

THE MEDIATION ACT 2023

Impact, Practical Challenges and How to Work

Kadapa District – Workshop-II

CHAIRPERSON

Hon'ble Administrative Judge,
High Court of Andhra Pradesh,
Amaravathi

NODAL OFFICER

Hon'ble Principal District Judge
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With the kind permission of the Hon'ble Chairperson-cum-Hon'ble Administrative Judge, High Court of Andhra Pradesh, and the Nodal Officer-cum-Hon'ble Principal District Judge, Kadapa District, I am obliged to submit my presentation on the topic assigned to me.

Human is a social animal. He has to live in a society or a group with social values, principles and limitations. He is having an unique feature of discretion to opt the good and bad with his senses. When a society comprises of such human beings, certainly the conflicting interests among them give rise to disputes or conflicts. These disputes or conflicts were and are resolved initially by the mighty, now the state elected by the people of the country. In order to resolve such disputes or conflicts the state uses several mechanisms. Among the said mechanisms the age old mechanism is "MEDIATION". Even our Epics demonstrate such mechanism, lord Krishna is a prominent figure in Hindu mythology and the central character of the 'Bhagavathgeetha'. He played a crucial role as a mediator in the Kurukshetra war, teach the lessons and insights over the role of mediator. He teach about the characteristics like neutrality and impartiality, empathy and understanding, skills of communication, creativity in problem solving, conflict de-escalation, long term solutions, ethical conduct and respect for agreements. Hence, Mediation which is one of the method to solve or resolve the disputes or conflicts in India having its roots from history, mythology, tradition, custom and culture.

Despite these concerns, it remains influential because it offers a **more humane, participatory, and flexible alternative** to rigid legal systems, and holds potential for both **individual healing and broader social transformation**.

History of ADR:

- Mediation has been imbedded in Indian culture since ancient times.
- Buddhism propounded mediation as the wisest method of resolving problems.

Buddha said, "*Mediation brings wisdom; lack of mediation leaves ignorance. Know well what leads you forward and what holds you back; choose that which leads to wisdom*".

Ancient Times- The tribunal propounded and set up by a brilliant scholar Yagnavalkya, known as KULA, which dealt with the disputes between members of the family, community, tribes, castes or races.

- Another tribunal known as **SHRENI**, a corporation of artisans following the same business, dealt with their internal disputes.
- **sPUGA** was a similar association of traders in any branch ion commerce. Another scholar Parashar opined that certain questions should be determined by the decisions of a parishad or association or an assembly of the learned.
- Indian Jurist Patanjali said, "Progress comes swiftly in mediation for those who try hardest, instead of deciding who was right and who was wrong". It is a recorded fact that complicated cases were resolved not in the King's courts but by King's mediator.

- It is widely accepted that a village panchayat, meaning **five wise men**, used to be recognised and accepted as conciliatory and or decision making body.
- Like many of the ancient dispute resolution methods, the panchayat shared some of the characteristics of mediation and some of the characteristics of arbitration.

Mediation in India:

- Mediation, conciliation, and arbitration have deep historical roots in India, predating the modern Anglo-Saxon adversarial legal system. In pre-British India, especially in Gujarat, business communities relied on respected figures like '*Mahajans*' to resolve disputes through informal mediation or a hybrid **Med-Arb system**, which combined mediation and arbitration. These mechanisms were widely accepted and even enforced socially, though they lacked formal legal recognition. With the advent of British rule, especially after the establishment of courts in 1775, indigenous dispute resolution systems were sidelined in favor of formal British legal procedures, which emphasized strict adjudication over compromise. Despite this shift, the British judicial system gained credibility and continued post-independence as India's primary justice delivery mechanism.
- However, post-1947 developments—such as constitutional rights, economic expansion, increased legislation, population growth, and the government becoming a major litigant—led to a massive surge in litigation. The formal court system, burdened by inadequate infrastructure, struggled with delays and backlog, prompting people to seek alternatives. This challenge of court congestion is global; countries like the United States, Australia, the United Kingdom, and the European Union have increasingly adopted **Alternative Dispute Resolution (ADR)** mechanisms, especially mediation, to ensure faster and more efficient access to justice.
- It first gauged legislative recognition in Industrial Disputes act, 1947, where under section 4 of the Act are charged with the duty of mediating in and promoting the settlement of industrial disputes.
The Legal Services Authorities Act, 1987 by constituting the National Legal Services Authority as a Central Authority with the Chief Justice of India as its Patron-in-Chief. The Central Authority has been vested with duties to perform, inter alia, the following functions: -
- To encourage the settlement of disputes by way of negotiations, arbitration and conciliation.
- To lay down policies and principles for making legal services available in the conduct of any case before the court, any authority or tribunal.
- To frame most effective and economical schemes for the purpose.
- To utilize funds at its disposal and allocate them to the State and District Authorities appointed under the Act.
- To undertake research in the field of legal services.

- To recommend to the Government grant-in-aid for specific schemes to voluntary institutions for implementation of legal services schemes.
- To develop legal training and educational programmes with the Bar Councils and establish legal services clinics in universities, Law Colleges and other institutions.
- To act in co-ordination with governmental and non-governmental agencies engaged in the work of promoting legal services.
- The Indian parliament enacted the Arbitration and Conciliation Act in 1996, making elaborate provisions for conciliation of disputes arising out of legal relationship, whether contractual or not, and to all proceedings relating thereto. The Act provided for the commencement of conciliation proceedings, appointment of conciliators and assistance of suitable institution for the purpose of recommending the names of the conciliators or even appointment of the conciliators by such institution, submission of statements to the conciliator and the role of conciliator in assisting the parties in negotiating settlement of disputes between the parties.
- In 1999, the Indian Parliament passed the CPC Amendment Act of 1999 inserting Sec.89 in the Code of Civil Procedure 1908, providing for reference of cases pending in the Courts to ADR which included mediation. The Amendment was brought into force with effect from 1st July, 2002.

Evolution of mediation in India:

- The first elaborate training for mediators was conducted in Ahmedabad in the year 2000 by American trainers sent by Institute for the Study and Development of Legal Systems (ISDLS). It was followed by a few repeated advance training workshops conducted by Institute for Arbitration Mediation Legal Education and Development (AMLEAD) a Public Charitable Trust settled by two senior lawyers of Ahmedabad. On 27th July 2002, the Chief Justice of India, formally inaugurated the Ahmedabad Mediation Centre, reportedly the first lawyer-managed mediation centre in India.
- The Chief Justice of India called a meeting of the Chief Justices of all the High Courts of the Indian States in November, 2002 at New Delhi to impress upon them the importance of mediation and the need to implement Sec. 89 of Civil Procedure Code.
- The Mediation and Conciliation Project Committee (MCPC) was constituted by the then Chief Justice of India Hon'ble Mr. Justice R.C. Lahoti by order dt. 9th April, 2005. Hon'ble Mr. Justice N. Santosh Hegde was its first Chairman. It consisted of other judges of the Supreme Court and High Court, Senior Advocates and Member Secretary of NALSA.

