

# Professional Opportunities in 'Mediation' for Chartered Accountants



**The Institute of Chartered Accountants of India**  
(Set up by an Act of Parliament)  
New Delhi

# Professional Opportunities in 'Mediation' for Chartered Accountants



Committee on Commercial Laws, Economic Advisory & NPO Cooperative  
**The Institute of Chartered Accountants of India**  
(Set up by an Act of Parliament)

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Basic draft of this publication was prepared by CA. Chandrashekhar Vasant Chitale

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# Foreword

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Commercial laws are essential for creating a conducive environment for business activities, fostering economic growth and ensuring fairness and stability in the marketplace. They provide the legal infrastructure that supports and regulates economic transactions, contributing to the overall prosperity of a nation.

The Mediation Act 2023 aims to lay down the legislative framework for mediation to be adopted by disputing parties, especially institutional mediation where various stakeholders have been identified to establish a robust and effective mediation ecosystem in India.

Since the legal regulatory framework continues to evolve, it becomes crucial for Chartered Accountants to stay well-informed and well-prepared. I am delighted to know that the Committee on Commercial Laws, Economic Advisory, and NPO Co-operative of the Institute of Chartered Accountants of India (ICAI) is bringing out the publication on “Professional Opportunities in Mediation for Chartered Accountants” to provide basics and practical insights of various aspects of the Mediation.

I extend my heartfelt appreciation to CA. Abhay Chhajed, Chairman, CA. Mangesh P. Kinare, Vice-Chairman and all other members of the Committee for their untiring efforts in developing this publication.

I encourage all readers to make the most of this resource and leverage their expertise from the insights provided within.

7<sup>th</sup> February, 2024  
Delhi

**CA. Aniket Sunil Talati**  
President, ICAI



# Preface

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I am honored to present the publication on Professional Opportunities in 'Mediation' for Chartered Accountants, developed by the Committee on Commercial Law, Economic Advisory, and NPO Cooperative of the Institute of Chartered Accountants of India (ICAI). This comprehensive resource serves as a valuable guide, providing clarity and practical insights on the complexities of the Mediation.

In the dynamic landscape of financial practices, Chartered Accountants play a pivotal role in maintaining integrity and fostering transparency. Recognizing the need for effective conflict resolution mechanisms, we delve into the realm of Mediation – a powerful tool that empowers Chartered Accountants to navigate disputes with finesse and professionalism. As Chairman of the Committee, I commend the dedicated efforts of the team in compiling this publication, which aims to assist professionals and stakeholders in navigating the intricacies of this evolving law.

I would like to acknowledge the support and guidance provided by the leadership of ICAI - CA. Aniket Sunil Talati, President, ICAI and CA. Ranjeet Kumar Agarwal, Vice-President, ICAI.

I would also like express my sincere gratitude to CA. Chandrashekhar Vasant Chitale, member of the Committee and the subject expert who has written this publication. Further the publication is reviewed by CA. (Adv.) Nipun Singhvi, subject expert and finally looked over by CA. Pramod Jain, member of the Committee, whose contributions have been instrumental in shaping its content and usefulness.

I trust that the publication of "Professional Opportunities in 'Mediation' for Chartered Accountants" will stand as a vital reference for CA Professionals, regulators, and all stakeholders engaged in transactions within our dynamic financial landscape. This resource is designed to enhance understanding and foster best practices specific to the domain of mediation.

I express my gratitude to all those involved in the creation of this resource, recognizing the collective commitment to excellence within our community. Together, let us elevate the standards of Chartered Accountancy, fostering a culture of transparency, understanding, and ethical decision-making. Happy Learning!

**CA. Abhay Chhajer**

February 5, 2024  
Noida, Uttar Pradesh

Chairman, Committee on Commercial Law  
Economic Advisory, and NPO Cooperative

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# Chapter 1

## Prelude

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### Commercial Disputes

Mediation is one mode of alternative dispute resolution. It has deep historical roots in India. Drawing inspiration from ancient traditions and indigenous practices, mediation has played a pivotal role in resolving conflicts. Quicker resolution of disputes promotes harmony in the society.

The conflict of human beings started in past during the primitive age as soon as the human being started gaining knowledge through the struggle for survival. The dispute between the Kauravas and the Pandavas, where all talks failed that led to the Mahabharata war, was one that cried out for settlement.

Today, the world has shrunk due to advent of e-media and infrastructure for cross border transactions. The commercial relationship is founded by contract – written or oral, even express, or implied. When such contract is interpreted differently by different parties to contract and each party in a quest of fortifying its benefits or arresting loss to be sustained, takes a stand that for obvious reasons is opposed by the other party(s), that gives rise to dispute.

Commercial disputes include any dispute arising out of commercial relationship between parties such as seller-buyer, export-import of merchandise or services, movable or immovable property, franchising, distributions, joint venture, managements, shareholders, partnership agreements, insurance, etc., its interpretation and enforcement. In modern times intellectual property rights, trademarks, use of software, copyrights, etc. have added dimension to the commercial disputes.

### History of Mediation

The historical origins of mediation in India can be traced back to ancient times when indigenous practices and cultural traditions emphasized the peaceful resolution of conflicts. These early forms of mediation were deeply rooted in the social fabric of Indian society and played a significant role in maintaining harmony and justice.

## **CAs as Mediators**

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Likewise, mediation in ancient India was prevalent in various forms. The principles of non-violence and compassion, central to Hinduism and Buddhism, laid the foundation for resolving conflicts through peaceful means. The concept of "Ahimsa," meaning non-violence, encouraged individuals to seek resolution through dialogue, understanding, and reconciliation.

Ancient Indian texts and scriptures, such as the Vedas, Upanishads, and Epics like the Mahabharata and Ramayana, and also *Arthashastra* and *Manusmriti* provides guidance on mediation and showcased instances where mediation was employed to settle disputes. These texts presented mediation as a virtuous and noble act, promoting the restoration of harmony and justice.

Ancient Vedic practices were transmitted orally for centuries before being written down. Also, Fire gazing that focused the mind (Jaffe, 2007) and shamanic guided meditation practices existed long before written records began in ancient hunter–gatherer cultures (Eliade, 1972).

The earliest written records of meditation come from the Hindu Vedas around 1500 BCE. The Torah also contains a description of the patriarch Isaac going to "lasuach" in a field, a kind of Jewish meditation most likely practiced around 1000 BCE.

Meanwhile, other forms of meditation were also recorded around 600 and 400 BCE within both Taoist China and Buddhist India.

## **A Catalyst**

The only way to guarantee litigants' rights is a judiciary that is working properly. Due to its significance, it is crucial that judges uphold the fundamentals of natural justice.

Independence, impartiality, sense of perspective, patience and understanding of principles of natural justice are certain attributes that make a person competent to become judge. Role of mediator is akin to judge and rather than imposing a judgment, the role of mediator is bring parties to commonly embarrassed resolution of disputes and differences. Considering education and training of Chartered Accountants, as a class they are considered as more appropriate to be mediator in any dispute. Understanding of commercial laws and practices, expertise in accountancy and taxation, makes Chartered Accountant and excellent choice for being a mediator to become a catalyst in decision making.

Patience, humility, honesty, courage, clear eyes, a calm attitude, awareness, and the capacity for original thought are characteristics of an excellent mediator. Additionally, one must be able to evaluate the circumstances in which they would likely rule as well as rationally examine legal problems. Commercial world finds these attributes in professionally trained and experienced professional – Chartered Accountants.

Quick resolution of dispute is the most desired by commercial world. Because this frees their time to get engaged full throttle, in their respective occupation. In the interest of time, litigants are willing to forego some part of entitlement, for this reason. This factor is well understood by chartered accountants – as a class – and while gathering momentum, they do not allow parties to defocus from the goal. Thus, being truthful to the object of the process, a chartered accountant acts as a catalyst in allowing parties to resolve disputes and differences.

# Background of Mediation

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## History

One notable part in the epic of Mahabharata is mediation. Lord Krishna acted as a mediator during the Kurukshetra war. He attempted to prevent the war by offering alternative solutions and facilitating dialogue between the warring parties. His role as a mediator demonstrated the significance of peaceful negotiation and mediation even in times of great conflict.

## Village Economy

Village panchayats, which were local self-governing bodies, were responsible for resolving disputes within their communities. Panchayats acted as mediators, bringing together conflicting parties, and facilitating discussions to reach mutually agreeable solutions. These community-based mediation practices thrived and continue to exist in rural areas, preserving the ancient traditions of conflict resolution.

During this period, mediators, known as "**Panch**" played a crucial role in the mediation process. They were individuals respected for their wisdom, impartiality, and ability to navigate complex disputes. Often drawn from scholarly, religious, or influential social backgrounds, these mediators acted as neutral facilitators, guiding the parties towards a peaceful resolution.

Mediation in medieval India extended beyond the immediate parties involved. It often involved community members, elders, and respected individuals who acted as witnesses or advisors during the process. Their presence ensured transparency, legitimacy, and a sense of collective responsibility for upholding justice and harmony.

During the Mughal era, mediation continued to hold prominence. The Mughal courts, known as "Adalats," employed mediation techniques to settle disputes, particularly in matters of land and property. These courts emphasized the importance of negotiation and facilitated dialogue between disputing parties, seeking resolution without resorting to lengthy and costly litigation.

### What is Mediation?

Mediation is when parties meet with a neutral person to help them with conflict resolution. Mediation is one of several Alternative Dispute Resolution methods (ADR) available to parties. It is an alternative to resolving a legal dispute through a trial or court case.

Unlike Arbitration, a type of ADR similar to a trial, mediation doesn't involve decision-making by a neutral third party. The parties can initiate ADR procedures or be compelled by legislation, the courts, or contractual terms. Mediators are professionals who've gone through mediation training or a mediation program.

Mediation is a form of dispute resolution that allows individuals and/or organizations involved in a dispute to work together towards resolving their own differences. During mediation, trained mediators work closely with the disputing parties by listening to all sides of the dispute, identifying areas of concern, and exploring underlying interests and possible solutions. The mediation process gives parties the opportunity to tell their story and to hear the other person while focusing on moving forward. Mediators remain neutral throughout the process and unlike a magistrate or judge, mediators do *not* decide the outcome; the outcome is determined by the parties themselves.

### Features of Mediation

1. Mediation is voluntary. The parties retain the right to decide whether to settle a dispute and the terms of settlement of the conflict. The decision to settle and the terms of settlement always rest with the parties. The parties have ultimate control over the outcome of mediation. Any party may withdraw from the mediation proceedings at any stage before its termination and without assigning any reason.
2. Mediation is a party-centred negotiation process. The parties and not the neutral mediator, are the focal point of the mediation process.
3. Though the mediation process is informal, it is not governed by the rules of evidence and formal rules of procedure.
4. Mediation, in essence, is an assisted negotiation process. Mediation addresses both the factual legal issues and the underlying causes of a

## **CAs as Mediators**

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- dispute. The goal of mediation is to find a mutually acceptable solution that adequately and legitimately satisfies the parties' needs, desires, and interests.
5. Mediation provides an efficient, effective, speedy, convenient, and less expensive process to resolve disputes with dignity, mutual respect, and civility.
  6. Mediation is conducted by a neutral third party - the mediator. The mediator remains impartial, independent, detached and objective throughout the mediation process. In mediation, the mediator assists the parties in resolving their dispute.
  7. In Mediation, the mediator works together with parties to facilitate the dispute resolution process and does not adjudicate a dispute by imposing a decision upon the parties. A mediator's role is both facilitative and evaluative.
  8. The mediator employs specific specialised communication skills and negotiation techniques to facilitate productive interaction between the parties to overcome negotiation impasses and find mutually acceptable solutions.
  9. Mediation is a private process, which is not open to the public. Mediation is also confidential, which means that statements made during mediation cannot be disclosed in civil proceedings or elsewhere without the written consent of all parties.
  10. In the event of failure to settle the dispute, the mediator's report does not mention the reason for the loss. The information will only say "not settled".
  11. The mediator cannot be called upon to testify in any proceeding or to disclose to the court what transpired during the mediation process.
  12. Mediation in a particular case need not be confined to the dispute referred but can go beyond and proceed to resolve all other connected or related arguments.

## **Advantages of Mediation**

**Saving of Time** – as compared to courts, saving of time is enormous. It extends even beyond office time.

**Cost Effective** – Costs involved in the process of mediation are far less and it often takes place at a mutually convenient place and time.

**Voluntary** – Mediation is a voluntary process for everyone involved.

**Confidential** – Mediation sessions are confidential except in rare circumstances. Mediators cannot be called to testify about what was said in mediation.

**Non-judgmental** – Mediators are not judges, they do not take sides or tell parties what to do. Parties reach at a mutually acceptable resolution model.

**Positive and forward looking** – Through mediation, parties usually develop a better understanding of each other, and their future relationship do not get impaired.

**Empowering** – Parties craft and control the outcome of each mediation.

**Successful** – Parties are more likely to follow the requirements of a mediated agreement because they have crafted it themselves.

**Timely** – Mediations can often happen more quickly than waiting for a court date.

**Convenient** – Mediations can be arranged at a convenient time and place with options for phone or video conference arrangements.

**Finality** – as resolution of dispute is through voluntary negotiations, discussions, some give and take, the decision rests with the mediation agreement and does not travel to court. Thus, there is finality to the conclusions reached at.

## After a Mediation

If a resolution is reached, mediation agreement is drafted and executed. It may be oral also. Contents of mediation agreement varies with the type of dispute and its resolution. Whether a mediation agreement is binding depends upon the applicable laws. Mediation agreements are considered enforceable contracts if they are written and signed by the parties.

In court-ordered mediations, the written agreement or consent terms, can be made part of Court order for better enforcement. Parties may express more satisfaction with a mediated agreement. They may be more likely to follow its terms.



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If an agreement is not reached, the parties may pursue their claims in other forums or proceed to arbitration, etc. However, what's said in mediation remains confidential. Parties cannot use mediation statements and proposals at a contested hearing or trial.

# Commercial Disputes

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## Disputes

Dispute means some type of disagreement or difference of viewpoint or interpretations.

## Commercial action

In order to elucidate upon the definition of the term 'commercial action', the reliance can be placed on the Supreme Court judgment in *Punjab University v. Unit Trust of India* wherein it was held that commercial action would include 'any cause arising out of the ordinary transactions of merchants and traders and without prejudice to the generality of the foregoing words, any cause relating to the construction of a mercantile document, the export or import of merchandise, affreightment, insurance, banking, mercantile agency and mercantile usage.'

