participation in mediation, especially by commercial entities. A mediated settlement agreement can be relied upon or by the parties or persons claiming through them by way of defence, set off or otherwise in any subsequent proceedings .

4. Institutionalization and Quality Control:

The provision for establishment of the overarching Mediation Council of India (MCI) as a Regulator, and recognition of Mediation Service Providers (MSP) are crucial for maintaining high standards and consistency in Mediation across the country.

5. Flexibility and Party Autonomy:

Despite formalization, the Act preserves the voluntary and flexible nature of mediation enabling parties to shape their settlement terms and the mediator to adopt innovative methods. They are under no obligation to come to a settlement in the mediation even though the court or tribunal has referred the matter for mediation. Any reference by the

court or tribunal for mediation must be with the mutual consent of the parties. In "Babasaheb Neelkanth Kalyani vs. Sugandha Hiremath & Ors. Interim Application No. 5241 of 2025 in Suit No. 250 of 2023, Hon'ble Bombay High Court has held that the Mediation Act, 2023, does not empower courts to compel parties to undergo mediation without their mutual consent. The Hon'ble Court clarified that mediation under the statutory framework is consensual in nature and cannot be imposed unilaterally.

6. Time-Bound Process:

Section 18 of the Act stipulates that a mediation under this Act, shall be completed within a period of one hundred and twenty(120) days from the date fixed for the first appearance of the parties before the mediator. The same can be extended for a further period as agreed by the parties, but not exceeding sixty (60) days. The introduction of a time frame for mediation instills discipline in the process and reassures litigants that opting for mediation will not mean indefinite delay of their claims.

7. Confidentiality and Trust:

Section 22 of the Mediation Act, mandates that the mediator, mediation service provider, the parties and participants in the mediation shall keep acknowledgments, opinions, suggestions, promises, proposals, apologies, and admissions made during the mediation as confidential. It

also prohibits the parties to the mediation from adducing as evidence any information or communication including any information in electronic form or verbal communication utilised in the process of mediation and the court shall not take cognizance of such information or evidence. Further, as per section 23 of the Act, the mediator or participant in the mediation, including the experts and advisers have privilege against the disclosure and they cannot be called as a witness except in case of complaint of mis-conduct of mediator. This legal assurance of confidentiality is a cornerstone for building trust in the process and full participation of parties.

8. Online mediation is made acceptable and cost-effective:

Due to the Covid -19 pandemic, we have seen a shift in the justice delivery system with the inclusion of technology. The Indian judicial system has significantly adapted to technology and decided to continue with hybrid hearings even post pandemic. The Act also statutorily recognizes the concept of on-line mediation in Chapter VII. However, it makes mandatory to have the written consent of the parties for online mediation. Emphasis is laid on maintaining confidentiality and integrity of the proceedings and the communications that take place in the conduct of online mediations. However, further rules need to be framed for the online mediation procedure.

9. Encourages community mediation:

Community mediation is an innovative concept that consider the role of communities or residence associations to settle the dispute amicably. It provides for the settlement of dispute at the gross root level itself. According to section 43 any dispute that 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. The Act in Chapter X details the procedure to be followed while conducting a community mediation. It provides for an application to be made to the Authority constituted under the Legal Services Act, or, if no such Authority has been constituted, to the District Magistrate or Sub-Divisional Magistrate for maintaining peace and harmony amongst the residents or families of any area or locality. Upon receipt of such an application, the concerned authority is required to constitute a panel of three community mediators. The concerned authority is a society to constitute a permanent panel of mediators consisting of 'a person of standing and integrity and respected in the community', any local person whose contribution to the society has been recognized, a representative of the area or resident welfare association and any other person deemed appropriate. Representation of women or any other class or category of persons on the panel is only recommended but not prescribed. Significantly, sub-section (4) of section 44 of the Act states that any settlement reached in a community mediation shall only

be for the purpose of maintaining peace and harmony and shall not be enforceable like a decree of the court as is the case with other settlement agreements under section 27 of the Act.

10. Integration with Court Process:

The Act makes mediation a complementary arm of the judiciary, which will help reduce frivolous litigation. It also supports the growing trend of Arbitration-Mediation-Arbitration(The "Arbitration-Mediation - Arbitration") concept is a hybrid alternative dispute resolution (ADR) process. Disputants first attempt binding arbitration. If it fails to yield a resolution, they pause to attempt mediation. If mediation ends in an impasse, the process returns to binding arbitration for a final decision) and Mediation-Arbitration.