- MCPC has been taking the lead in evolving policy matters relating to the mediation. The committee has decided that 40 hours training and 10 actual mediation was essential for a mediator.
- The Supreme Court of India, in the *Salem Bar Association* case (AIR 2005 SC 3353), upheld the constitutional validity of ADR-related reforms and appointed a committee headed by Justice Jagannadha Rao to frame rules for effective implementation of mediation in civil courts. Based on Law Commission consultation papers, model mediation rules were prepared, approved by the Supreme Court, and directions were issued to all High Courts to adopt them, thereby giving **mandatory court-referred mediation legal recognition**. Consequently, **Court-Annexed Mediation and Conciliation Centres** were established, where mediation is conducted as part of the judicial system itself, unlike court-referred mediation where the court only directs parties externally.
- The judgment of Hon'ble Supreme Court in *MR KRISHNA MURTHY Vs. NEW INDIA ASSURANCE CO. LTD.*, reported in (2019) 4 SCC 177, directed the Central Government to enact the comprehensive Mediation Act, for the benefit of all.

LEGISLATION ON MEDIATION

1. The Code of Civil Procedure, 1908.
2. The Andhra Pradesh alternative dispute resolution and Mediation rules, 2017 published by way of notification no.26/SO/2017 in ROC No.1013/ADR/SO/2005 dt:15-09-2017, and
3. The Mediation Act, 2023

1. The Code of Civil Procedure, 1908 :-

Sec. 89 of the Code of Civil Procedure, 1908 (herein after CPC) says about the settlement of disputes outside the court.

Settlement of disputes outside the Court.--(1) Where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court 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 (26 of 1996) shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act;
- 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 Authority Act, 1987 (39 of 1987) and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;
- 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 Authority Act, 1987 (39 of 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.

Order 10 (1-A to 1-C) of CPC says

1A. Direction of the Court to opt for any one mode of alternative dispute resolution. After recording the admissions and denials, the court shall direct the parties to the suit to opt either mode of the settlement outside the court as specified in sub-section (1) of section 89. On the option of the parties, the court shall fix the date of appearance before such forum or authority as may be opted by the parties.

1B. Appearance before the conciliatory forum or authority. Where a suit is referred under rule 1 A, the parties shall appear before such forum or authority for conciliation of the suit.

1C. Appearance before the court consequent to the failure of efforts of conciliation. Where a suit is referred under rule 1A and the presiding officer of conciliation forum or authority is satisfied that it would not be proper in the interest of justice to proceed with the matter further, then, it shall refer the matter again to the Court and direct the parties to appear before the court on the date fixed by it.

The first case that dealt with the interpretation and constitutionality of the amendment of Order X Rules 1,1A,1B, 1C was **Salem Bar Association v UOI (AIR 2005 SC 3353)**

- ‘Terms of settlement’ under s. 89 shall be read as summary of dispute.

Afcons Infrastructure Ltd v. Cherian Varkey Construction Co. P. Ltd (2010 (8) SCC 24)-Afcon had a contract with Kochin Port Trust for construction of infra projects. Afcon sub-contracted some of the projects to Cherian Varkey Construction.

- Cherian failed to abide by the terms of the contract, therefore Afcon went for an order of attachment.
- Cherian wanted to go for arbitration, despite the contract not having details relating to arbitration.
- Afcon did not want to go for arbitration.

Questions-consent of all parties is necessary for s89 and procedure to apply s89.

- For arbitration and conciliation, party consent is required. However, for mediation and judicial settlement, courts can refer it on their own.

Matrimonial disputes, day to day disputes such as nuisance & trespass may go for mediation.

How should Sec.89 CPC could be interpreted-

Justice Raveendran held that:

1. The court does not have to format the terms of reference before referring the parties to ADR, it can describe the nature of dispute(in short) and make the reference.
 2. To fix the draftsman's mistake, the meaning of "judicial settlement" and "mediation" in clauses (c) and (d) to section 89(2) must be switched.
- It was further held that cases which are not suited for ADR process should not be referred under section 89 of the code and the court has to briefly record the reasons of not referring a case under ADR.
 - He gave a fair idea of types of cases that can come under ADR and that cannot.
 - **Cases that cannot come under ADR can be-** Representative suits, election disputes, suit for grant of probate or letters of administration, cases involving serious and specific allegations (fraud, forgery, coercion etc), cases requiring protection of courts(minors, deities, mentally challenged, title against government)
 - Cases that can come under ADR can be - all cases relating to trade, commerce, contract, dispute arising out of contracts, between neighbours, tortious liability, consumer disputes.

As per the judgement, the following processes requires the mutual consent of the parties:

Arbitration-

- Adjudicatory dispute resolution process.
- Governed by the AC Act
- There should be an arbitration agreement between the parties as per the above act.
- If there is no agreement between the parties for reference to arbitration, the court cannot refer the matter to arbitration under this code.
- Thus, mutual consent is necessary before agreeing to the avenue of arbitration.

Conciliation-

- Non-adjudicatory ADR process.
- Governed by provisions of the AC Act
- Both parties should agree to conciliation, otherwise there won't be any conciliation
- Consent by all parties is necessary for the court to refer the matter to conciliation.

Mediation, judicial settlement, Lok Adalat-Does not require the consent of the parties for reference.

Section 12 A-Commercial Courts Act-Pre-Institution mediation and settlement-

1. A suit which does not contemplate any urgent interim relief under this act, shall not be instituted unless the plaintiff exhaust the remedy of pre-institution 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.
3. Notwithstanding anything contained in the legal services authorities act, 1987, the authority authorised by the central government under clause (2) shall complete the process of mediation within a period of 3 months from the date of application made by the plaintiff under sub-section (1). Proviso-The period of mediation may be extended for a further period of two months with the consent of the parties.
4. Proviso further-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.
5. 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.
6. The settlement arrived at under this section shall have the same status and effect as it is an arbitral award on agreed terms under sub-section 4 of section 30 of the AC act, 1996.