The decision also held that 'commercial purpose' would cover within its ambit an undertaking the object of which is to make a profit out of the undertaking.

## What are Commercial Disputes?

Arising as part of a defined deal or transaction, a commercial dispute is a process that allows aggrieved parties to solve their differences. Viewed by the courts as 'a last resort' when communication between the parties involved has broken down, commercial disputes involve the resolution of any commercial transaction or deal. A highly formalised process, this can be between companies, individuals, or a mix of both.

A Commercial dispute is a business dispute. It means a dispute between two businesses or dispute between business and customer/clients. If it is related to the commercial matter, then we will say that it is a disagreement arising in the business where one party is not able to fulfil his promise for which he was legally bound and other parties suffer loss.

A dispute is some disagreement such as infringement of contract, not deliver expected things which are mentioned in clauses of the contract, delivery of bad quality of products, invalid price, parties not filing obligation in some way etc.

## **CAs as Mediators**

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Section 2(c) of *The Commercial Courts Act, 2015* defines “Commercial dispute” as it is a dispute arises out of the following matters:

1. The dispute in enforcement and interpretation of documents in ordinary transactions of merchants, bankers, financiers, and traders.
2. Export or import of merchandise or services.
3. Issues in admiralty and maritime law.
4. The transaction relating to aircraft, aircraft engines, aircraft equipment and helicopters, including sales, leasing and financing of the same.
5. Carriage of goods.
6. Contract related to construction and infrastructure, including tenders.
7. Agreements relating to immovable property used in commerce.
8. Franchising agreements.
9. Distribution and licensing agreements.
10. Management and consultancy agreements.
11. Joint venture agreements.
12. Shareholders agreements.
13. Subscription and investment agreements pertaining to the services industry including outsourcing and financial services.
14. Mercantile agency and mercantile usage.
15. Partnership agreements.
16. Technology developments agreements.
17. Intellectual property rights relating to trademarks, copyright, patent, domain names, geographical indications and semiconductor integrated circuits.
18. Agreements for the sale of goods or provision of services.
19. The exploitation of oil and gas reserves or other natural resources including the electromagnetic spectrum.
20. Insurance and reinsurance.
21. Contract of agency related to any of the above.
22. Other commercial disputes notified by the Central Government.

## Types of Commercial Disputes

Commercial Disputes can be of two types:

- a) The dispute between two businesses

In this type of Commercial dispute, there is a dispute between two businesses e.g. both engage in some type of contractual relationship with each other and breach of contract by one party, do something which is not in the contract and ignores clauses of the contract which is expected to do. Thus, these disputes spring from B-to-B transactions.

- b) The dispute between business and clients/customers

In this type of Commercial dispute, there is a dispute between business and clients/customers. E.g. customers dissatisfied with the product or services of a business, or customers suffer from unfair trade practices. Thus, these disputes spring from B-to-C transactions.

## Mediation for Commercial Disputes

The mediation generally involves one meeting with the other party and the process is confidential and “without prejudice”. This means that what is said or written, cannot be used in later proceedings, if the mediation fails. The confidentiality of the process can avoid embarrassing precedents being set, as might happen in court proceedings.

Commercial mediation is a flexible, voluntary, and confidential form of alternative dispute resolution in which a neutral third party, the mediator, assists parties to work towards a negotiated settlement of their dispute. The parties retain control of the decision whether or not to settle and on what terms.

Unlike a judge or arbitrator, the mediator will not decide the case on its merits but will work to facilitate agreement between the parties. It is the parties’ opinions, not the mediators, which matter. However the mediator influences the parties and if necessary their advisors.

Commercial mediation provides a private forum in which the parties can gain a better understanding of each other’s positions and work together to explore options for resolution. During the mediation, the mediator meets privately with each party to discuss the problem confidentially. This allows each party to be frank with the mediator and have a realistic look at their case in private,

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without fear that any weaknesses discussed will be communicated to other parties.

### ***What are the benefits of commercial mediation?***

Commercial mediation offers numerous benefits, including cost savings, flexibility, relationship preservation, confidentiality, and increased compliance. By embracing mediation as a preferred method for dispute resolution, businesses can efficiently navigate disputes while maintaining positive relationships and focusing on core operations. Significant benefits include:

- 1. Cost-effectiveness and time efficiency:** Commercial mediation saves time and money compared to court litigation. It requires fewer resources and offers a shorter resolution timeframe, providing significant cost savings for businesses.
- 2. Flexibility and control:** Commercial mediation allows businesses to have more control over the outcome. Parties actively participate in crafting solutions tailored to their specific needs and interests, fostering satisfactory and mutually acceptable resolutions.
- 3. Preserves business relationships:** Unlike litigation, commercial mediation focuses on collaboration and open communication. It helps businesses maintain relationships by working together to find common ground and reach mutually beneficial agreements.
- 4. Confidentiality and privacy:** Commercial mediation ensures privacy and confidentiality, protecting sensitive business information. This creates a safe space for open dialogue and encourages parties to freely share information, facilitating the resolution process.
- 5. Higher compliance and implementation rate:** Resolutions reached through commercial mediation have a higher compliance rate. Parties are more invested in adhering to agreed-upon terms since they actively participate in crafting solutions, leading to long-term stability and reduced future disputes.

## Chartered Accountants as Mediators

Chartered Accountants are experts in the arena of commercial transactions. They have adequate educational and practical background that provides significant understanding about the commercial world. They are experts in

accounting, taxation, corporate Laws, transactions structuring and have enough knowledge of business and commercial laws and its commercial practices.

These qualities equip Chartered Accountants to become the most preferred mediators in the commercial world.

# Why CAs are Preferred Mediators?

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## CA Profession

The CA profession in India has a rich history. The Institute of Chartered Accountants of India is a statutory body established in the year 1949 under an Act of Parliament viz. The *Chartered Accountants Act, 1949*. Since its inception, the profession has continuously evolved to meet the changing demands of the business world. The ICAI, entrusted with regulating and nurturing the CA profession, has played a pivotal role in ensuring its growth and relevance in the fast-paced financial landscape.

## What is a Chartered Accountant?

CA the two letters are synonymies of trust and confidence.

The CA profession in India holds immense significance in the country's economic landscape. Chartered Accountants act as financial guardians, offering their expertise to individuals, businesses, and the government. They are instrumental in promoting transparency, maintaining financial integrity, and fostering investor confidence. Moreover, CA professionals play a critical role in accounting, business and commercial laws compliances, tax compliances and litigations, auditing, and financial reporting, which are crucial for sustaining a robust and stable economy.

## CAs as Mediators

Chartered accountants are often considered suitable for commercial mediation for several reasons:

1. *Financial Expertise*: Chartered accountants have a deep understanding of financial matters, including accounting principles, taxation, financial analysis, and auditing. This expertise is valuable when mediating disputes involving financial issues, as they can help parties understand complex financial data and implications.
2. *Neutrality*: Chartered accountants are trained to be objective and impartial in their work, which aligns with the neutrality required in mediation. Their ability to remain unbiased can help facilitate fair and balanced negotiations.

## Why CAs are Preferred Mediators?

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3. *Problem-Solving Skills:* Accountants are skilled problem solvers by nature, which is a crucial trait for a mediator. They can analyze financial data, identify potential solutions, and guide parties toward mutually beneficial agreements.
4. *Understanding Business Operations:* Chartered accountants often have a good grasp of business operations and industry-specific knowledge. This can be valuable in understanding the context of a commercial dispute and finding solutions that align with the parties' business goals.
5. *Communication Skills:* Effective communication is a key aspect of mediation. Chartered accountants typically possess strong communication skills, allowing them to facilitate productive discussions and ensure that all parties are heard.
6. *Dispute Resolution Training:* Some chartered accountants undergo specific training in mediation and dispute resolution, further enhancing their suitability for this role.
7. *Time Conscious:* Chartered Accountants understand time value of money and are interested in early resolution of the matters on hand.
8. *Commercial Understanding :* Chartered Accountants have a knack of commercial understanding and have legal knowledge of applicable laws in relation to commercial disputed therefore they can be best blend of commercial wisdom and legal acumen.

While Chartered Accountants can be effective commercial mediators, it's essential to note that successful mediation also depends on their mediation training, experience, and the specific context of the dispute. Not all chartered accountants may choose to or be qualified for mediation, but their financial expertise can be an invaluable asset in this field.



# Background of Law on Mediation

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## History of Mediation in India

Much before the adoption of the formal British judicial system, the traditional *Panchayat* system prevailed in India whereby community issues were resolved by a group of village elders. Disputes were also referred to respected businessmen called *Mahajans*, to informally resolve the same amongst contesting parties.

As per the latest statistics available on the National Judicial Data Grid, impending cases before the District & Taluka Courts stand at over 40 million, the backlog waiting to be heard at various High Courts[2] is close to 5.9 million, and the pending case inventory before the Hon'ble Supreme Court of India[3] totals approximately 71,000.

Such backlog of cases, and the emergent need to unburden the judicial system, are central reasons for the Government and Courts to popularise Alternate Dispute Resolution Mechanisms (“**ADR**”) in India. Among the other available methods employed under ADR, one mechanism that stands out in terms of active participation of parties, in a non-adversarial backdrop, is Mediation.

Mediation is a method of resolving conflicts, where two or more parties arrive at a compromise with the support of a neutral party. A mediator is not a judge, rather a facilitator who assists parties in finding common ground.

## Scenario of Mediation before 2023 Enactment

Before enactment of the Mediation Act, 2023, the field was held by the following law and courts:

1. The *Industrial Disputes Act, 1947*

Conciliators appointed under Section 4 the *Industrial Disputes Act, 1947* are assigned with the duty to mediate and promote settlement of industrial disputes with detailed prescribed procedures for conciliation proceedings. If used appropriately, it's a cheap and quick process. However, only a few cases have been resolved and the very intent of having such provision has been frustrated. Unfortunately, large

numbers of matters which ought to have been resolved by this provision are still pending in courts and new matters are filed every day.

2. *Marriage related Laws*

More particularly, family and personal laws including the *Hindu Marriage Act, 1955* and the *Special Marriages Act, 1954* require the court in the first instance to attempt mediation between parties.

3. *The Legal Services Authority Act, 1987*

Arbitration, mediation, and conciliation are all methods that are used by these organizations to settle disputes.

4. *The Micro, Small and Medium Enterprises (MSME) Development Act, 2006*

The *Micro, Small and Medium Enterprises (MSME) Development Act, 2006* mandates conciliation when disputes arise on payments to MSMEs.

5. *The Code of Civil Procedure, 1908*

In 2002, an amendment to the *Code of Civil Procedure, 1908 (CPC)* was brought in. Section 89 read with Order X Rule 1A provided for reference of cases pending in the courts to ADR. In addition, Order XXXIIA of the CPC recommends mediation for familial/personal relationships, as the ordinary judicial procedure is not ideally suited to the sensitive area of personal relationships. Though many courts in India now have mediation centres, there is no accurate data available to show that this provision has been utilised successfully.

6. *The Companies Act, 2013*

Section 442 of the *Companies Act, 2013*, read with the *Companies (Mediation and Conciliation) Rules, 2016*, provides for referral of disputes to mediation by the National Company Law Tribunal and Appellate Tribunal.

7. *The Commercial Courts Act, 2015*

The *Commercial Courts Act, 2015*, providing mandatory pre-institutional mediation in certain classes of Commercial Suits, where no urgent relief is sought, was also an important step in favour of commercial mediation. The 2018 amendment to the *Commercial*

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*Courts Act 2015* (Section 12A), made it mandatory for parties to exhaust the remedy of pre-institution mediation under the Act before instituting a suit. *The Commercial Courts (Pre-Institution Mediation and Settlement) Rules 2018* (the PIMS Rules) have been framed by the government. Settlements arrived at in this process are enforceable by law. The period of mediation would not be computed for the purposes of limitation under India's Limitation Act. Effective implementation of this provision can be major boost for economic growth.

The Hon'ble Supreme Court has also recently held that this provision is not merely procedural and must be complied with before any remedy can be availed under the said Act; and in the event of failure to invoke pre-institutional mediation, a commercial suit is liable to be dismissed.

### 8. *The Real Estate (Regulation and Development) Act, 2016*

Section 32(g) of the *Real Estate (Regulation and Development) Act, 2016* provides for amicable conciliation of disputes between the promoters and allottees through dispute settlement forum, set up by consumer or promoter associations.

### **Court Ordered**

Some sort of alternative dispute resolution is required by most jurisdictions in India before resolution through the judicial process. As soon as a case is filed, the parties are provided with a few ADR options out of which they must select and pursue one unless exempted by the court.

### **Court-Annexed**

Under Court-Annexed Mediation, the mediation services are provided by the court as part of the judicial system.

The Court maintains a list of skilled and experienced mediators who are available to the parties. The Court appoints a mediator and sets a date by when the mediation must be completed. The results of the mediation are confidential, and any agreement reached is enforceable as a judgement of the court.

Since the case is referred to a court-annexed mediation service, the overall supervision is kept on the process and there is no feeling of abandonment by the system. The litigants, lawyers and judges become participants in the

system, and it is felt that the settlement is achieved by all the actors in the justice delivery system.

The same lawyers who appeared in the case represent their clients before a mediator and the litigants are also allowed to participate. The popular acceptance for mediation also improves as it is the integral and impartial court-system which is seen as extending an additional service. The dispensation of justice thus becomes well-coordinated.

### ***Court-Referred***

Under Court-Referred Mediation, the court merely refers the matter to a mediator.

Further, provisions have been specifically included to incentivise litigants to voluntarily choose this path. For instance, Section 16 of the Court Fees Act, 1870 provides for the refund of the entire court fees if the matter was finally settled using the alternative dispute redressal mechanism.

## **Supreme Courts and Mediation**

In the case of *Ramgopal & Anr. v. State of Madhya Pradesh & Anr.* [Ramgopal & Anr. v. State of Madhya Pradesh & Anr., CRLMP. NO.14745/2010], the court asked the Law Commission and the Government of India to do research, to determine if the punishments for the offenses mentioned under Section 498-A of the Indian Penal Code that is currently non compoundable can be made compoundable. If these offenses are made compoundable, then the courts can order the parties involved in such disputes to consult the mediation centres.