11. Alignment with International Obligations and Trends:

The Act on mediation is in alignment with the UN established Sustainable Development Goal (SDG)16, and obligations created upon signing the Singapore Convention. It improves India's image as an ADR-friendly jurisdiction.

Practical Challenges

1.Exclusion of Government Disputes and a Wide Exclusion Clause:

The exclusion of government-involved, non-commercial disputes undercuts the Act's potential impact given that governments and public

sector bodies are the largest litigants. The Standing Committee for considering the Bill had in fact recommended including government disputes within the ambit of the Act to reduce the burden on courts, but the final Act still allows the government to opt out except for commercial cases. Besides, several matters before specialized tribunal such as TDSAT, TRAI, SEBI, SAT are excluded, though these deal with matters that need a quick resolution. Besides, as on date, most of these Tribunals have been successfully resorting to Mediation as evident from available data.

2. No Provision for Cross-Border Enforcement:

Section 2 of The Act covers only those international mediations which are conducted in India, and it does not provide for enforcement in India of settlements mediated abroad. Hence, such cross-border settlements remain like a mere contract, enforceable only through litigation. This might make parties less inclined to mediate cross-border disputes. There are 18 countries including Japan, Turkey, Israel, Kazakhstan, and Sri Lanka that have ratified the Singapore Convention on Mediation, which provides a framework for enforcing international mediated settlement as orders of Court.

3. Lack of mandatory Pre-Litigation Mediation :

In a country like ours where awareness about Mediation process is lacking and there is an ingrained, litigation-mindset, voluntary initiation of mediation process will not yield desired results.

4. Restricted scope of international mediation :

The definition of International Mediation under section 3 (g) of the Act restricts the scope of international mediation only to commercial disputes arising out of legal relationship, contractual or otherwise under any law for the time being in force. By confining the definition of “international mediation” to commercial disputes alone, the Act excludes a large number of disputes arising out of matrimonial causes, family disputes, child custody disputes, property division disputes where one of the parties may be residing abroad from its purview thereby limiting such parties from seeking mediation as a mutually satisfactory process.

5. Lack of guidelines on Mediator Qualifications:

There are no guidelines laid down for who can serve as a mediator or be a Mediation Service Provider, which is left to be decided by the Mediation Council of India. However, the Mediation and Conciliation Project Committee of the Hon'ble Supreme Court of India (MCPC) working in tandem with NALSA developed a uniform mediation training manual of India. Under this manual, a 40 hours training on mediation covering conflict understanding, mediation stages, communication skills, and negotiation has been imparted to all the judicial officers and some of the identified members from the bar across the state of A.P.

6. Mediator remuneration is not specified:

In court-annexed mediations, often services are low-cost or free,

whereas private mediators charge professional fees. The Mediation Act is silent on fees. A schedule of fees would ensure that affordability does not become an issue.

Way forward for making the Mediation Act a success:

Though India's Mediation Act, 2023 is broadly in line with global best practices, to truly realize its objectives of making mediation the preferred mode of dispute resolution, several measures can be pursued and nurtured by policymakers, judiciary, and the legal community:

1. Constitute the Mediation Council promptly and notify remaining provisions :

The Central government should expedite appointments to the Mediation Council of India for laying down clear rules on mediator qualifications, establishment of Mediation Service Providers etc. This will improve quality and trust in the process and build capacity. Besides, for the Act to be effective, it should notify the provisions that have not yet been notified to come into effect vide SO No 4384(E) dated 09.10.2023.

2. Include Government Disputes and narrow the exclusion clause:

As per section 2 (iv) of the Mediation Act, it applies to a dispute wherein the Central government or a State government or agencies, public bodies, corporations, and local bodies, including entities controlled or owned by such government and where the matter pertains to a commercial dispute. The Parliament should reconsider the blanket

exemption for government and its agencies in non-commercial disputes before notifying Section 2(iv). At the least, sector-specific mediation by government can be considered, especially in relation to land, tax, service matters, and environment. It could also be based upon the value of the dispute. This will demonstrate good faith, setting an example for private parties, and reduce case load. Schedule I ought to be modified to reduce the disputes excluded such as those before specialised Tribunals such as CCI, Telecom Tribunal, Electricity Tribunal, SAT, SEBI, where they are simple commercial disputes, not pertaining to public policy. Mediation in such cases would help restore relationships and advance economic growth.