This statute has made it mandatory that before instituting a commercial dispute, parties must try mediation. Any settlement reached by way of pre-institution mediation shall be enforced as an arbitral award. In **Patil Automation Private Limited Vs., Rakheja Engineers Private Limited** (2022 livelaw (SC) 678, at para no.84 held, that *“We declare that Section 12A of the Act is mandatory and hold that any suit instituted violating the mandate of Section 12A must be visited with rejection of the plaint under Order VII Rule 11. This power can be exercised even suo moto by the court as explained earlier in the judgment. We, however, make this declaration effective from 20.08.2022 so that concerned stakeholders become sufficiently informed. Still further, we however direct that in case complaints have been already rejected and no steps have*

been taken within the period of limitation, the matter cannot be reopened on the basis of this declaration. Still further, if the order of rejection of the plaint has been acted upon by filing a fresh suit, the declaration of prospective effect will not avail the plaintiff. Finally, if the plaint is filed violating Section 12A after the jurisdictional High Court has declared Section 12A mandatory also, the plaintiff will not be entitled to the relief”.

2. **The Andhra Pradesh alternative dispute resolution and Mediation rules, 2017:-**

These rules brought by the Andhra Pradesh Government to up to date the Civil Procedure Alternative Dispute Resolution and Mediation Rules 2005 in accordance with the Hon’ble Supreme Court Judgments. These rules came into force from 22-09-2017.

As per these Rules, even without the consent of the parties the court may referred the case to Meditation even without formulation of the terms of possible terms of settlement and with describing the nature of the dispute make the reference to the court. The court may resort to Alternative Dispute Resolution processes at any stage of the proceedings.

The above Rules explains the procedure for holding the Mediation, procedure to refer the matter for Mediation, Appointment of Mediators, Process of Mediation etc., these rules supersede by the Mediation Act, 2023.

3. **The Mediation Act, 2023:-**

The Mediation Act, 2023 consists of total 11 Chapters, 65 Sections, 10 Schedules. This Act came into force from 14th September, 2023. It is applicable to the Mediation which is conducted in India.

As per this Act, ‘ Mediation’ includes a process, whether referred to by the expression Mediation, Pre Litigation Mediation, Online Mediation, Conciliation or an expression of similar import, whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person referred to as Mediator, who doesn’t have the authority to impose a settlement upon the parties to the dispute.

‘Mediator’ means a person who is appointed to be a Mediator, by the parties or by a Mediation Services Provider, to undertake Mediation, and includes a person registered as Mediator with the Counsel. 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.

As per this Act, the types of Mediation are as follows:-

- a) Court Annexed Mediation.
- b) Community Mediation.
- c) Institutional Mediation.
- d) International Mediation.
- e) Pre-Litigation Mediation.
- f) Online Mediation.

a. Court Annexed Mediation:-

As per Sec. 3 (e) of the Mediation Act, means and includes the Pre-Litigation Mediation and Mediation conducted at the Mediation Centers established by any Court or tribunal.

b. Community Mediation:-

As per Sec. 43 of the Mediation Act, 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.

c. Institutional Mediation:-

As per Sec. 3 (f) of the Mediation Act means Mediation conducted and the ages of the Mediation Services Provider.

d. International Mediation:-

As per Sec. 3 (g) of the Mediation Act, means undertaken under this Act and relates to a commercial dispute arising out of a legal relationship, contractual or otherwise, under any law for the time being in force in India, and where at least one of the parties, is –

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

e. Pre-Litigation Mediation:-

As per Sec. 5 of the Mediation Act, means whether any Mediation agreement exists or not, the parties before filing any suit or proceedings of Civil or Commercial nature in any Court, may voluntarily and with mutual consent take steps to settle the disputes by Pre-Litigation Mediation in accordance with the provisions of this Act, provided that Pre-Litigation Mediation in matters of Commercial disputes of specified value shall be undertaken in accordance with the provisions of Sec. 12 A of the Commercial Courts Act, 2015 (4 of 2016), and the rules made thereunder.

f. Online Mediation:-

As per Sec. 30 of the Mediation Act, 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.

MEDIATION PROCEEDINGS/PROCESS

- Every Mediation conducted under this Act, shall be within the territorial Jurisdiction of the Court or Tribunal of competent Jurisdiction to decide the subject matter of dispute. Provided on mutual consent of the parties the Mediation may be conducted outside the territorial jurisdiction of the Court or Tribunal or by way of Online Mediation. But as per the explanation for the purpose enforcement, challenge and registration of the mediated settlement agreement the same shall be deemed to have been within the local jurisdiction of the Court or the Tribunal having competent Jurisdiction. (Sec. 13).
- The Mediation shall be completed within a period of 120 days from the date fixed for the appearance before the Mediator, and said period maybe extended for a further period as agreed by the parties not exceeding 60 days. In a total on inclusive extension of the period the maximum period for Mediation is only 180 days. (Sec. 20).
- The period of limitation starts from the date of commencement of Mediation of the Mediation proceedings under Sec. 14 of the Mediation Act, and concludes by submission of report under Sec. 21 of Mediation Act, or by termination of Mediation under Sec. 24 of Mediation Act, (Sec. 29).
- Disputes which are not fit for Mediation are as per the first Schedule of the Mediation Act, (claims against the minors, deities, disables, mentally ill, unsound mind, representative suits, suits for declaration of title against Government, declaration of right in rem, prosecution of criminal cases, complaints or proceedings instituted before any statutory authority, rights of third parties who are not participated in Mediation (except the children in matrimonial cases), matters

falling under the National Green Tribunal Act, 2010, tax and refunds by the State or Parliament, land acquisition cases etc. provided that nothing contained herein shall prevent any court, if deemed appropriate, from referring any dispute relating to compoundable offences including the matrimonial offences which are compoundable and pending between the parties, to mediation. (As per Sec. 6).

In **JITHENDRA RAGHU VANSHI VS. BABITHA RAGHU VANSHI** reported in (2013) 4 SCC 58, the Hon'ble Apex Court held, that *“even if the offences are non-compoundable, if they relate to matrimonial disputes and the court is satisfied that the parties have settled the same amicably and without any pressure, that for the purpose of securing ends of justice. Section 320, Cr.P.C. would not be a bar to the exercise of power of quashing of FIR, complaint or the subsequent criminal proceedings in respect of such offences can be quashed in exercise of power under Section 482, Cr.P.C (Para No. 12)”*.

Even this is the outcome in **K. SRINIVAS RAO VS. D. A. DEEPA** reported in AIR (2013) SC 2006, **BS JOSHI & ORS. Vs. STATE OF HARYANA & ANR.** Reported in AIR 2003 SC 1386.