In *Salem Bar Association v Union of India* [(2003) 1 SCC 49; [2005] 6 SCC 344 (India)] the Honourable Supreme Court directed for a committee to be appointed to frame model rules explaining the procedure for mediation. Consequently, the Mediation and Conciliation Project Committee (MCPC) to *inter alia* provide for training programmes, certification to mediators, grant-in-aid, and awareness programmes.

The Law Commission of India, in compliance with the aforesaid judgment, drafted the consultation paper on Alternative Dispute Redressal and Mediation Rules in 2003 which was adopted by several High Courts to formulate their separate Mediation Rules.

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Courts in Ahmedabad, Chennai, Delhi, Kerala and Bangalore (to name a few) now have annexed mediation centres within court complexes to encourage the adoption of this alternative. The Courts, even at appellant stage, have encouraged mediation as a viable dispute redressal mechanism.

Recently, in the matter of *MR Krishna Murthi v. New India Assurance Co. Ltd.*, [(2020) 15 SCC 493 (India)] the Supreme Court, asked the government to consider the feasibility of enacting an Indian Mediation Act to take care of various aspects of mediation in general. The Court further directed the government to examine the feasibility of setting up a Motor Accidents Mediation Authority (MAMA) by making necessary amendments in the Motor Vehicles Act. In the interregnum, NALSA was directed to set up Motor Accident Mediation Cells, which can function independently under the aegis of NALSA or can be handed over to MCPC.

## **Other Modes of Mediation**

### **Private**

In private mediation, mediation services are offered on a private, monetary basis by qualified mediators to the Court, general public, and the commercial and governmental sectors for dispute resolution through mediation. Recourse may also be taken to private mediation in pending cases or pre-litigation disputes.

### **Contractual**

Parties to a contract may include a mediation clause to resolve disputes as part of the terms of their agreement as it can effectively resolve contractual disputes before they turn into a protracted legal battle. The conditions of the mediation and the selection of the mediator are mentioned in the contract. The results of the mediation may be enforced as judgements of a court.

### **Voluntary**

Parties to a dispute may also decide to seek mediation off their own accord, without being compelled by the law, the court, or a contract. This can be done at any time and is controlled by the parties.

## **Future of Mediation**

A mediated settlement, by its very nature, is not very susceptible to a challenge (and objections, if at all, is restricted to limited specified grounds. A

mediated settlement would, therefore, reduce the burden not only of Courts of original jurisdiction, but also appellate and writ Courts, along with the Supreme Court. Such an avenue of dispute resolution is also very cost effective (does not entail payment of Court fee or legal/professional fee) and time efficient. However, given the frame of mind of parties in a dispute scenario, merely leaving their representatives in a room together with a passive mediator, will only be counter-productive. An effective mediation is centred around a skilled mediator, without whom the process is *fait accompli*. It is, therefore, imperative that an adequate framework for training appropriate mediators be included either in the Act, or the Rules/Regulations to be framed thereunder.

An area of concern in the regime contemplated in the current version of the Bill, are the provisions relating to International Mediation, which do not appear to be entirely in consonance with international standards or practices. The Bill ought to be brought in line with the international practices, enabling parties to easily enforce settlement agreements across different jurisdictions, while retaining the necessary checks and balances.

Internationally, India showed its support for mediation when it became a signatory to the UN Convention on International Settlement Agreement.

# The Mediation Act, 2023

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## The Bill

In January 2020, the Supreme Court set up a panel headed by Shri Niranjan Bhat to prepare a draft legislation on Mediation. Subsequently, it was sent to the government as a suggestion from the apex court. The Government, then, on 5th November 2021 put the draft Mediation Bill on their website for Public Consultation. Following that, on 20th December 2021 the Mediation Bill, 2021 was introduced in the Rajya Sabha by the Government and was referred to the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law & Justice for examination and report, on 22nd December, 2021.

## Parliamentary Standing Committee

Following the direction of Hon. Supreme Court, a bill on mediation law was presented in the parliament which was referred to the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice. In its report, after taking stock of volume of pending litigation at various levels and paucity of number of judges, the Committee recognised that Alternative Dispute Resolution (ADR) mechanisms like arbitration, conciliation and mediation come in handy. These ADR mechanisms are less adversarial and are capable of providing a better substitute to the conventional methods of resolving disputes.

The Committee noted that objective of the Bill is to promote, encourage and facilitate mediation especially institutional mediation for resolution of civil and commercial disputes, enforce mediated settlement agreements, provide for a body for registration of mediators, to encourage community mediation and to make online mediation as an acceptable and cost-effective process and for matters connected therewith or incidental thereto.

## The Mediation Act, 2023

An Act No. 32 of 2023 was enacted on 14 September 2023 to promote and facilitate mediation, especially institutional mediation, for resolution of disputes, commercial or otherwise, enforce mediated settlement agreements,

provide for a body for registration of mediators, to encourage community mediation and to make online mediation as acceptable and cost effective process and for matters connected therewith or incidental thereto.

This Act is called as **the Mediation Act, 2023**.

The Mediation Act, 2023 has eleven Chapters containing sixty-five sections and there are ten schedules. The entire Law contained in the Act has been discussed in this book.

It extends to the whole of India.

It shall come into force on such date as the Central Government may, by notification, appoint and different dates may be appointed for different provisions of this Act.

This Act has been published for general information in the Gazette of India Extraordinary [Part II].

## **Applicability**

The Mediation Act, 2023 is applicable where mediation is conducted in India, and:

- (i) all or both parties habitually reside in or are incorporated in or have their place of business in India; or
- (ii) the mediation agreement provides that any dispute shall be resolved in accordance with the provisions of this Act; or
- (iii) there is an international mediation; or
- (iv) wherein one of the parties to the dispute is the Central Government or a State Government or agencies, public bodies, corporations and local bodies, including entities controlled or owned by such Government and where the matter pertains to a commercial dispute; or
- (v) to any other kind of dispute if deemed appropriate and notified by the Central Government or a State Government from time to time, for resolution through mediation under this Act, wherein such Governments, or agencies, public bodies, corporations and local bodies including entities controlled or owned by them, is a party.

Thus, from 14<sup>th</sup> day of September 2023, the Mediation Act, 2023 holds the field.



### Salient Features

**Object:** To foster a link between the mediation and the arbitration of commercial disputes, thus reducing the burden on Indian Courts.

**Pre-litigation mediation:** Parties must attempt to settle civil or commercial disputes by mediation before approaching any court or certain tribunals.

**Embargo:** It contains a list of disputes which are not fit for mediation include:

- a) Disputes about claims against minors or persons of unsound mind,
- b) Involving criminal prosecution, and
- c) Affecting the rights of third parties.

The central government has power amend this list.

**Jurisdiction:** It will apply to mediations conducted in India

- a) Involving only domestic parties,
- b) Involving at least one foreign party and relating to a commercial dispute (i.e., international mediation)
- c) If the central or state government is a party, the Act will apply to commercial disputes, and other disputes as notified.

**Mediation process:** Mediation proceedings will be confidential, and must be completed within 180 days extendable by further 180 days by the parties.

**Withdrawal:** A party may withdraw from mediation process after two sessions.

**Court annexed mediation:** Mediation must be conducted as per the rules framed by the Supreme Court or High Courts.

**Mediators:** Mediators may be appointed by the parties by agreement, or an Institution i.e. Mediation service provider.

**Mediation Council of India-** To be established by the Central government. Its functions are to

- a) Register, recognize and regulate mediation institutions and mediators in India
- b) Promote international and domestic mediation in India
- c) Facilitate and conduct continuous training, education and certifications in mediation

- d) Maintain a depository of mediation settlement agreements made in India

**Nature of the mediation:** Agreements resulting from mediation (other than community mediation) will be *final, binding, and enforceable* in the same manner as court judgments. However, it may be challenged on grounds of

- a) Fraud,
- b) Corruption,
- c) Impersonation, or
- d) Relating to disputes not fit for mediation.

**Community mediation:** It will be conducted by a panel of three mediators to resolve disputes likely to affect the peace and harmony amongst residents of a locality.

**No Outcome:** Even if the process of mediation is unable to reach a settlement through pre-litigation mediation, the court or tribunal may at any stage refer the parties to mediation.

## Disputes Not in Purview of Mediation

A mediation under this Act cannot be conducted for resolution of any dispute or matter contained in the indicative list under the First Schedule.

The said First Schedule lists out the following disputes to be ineligible for mediation:

1. Disputes which by virtue of any law for the time being in force may not be submitted for mediation.
2. Disputes relating to claims against minors, deities; persons with intellectual disabilities under paragraph 2 of the Schedule and person with disability having high support needs as defined in clause (t) of section 2 of the Rights of Persons with Disabilities Act, 2016; persons with mental illness as defined in clause (s) of sub-section (1) of section 2 of *The Mental Healthcare Act, 2017*; persons of unsound mind, in relation to whom proceedings are to be conducted under Order XXXII of the Code of Civil Procedure, 1908; and suits for declaration of title against Government; declaration having effect of right *in rem*.
3. Disputes involving prosecution for criminal offences.
4. Complaints or proceedings, initiated before any statutory authority or body in relation to registration, discipline, misconduct of any

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practitioner, or other registered professional, such as legal practitioner, medical practitioner, dentist, architect, chartered accountant, or in relation to any other profession of whatever description, which is regulated under any law for the time being in force.

5. Disputes which have the effect on rights of a third party who are not a party to the mediation proceedings except only in matrimonial disputes where the interest of a child is involved.
6. Any proceeding in relation to any subject matter, falling within any enactment, over which the Tribunal constituted under the National Green Tribunal Act, 2010, has jurisdiction.
7. Any dispute relating to levy, collection, penalties or offences, in relation to any direct or indirect tax or refunds, enacted by any State legislature or the Parliament.
8. Any investigation, inquiry or proceeding, under the Competition Act, 2002, including proceedings before the Director General, under the Act; proceedings before the Telecom Regulatory Authority of India, under the Telecom Regulatory Authority of India Act, 1997 or the Telecom Disputes Settlement and Appellate Tribunal established under section 14 of that Act.
9. Proceedings before appropriate Commissions, and the Appellate Tribunal for Electricity, under the Electricity Act, 2003.
10. Proceedings before the Petroleum and Natural Gas Regulatory Board, and appeals therefrom before the Appellate Tribunal under the Petroleum and Natural Gas Regulatory Board Act, 2006.
11. Proceedings before the Securities and Exchange Board of India, and the Securities Appellate Tribunal, under the Securities and Exchange Board of India Act, 1992.
12. Land acquisition and determination of compensation under land acquisition laws, or any provision of law providing for land acquisition.
13. Any other subject matter of dispute which may be notified by the Central Government.

However, 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.

Thus, now the new era of codified mediation, giving more credibility to informal process of dispute resolution has ushered in. This is a significant step towards decongesting the pressure on courts and at the same time, consuming talent of vast number of professionals and citizen in this process. Early resolution of disputes is expected to put unutilised or under-utilised asset locked up in litigation to optimum productive use at an early date. The other advantage can be in the field of maintaining social harmony and promotion of goodwill in the society.

*(Ref. Sections 1, 2, 6 and First Schedule of the Mediation Act, 2023)*

## Chapter 7

# Mediation

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### Global Scenario

In last year, about fifty Nations have signed the International Treaty on Mediation in which two great economic powers participated like China and United States, along with the other large economies in Asia India and South Korea held there meeting in Singapore. These deliberations resulted in inking of the International Treaty on Mediation. This Treaty provides overall settlement of the disputes among the signatory countries. Resolving the dispute through Mediation process has been the focus of the treaty. This treaty is also known as Singapore Convention on International Settlement Agreement. Representatives of 70 countries participated.

Mediation has emerged as an effective means of resolving disputes, especially in the context of commercial disagreements. It is known for its speed, efficiency, and cost-effectiveness. However, a significant challenge has been the absence of a governing framework for this practice, despite its recognition by Indian Courts in legal decisions and legislation.

### What is Mediation?

Mediation is a **voluntary process** in which parties try to settle disputes with the assistance of an independent third person. The process of Mediation **does not impose a solution on the parties. The process** creates a conducive environment for resolution of the dispute. The Mediation process is initiated per volition of parties to dispute. **No rules are stipulated, or procedures are laid down and is left to the choice of the parties. The Mediator acts as a catalyst in trying to resolve the dispute to the satisfaction of parties to the dispute.**

**Mediation** is an alternatives Dispute Resolution process, wherein tapping doors of courts or tribunals is kept at a bay. A Neutral Third party, like an independent Chartered Accountant or any other professional acts as middleman. He assists the parties to discuss the dispute in an appropriate manner. This facilitates reaching of a unanimous agreement on dispute resolution that is acceptable by both or all the parties to dispute. Proceedings are treated as confidential and without prejudice. Therefore, is the dispute is

not resolved through mediation process, there is no recourse to what transpired during these proceedings. This phenomenon provides comfort and freedom to the parties in expressing their respective views.

## Indian Jurisdiction

In India, mediation was legitimized by **various enactments, though there was no special legislation there for** before the enactment of **The Mediation Act 2023**.

Therefore, Mediation can be considered as an extended arm of the law. The is expected to be much more effective as it is per choice of the parties to dispute that is now provided with a legal armour.

Mediation is part of **Alternate Dispute Mechanism (ADR)**.

### Mediation

The Act has defined 'Mediation as follows:

"Mediation" includes a process, whether referred to by the expression mediation, pre-litigation mediation, online mediation, community mediation, conciliation or an expression of similar import, whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person referred to as mediator, who does not have the authority to impose a settlement upon the parties to the dispute. [Section 2(h)]

As per definition under the Act, '*Mediation*' has been inclusively defined. Thus, whatever common folk understand as meaning of Mediation, it is included. Besides, the following is also included:

- (i) A process, whether referred to by the expression mediation, pre-litigation mediation, online mediation, community mediation, conciliation, or an expression of similar import,
- (ii) Whereby parties attempt to reach an amicable settlement of their dispute.
- (iii) With the assistance of a third person referred to as mediator, who does not have the authority to impose a settlement upon the parties to the dispute.

Reference is made of the following terms:

- (a) Mediation:
- (b) Pre-litigation mediation:

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- (c) Online mediation:
- (d) Community mediation:
- (e) Conciliation:
- (f) An expression of similar import:

## **Mediation Contract**

It is provided that a mediation agreement shall be in writing, by or between parties and any one party claiming through them. It should be for submitting to mediation either (i) all or (ii) certain disputes which

- (a) have arisen between the parties or
- (b) which may arise between the parties.