3. Mandatory pre-litigation mediation and carrot and stick approach:

The net of mandatory pre-litigation mediation needs to be widened, and cost sanctions or incentives for attempting mediation ought to be looked into by the Legislature. This approach has been found to be useful in other countries including Italy, US, UK and Australia .It may be mentioned that the courts are attempting to address these legislative lacunae through developing jurisprudence. The Hon'ble Supreme Court in case of ***Patil Automation Pvt. Ltd. Vs. Rakheja Engineers Pvt. Ltd*** reported in (2022) 10 SCC 1, and ***Yamini Manohar Vs. T K D Keerthi***, in S.L.P Civil No. 32275/2023 dated 13.10.2023, has held that pre-litigation mediation in commercial matters is the rule and hence, it

imposed costs on the party for avoiding pre-litigation mediation. In the case of *Yamini Manohar*, it has further held that “*without some element of compulsion, many parties might never experience benefits of mediation.*” It clarified that ‘mandatory’ is only to the extent of the first step, ‘resolving to resolve’, since in any case a settlement cannot be imposed upon parties. However, legislative intervention will hasten the process.

4. Develop specialised mediation and embrace technology:

The Mediation Counsel of India should encourage specialised mediators for family, commercial, industrial and community disputes. Specialists bring subject-matter expertise that fosters informed solutions. The council could also facilitate online dispute resolution platforms to reach remote areas.

5. Cultural shift and rebranding:

For mediation to thrive, it must shed the perception of being secondary or “alternative” we must embrace it as the first option. We as the Judges of the district judiciary can integrate mediation into case management by referring matters early and monitoring settlements. For a cultural shift, rebranding Alternative Dispute Resolution in legal education and public discourse, as suggested by debates in the UK, is to drop the term “**alternative**” it can be re branded as “**appropriate**” method of dispute resolution.

6. Promote awareness and integrate mediation education:

Concerted awareness campaigns are needed for all stake holders. Mediation should be included in High School Education, instead of reference only to the confrontational Court system. Besides, business schools, civil service academics and judicial training should incorporate mediation in their curricula, emphasising negotiation skills, communication and problem-solving. Bar councils could require lawyers to inform clients about mediation options and courts record this advice in writing. Mediation advocacy, public advertisements and legal literacy programs can dispel misconceptions about mediation and highlight success stories.

7.Targeted procedural mechanisms for efficient implementation :

The implementation process requires specific, targeted procedural mechanisms to overcome cultural inertia. Firstly, the Judiciary must notify Specialized Execution Benches dedicated to summarily dealing with the execution and challenges of Mediation Settlement Agreements. This administrative measure prevents Mediation Settlement Agreements from entering the long queue of general execution proceedings, ensuring swift and time-bound enforcement. Secondly, the rules of procedure must be amended to allow for the imposition of exemplary and high-value cost sanctions against any party that initiates a demonstrably frivolous or bad-faith challenge to a certified Mediation Settlement Agreement. This powerful financial disincentive is crucial for re-orienting the legal culture away from tactical delay and toward

genuine compliance with settled terms. The cumulative effect of these mechanisms will be to confer the necessary operational finality upon Mediation Settlement Agreements, ensuring the Act's practical success.

8. Operationalizing finality against adversarial legal culture:

The greatest operational friction point for the Mediation Act, 2023, stems from India's deeply ingrained adversarial legal culture. Legal practitioners and parties often view mediation as a tactical necessity—a procedural step to be cleared rather than a genuine platform for resolution. This mindset leads to bad faith participation, delays, and non-disclosure, ultimately compromising the quality and durability of any resulting agreement. While the Act confers Mediated Settlement Agreements with the enforceability of a court decree, this de jure (by law) finality is threatened by the potential for shift litigation. Parties may circumvent the spirit of the settlement by initiating protracted challenges during the execution stage, thereby neutralizing the Act's primary benefit of reducing docket load.

9. Ratification of the Singapore Convention:

With ratification, if a commercial dispute is mediated and resolved anywhere in the world, the settlement could be directly enforced in India. This would amplify India's credibility as a hub of international business.

Conclusion:

India's Mediation landscape is evolving. The Mediation Act, 2023

represents a landmark effort to transform dispute resolution by institutionalising mediation and making it a mainstream dispute resolution mechanism. By providing mediation a strong legal foundation, establishing institutional framework, guaranteeing confidentiality, party autonomy and enforceability of mediated settlements, the Act aims for a paradigm shift in the outlook to dispute resolution by the parties from confrontational to collaborative. It addresses the needs of an overburdened judiciary and aligns with international trends.

I would like to conclude my presentation with the great words of Hon'ble chief justice of India, my lord sri justice Surya Kant ji ,

"Mediation is not just an alternative to adjudication but a constitutional value in itself, which embodies the spirit of compassion, consensus, and social harmony"."Mediation subtracts bitterness, divides burden and adds hope to broken human relations".

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