- The dispute will be referred to Mediation by the Court or Tribunal at any stage of the proceedings. By virtue of an agreement of the parties also dispute will be referred to Mediation. (Sec. 7 and 14).
- As per Sec. 8 to 12 of the Mediation Act, the Mediator will be appointed for Mediation, the parties shall be free to agree upon the name of the Mediator and the procedure for their appointment. The parties can prefer the Mediator among the list of the Mediators with the Mediation Service Provider. The Mediator so appointed give his willingness or refusal within 7 days from the date of receipt of said communication of such appointment. On termination of the Mediator on the grounds in the Sec.10 of the Mediation Act, the Mediation Service Provider shall appoint another Mediator within 7 days from the date of such termination.
- The Mediation proceedings will be conducted in view of Sec. 15 to 17 of the Mediation Act,

The process of mediation:

- Mediation is dynamic process in which the mediator assists the parties to negotiate a settlement for resolving their dispute.
- In doing so, the mediator uses the 4 functional stages of mediation, namely:
 1. Introduction & opening statement
 2. Joint session
 3. Separate session
 4. Closing

The functional stages are used in an informal and flexible manner so that the mediation process gains momentum, following a specific and predictable course as illustrated below:

1. Introduction
2. Understanding the problem
3. Deeper understanding of the interests and needs of parties
4. Defining the problem
5. Creating options
6. Evaluating options
7. Settlement/non-settlement

Functional Stages of Mediation:

The mediation process consists of four structured stages:

- (1) Introduction & Opening Statement,**
- (2) Joint Session,**
- (3) Separate Session(s), and (4) Closing.**

Though mediation is flexible and informal, it follows these identifiable stages to ensure clarity, control, and effective dispute resolution.

Stage 1 – Introduction and Opening Statement

- This stage aims to establish neutrality, build trust, create rapport, and set a constructive environment for negotiation. The mediator ensures all necessary parties and their counsel are present and properly authorized to negotiate. Seating arrangements are flexible but must ensure comfort, safety, and effective communication with eye contact.
- The mediator introduces himself, discloses qualifications, confirms absence of bias or interest, and expresses hope for amicable resolution. Parties and their counsel are invited to introduce themselves, and logistical issues like time constraints and authority to settle are clarified.

The mediator then delivers the opening statement, explaining:

- Concept, stages, and process of mediation
- Roles of mediator, parties, and advocates
- Advantages of mediation
- Ground rules of conduct

Key features emphasized include: voluntariness, confidentiality, neutrality, non-adjudicatory nature, party autonomy, flexibility, good faith participation, and finality. Ground rules include no interruption, respectful language, addressing mediator, equal opportunity to speak, and maintaining decorum. The mediator ensures that parties understand the process before proceeding.

Stage 2 – Joint Session

The joint session focuses on information gathering, understanding perspectives, and identifying issues. Each party is given an uninterrupted opportunity to present their case—first the plaintiff/ petitioner, then their counsel, followed by the defendant/respondent and their counsel.

The mediator encourages open communication, manages emotions and interruptions, and may ask questions to clarify facts. The mediator then summarizes the issues, identifies areas of agreement and disagreement, and ensures all parties feel heard. Parties may respond to each other with permission.

The mediator maintains control of proceedings and may decide to move to separate sessions (caucus) depending on productivity, conflict intensity, or party request. Multiple joint and separate sessions may alternate as needed.

Stage 3 – Separate Session (Caucus)

This stage allows **deeper exploration of issues, emotions, and interests in a confidential setting**. The mediator reaffirms confidentiality and allows parties to express **sensitive concerns, emotions, and underlying interests** freely.

The mediator:

- Identifies emotional and relational factors
- Distinguishes between positions and interests
- Identifies common interests and priorities
- Explores possible trade-offs and settlement options

Reality Testing

The mediator evaluates parties' perceptions by:

- Examining strengths and weaknesses of claims
- Assessing legal and factual positions
- Considering litigation risks, costs, and outcomes
- Evaluating chances of success/failure This is done through:
- **Effective questioning** (open, closed, fact-based, interest-based)
- Discussion of case strengths/weaknesses
- **BATNA, WATNA, MLATNA analysis** (best, worst, most likely alternatives) This helps parties move from rigid positions to realistic solutions.

Brainstorming

The mediator facilitates option generation in two stages:

- **Creating options** (no judgment, encourages creativity)
- **Evaluating options** (identify acceptable solutions)

This involves **lateral thinking (creative)** and **linear thinking (analytical)** to arrive at workable solutions.

Sub-Sessions and Negotiation

The mediator may hold sub-sessions with:

- Individual parties
- Advocates
- Groups with common interests

This helps manage internal conflicts and improve negotiation. The mediator also facilitates **exchange of offers** between parties to move toward settlement. If no agreement is reached, the matter returns to court.

Stage 4 – Closing

(A) When Settlement is

Reached The mediator:

- Confirms settlement terms orally
- Reduces agreement to writing
- Ensures signing by parties and counsel
- Sends agreement to court for order

The agreement must:

- Be clear, precise, complete, and unambiguous
- Avoid legal jargon and vague terms
- Clearly specify who will do what, when, where, and how
- Be legally enforceable and acceptable to both parties
- The mediator thanks and congratulates parties.

(B) When No Settlement is

Reached If mediation fails:

- The mediator reports only “**not settled**” (no reasons given)
- Confidentiality is maintained
- No statements are disclosed to court
- The mediator thanks parties for participation The case is then returned to the referring court.
- As per Sec. 19 of the Mediation Act, the mediated settlement agreement reduced into writing between some or all the parties resulting from Mediation, settling some or all of the disputes between such parties and authenticated by the Mediator, and the terms of the same may extend beyond the disputes referred to Mediation. The mediated settlement agreement which is void and under the provisions of Indian Contract Act, 1872 is not executable and not lawful. It includes a Mediated settlement agreement resulting from Online Mediation.