A mediation agreement may be in the form of a mediation clause in a contract or in the form of a separate agreement.

A mediation agreement is required to be in writing, if it is contained in or recorded as—

- (a) any document signed by the parties.
- (b) an exchange of communications or letters including through electronic form (under the Information Technology Act, 2000).
- (c) any pleadings in a suit or any other proceedings in which existence of mediation agreement is alleged by one party and not denied by the other.

A reference in any agreement containing a mediation clause shall constitute a mediation agreement if the agreement is in writing and the reference is such as to make the mediation clause as part of the agreement.

The parties may agree to submit to mediation any dispute arising between them under an agreement, entered into either

- (i) prior to arising of the dispute or
- (ii) subsequent to arising of the dispute.

A mediation agreement in case of international mediation shall refer to an agreement for resolution in matters of commercial disputes. "Commercial dispute" means a dispute defined in section 2(1) (c) of The Commercial Courts Act, 2015.

Where there are several disputes between the parties, the choices are:

- (i) refer one dispute for Mediation or
- (ii) refer some of the disputes for Mediation or
- (iii) refer all the dispute for Mediation.

Of course, after selection of alternative (i) or (ii) further disputes can also be referred for mediation through the same or some other Mediator/s. Further, after selection of alternative (iii), it is possible that certain of the disputes are withdrawn from the process of Mediation.

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:

However, pre-litigation mediation in matters of commercial disputes of Specified Value shall be undertaken in accordance with the provisions of section 12A of The Commercial Courts Act, 2015, and the rules made thereunder. These provisions shall, also, be applicable to the tribunals notified by the Central Government or a State Government, as the case may be.

For the purposes of commercial disputes of Specified Value, unless otherwise agreed upon by the parties, a mediator competent to conduct mediation should be one of the following:

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

For conducting pre-litigation mediation under the Act, a party may request any person designated for this purpose by the High Courts, or an Authority constituted under the Legal Services Authorities Act, 1987, as the case may be.

The court-annexed mediation centre and an Authority constituted under the Legal Services Authorities Act, 1987, shall maintain a panel of mediators for the purposes of pre-litigation mediation.



### Motor Vehicles Act

Overriding provisions have been made for issues under the Motor Vehicles Act, 1988. When an application for compensation arising out of an accident is made before the Claims Tribunal, if the settlement as provided for in section 149 of that the Motor Vehicles Act, 1988 is not arrived at between the parties, the Claims Tribunal shall refer the parties for mediation to a mediator or mediation service provider under this Act. Further, where the parties arrive at a settlement agreement under sub-section (6), it shall be placed before the Claims Tribunal for its consideration. If the parties do not reach to settlement agreement, a non-settlement report prepared by the mediator shall be forwarded to the Claims Tribunal, which has referred the matter for mediation, for adjudication.

A mediation under this Act shall not be conducted for resolution of any dispute or matter contained in the indicative list under the First Schedule. Contents of this First Schedule are reproduced in Chapter 3 of this book. The First Schedule can be amended by the Central Government. The amendment can be made by notification. For making any amendment to the First Schedule, the Central Government should be satisfied that it is necessary or expedient so to do.

Of course, the provision further states that nothing contained in the First Schedule shall prevent any court from referring any dispute relating to compoundable offences including the matrimonial offences which are compoundable and pending between the parties, to mediation. This order can be made by the Court, if deems such an action appropriate. Such reference can be made at any stage of proceedings.

The parties shall not be under obligation to come to a settlement in the mediation pursuant to such reference.

If the court or tribunal refers the parties to undertake mediation, it may pass suitable interim order to protect the interest of any party if deemed appropriate.

Any dispute court refers to Mediation, the outcome of such mediation shall not be deemed to be a judgment or decree of court. It shall be further considered by the court.

## On-line Mediation

Mediation can be through physical meeting of the Mediator and the parties to the dispute. The businesses have become global and visits within India or beyond. This factor makes it difficult that all the parties are at one place on the same date and time. Technology has made it possible to conduct meetings virtually. This technology feature can be used for the benefit of expediting process of mediation, the lawmakers believe.

Act has made enabling provisions for online mediation. Pre-litigation mediation may be conducted at any stage of mediation on electronic medium. Conducting mediation on an online mode, 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. The process of online mediation shall be in such manner as may be specified. The conduct of online mediation shall be in the circumstances, which ensure that the essential elements of integrity of proceedings and confidentiality are maintained at all times and the mediator may take such appropriate steps in this regard as he deems fit. Subject to the other provisions of this Act, the mediation communications in the case of online mediation shall, ensure confidentiality of mediation.

Chapter III of the Act deals with the process of Mediation and Chapter VII deals with Online Mediation.

*(Ref. Sections 2(h), 4, 5, 6, 7 and 30 of the Mediation Act, 2023)*

## Chapter 8

# Mediators

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Mediator is the fulcrum around which the wheel of mediation process revolves. The parties to dispute can select a mediator, who, in their opinion shall assist in amicable resolution of dispute. A mediator may be formally trained or otherwise. Of course, trained mediator shall be more successful in the mission and will have better understanding of law that can add credibility to the mediation settlement agreement.

A person of any nationality may be appointed as a mediator. However, a mediator of any foreign nationality shall possess such qualification, experience and accreditation as may be specified under the Act.

The parties shall be free to agree upon the name of mediator and the procedure for their appointment.

If the parties do not reach any agreement on a matter name of mediator and the procedure for their appointment, then the party seeking initiation of mediation shall make an application to a mediation service provider for the appointment of a mediator. Upon receiving such an application, the mediation service provider shall appoint,—

- (i) the mediator as agreed by the parties; or
- (ii) in case the parties are unable to reach agreement as to the appointment of mediator or mediator agreed by them refuses to act as mediator, a mediator from the panel maintained by it, with his consent.

This shall be done within a period of seven days,

The person appointed as a mediator shall communicate his willingness or otherwise within a period of seven days from the date of receipt of communication of such appointment.

The mediation service provider shall, while appointing any person from the panel of mediators maintained by it, consider his suitability and the preference of the parties for resolving the dispute.

The person appointed as a mediator shall, prior to the conduct of mediation, disclose in writing to the parties regarding any circumstance or potential circumstance, personal, professional, financial, or otherwise, that may constitute any conflict of interest or that is likely to give rise to justifiable

doubts as to his independence or impartiality as a mediator. During the process of mediation, the mediator shall, without delay, disclose to the parties in writing any conflict of interest, referred to earlier, that has newly arisen or has come to his knowledge.

Upon disclosure interest by the mediator, the parties shall have the option to waive any objection if all of them express in writing, which shall be construed as the consent of parties. Alternatively, if either party desires to replace the mediator, then, in case of—

- (i) institutional mediation, such party shall apply to the mediation service provider for termination of the mandate of mediator.
- (ii) mediation other than institutional mediation, such party shall terminate the mandate of mediator.

A mediation service provider may terminate the mandate of a mediator upon—

- (i) the receipt of application from a party for termination of the mandate of mediator; or
- (ii) the receipt of information about the mediator being involved in a matter of conflict of interest from participants or any other person; or
- (iii) his withdrawal from mediation for any reason:

However, termination under clause (ii) shall be effected if, after giving a hearing to the mediator, mediation service provider finds that there is justifiable doubt as to the independence or impartiality of the mediator and that the same has been brought to the notice of parties and that either party desires to replace the mediator.

Upon termination of the mandate of mediator—

- (i) in case of mediation other than institutional mediation under clause (ii) of sub-section (4) of section 10, the parties may, appoint another mediator within a period of seven days from such termination; and
- (ii) under section 11, the mediation service provider shall appoint another mediator from the panel maintained by it within a period of seven days from such termination.

## Place of Mediation

Every mediation under this Act shall be undertaken within the territorial jurisdiction of the court or tribunal competent to adjudicate upon the dispute.

## **CAs as Mediators**

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However, with consent of the parties, mediation may be conducted at any other place or online. In such a scenario, for the purpose of enforcement, challenge and registration of the mediated settlement agreement, the same shall be deemed to be undertaken within the territorial limits of the competent court or tribunal.

## **Commencement of Mediation**

Mediation is deemed to have commenced from the date a party receives notice invoking mediation under a mediation agreement. In case there is no such agreement, from the date of appointment or consent of the mediator to be appointed, whichever the case may be.

## **Conduct of Mediation**

The Act specifies and defines role of the mediator at the time of conduct of mediation. A mediator while assuming role of a facilitator, shall assist parties in an independent, neutral and unbiased manner in their attempt to reach amicable settlement of their dispute. Further, the mediator is guided by the principles of objectivity and fairness and protect the voluntariness, confidentiality and self-determination of the parties and not bound by procedural law. This would ensure more flexibility from procedural requirements and party autonomy in arriving at an amicable settlement.

## **Role of Mediator**

A mediator's role is confined to that of a facilitator who assists in identifying issues, advancing better understanding, clarifying priorities, exploring areas of settlement and generating options in an attempt to resolve the dispute. Further, the Act restrict a mediator from giving any assurance that mediation may result in a settlement.

Upon conclusion of mediation proceedings, settlement is arrived through a agreement in writing known as mediated settlement agreement. Terms of mediation agreement may extend beyond scope of disputes referred to mediation.

*(Ref. Sections 8, 9, 10, 11 and 12 of the Mediation Act, 2023)*

# Mediation Process

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Chapter V of the Act prescribes process for mediation. This Chapter provides framework for mediation.

## Jurisdiction

Every mediation under this Act shall be undertaken within the territorial jurisdiction of the court or tribunal of competent jurisdiction to decide the subject matter of dispute. However, on the mutual consent of the parties, mediation may be conducted at any place outside the territorial jurisdiction of the court or tribunal, or by way of online mediation. It is, also, clarified under the Act that where the parties agree to conduct the mediation at any place outside the territorial jurisdiction or online, for the purpose of enforcement, challenge and registration of the mediated settlement agreement, the same shall be deemed to have been undertaken within the territorial jurisdiction of the court or tribunal of competent jurisdiction.

## Commencement and Conduct

The mediation proceedings with respect to a particular dispute shall be deemed to have commenced—

- (a) where there is an existing agreement between the parties to settle the dispute through mediation, the date on which a party or parties receives notice from the party initiating the mediation, to refer such dispute to mediation; or
- (b) in other cases—
  - (i) where the parties have agreed to appoint a mediator of their choice for mediation and settlement of disputes between them on the date the mediator provides his consent to appointment; or
  - (ii) where one of the parties applies to a mediation service provider for settlement of disputes through mediation, the date of appointment of a mediator.

## **CAs as Mediators**

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The mediation process shall be conducted in the manner as may be specified. The mediator shall assist the parties in an independent, neutral, and impartial manner in their attempt to reach an amicable settlement of their dispute. The mediator shall at all times be guided by the principles of objectivity and fairness and protect the voluntariness, confidentiality and self-determination of the parties, and the standards for professional and ethical conduct as may be specified. The mediation process may include the mediator taking such measures as may be considered appropriate, considering the circumstances of the case, including meeting with parties or participants, jointly or separately, as frequently as deemed fit by the mediator, both in order to convene the mediation, and during the mediation for the orderly and timely conduct of the process and to maintain its integrity.

The mediator with the consent of the parties shall determine the language or languages to be used in the mediation process.

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. The process of online mediation shall be in such manner as may be specified. The conduct of online mediation shall be in the circumstances, which ensure that the essential elements of integrity of proceedings and confidentiality are maintained at all times and the mediator may take such appropriate steps in this regard as he deems fit. Subject to the other provisions of this Act, the mediation communications in the case of online mediation shall, ensure confidentiality of mediation.

It is expressly provided that the mediator shall not be bound by the Code of Civil Procedure, 1908, or the Indian . Evidence Act, 1872.

## **Dos and Don'ts**

Duties of the mediator are as follows:

- (i) to facilitate voluntary resolution of the dispute by the parties
- (ii) communicate the view of each party to the other to the extent agreed to by them,
- (iii) assist them in identifying issues, advancing better understanding, clarifying priorities,

- (iv) exploring areas of settlement
- (v) generating options in an attempt to resolve the dispute expeditiously,
- (vi) emphasising that it is the responsibility of the parties to take decision regarding their claims.

The mediator should expressly inform that he only facilitates in arriving at a decision to resolve a dispute. That the mediator shall not impose any settlement nor give any assurance that the mediation may result in a settlement.

The mediator shall not—

- (a) act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceeding in respect of a dispute that is the subject matter of the mediation proceedings;
- (b) be presented by the parties as a witness in any arbitral or judicial proceeding.

Where no agreement is arrived at between the parties, within the time period as provided under section 18, or where, the mediator is of the view that no settlement is possible, he shall keep confidential all the following matters relating to the mediation proceedings, namely::

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

No audio or video recording of the mediation proceedings shall be made or maintained by the parties or the participants including the mediator and mediation service provider, whether conducted in person or online to ensure confidentiality of the conduct of mediation proceedings.

No party to the mediation shall in any proceeding before a court or tribunal including arbitral tribunal, rely on or introduce as evidence any information or communication set forth in clauses (i) to (iv) of sub-section (1), including any



## **CAs as Mediators**

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information in electronic form, or verbal communication and the court or tribunal including arbitral tribunal shall not take cognizance of such information or evidence.

The provisions of this section shall not prevent the mediator from compiling or disclosing general information concerning matters that have been subject of mediation, for research, reporting or training purposes, if the information does not expressly or indirectly identify a party or participants or the specific disputes in the mediation.

For the removal of doubts, it is hereby clarified that nothing contained in these provisions shall apply to the mediated settlement agreement where its disclosure is necessary for the purpose of registration, enforcement, and challenge.

## **Time Limit**

Mediation under this Act shall be completed within a period of one hundred and twenty days from the date fixed for the first appearance before the mediator. This period for mediation may be extended for a further period as agreed by the parties, but not exceeding sixty days.

This time limit is notwithstanding anything contained in any other law for the time being in force.

Where no agreement is arrived at between the parties, within the time period as provided under section 18, or where, the mediator is of the view that no settlement is possible, he shall,—

- (i) in the case of institutional mediation, submit a non-settlement report to the mediation service provider in writing;
- (ii) in all other cases, prepare a non-settlement report and provide a signed copy to all the parties:

The report referred to in this section shall not disclose the cause of non settlement, or any other matter or thing referring to their conduct, during mediation.