- The Mediated settlement agreement arrived between the parties other than those arrived in a court or Tribunal referred Mediation or award of Lok Adalat or final award of the Permanent Lok Adalat maybe registered at the option of the parties with unique registration number to such settlement agreements. The same maybe registered with such authority within the territorial jurisdiction of the court or Tribunal of competent jurisdiction to decide subject matter of the dispute. The same maybe registered within a period of 180 days or on payment of such fee even after the said 180 days (Sec. 20).
- If the Mediation fails, non-settlement report has to be submitted to the Service Provider in writing and it shall not disclose the cause of non-settlement, or any other matter or thing referring to their conduct, during Mediation. (Sec. 21).
- In **MOTHIRAM (D) THR. LRS. & ANR. VS., ASHOK KUMAR & ANR.** Reported in (2011) 1 SCC 466, The Hon'ble apex court held, that *“we would like to state Mediation proceedings are totally confidential proceedings. This is unlike proceedings in court which are conducted openly in the public gaze. If the Mediation succeeds, by both the parties to the court without mentioning what transpired during the Mediation proceedings. If the Mediation is unsuccessful, then the mediator should only write one sentence in his report and send it to the court stating that the ‘**Mediation has been unsuccessful**’. Beyond that the Mediator should not write anything which was discussed, proposed or done during the Mediation proceedings. If the happenings in the Mediation proceedings are disclosed, it will destroy the confidentiality of the Mediation process”*.
- The Mediator, Mediation Service Provider, the parties and the participants in the Mediation shall keep confidential all the following matters relating to the Mediation proceedings, namely:- Acknowledgments, opinions, suggestions, promises, proposals, apologies and admissions made during the mediation, acceptance of, or willingness to, accept proposals made or exchanged in the mediation, documents prepared solely for the conduct of mediation or in relation thereto, any other mediation communication. No audio or video recording whether conducted in person or online is permitted during Mediation. No party to the Mediation shall in any proceedings before a court or Tribunal rely on or introduced as evidence any information or communication ascertained during Mediation and the court or Tribunal shall not take cognizance of such information or evidence even otherwise it is in electronic form or verbal communication. Nothing in this section is applicable to the mediated settlement agreement where its disclosure is necessary for the purpose of registration or for enforcement and challenge. (Sec. 22).

In PERRY KANSAGRA VS., SMRITI MADAN KANSAGRA reported in **(2019) 20 SCC 753**, The Hon'ble apex court at para No. 24, held, that *“it is true that the process of mediation is founded on the element of confidentiality. Qualitatively, Mediation or Conciliation stands on a completely different footing as against regular adjudicatory processes. Instead of an adversarial stand in adjudicatory proceedings, the idea of mediation is to resolve the dispute at a level which is amicable rather than adversarial. In the process, the parties may make statements which they otherwise they would not have made while the matter was pending adjudication before a court of law. Such statements which are essentially made in order to see if there could be a settlement, ought not to be used against the maker of such statements in case at a later point the attempts at mediation completely fail. If the statements are allowed to be used at subsequent stages, the element of confidence which is essential for healthy mediation/conciliation would be completely lost. The element of confidentiality and the assurance that the statements would not be relied upon helps the parties bury the hatchet and move towards resolution of the disputes. The confidentiality is, thus, an important element of mediation/conciliation”*.

- The parties, Mediator, participant or experts participated in Mediation shall not summon as witness to give evidence over the Mediation and the documents therein. Such privilege is not attach to a threat or offence, domestic violence or abuse of a child if happen during the process of Mediation. (Sec. 23).

In PERRY KANSAGRA VS., SMRITI MADAN KANSAGRA reported in **(2019) 20 SCC 753**, The Hon'ble apex court at para No. 24, held, that *“it is true that the process of mediation is founded on the element of confidentiality. Qualitatively, Mediation or Conciliation stands on a completely different footing as against regular adjudicatory processes. Instead of an adversarial stand in adjudicatory proceedings, the idea of mediation is to resolve the dispute at a level which is amicable rather than adversarial. In the process, the parties may make statements which they otherwise they would not have made while the matter was pending adjudication before a court of law. Such statements which are essentially made in order to see if there could be a settlement, ought not to be used against the maker of such statements in case at a later point the attempts at mediation completely fail. If the statements are allowed to be used at subsequent stages, the element of confidence which is essential for healthy mediation/conciliation would be completely lost. The element of confidentiality and the assurance that the statements would not be relied upon helps the parties bury the hatchet and move towards resolution of the disputes. The confidentiality is, thus, an important element of mediation/conciliation”*.

Recently the Hon'ble Apex court in **BEZAWADA SRI NAGA SUSHMA VS., SUNDRU UDAY KIRAN** in transfer petition (c) NO. 2933 OF 2025 dt.10-03-2026, held at para no. 2 *"We are of the considered view that the Report so submitted by the learned Mediator is not in consonance with the directions issued by this Court in "Moti Ram VS. Ashok Kumar" reported in (2011) 1 SCC 466 as reiterated in the case of "Perry Kansagra VS. Smriti Madan Kansagra" reported in (2019) 20 SCC 753, particularly in paragraph 24. We need not say anything further, save and except that we direct the Registry of this court to forward a copy of this order, as also a copy of the Report filed by the learned Mediator, A.P. High court Mediation and Arbitration Centre, in a sealed cover, to the Registrar General of the High Court of Andhra Pradesh at Amaravati, to be placed before Hon'ble the Chief Justice for taking appropriate steps as are required under law. All concerned need to be apprised of the existing position in law, which exercise perhaps can be conducted by sensitizing and imparting training through the office of the Coordinator of all the Centers where Mediation is conducted"*.

followed with this dictum The Hon'ble Chief Justice of the High Court of Andhra Pradesh, on 02-05-2026 directed the Member Secretary, A.P State Legal Services Authority for conducting Training Programme to all the Mediators. In obedience to the said directions the Hon'ble A.P. State Legal Services Authority issued.,

A.P.STATE LEGAL SERVICES AUTHORITY
AMARAVATI

Rec.No.02-LI/APLSA/LSW/2026 Dt: 04.05.2026

C I R C U L A R

Sub: Compliance with directions of the Supreme Court of India in Transfer Petition (C) No. 2933 of 2025 – Adherence to mediation norms laid down in Moti Ram vs. Ashok Kumar and Perry Kansagra vs. Smriti Madan Kansagra – Instructions to Mediators – Issued – Reg.

Ref: 1.The Hon'ble Supreme Court of India Order dated 10.03.2026 in Transfer Petition (C) No. 2933 of 2025,
2.Communication received from the Registrar General, High Court of A.P., Amaravati.

Adverting to the above subject and references, the Hon'ble Supreme Court of India, in its Order dated 10.03.2026 in Transfer Petition (C) No. 2933 of 2025, has, inter alia, observed serious concerns regarding the manner in which a Mediator's Report was prepared and submitted. The Hon'ble Supreme Court has specifically held that such report was not in consonance with the legal principles governing mediation, as laid down in Moti Ram vs. Ashok Kumar (2011 1 SCC 466) and Perry Kansagra vs. Smriti Madan Kansagra (Paragraph 24)(2019) 20 SCC 753).

Further, the Hon'ble Supreme Court has directed that all concerned be sensitized and trained regarding the correct legal position governing mediation practice. In compliance with the above directions, the following instructions are hereby issued for strict adherence:

1. All Mediators shall strictly adhere to the principles laid down by the Hon'ble Supreme Court in the above judgments, particularly with regard to:

a) Confidentiality of mediation proceedings;
b) Scope and content of Mediator's Reports;
c) Non-recording of merits or opinions beyond permissible limits.

(P.T.O.)

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2. All Coordinators of District Mediation Centres shall:-

a) Ensure dissemination of this Circular to every empanelled Mediator;
b) Monitor compliance in preparation and submission of Mediator Reports;
c) Maintain proper oversight over mediation processes in their respective centres.

All Chairpersons of District Legal Services Authorities (DLSAs) are requested to communicate this Circular, copy of the above-mentioned Order and judgments to all Coordinators of District Mediation Centres and all Mediators functioning under their jurisdiction.

MEMBER SECRETARY

To

1. The Chairpersons, District Legal Services Authorities.
2. The Directors-cum-Chairpersons, District Mediation Centres.
3. The Chairpersons, Mandal Legal Services Committees (through the Chairperson, DLSA concerned).

followed with the above circular the Hon'ble A.P. State Legal Authority also conducted a Virtual Training Programme in coordination with the A.P. Judicial Academy on 07-05-2026 from 04.00 pm., to 06.00 pm., vide its letter in ROC No. 65-L1/APSLSA/LSW/2026, Dated: 05.05.2026.

- The Mediation proceedings comes to an end on the date of sign in and authentication of the Mediated agreement settlement or when further efforts at Mediation are no longer justified, when in written communicated to the Mediator, that the party opted to out of Mediation or on the expiry of time limit. (Sec. 24).
- The Mediated Settlement agreement resulting from a Mediation signed by the parties and authenticated by a Mediator shall be final and binding by the parties and enforceable in accordance with the provisions of CPC in the same manner as if it were a judgment or decree passed by a court. (Sec. 27).
- The Mediated settlement agreement arrived between the parties in a Mediation may be challenged on the following grounds, namely:- fraud, corruption, impersonation and the dispute is not fit for Mediation as per Sec. 6 of the Mediation Act. The application may be filed before the court or tribunal of competent jurisdiction within 90 days from the date of receipt of the Mediated settlement agreement, it may filed even after the 90 days and within a further period of 90 days on sufficient cause to the satisfaction of court or Tribunal (Sec. 28).
- The other Judicial commencements regarding the importance of Mediation and its confidentiality are,

In **RK ANAND VS., REGISTRAR DELHI HIGH COURT**, reported in 2009 AIR SEW 6876, the Hon'ble Delhi High Court, held, that *“the confidentiality of the mediation process, emphasizing that the proceedings and communications made during mediation are privileged and cannot be disclosed in court”*.

In **BS KRISHNA MURTHY VS., BS NAGARAJ, VISAKHAPTAM**, reported in AIR 2011 SC 794, the Hon'ble Apex Court held, that *“lawyers should advise their clients to try for mediation for resolving the disputes, especially where relationships, like family relationships, business relationships, are involved, otherwise, the litigation drags on for years and decades often ruining both the parties. Hence, the lawyers as well as litigants should follow Mahatma Gandhi's advice in the matter and try for arbitration/mediation. This is also the purpose of section 89 of the Code of Civil Procedure”*.

Let discuss about the roles of Referral Judges, the role of Mediator, the role of Lawyers in Mediation and the role of Parties in Mediation.

ROLE OF REFERRAL JUDGES

1. The Referral Judge place a crucial role in identifying the dispute which is fit for mediation in accordance with Sec. 6 of the Mediation Act, Motivating the parties to resolve their disputes through Mediation.
2. The Referral Judge may refer the matter to Mediation even if the parties are not inclined for Mediation, by explaining the concept and process of Mediation, advantages of Mediation, how the interest of the parties could be satisfied out of the settlement.
3. The process of Mediation is initiated through a referral order. It is a foundation of Court referred Mediation. It shall contain the information like name of the referral Judge, Court Name, Case Number, Name of the Parties, Date and Year of the institution of the case, Stage of the Case, Nature of the Dispute, the Statutory Provision under which the reference is made, next date of hearing before the referral court, consent of the parties, Name of the institution to whom the case was referred to mediation, the date and time for the parties to report before the Mediation Centre, the time limit for completion of the Mediation.
4. The Referral Judge have vital role even after conclusion of the Mediation. If there is no settlement between the parties, the court proceedings shall continue in accordance with law. The Referral Judge shall ensure the confidentiality of the mediation process is not breached, should not ask for the reasons for the failure of the parties to reach the settlement.
5. If the dispute has been settled in the Mediation, the Referral Judge should examine the lawfulness of the Mediated settlement agreement, should act upon the terms and conditions of the agreement and pass consequential orders.

ROLE OF MEDIATOR

1. The mediator plays a **facilitative and evaluative role**. As a facilitator, the mediator manages communication, encourages dialogue, controls emotional outbursts, and helps parties move towards settlement. As an evaluator, the mediator may assist parties in assessing the **strengths and weaknesses of claims and possible trial outcomes**. However, the mediator **never adjudicates or imposes a decision**—the authority always rests with the parties.
2. The mediator uses **specialized communication skills and negotiation techniques** to overcome deadlocks and guide parties toward mutually acceptable solutions.

Confidentiality and Privacy in Mediation-Mediation is a **private and confidential process**. Statements made, documents produced, or admissions given during mediation are **inadmissible and non-discoverable in any legal proceeding**, unless all parties consent. The mediator cannot disclose information or testify about proceedings. Information shared privately with the mediator is not disclosed without permission. No formal record of proceedings is maintained, ensuring **complete confidentiality and protection of parties' interests**.

Legal Status of Settlement and Procedure-Any settlement reached during litigation must be **reduced to writing, signed by parties, and submitted to the court**, which then passes an appropriate order. A **pre-litigation settlement operates as a binding contract** between parties. If mediation fails, the mediator only reports **"not settled"** without reasons. The mediator cannot be compelled to testify. Importantly, parties may even agree to settlements **beyond strict legal rights and liabilities**, focusing on practical resolution. Mediation may also extend to **related or connected disputes beyond the referred matter**.

Qualifications of Mediators

As per the **Salem Advocate Bar Association v. Union of India (2005)** and Model Mediation Rules, the following are eligible:

- Retired judges (Supreme Court, High Court, District Courts)
- Advocates with minimum 07 years standing at the bar (The Andhra Pradesh Alternative Dispute Resolution and Mediation Rules 2017)
- Experts/professionals or senior bureaucrats with **15 years experience**
- Recognized institutions specializing in mediation (approved by High Court) This ensures professional competence and credibility in mediation practice.