## **Settlement Agreement**

A mediated settlement agreement includes an agreement in writing between some or all of the parties resulting from mediation, settling some or all of the disputes between such parties, and authenticated by the mediator: The terms

of the mediated settlement agreement may extend beyond the disputes referred to mediation. Where a mediated settlement agreement is reached between the parties with regard to all or some of the disputes, the same shall be reduced in to writing and signed by the parties. Any mediated settlement agreement under this section includes a settlement agreement resulting from online mediation.

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

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

The mediated settlement agreement signed,—

- (i) ***Institutional mediation:*** It shall be submitted to the mediator, who shall, after authenticating the same, forward it with a covering letter signed by him, to the mediation service provider and also provide a copy to the parties;
- (ii) ***In all other cases:*** It shall be submitted to the mediator who shall, after authenticating the mediated settlement agreement, provide a copy to all the parties.

The registration of mediation settlement agreement may be made by the parties or mediation service provider within a period of one hundred and eighty days from the date of receipt of authenticated copy of mediated settlement agreement: Mediated settlement agreement may be allowed to be registered after the expiry of period of one hundred and eighty days on payment of such fee as may be specified in consultation with the Authority or any other body..

The mediated settlement agreement under this section may be registered with such Authority or the body situated within the territorial jurisdiction of the court or tribunal of competent jurisdiction to decide the subject matter of dispute.

## Costs

The cost of mediation, other than community mediation shall be such as may be specified. Unless otherwise agreed by the parties, all costs of mediation,

## **CAs as Mediators**

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including the fees of the mediator and the charges of the mediation service provider shall be borne equally by the parties.

The provisions of this Act shall not apply to the proceedings conducted by Lok Adalat and Permanent Lok Adalat under the Legal Services Authorities Act, 1987. For the purposes of record, mediated settlement agreement arrived at between the parties, other than those arrived in a court or tribunal referred mediation or award of Lok Adalat or final award of the Permanent Lok Adalat under section 21 or section 22E of the Legal Services Authorities Act, 1987, may, at the option of parties, be registered with an Authority constituted under the said Act, or any other body as may be notified by the Central Government, in such manner as may be specified and such Authority or body shall issue a unique registration number to such settlement agreements. It has been clarified that nothing contained in this sub-section shall affect the rights of parties to enforce the mediated settlement agreement under section 27 or challenge the same under section 28.

*(Ref. Sections 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 30 of the Mediation Act, 2023)*

## Chapter 10

# Enforcement

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In order to provide credibility to the mediation process, provisions of enforcement of mediated settlement agreement have been made in Chapter VI of the Act.

A mediated settlement agreement resulting from a mediation signed by

- (i) the parties and
- (ii) authenticated by the mediator

shall be final and binding on the parties.

It is also binding persons claiming under them.

It is provided that the mediated settlement agreement is enforceable as per the provisions in accordance with the provisions of the Code of Civil Procedure, 1908. Such enforcement is made in the same manner as if it is a judgment or decree passed by a court. It can, accordingly, be relied on by any of the parties or persons claiming through them, by way of defence, set off or otherwise in any legal proceeding.

In any case in which the mediated settlement agreement is arrived at between the parties and is sought to be challenged by either of the parties, such party may file an application before the Court or tribunal of competent jurisdiction.

A mediated settlement agreement can be challenged only on all or any of the following grounds:

- (i) fraud.
- (ii) corruption.
- (iii) impersonation.
- (iv) where the mediation was conducted in disputes or matters not fit for mediation under the First Schedule [refer Chapter 6].

The challenge is possible notwithstanding anything contained in any other law for the time being in force.

An application for challenging the mediated settlement agreement should not be made after 90 days have elapsed from the date on which the party making

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that application has received the copy of mediated settlement agreement.

However, if the court or tribunal, as the case may be, is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of 90 days, it may entertain the application within a further period of 90 days.

In computing the period of limitation fixed for any proceeding relating to disputes in respect of which a mediation has been undertaken under this Act, the period from the date of commencement of mediation under section 14, and up to:

- (i) submission of report under section 21; or
- (ii) termination of mediation under section 24,

shall be excluded.

This provision is binding notwithstanding anything contained in the Limitation Act, 1963 or in any other law for the time being in force,

*(Ref. Sections 27, 28 and 29 of the Mediation Act, 2023)*

# Mediation Council of India

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The Act provides for establishment of the Mediation Council of India that will oversee mediation proceedings and carry out such other functions as are entrusted by the Central Government.

The law requires the Central Government to establish a Council to be known as the Mediation Council of India, The Council shall perform the duties and discharge the functions under this Act. A notification shall be issued for this purpose.

The Council shall be a body corporate by the name Mediation Council of India. It shall have perpetual

succession and a common seal. It will have power to acquire, hold and dispose of property, both movable and immovable, and to enter into contracts, and shall, by the said name, sue or be sued. It shall act subject to provisions of this Act.

The head office of the Council shall be at Delhi. It can be at such other place as may be notified by the Central Government. The Council may, in consultation with the Central Government, establish offices at other places in India and abroad.

## The Council

The Council shall consist of the following members, namely:—

Chairperson:

- (a) a person of ability, integrity and standing having adequate knowledge and professional experience or shown capacity in dealing with problems relating to law, alternative dispute resolution preferably mediation, public affairs or administration.

Appointing Authority: the Central Government.

Members:

- (b) a person having knowledge and experience in law related to mediation or alternative dispute resolution mechanisms,

## **CAs as Mediators**

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Appointing Authority: the Central Government.

- (c) an eminent person having experience in research or teaching in the field of mediation and alternative dispute resolution laws,

Appointing Authority: the Central Government.

- (d) Secretary to the Government of India in the Department of Legal Affairs, Ministry of Law and Justice or his representative not below the rank of Joint Secretary

*Ex officio*;

- (e) Secretary to the Government of India in the Department of Expenditure, Ministry of Finance or his representative not below the rank of Joint Secretary

*Ex officio*;

Member-Secretary:

- (f) Chief Executive Officer

*Ex officio* and

Part-Time Member:

- (g) one representative of a recognised body of commerce and industry,  
Chosen by the Central Government—

## **Term**

The Members of the Council shall hold office as such, for a term of four years from the date on which they enter upon their office and shall be eligible for re-appointment. Provided that no Member shall hold office after he has attained the age of seventy years, in the case of Chairperson, and sixty-seven years, in the case of any other Member. It further provides that if the Chairperson is appointed on Part-Time basis, then, at least one of the Members appointed under clauses (b) or (c) shall be a Full-Time Member. *Ex officio* Member's term shall be co-terminus with the term of their office.

The Member may, by notice in writing, under his hand addressed to the Central Government, resign his office. However, such a Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor

enters upon his office or until the expiry of his term of office, whichever is earlier.

## Service Conditions

The salaries, allowances and other terms and conditions of Members other than *ex officio* Members shall be such as may be prescribed. The Member are entitled to such travelling and other allowances as is prescribed.

## Vacancy Not to Affect

No act or proceeding of the Council shall be invalid merely by reason of—

- (a) any vacancy or any defect, in the constitution of the Council;
- (b) any defect in the appointment of a person as a Member of the Council; or
- (c) any irregularity in the procedure of the Council not affecting the merits of the case.

## Removal of Member

The Central Government may, remove any Member from his office, if he—

- (a) is an undischarged insolvent; or
- (b) has engaged at any time, during his term of office, in any paid employment without the permission of the Central Government; or
- (c) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
- (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member; or
- (e) has so abused his position as to render his continuance in office prejudicial to the public interest; or
- (f) has become physically or mentally incapable of acting as a Member.

Where a Member is proposed to be removed on any ground, he shall be informed of charges against him and given an opportunity of being heard in respect of those charges.

## Experts, Officers

The Council may, appoint such experts and constitute such committees of



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experts as it may consider necessary to discharge its functions on such terms and conditions as may be specified.

There shall be a Chief Executive Officer (COO) of the Council, who shall be responsible for the day to day administration and implementation of the decisions of the Council. There shall be a Secretariat to the Council consisting of such number of officers and employees as may be specified. Qualification, appointment and other terms and conditions of service of the COO and of the other employees and other officers of the Council shall be such as may be specified. The Central Government shall provide such number of officers and employees as may be necessary for the functioning of the Council till regulations are made under this section.

## **Functions**

The Mediation Council of India shall perform the following functions —

- (a) endeavour to promote domestic and international mediation in India through appropriate guidelines;
- (b) endeavour to develop India to be a robust centre for domestic and international mediation;
- (c) lay down the guidelines for the continuous education, certification and assessment of mediators by the recognised mediation institutes;
- (d) provide for the manner of conduct of mediation proceedings, under sub-section (1) of section 15;
- (e) provide for manner of registration of mediators and renew, withdraw, suspend or cancel registration on the basis of conditions as may be specified;
- (f) lay down standards for professional and ethical conduct of mediators under sub-section (3) of section 15;
- (g) hold trainings, workshops and courses in the area of mediation in collaboration with mediation service providers, law firms and universities and other stakeholders, both Indian and international, and any other mediation institutes;
- (h) enter into memoranda of understanding or agreements with domestic and international bodies or organisations or institutions;

- (i) recognise mediation institutes and mediation service providers and renew, withdraw, suspend or cancel such recognition;
- (j) specify the criteria for recognition of mediation institutes and mediation service providers;
- (k) call for any information or record of mediation institutes and mediation service providers;
- (l) lay down standards for professional and ethical conduct of the mediation institutes and mediation service providers;
- (m) publish such information, data, research studies and such other information as may be required;
- (n) maintain an electronic depository of the mediated settlement agreements made in India and for such other records related thereto in such manner as may be specified; and
- (o) perform any other function as may be assigned to it by the Central Government.

The Council, after the end of each year or at such other intervals as directed by the Central Government, prepare a report on the implementation of the provisions of this Act during the year or such interval. The report can be prepared, shall, as soon as practicable. The Report should be forwarded to the Central Government. The Central Government is empowered to take such additional measures as it deems necessary to supplement the functioning of the Council and for the effective implementation of the provisions of the Act.

## **Rules**

Without prejudice to the foregoing provisions of this Act, the Council shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time. However, the views of the Council shall be taken into consideration before any direction is given. The decision of the Central Government whether a question is one of policy or not shall be final.

The Council can, with the previous approval of the Central Government, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act. In particular, and without

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prejudice to the generality of the foregoing power, such regulations may make provision for—

- (a) qualification, experience and accreditation for mediators of foreign nationality under the proviso to sub-section (1) of section 8;
- (b) manner of conducting mediation proceeding under sub-section (1) of section 15;
- (c) standards for professional and ethical conduct of mediators under sub-section (3) of section 15;
- (d) manner of registration of mediated settlement agreement under sub-section (1) of section 20;
- (e) fees for registration of mediated settlement agreement under the proviso to sub-section (2) of section 20;
- (f) cost of mediation under sub-section (1) of section 26;
- (g) manner of process of conducting online mediation under sub-section (2) of section 30;
- (h) the terms and conditions of experts and committees of experts under section 36;
- (i) qualifications, appointment and other terms and conditions of service of the Chief Executive Officer under sub-section (2) of section 37;
- (j) the number of officers and employees of the Secretariat of the Council under sub-section (4) of section 37;
- (k) the qualification, appointment and other terms and conditions of the employees and other officers of the Council under sub-section (5) of section 37;
- (l) conditions for registration of mediators and renewal, withdrawal, suspension or cancellations of such registrations under clause (d) of section 38;
- (m) criteria for recognition of mediation institutes and mediation service providers under clause (i) of section 38;
- (n) manner of maintenance of electronic depository of mediated settlement agreement under clause (m) of section 38;
- (o) manner for recognition of mediation service provider under sub-section (2) of section 40;

- (p) such other functions of mediation service provider under clause (f) of section 41;
- (q) duties and functions to be performed by mediation institutes under section 42; and
- (r) any other matter in respect of which provision is necessary for the performance of functions of the Council under this Act.

## **Mediation Fund**

A "Mediation Fund" for the purposes of promotion, facilitation and encouragement of mediation under this Act, shall be constituted and shall be administered by the Council.

The Fund shall receive the following, namely:—

- (a) all monies provided by the Central Government;
- (b) all fees and other charges received from mediation service provider, mediation institutes or bodies or persons;
- (c) all monies received by the Council in the form of donations, grants, contributions and income from other sources;
- (d) grants made by the Central Government or the State Government for the purposes of the Fund;
- (e) amounts deposited by persons as contributions to the Fund;
- (f) amounts received in the Fund from any other source; and
- (g) interest on the above or other income received out of the investment made from the Fund.

The Fund shall be applied towards meeting the salaries and other allowances of Member, Chief Executive Officer, Officers and employees and the expenses of the Council including expenses incurred in the exercise of its powers and discharge of its duties under this Act.

The Council shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, including the balance sheet, in such form and manner as may be prescribed in consultation with the Comptroller and Auditor-General of India.

The accounts of the Council shall be audited by the Comptroller and Auditor-General of India and any expenditure incurred by him in connection with such

## **CAs as Mediators**

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audit shall be payable by the Council to the Comptroller and Auditor-General of India.

The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of the Council shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the audit of the Government accounts, and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect the offices of the Council.

The accounts of the Council as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

*(Ref. Sections 31, 32, 33, 34, 35, 36, 37, 38, 39, 45 and 46 of the Mediation Act, 2023)*

## Mediation Service Providers and Mediation Institutes

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Certain agencies that are catalyst in resolution of disputes through process of mediation are recognised under the law and legitimacy has been provided to such agencies. These are as follows:

**"Mediation service provider"** includes—

- (a) a body or an organisation that provides for the conduct of mediation under this Act and the rules and regulations made thereunder and is recognised by the Council; or
- (b) an Authority constituted under the Legal Services Authorities Act, 1987; or
- (c) a court-annexed mediation centre; or
- (d) any other body as may be notified by the Central Government:

Provided that the bodies referred to in clauses (b), (c) and (d) shall be deemed to be mediation service providers recognised by the Council.

The mediation service provider shall be recognised by the Council in the manner as may be specified.

The mediation service providers shall perform the following functions, namely:—

- (a) accredit mediators and maintain panel of mediators;
- (b) provide the services of mediator for conduct of mediation;
- (c) provide all facilities, secretarial assistance and infrastructure for the efficient conduct of mediation;
- (d) promote professional and ethical conduct amongst mediators.
- (e) facilitate registration of mediated settlement agreements in accordance with the provisions of section 20; and
- (f) such other functions as may be specified.

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

## **CAs as Mediators**

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The Institute of Chartered Accountants of India can constitute a Section 8 Company that can act as a Mediation service provider. This body will be able to train Chartered Accountants in the field of mediation and sharpen their skillsets to resolve disputes amicably, lead the parties to conclusion of dispute.

The Institute, having five regional offices and about 175 branches, chapters and a host of study circles shall provide an army of mediators. This will serve the cause of providing quality mediation services. The outcome shall be reducing backlog at Courts and unlocking precises national wealth, putting it to productive utilisation.

*(Ref. Sections 40, 41 and 42 of the Mediation Act, 2023)*

## Community Mediation

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Common playground, parking, festival celebrations, burning crackers, etc., are examples of events that may result into community difference in viewpoints and disputes. Informal process of settling differences and tension in the locality is done by senior and knowledgeable members of the society. Such set of people, often proactively associate themselves in ensuring wellbeing and harmony in the locality.

The Act also provides for Community Mediation that formalizes this aspect of informal understandings.

For the purposes of Community Mediation, the Authority constituted under The Legal Services Authorities Act, 1987 is required to notify a permanent panel of community mediators. The panel may be revised from time to time. Where such an authority has not been constituted, this is done by the District Magistrate or the Sub-Divisional Magistrate.

For inclusion in the panel of Community Mediators, because of their knowledge, experience and status in the society and having legal background, are preferred personalities.

Under the Act, Panel of Community Mediators inclusion is required to be from the following class persons:

- (a) person of standing and integrity who are respectable in the community.
- (b) any local person whose contribution to the society has been recognised.
- (c) representative of area or resident welfare associations.
- (d) person having experience in the field of mediation; and
- (e) any other person deemed appropriate.

While panel is constituted, representation of women or any other class or category of persons may be considered.

Any dispute likely to affect peace, harmony and tranquillity amongst the residents or families of any area or locality may be settled through community mediation. This is with prior mutual consent of the parties to the dispute. Under the Act, any of the parties should make an application before



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the concerned Authority constituted under the Legal Services Authorities Act, 1987 for referring the dispute to mediation. In areas where no such Authority has been constituted such an application should be made to the District Magistrate or Sub-Divisional Magistrate

On receipt of application, the concerned Authority is required to constitute panel of three community mediators. This is with a view to facilitate settlement of a dispute for which an application has been received.

Any community mediation initiated under the Act, it is necessary that it should be conducted by the panel of three community mediators constituted by the competent Authority, referred to in above paragraphs. The Mediation Panel has to devise suitable procedure for the purpose of resolving the dispute. The community mediators have duty of making efforts to resolve disputes through community mediation. The mediators should help parties for resolving disputes amicably.

The provisions of Section 20 shall, *mutatis mutandis* apply, in relation to the registration of mediated settlement agreement under this section.

Settlement agreement is arrived at through community mediation under this Act, the same should be reduced into writing. The settlement agreement should bear signatures of the parties. It should be authenticated by the community mediators. A copy of the settlement agreement should be provided to the parties. The registration of settlement agreement may be made by the parties within a period of 180 days from the date of receipt of authenticated copy of mediated settlement agreement. mediation service provider can, in similar timelines, register the said agreement. Extension of time for registration is allowed after initial period of 180 days, which is subject to payment of fees.

Any settlement agreement arrived in this manner is for the purpose of maintaining the peace, harmony and tranquillity amongst the residents or families of any area or locality.

However, such a settlement agreement is not enforceable as a judgment or decree of a civil court.

Where no settlement agreement is arrived at, a non-settlement report may be submitted by the community mediators to the Authority and to the parties.

The provisions relating to Community Mediation are contained in Chapter X.

*(Ref. Sections 20, 43 and 44 of the Mediation Act, 2023)*

To make mediation process in India, more effective, certain provisions of residual nature, have been made in the Act.

## **Government Litigation**

The Central Government or the State Government or any of its entity or agency, as the case may be, may frame any schemes or guidelines, for resolution of any dispute through mediation or conciliation in cases where the Central Government or the State Government or any of its entity or agency is one of the parties and in such cases mediation or conciliation may be conducted in accordance with such schemes or guidelines.

Notwithstanding anything contained in this Act, no dispute including a commercial dispute, wherein the Central Government or State Government or any of its agencies, public bodies, corporations and local bodies including entities controlled or owned by them is a party, the settlement agreement arrived at shall be signed only after obtaining the prior written consent of the competent authority of such Government or any of its entity or agencies, public bodies, corporations and local bodies, as the case may be.

## **No Action**

No suit, prosecution or other legal proceeding shall lie against the Central Government or a State Government or any officer of such Government, or the Member or Officer or employee of the Council or a mediator, mediation institutes, mediation service providers, which is done or is intended to be done in good faith under this Act or the rules or regulations made thereunder.

## **Rule Making**

The Central Government may, by notification, make rules for carrying out the provisions of this Act.

In particular, and without prejudice to the generality of the foregoing power, such rules may make provision for—

- (a) the salaries and allowances and the terms and conditions of the Members under sub-section (3) of section 32;

## **CAs as Mediators**

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- (b) the travelling and other allowances payable to the Member under sub-section (4) of section 32;
- (c) the form and manner of annual statement of accounts, including the balance sheet under sub-section (1) of section 46; and
- (d) any other matter which is to be or may be prescribed.

Every notification issued under sub-section (2) of section 6, sub-section (2) of section 55, rule and regulation made under this Act shall be laid, as soon as may be after it is issued or made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification, rule or regulation or both Houses agree that the notification, rule or regulation should not be issued or made, the notification, rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification, rule or regulation.

If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to it to be necessary for removing the difficulty. However, no such order shall be made under this section after the expiry of a period of five years from the date of commencement of this Act. Every order so made shall be laid, as soon as may be after it is made, before each House of Parliament.

The provisions of this Act shall have overriding effect for conduct of mediation or conciliation notwithstanding anything inconsistent therewith contained in any other law for the time being in force, and any instrument having force of law. This is subject to the enactments mentioned in the Second Schedule, If the Central Government is satisfied that it is necessary or expedient so to do, it may, by notification, amend the Second Schedule and thereupon it shall be deemed to have been amended accordingly.

The rules in force governing the conduct of court-annexed mediation shall continue to apply until regulations are made under sub-section (1) of section 15:

Provided that the rules shall continue to apply in all court-annexed mediation pending as on the date of coming into force of the regulations.

## Amendment to Other Acts

**The Indian Contract Act, 1872**, has been amended in the manner specified in the Third Schedule.

In section 28 of the Indian Contract Act, 1872 (9 of 1872), for *Exception 1* and *Exception 2*, the following shall be substituted, namely:—

**"Exception 1.—Saving of contract to refer to arbitration or mediation dispute that may arise.**—This section shall not render illegal a contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to resolution through arbitration or mediation.

**Exception 2.—Saving of contract to refer questions that have already arisen.**— Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration or mediation any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration or mediation."

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

In the Code of Civil Procedure, 1908 (5 of 1908),—

- (i) under Part V, under the heading SPECIAL PROCEEDINGS, the sub-heading "ARBITRATION" shall be omitted;
- (ii) for section 89, the following section shall be substituted, namely:—

"89. Settlement of disputes outside the Court.—Where it appears to the Court that the dispute between the parties may be settled and there exists elements of settlement which may be acceptable to the parties, the Court may—

- (a) refer the dispute to arbitration, and thereafter, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration were referred for settlement under the provisions of that Act; or
- (b) refer the parties to mediation, to the court-annexed mediation centre or any other mediation service provider or any mediator, as per the option

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of the parties, and thereafter the provisions of the Mediation Act, 2023 shall apply as if the proceedings for mediation were referred for settlement under the provisions of that Act; or

- (c) refer the dispute to Lok Adalat, in accordance with the provisions of sub-section (1) of section 20 of Legal Services Authorities Act, 1987 (39 of 1987) and thereafter, all other provisions of that Act shall apply in respect of the dispute;
- (d) effect compromise between the parties and shall follow such procedure as deemed fit for judicial settlement."

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

In the Legal Services Authorities Act, 1987 (39 of 1987), in section 4, for clause (f), the following clause shall be substituted, namely:—

"(f) encourage the settlement of disputes, including online by way of negotiations, arbitration, mediation and conciliation;"

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

In the Arbitration and Conciliation Act, 1996 (26 of 1996),—

- (a) in section 43D,—
  - (i) in sub-section (1), the words "mediation, conciliation" shall be omitted;
  - (ii) in sub-section (2), in clauses (e), (f) and (i), the words "and conciliation" wherever they occur shall be omitted;
- (b) for sections 61 to 81, the following sections shall be substituted, namely:—

"61. Reference of conciliation in enactments.—

(1) Any provision, in any other enactment for the time being in force, providing for resolution of disputes through conciliation in accordance with the provisions of this Act, shall be construed as reference to mediation as provided under the Mediation Act, 2023.

(2) Conciliation as provided under this Act and the Code of Civil Procedure, 1908 (5 of 1908), shall be construed as mediation referred to in clause (h) of section 3 of the Mediation Act, 2023.

62. Saving.—Notwithstanding anything contained in section 61, any conciliation proceeding initiated in pursuance of sections 61 to 81 of this Act as in force before the commencement of the Mediation Act, 2023, shall be continued as such, as if the Mediation Act, 2023, had not been enacted."

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

In the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006), for section 18, the following section shall be substituted, namely:—

"18. Reference to Micro and Small Enterprises Facilitation Council.—

(1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.

(2) On receipt of a reference under sub-section (1), the Council shall either conduct mediation itself or refer the matter to any mediation service provider as provided under the Mediation Act, 2023.

(2) The conduct of mediation under this section shall be as per the provisions of the Mediation Act, 2023.

(3) Where the mediation initiated under sub-section (3) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any institution or centre providing alternative dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996), shall, then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of section 7 of that Act.

(4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternative dispute resolution services shall have jurisdiction to act as an Arbitrator or mediator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India."

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

## **CAs as Mediators**

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In the Companies Act, 2013 (18 of 2013), for section 442, the following section shall be substituted, namely:—

"442. Reference to mediation.—(1) Any of the parties to a proceedings before the Central Government, Tribunal or the Appellate Tribunal may, at any time apply to the Central Government, Tribunal or the Appellate Tribunal, as the case may be, in such form along with such fees, if any, as may be prescribed, for referring the matter pertaining to such proceedings for mediation and the Central Government, Tribunal or the Appellate Tribunal, as the case may be, shall refer the matter to mediation to be conducted under the provisions of the Mediation Act, 2023.

(2) Nothing in this section shall prevent the Central Government, Tribunal or the Appellate Tribunal before which any proceeding is pending from referring any matter pertaining to such proceeding *suo motu* to mediation to be conducted under the provisions of the Mediation Act, 2023 as the Central Government, Tribunal or the Appellate Tribunal, deems fit.

(3) The mediator or mediation service provider shall file the mediated settlement agreement arrived at between the parties with the Central Government or the Tribunal or the Appellate Tribunal under the Act.

(4) The Central Government or the Tribunal or the Appellate Tribunal shall pass an order or judgment making the said mediated settlement agreement as part thereof.

(5) The fee of the mediator shall be such as may be prescribed."

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

In the Commercial Courts Act, 2015 (4 of 2016),—

(a) for Chapter IIIA, the following Chapter shall be substituted, namely:—

"CHAPTER IIIA

### ***PRE-LITIGATION MEDIATION AND SETTLEMENT***

12A. Pre-litigation Mediation and Settlement.—(1) A suit, which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of pre-litigation mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.

(2) For the purposes of pre-litigation mediation, the Central Government may, by notification, authorise—

- (i) the Authority, constituted under the Legal Services Authorities Act, 1987 (39 of 1987); or
- (ii) a mediation service provider as defined under clause (m) of section 3 of the Mediation Act, 2023.

(3) Notwithstanding anything contained in the Legal Services Authorities Act, 1987 (39 of 1987), the Authority or mediation service provider authorised by the Central Government under sub-section (2) shall complete the process of mediation within a period of one hundred and twenty days from the date of application made by the plaintiff under sub-section (1):

Provided that the period of mediation may be extended for a further period of sixty days with the consent of the parties:

Provided further that, the period during which the parties spent for pre-litigation mediation shall not be computed for the purposes of limitation under the Limitation Act, 1963 (36 of 1963).

(4) If the parties to the commercial dispute arrive at a settlement, the same shall be reduced into writing and shall be signed by the parties and the mediator.

(5) The mediated settlement agreement arrived at under this section shall be dealt with in accordance with the provisions of sections 27 and 28 of the Mediation Act, 2023.;

(b) in section 21A, in sub-section (2), for clause (a), the following clause shall be substituted, namely:—

"(a) the manner and procedure of pre-litigation mediation under sub-section (1) of section 12A;".

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

In the Consumer Protection Act, 2019 (35 of 2019),—

- (a) in section 2, clauses (25) and (26) shall be omitted;
- (b) for section 37, the following sections shall be substituted, namely:—

"37. Reference to mediation.—The District Commission or State Commission or the National Commission, as the case may be, shall either on an



## CAAs as Mediators

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application by the parties at any stage of proceedings refer the disputes for settlement by mediation under the Mediation Act, 2023.

37A. Settlement through mediation.—(1) Pursuant to mediation, if an agreement is reached between the parties with respect to all of the issues involved in the consumer dispute or with respect to only some of the issues, the terms of such agreement shall be reduced to writing accordingly, and signed by the parties to such dispute or their authorised representatives.

(2) The mediator shall prepare a settlement report of the settlement and forward the signed agreement along with such report to the concerned Commission.

(3) Where no agreement is reached between the parties within the specified time or the mediator is of the opinion that settlement is not possible, he shall prepare his report accordingly and submit the same to the concerned Commission.

37B. Recording settlement and passing of order.—(1) The District Commission or the State Commission or the National Commission, as the case may be, shall, within seven days of the receipt of the settlement report, pass suitable order recording such settlement of consumer dispute and dispose of the matter accordingly.

(2) Where the consumer dispute is settled only in part, the District Commission or the State Commission or the National Commission, as the case may be, shall record settlement of the issues which have been so settled and continue to hear other issues involved in such consumer dispute.