Ethics and Code of Conduct for Mediators

Mediators must adhere to strict ethical standards:

1. Avoid Conflict of Interest
2. Mediator must not handle cases where there is **direct/indirect interest** unless disclosed and accepted by parties. Advocates acting as mediators cannot later represent parties in the same dispute.
3. Maintain Professional Boundaries
4. Mediator must act within competence and avoid providing other professional services to parties.
5. Practice Neutrality
6. Mediator must remain impartial in words, conduct, and process management.

7. Ensure Voluntariness
8. Respect parties' right to **withdraw at any stage**.
9. Maintain Confidentiality
10. Information disclosed must remain confidential unless:
 - i. Party permits disclosure, or
 - ii. Required by law
11. Do No Harm
12. Mediator must avoid processes that **worsen conflict or harm parties**; may modify process or withdraw if necessary.
13. Promote Self-Determination
14. Ensure parties make independent decisions without coercion or dominance.
15. Facilitate Informed Consent
16. Ensure parties have **adequate information** to make decisions.
17. Protect Third-Party Interests
18. Consider impact on non-participants (children, vulnerable persons).
19. Honesty and Integrity Mediator must disclose:
 - Qualifications
 - Interests
 - Fees

Relevant facts affecting participation

Mediator must not mislead parties or misuse confidential information and must not accept gifts or extra payments.

Additionally, a judicial officer cannot mediate disputes connected with cases pending before their own court.

ROLE OF LAWYERS IN MEDIATION

Mediation as a mode of ADR is the process where parties are encouraged to communicate, negotiate and settle their disputes with the assistance of a neutral facilitator i.e., mediator. Though the role of the lawyer in mediation is functionally different from his role in litigation, the service rendered by the lawyer to the party during the mediation process is a professional service. Since lawyers have a proactive role to play in the mediation process, they should know the concept and process of mediation and the positive role to be played by them while assisting the parties in mediation. The role of the lawyer commences even before the case comes to the court and it continues throughout the mediation process and even thereafter, whether the dispute has been settled or not. Awareness programmes are necessary to make the lawyers aware of the concept and process of mediation, the advantages and benefits of mediation and the role of lawyers in the mediation process.

The role of lawyers in mediation can be divided into three phases:

- (i) Pre-mediation;
- (ii) During mediation; and
- (iii) Post-mediation.

(I) PRE-MEDIATION

When faced with a dispute and the prospect of approaching an adjudicatory forum for relief, a party first contacts a lawyer. The lawyer must first consider whether there is scope for resorting to any of the ADR mechanisms. Where mediation is considered the appropriate mode of ADR, educating the party about the concept, process and advantages of mediation becomes an important phase in the preparation for mediation. The lawyer is best placed to assist his client to understand the role of the mediator as a facilitator. He helps the client to understand that the purpose of mediation is not merely to settle the dispute and dispose of the litigation, but also to address the needs of the parties and to explore creative solutions to satisfy their underlying interests. The lawyer can help the parties to change their attitude from adversarial to collaborative. The party must be informed that in a dispute involving the break down of relationship, whether personal, contractual or commercial, mediation helps to strengthen/restore the relationship. While helping the party to understand the legal position and to assess the strength and weakness of his case and possible outcome of litigation, the lawyer makes him realize his real needs and underlying interest which can be better satisfied through mediation.

(II) DURING MEDIATION

The role of lawyers is very important during mediation also. The participation of lawyers in mediation is often constructive but sometimes it may be non-cooperative and discouraging. The attitude and conduct of the lawyer influence the attitude and conduct of his client. Hence, in order to ensure meaningful dialogue between the parties and the success of mediation, lawyers must have a positive attitude and must demonstrate faith in the mediation process, trust in the mediator and respect for the mediator as well as the other party and his counsel. The lawyer must himself observe the ground rules of mediation explained by the mediator and advise the party also to observe them. The lawyer must be prepared on the facts, the law and the precedents. At the same time, he must enable and encourage the party to present his case before the mediator. Considering that the party may not always be able to state the complete and correct facts or refer to the relevant documents, the lawyer must be alert and vigilant to supplement them. With the help of reality-testing, using the BATNA/

WATNA/ MLATNA analysis, the lawyer must constantly evaluate the case of the parties and the progress of mediation and must be prepared to advise the party to change position, approach, demands and the extent of concessions. When it is felt necessary to have a sub-session with the lawyer(s) the mediator may hold such sub-session with the lawyer(s) and the lawyer(s) must cooperate with the mediator to carry forward the process and arrive at a settlement. Such sub-sessions with the lawyer(s) can be held by the mediator also at the request of the party or the lawyer. The lawyer participates in finalizing and drafting the settlement between the parties. He must ensure that the settlement recorded is complete, clear and executable. He must also explain to his client and make him understand every term of the settlement.

III) POST-MEDIATION:-

After conclusion of mediation also, the lawyer plays a significant role. If no settlement has been arrived at, he has to assist and guide the party either to continue with the litigation or to consider opting for another ADR mechanism.

If a settlement between the parties has been reached before the mediator, the lawyer has the responsibility to reassure his client about the appropriateness of the client's decision and to advise against any second thoughts. To maintain and uphold the spirit of the settlement, the lawyer must cooperate with the court in the execution of the order/decreed passed in terms of the settlement.

ROLE OF PARTIES IN MEDIATION

Mediation is a process in which the parties have a direct, active and decisive role in arriving at an amicable settlement of their dispute.

Though the parties get the assistance of their advocate and the neutral mediator, the final decision is of the parties. As far as the parties are concerned, the whole process of mediation is voluntary. Though consent of the parties is not mandatory for referring a case to mediation and though the parties are required to participate in the mediation, mediation is voluntary as the parties retain their authority to decide whether the dispute should be amicably settled or not and what should be the terms of the settlement. Neither the mediator nor the lawyers can take the decision for the parties and they must recognize and respect the right of self-determination of the parties.

During the process of mediation, parties should focus on their interests rather than their entitlement or legal technicalities.

The parties are free to avail of the services of lawyers in connection with mediation. Mediation is about communicating, persuading and being persuaded for a settlement. Hence, each party needs to communicate its view to the other party and should be open to receive such communication in return. Both speaking and listening are equally important. The attempt must not be to argue and defeat but to know and inform. Parties may have to change their position and align it with their best interest. In mediation, trust in the mediator is essential. Hence, the mediator must be a person who continues to enjoy the trust of the parties.

A settlement duly arrived at between the parties in mediation is binding on the parties and the parties are bound to cooperate in the execution of the order/decreed passed in terms of the settlement.

IMPACT AND ADVANTAGES IN MEDIATION

- Mediation offers several advantages. It gives parties **control over scope and outcome**, allowing flexibility in issues and solutions.
- It is **participative**, enabling direct expression and involvement. Being **voluntary**, it ensures higher compliance.
- The process is **speedy, efficient, economical, simple, and flexible**, conducted in a **cordial and informal environment**.
- It is a **fair process**, as the mediator ensures neutrality and balances unequal power dynamics.
- Confidentiality promotes open discussion. Mediation improves **communication and relationships**, helping preserve or restore them.
- It focuses on **long-term interests rather than past disputes**, enabling comprehensive resolution of issues.
- Mediation promotes **mutually beneficial settlements**, often resolving **connected disputes** as well. It allows **creative and non-conventional solutions**, even beyond legal entitlements. Since parties themselves agree to the outcome, **compliance is high**, and settlements bring **finality**, with no scope for appeal or prolonged litigation.
- Additionally, in court-referred mediation, **refund of court fees** may be available.

CHALLENGES IN MEDIATION

1. Lack of Strong Infra Structure:-

For an effective Mediation an effective institutional infrastructure is a need. There shall be a proper accommodation, accessories, pre conferencing facilities, online infrastructure, stationary are required in all Mediation Centers at every level from District to Taluk.

2. Lack Of Public Awareness and Confidence:-

The general public is not very aware about the Mediation process. They are unable to understand its positive impact, advantages and speedy justice at the will of the parties. The parties has to be encouraged for the process of Mediation, have to create confidence with them.

3. Reluctance by Lawyers :-

The lawyers are not facilitating Pre Institution Mediation because they believe that resolving disputes through Mediation will curtail their income which they are making through litigation and they will lose their clients.

4. Shortage of Trained and Dedicated Mediators.

5. The Mediators who are working on Mediation shall understand the main purpose and object of Mediation, quite often they forget about the confidentiality is the heart and soul of Mediation.

HOW TO WORKOUT

1. The method of Mediation is one of the good and peaceful method among the ADR methods and hence, the litigant and lawyers has to be constantly given awareness over the Mediation method in disposal the litigations.
2. An exhaustive capacity building has to be undertaken to see that there shall be a continuous Nation wide Training Programme and accreditation Programmes to the Mediators.
3. There shall be Judicial guidelines for procedural clarity.
4. The technology integration is a need to expand online Mediation platforms for accessibility.
5. The law schools curriculum shall include the Mediation as one of the subject to encourage and also give an option to the students to become expertised Mediators in the field.
6. The Referral Judges also required to undergo frequent training-cum-awareness programmes over Mediation to understand the process, use and advantages of Mediation i.e., effective Mediation which could give an end to the litigation.

I conclude the presentation with the Judgment of Hon'ble Apex Court in **BS KRISHNA MURTHY VS., BS NAGARAJ, VISAKHAPTNAM, reported in AIR 2011 SC 794**, in which the Hon'ble Apex Court quoted the observations of Mahatma Gandhi in his book "MY EXPERIMENTS WITH TRUTH"

"I saw that the facts of Dada Abdulla's case made it a very strong indeed, and that the law was bound to be on his side. But I also saw that the litigation, if it were persisted in, would ruin the plaintiff and the defendant, who were relatives and both belonged to the same city. No one knew how long the case might go on. Should it be allowed to continue to be fought out in court, it might go on indefinitely and to no advantage of either party. Both, therefore, desired an immediate termination of the case, if possible.

I approached Tyeb Sheth and requested and advised him to go to arbitration. I recommended him to see his counsel. I suggested to him that if an arbitrator commanding the confidence of both parties could be appointed, the case would be quickly finished. The lawyers' fees were so rapidly mounting up that they were enough to devour all the resources of the clients, big merchants as they were. The case occupied so much of their attention that they had no time left for any other work. In the meantime mutual ill-will was steadily increasing. I became disgusted with the profession. As lawyers the counsel on both sides were bound to rake up points of law in support of their own clients. I also saw for the first time that the winning party never recovers all the costs incurred. Under the Court Fees Regulation there was a fixed scale of costs to be allowed as between party and party, the actual costs as between attorney and client being very much higher. This was more than I could bear. I felt that my duty was to befriend both parties and bring them together. I strained every nerve to bring about a compromise. At last Tyeb Sheth agreed. An arbitrator was appointed, the case was argued before him, and Dada Abdulla won.

But that did not satisfy me. If my client were to seek immediate execution of the award, it would be impossible for Tyeb Sheth to meet the whole of the awarded amount, and there was an unwritten law among the Porbandar Memons living in South Africa that death should be preferred to bankruptcy. It was impossible for Tyeb Sheth to pay down the whole sum of about # 37,000 and costs. He meant to pay not a pie less than the amount, and he did not want to be declared bankrupt. There was only one way. Dada Abdulla should allow him to pay in moderate installments. He was equal to the occasion, and granted Tyeb Sheth installments spread over a very long period. It was more difficult for me to secure the concession of payment by instalments than to get the parties to agree to arbitration. But both were happy over the result, and both rose in the public estimation. My joy was boundless. I had learnt the the practice of law. I had learnt to find out the better side of human nature and to enter men's hearts. I realized that the true function of a lawyer was to unite parties riven asunder. The lesson was so indelibly burnt into me that a large part of my time during the twenty years of my practice as a lawyer was occupied in bringing about private compromises of hundreds of cases. I lost nothing thereby-not even money, certainly not my soul."

The Mediation Act, 2023 is a transformative reform. Its success depends on effective implementation, awareness and Judicial support. With proper infrastructure and training, India can emerge as a global leader in Mediation, reducing Judicial backlog and fostering a culture of collaborative dispute resolution.

I humbly submit my heartfelt gratitude's to the Hon'ble Chairperson-cum-Administrative Judge, High Court of Andhra Pradesh, Amaravathi, The Hon'ble Nodal Officer-cum-Principal District Judge, YSR Kadapa District for giving this great opportunity to submit the paper on the Topic, I also submit my thanks to the Hon'ble Additional District Judges, the Hon'ble Civil Judges in all cadres in this regard. I am submitting my all gratitude's to the almighty for all his kindness on all of us.

References:

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3. The Book on "*Mediation as dispute resolution with special emphasis on the Mediation Act, 2023*" by Sarthak Arora and Gaayan Arora published by Whitsmann Publishing, New Delhi.
4. The Mediation notes available in online.