(3) Where the consumer dispute could not be settled by mediation, the District Commission or the State Commission or the National Commission, as the case may be, shall continue to hear all the issues involved in such consumer dispute.";

(c) in section 38, in sub-section (1), the words "or in respect of cases referred for mediation on failure of settlement by mediation," shall be omitted;

(d) in section 41, the third proviso shall be omitted;

(e) Chapter V shall be omitted;

(f) in section 101, in sub-section (2),—

(i) clause (r) shall be omitted;

(ii) clause (zf) shall be omitted;

- (g) in section 102, in sub-section (2), clause (p) shall be omitted;
- (h) in section 103, in sub-section (2), clauses (c) to (h) shall be omitted.

## **Prior Mediation**

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

*(Ref. Sections 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64 and 65 of the Mediation Act, 2023)*

## CAAs and Mediation

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### CAAs: Preferred Mediators

For Commercial Disputes, generally, parties prefer Chartered Accountants as Mediators for diverse reasons. Involvement of a chartered accountant, on can expect expeditious disposal of the dispute that is commercially viable for parties to the dispute.

This aspect has been discussed in this chapter along with preparation necessary for chartered accountant to serve as a mediator.

### What is Commercial Mediation?

Commercial mediation is a form of alternative dispute resolution (ADR) used to resolve conflicts and disputes between businesses or individuals involved in commercial activities. In commercial mediation, a neutral third party, known as the mediator, assists the parties in reaching a mutually acceptable agreement. The mediator helps facilitate communication, encourages cooperation, and guides the negotiation process, but they do not impose a solution. This method is often less costly and time-consuming than going to court, making it a popular choice for resolving business disputes.

### Why CAAs are preferred as Mediators?

Commercial litigants may find chartered accountants to be valuable as mediators for several reasons:

1. **Financial Expertise:** Chartered accountants possess in-depth knowledge of financial matters, making them well-equipped to understand and resolve disputes involving complex financial data, accounting principles, tax implications, and financial analysis.
2. **Industry-Specific Knowledge:** Accountants often have industry-specific knowledge, which can be crucial in understanding the unique aspects and challenges of a particular business sector, thereby facilitating more contextually relevant solutions.
3. **Neutrality:** Chartered accountants are trained to be neutral and objective in their professional roles. Their impartiality is a fundamental

requirement in mediation, helping to ensure fairness and balance in the dispute resolution process.

4. **Communication Skills:** Effective communication is a cornerstone of successful mediation, and accountants are typically skilled communicators. They can help parties understand complex financial issues and guide them through discussions.
5. **Problem-Solving Abilities:** Accountants are trained problem solvers by nature. They can analyze financial data, identify potential solutions, and guide parties toward mutually beneficial agreements.
6. **Cost-Effective:** Using a chartered accountant as a mediator can be cost-effective because they can address financial issues directly, potentially saving both parties time and money compared to a protracted legal battle.
7. **Expedited Resolution:** Accountants may be able to expedite the dispute resolution process by efficiently addressing financial matters, tax implications, or accounting discrepancies that often play a role in commercial disputes.
8. **Business Understanding:** Chartered accountants understand the intricacies of business operations and the impact of financial decisions. This understanding can lead to more practical and business-oriented solutions.

While chartered accountants bring unique strengths to commercial mediation, the suitability of any mediator also depends on their mediation training and experience. Commercial litigants should carefully consider their specific needs and the nature of the dispute when selecting a mediator, whether it is a chartered accountant or another qualified professional.

## **How CAs should prepare themselves for the role of a mediator?**

To prepare themselves for the role of a mediator, chartered accountants can follow these steps:

1. **Mediation Training:** Enroll in formal mediation training programs or courses to learn the principles, techniques, and ethics of mediation. Many organizations and institutions offer accredited mediation training.

## CAAs as Mediators

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2. **Gain Practical Experience:** Seek opportunities to observe experienced mediators in action and, if possible, participate in co-mediation or apprenticeship programs to gain hands-on experience.
3. **Understand Mediation Standards:** Familiarize themselves with the ethical and professional standards of mediation, which may vary by jurisdiction and organization. This includes principles like neutrality, confidentiality, and impartiality.
4. **Develop Communication Skills:** Improve communication and active listening skills, as effective communication is a cornerstone of successful mediation. This involves learning to ask open-ended questions, clarify information, and maintain a neutral tone.
5. **Legal Knowledge:** While not required, a basic understanding of relevant commercial laws and regulations can be beneficial for mediating disputes with legal aspects.
6. **Keep Current:** Stay updated on mediation trends and best practices. Join mediation associations and attend workshops or conferences to network and learn from experienced mediators.
7. **Ethical Guidelines:** Adhere to the ethical guidelines of both the mediation profession and their chartered accountancy profession. Maintaining ethical standards is crucial in both roles.
8. **Develop Problem-Solving Skills:** Hone problem-solving and negotiation skills, as these are essential for guiding parties toward mutually agreeable solutions.
9. **Practice Neutrality:** Learn how to maintain neutrality and avoid taking sides in disputes. Recognize and manage potential biases or conflicts of interest.
10. **Build a Mediator Toolkit:** Create a toolkit of mediation resources, including sample agreements, mediation forms, and documentation templates.
11. **Understand Specific Commercial Issues:** Given their background, chartered accountants should deepen their understanding of commercial issues, such as financial statements, tax implications, and business operations.

12. **Mediation Specialization:** Consider specializing in specific areas, such as commercial, financial, or tax mediation, based on their expertise and interests.
13. **Continuous Improvement:** Commit to ongoing self-assessment and improvement as a mediator. Solicit feedback from parties involved in mediations and use it to refine their skills.

Becoming a skilled mediator is a continuous process that involves not only training but also practical experience and a commitment to upholding ethical standards. Chartered Accountants can leverage their financial expertise and these preparatory steps to excel in the role of a mediator in commercial disputes.

# Appendix

रजिस्ट्री सं. डी.एल.—(एन)04/0007/2003—23

REGISTERED NO. DL—(N)04/0007/2003—23

  
सत्यमेव जयते

# भारत का राजपत्र

## The Gazette of India

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असाधारण

EXTRAORDINARY

भाग II — खण्ड I

PART II — Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं. 35] नई दिल्ली, शुक्रवार, सितम्बर 15, 2023/ भाद्रपद 24, 1945 (साक)  
No. 35] NEW DELHI, FRIDAY, SEPTEMBER 15, 2023/BHADRA 24, 1945 (SAKA)

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।  
Separate paging is given to this Part in order that it may be filed as a separate compilation.

### MINISTRY OF LAW AND JUSTICE (Legislative Department)

*New Delhi, the 15th September, 2023/Bhadra 24, 1945 (Saka)*

The following Act of Parliament received the assent of the President on the 14th September, 2023 and is hereby published for general information:—

#### THE MEDIATION ACT, 2023

No. 32 OF 2023

[14th September, 2023.]

An Act to promote and facilitate mediation, especially institutional mediation, for resolution of disputes, commercial or otherwise, enforce mediated settlement agreements, provide for a body for registration of mediators, to encourage community mediation and to make online mediation as acceptable and cost effective process and for matters connected therewith or incidental thereto.

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

#### CHAPTER I

##### PRELIMINARY

1. (1) This Act may be called the Mediation Act, 2023.

(2) It shall extend to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification, appoint and different dates may be appointed for different provisions of this Act and any

Short title,  
extent and  
commencement.

reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

CHAPTER II  
APPLICATION

- Application.** 2. This Act shall apply where mediation is conducted in India, and—
- (i) all or both parties habitually reside in or are incorporated in or have their place of business in India; or
  - (ii) the mediation agreement provides that any dispute shall be resolved in accordance with the provisions of this Act; or
  - (iii) there is an international mediation; or
  - (iv) wherein one of the parties to the dispute is the Central Government or a State Government or agencies, public bodies, corporations and local bodies, including entities controlled or owned by such Government and where the matter pertains to a commercial dispute; or
  - (v) to any other kind of dispute if deemed appropriate and notified by the Central Government or a State Government from time to time, for resolution through mediation under this Act, wherein such Governments, or agencies, public bodies, corporations and local bodies including entities controlled or owned by them, is a party.
- Definitions.** 3. In this Act, unless the context otherwise requires,—
- (a) "commercial dispute" means a dispute defined in clause (c) of sub-section (1) of section 2 of the Commercial Courts Act, 2015;
  - (b) "community mediator" means a mediator for the purposes of conduct of community mediation under Chapter X;
  - (c) "Council" means the Mediation Council of India established under section 31;
  - (d) "court" means the competent court in India having pecuniary and territorial jurisdiction and having jurisdiction to decide the disputes forming the subject matter of mediation, if the same had been the subject matter of a suit or proceeding;
  - (e) "court-annexed mediation" means mediation including pre-litigation mediation conducted at the mediation centres established by any court or tribunal;
  - (f) "institutional mediation" means mediation conducted under the aegis of a mediation service provider;
  - (g) "international mediation" means mediation undertaken under this Act and relates to a commercial dispute arising out of a legal relationship, contractual or otherwise, under any law for the time being in force in India, and where at least one of the parties, is—
    - (i) an individual who is a national of, or habitually resides in, any country other than India; or
    - (ii) a body corporate including a Limited Liability Partnership of any nature, with its place of business outside India; or
    - (iii) an association or body of individuals whose place of business is outside India; or

4 of 2016.



(iv) the Government of a foreign country;

(h) "mediation" includes a process, whether referred to by the expression mediation, pre-litigation mediation, online mediation, community mediation, conciliation or an expression of similar import, whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person referred to as mediator, who does not have the authority to impose a settlement upon the parties to the dispute;

(i) "mediator" means a person who is appointed to be a mediator, by the parties or by a mediation service provider, to undertake mediation, and includes a person registered as mediator with the Council.

*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;

(j) "mediation agreement" means a mediation agreement referred to in sub-section (1) of section 4;

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

(i) anything said or done;

(ii) any document, or

(iii) any information provided,

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

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

(m) "mediation service provider" means a mediation service provider referred to in sub-section (1) of section 40;

(n) "mediated settlement agreement" means mediated settlement agreement referred to in sub-section (1) of section 19;

(o) "Member" means a Full-Time or Part-Time Member of the Council and includes the Chairperson;

(p) "notification" means notification published in the Official Gazette and the expression "notified" with its cognate meanings and grammatical variations shall be construed accordingly;

(q) "online mediation" means online mediation referred to in section 30;

(r) "participants" means persons other than the parties who participate in the mediation and includes advisers, advocates, consultants and any technical experts and observers;

(s) "party" means a party to a mediation agreement or mediation proceeding whose agreement or consent is necessary to resolve the dispute and includes their successors;

(t) "place of business" includes—

(a) a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a party stores its goods, supplies or receives goods or services or both, or

(b) a place where a party maintains its books of account; or

(c) a place where a party is engaged in business through an agent, by whatever name called;

(u) "pre-litigation mediation" means a process of undertaking mediation, as provided under section 5, for settlement of disputes prior to the filing of a suit or proceeding of civil or commercial nature in respect thereof, before a court or notified tribunal under sub-section (2) of section 5,

(v) "prescribed" means prescribed by rules made by the Central Government under this Act,

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

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

21 of 2000.

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

## CHAPTER III

## MEDIATION

Mediation agreement.

4. (1) A mediation agreement shall be in writing, by or between parties and anyone claiming through them, to submit to mediation all or certain disputes which have arisen or which may arise between the parties.

(2) A mediation agreement may be in the form of a mediation clause in a contract or in the form of a separate agreement.

(3) A mediation agreement is in writing, if it is contained in or recorded as—

(a) any document signed by the parties;

(b) an exchange of communications or letters including through electronic form as provided under the Information Technology Act, 2000;

21 of 2000.

(c) any pleadings in a suit or any other proceedings in which existence of mediation agreement is alleged by one party and not denied by the other.

(4) A reference in any agreement containing a mediation clause shall constitute a mediation agreement if the agreement is in writing and the reference is such as to make the mediation clause as part of the agreement.

(5) The parties may agree to submit to mediation any dispute arising between them under an agreement, whether entered prior to arising of the dispute or subsequent thereto.

(6) A mediation agreement in case of international mediation shall refer to an agreement for resolution in matters of commercial disputes referred to in clause (a) of section 3.

Pre-litigation mediation.

5. (1) Subject to other provisions of this Act, 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 section 12A of the Commercial Courts Act, 2015, and the rules made thereunder.

4 of 2016.

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

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

(i) registered with the Council; or

(ii) empanelled by a court-annexed mediation centre; or

39 of 1987. (ii) empanelled by an Authority constituted under the Legal Services Authorities Act, 1987, or

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

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

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

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

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

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

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

Disputes or matters not fit for mediation.

Provided that nothing contained herein shall prevent any court, if deemed appropriate, from referring any dispute relating to compoundable offences including the matrimonial offences which are compoundable and pending between the parties, to mediation:

Provided further that the outcome of such mediation shall not be deemed to be a judgment or decree of court referred to in sub-section (2) of section 27, and shall be further considered by the court in accordance with the law for the time being in force.

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

7. (1) Notwithstanding the non-settlement of dispute under sub-section (1) of section 5, the court or tribunal may, at any stage of proceeding, refer the parties to undertake mediation.

Power of court or tribunal to refer parties to mediation.

(2) If the court or tribunal refers the parties to undertake mediation, it may pass suitable interim order to protect the interest of any party if deemed appropriate.

(3) The parties shall not be under obligation to come to a settlement in the mediation pursuant to a reference under sub-section (1).

CHAPTER IV

MEDIATORS

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

Appointment of mediators.

Provided that mediator of any foreign nationality shall possess such qualification, experience and accreditation as may be specified.

(2) The parties shall be free to agree upon the name of mediator and the procedure for their appointment.

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

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

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

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

(5) The person appointed under clause (i) of sub-section (4) shall communicate his willingness or otherwise within a period of seven days from the date of receipt of communication of such appointment.

Preference of parties.

9. The mediation service provider shall, while appointing any person from the panel of mediators maintained by it, consider his suitability and the preference of the parties for resolving the dispute.

Conflict of interest and disclosure.

10. (1) The person appointed as a mediator shall, prior to the conduct of mediation, disclose in writing to the parties regarding any circumstance or potential circumstance, personal, professional, financial, or otherwise, that may constitute any conflict of interest or that is likely to give rise to justifiable doubts as to his independence or impartiality as a mediator.

(2) During the mediation, the mediator shall, without delay, disclose to the parties in writing any conflict of interest, referred to in sub-section (1), that has newly arisen or has come to his knowledge.

(3) Upon disclosure under sub-section (1) or sub-section (2), the parties shall have the option to waive any objection if all of them express in writing, which shall be construed as the consent of parties.

(4) Upon disclosure under sub-section (1) or sub-section (2), if either party desires to replace the mediator, then, in case of—

(i) institutional mediation, such party shall apply to the mediation service provider for termination of the mandate of mediator;

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

Termination of mandate of mediator.

11. A mediation service provider may terminate the mandate of a mediator upon—

(i) the receipt of application from a party under clause (i) of sub-section (4) of section 10; or

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

(iii) his withdrawal from mediation for any reason.

Provided that termination under clause (ii) shall be effected if, after giving a hearing to the mediator, mediation service provider finds that there is justifiable doubt as to the independence or impartiality of the mediator and that the same has been brought to the notice of parties and that either party desires to replace the mediator.

12. Upon termination of the mandate of mediator—

(i) in case of mediation other than institutional mediation under clause (ii) of sub-section (4) of section 10, the parties may, appoint another mediator within a period of seven days from such termination; and

(ii) under section 11, the mediation service provider shall appoint another mediator from the panel maintained by it within a period of seven days from such termination.

Replacement of mediator.

CHAPTER V

MEDIATION PROCEEDINGS

13. Every mediation under this Act shall be undertaken within the territorial jurisdiction of the court or tribunal of competent jurisdiction to decide the subject matter of dispute:

Territorial jurisdiction to undertake mediation.

Provided that on the mutual consent of the parties, mediation may be conducted at any place outside the territorial jurisdiction of the court or tribunal, or by way of online mediation.

*Explanation.*—For the removal of doubts, it is clarified that where the parties agree to conduct the mediation at any place outside the territorial jurisdiction or online, for the purpose of enforcement, challenge and registration of the mediated settlement agreement, the same shall be deemed to have been undertaken within the territorial jurisdiction of the court or tribunal of competent jurisdiction.

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

Commencement of mediation.

(a) where there is an existing agreement between the parties to settle the dispute through mediation, the date on which a party or parties receives notice from the party initiating the mediation, to refer such dispute to mediation; or

(b) in other cases—

(i) where the parties have agreed to appoint a mediator of their choice for mediation and settlement of disputes between them on the date the mediator provides his consent to appointment; or

(ii) where one of the parties applies to a mediation service provider for settlement of disputes through mediation, the date of appointment of a mediator.

15. (1) The mediation process shall be conducted in the manner as may be specified.

Conduct of mediation.

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

(3) The mediator shall at all times be guided by the principles of objectivity and fairness and protect the voluntariness, confidentiality and self-determination of the parties, and the standards for professional and ethical conduct as may be specified.

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

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

(6) The mediator with the consent of the parties shall determine the language or languages to be used in the mediation process.

16. (1) The mediator shall attempt to facilitate voluntary resolution of the dispute by the parties and communicate the view of each party to the other to the extent agreed to by them, assist them in identifying issues, advancing better understanding, clarifying priorities,

Role of mediator.

5 of 1908.  
1 of 1872.

exploring areas of settlement and generating options in an attempt to resolve the dispute expeditiously, emphasising that it is the responsibility of the parties to take decision regarding their claims.

(2) The parties shall be informed expressly by the mediator that he only facilitates in arriving at a decision to resolve a dispute and that he shall not impose any settlement nor give any assurance that the mediation may result in a settlement.

Role of mediator in other proceedings.

**17.** The mediator shall not—

(a) act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceeding in respect of a dispute that is the subject matter of the mediation proceedings;

(b) be presented by the parties as a witness in any arbitral or judicial proceeding.

Time-limit for completion of mediation.

**18.** (1) Notwithstanding anything contained in any other law for the time being in force, mediation under this Act shall be completed within a period of one hundred and twenty days from the date fixed for the first appearance before the mediator.

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

Mediated settlement agreement.

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

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

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

9 of 1872.

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

(3) Subject to the provisions of section 26, the mediated settlement agreement signed,—

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

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

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

(5) Any mediated settlement agreement under this section includes a settlement agreement resulting from online mediation.

Registration of mediated settlement agreement.

**20.** (1) For the purposes of record, mediated settlement agreement arrived at between the parties, other than those arrived in a court or tribunal referred mediation or award of Lok Adalat or final award of the Permanent Lok Adalat under section 21 or section 22E of the Legal Services Authorities Act, 1987, may, at the option of parties, be registered with an Authority constituted under the said Act, or any other body as may be notified by the Central Government, in such manner as may be specified and such Authority or body shall issue a unique registration number to such settlement agreements:

39 of 1987.

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

*Explanation.*—For the removal of doubts, it is clarified that nothing contained in this sub-section shall affect the rights of parties to enforce the mediated settlement agreement under section 27 or challenge the same under section 28.

(2) The registration referred to in sub-section (1) may be made by the parties or mediation service provider within a period of one hundred and eighty days from the date of receipt of authenticated copy of mediated settlement agreement:

Provided that mediated settlement agreement may be allowed to be registered after the expiry of period of one hundred and eighty days on payment of such fee as may be specified in consultation with the Authority or any other body referred to in sub-section (1).

**21.** Subject to the provisions of section 26, where no agreement is arrived at between the parties, within the time period as provided under section 18, or where, the mediator is of the view that no settlement is possible, he shall,—

Non-settlement report.

(i) in the case of institutional mediation, submit a non-settlement report to the mediation service provider in writing;

(ii) in all other cases, prepare a non-settlement report and provide a signed copy to all the parties:

Provided that the report referred to in this section shall not disclose the cause of non-settlement, or any other matter or thing referring to their conduct, during mediation.

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

Confidentiality.

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

(ii) acceptance of, or willingness to, accept proposals made or exchanged in the mediation;

(iii) documents prepared solely for the conduct of mediation or in relation thereto;

(iv) any other mediation communication.

(2) No audio or video recording of the mediation proceedings shall be made or maintained by the parties or the participants including the mediator and mediation service provider, whether conducted in person or online to ensure confidentiality of the conduct of mediation proceedings.

(3) No party to the mediation shall in any proceeding before a court or tribunal including arbitral tribunal, rely on or introduce as evidence any information or communication set forth in clauses (i) to (iv) of sub-section (1), including any information in electronic form, or verbal communication and the court or tribunal including arbitral tribunal shall not take cognizance of such information or evidence.

(4) The provisions of this section shall not prevent the mediator from compiling or disclosing general information concerning matters that have been subject of mediation, for research, reporting or training purposes, if the information does not expressly or indirectly identify a party or participants or the specific disputes in the mediation.

*Explanation.*—For the removal of doubts, it is hereby clarified that nothing contained in this section shall apply to the mediated settlement agreement where its disclosure is necessary for the purpose of registration, enforcement and challenge.

Admissibility  
and privilege  
against  
disclosure.

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

Provided that nothing in this section and section 22 shall protect from disclosure, information sought or provided to prove or dispute a claim or complaint of professional misconduct of mediator or malpractice based on conduct occurring during the mediation.

(2) There shall be no privilege or confidentiality that will attach to—

(a) a threat or statement of a plan to commit an offence punishable under any law for the time being in force;

(b) information relating to domestic violence or child abuse; and

(c) statements made during a mediation showing a significant imminent threat to public health or safety.

Termination  
of mediation.

**24.** The mediation proceedings under this Act shall be deemed to terminate—

(a) on the date of signing and authentication of the mediated settlement agreement; or

(b) on the date of the written declaration of the mediator, after consultation with the parties or otherwise, to the effect that further efforts at mediation are no longer justified; or

(c) on the date of the communication by a party or parties in writing, addressed to the mediator and the other parties to the effect that the party wishes to opt out of mediation;

(d) on the expiry of time limit under section 18.

Cost of  
mediation.

**25. (1)** The cost of mediation, other than community mediation shall be such as may be specified.

(2) Unless otherwise agreed by the parties, all costs of mediation, including the fees of the mediator and the charges of the mediation service provider shall be borne equally by the parties.

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

**26.** The provisions of this Act shall not apply to the proceedings conducted by Lok Adalat and Permanent Lok Adalat under the Legal Services Authorities Act, 1987.

39 of 1987.

## CHAPTER VI

### ENFORCEMENT OF MEDIATED SETTLEMENT AGREEMENT

Enforcement  
of mediated  
settlement  
agreement.

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

(2) Subject to the provisions of section 28, the mediated settlement agreement shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908, in the same

5 of 1908.



manner as if it were a judgment or decree passed by a court, and may, accordingly, be relied on by any of the parties or persons claiming through them, by way of defence, set off or otherwise in any legal proceeding.

**28. (1)** Notwithstanding anything contained in any other law for the time being in force, in any case in which the mediated settlement agreement is arrived at between the parties and is sought to be challenged by either of the parties, such party may file an application before the court or tribunal of competent jurisdiction.

Challenge to mediated settlement agreement.

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

- (i) fraud;
- (ii) corruption;
- (iii) impersonation;
- (iv) where the mediation was conducted in disputes or matters not fit for mediation under section 6.

(3) An application for challenging the mediated settlement agreement shall not be made after ninety days have elapsed from the date on which the party making that application has received the copy of mediated settlement agreement under sub-section (3) of section 19:

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

36 of 1963.

**29.** Notwithstanding anything contained in the Limitation Act, 1963 or in any other law for the time being in force, in computing the period of limitation fixed for any proceeding relating to disputes in respect of which a mediation has been undertaken under this Act, the period from the date of commencement of mediation under section 14, and up to—

Limitation.

- (i) submission of report under section 21, or
- (ii) termination of mediation under section 24,

shall be excluded.

#### CHAPTER VII

##### ONLINE MEDIATION

**30. (1)** Online mediation including pre-litigation mediation may be conducted at any stage of mediation under this Act, with the written consent of the parties including by the use of electronic form or computer networks but not limited to an encrypted electronic mail service, secure chat rooms or conferencing by video or audio mode or both.

Online mediation.

(2) The process of online mediation shall be in such manner as may be specified.

(3) The conduct of online mediation shall be in the circumstances, which ensure that the essential elements of integrity of proceedings and confidentiality are maintained at all times and the mediator may take such appropriate steps in this regard as he deems fit.

(4) Subject to the other provisions of this Act, the mediation communications in the case of online mediation shall, ensure confidentiality of mediation.

#### CHAPTER VIII

##### MEDIATION COUNCIL OF INDIA

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

Establishment and incorporation of Mediation Council.

(2) The Council shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to enter into contract, and shall, by the said name, sue or be sued.

(3) The head office of the Council shall be at Delhi or at such other place as may be notified by the Central Government.

(4) The Council may, in consultation with the Central Government, establish offices at other places in India and abroad.

Composition  
of Council.

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

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

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

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

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

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

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

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

(2) The Members of the Council, other than *ex officio* members, shall hold office as such, for a term of four years from the date on which they enter upon their office and shall be eligible for re-appointment:

Provided that no Member other than *ex officio* Member shall hold office after he has attained the age of seventy years, in the case of Chairperson, and sixty-seven years, in the case of other Members:

Provided further that if the Chairperson is appointed on Part-Time basis, then, at least one of the Members appointed under clauses (b) or (c) shall be a Full-Time Member.

(3) The salaries, allowances and other terms and conditions of Members other than *ex officio* Members shall be such as may be prescribed.

(4) The Member shall be entitled to such travelling and other allowances as may be prescribed.

Vacancies,  
etc., not to  
invalidate  
proceedings of  
Council.

33. No act or proceeding of the Council shall be invalid merely by reason of—

(a) any vacancy or any defect, in the constitution of the Council;

(b) any defect in the appointment of a person as a Member of the Council; or

(c) any irregularity in the procedure of the Council not affecting the merits of the case.

Resignation.

34. The Member may, by notice in writing, under his hand addressed to the Central Government, resign his office:

Provided that the Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is earlier.

**35.** The Central Government may, remove any Member from his office, if he— Removal.

(a) is an undischarged insolvent, or

(b) has engaged at any time, during his term of office, in any paid employment without the permission of the Central Government; or

(c) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member, or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest; or

(f) has become physically or mentally incapable of acting as a Member.

Provided that where a Member is proposed to be removed on any ground, he shall be informed of charges against him and given an opportunity of being heard in respect of these charges.

**36.** The Council may, appoint such experts and constitute such committees of experts as it may consider necessary to discharge its functions on such terms and conditions as may be specified. Appointment of experts and constitution of Committees.

**37. (1)** There shall be a Chief Executive Officer of the Council, who shall be responsible for the day to day administration and implementation of the decisions of the Council. Secretariat and Chief Executive Officer of Council.

(2) The qualification, appointment and other terms and conditions of service of the Chief Executive Officer shall be such as may be specified.

(3) There shall be a Secretariat to the Council consisting of such number of officers and employees as may be specified.

(4) The qualification, appointment and other terms and conditions of the service of the employees and other officers of the Council shall be such as may be specified.

(5) The Central Government shall provide such number of officers and employees as may be necessary for the functioning of the Council till regulations are made under this section.

**38.** The Council shall— Duties and functions of Council.

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

(b) endeavour to develop India to be a robust centre for domestic and international mediation;

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

(d) provide for the manner of conduct of mediation proceedings, under sub-section (1) of section 15;

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

(f) lay down standards for professional and ethical conduct of mediators under sub-section (3) of section 15.

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

(h) enter into memoranda of understanding or agreements with domestic and international bodies or organisations or institutions;

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

(j) specify the criteria for recognition of mediation institutes and mediation service providers;

(k) call for any information or record of mediation institutes and mediation service providers;

(l) lay down standards for professional and ethical conduct of the mediation institutes and mediation service providers;

(m) publish such information, data, research studies and such other information as may be required;

(n) maintain an electronic depository of the mediated settlement agreements made in India and for such other records related thereto in such manner as may be specified; and

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

Monitoring and reporting.

39. (1) The Council shall, as soon as practicable after the end of each year or at such other intervals as directed by the Central Government, prepare a report on the implementation of the provisions of this Act during the year or such interval and forward a copy thereof to the Central Government.

(2) The Central Government may take such additional measures as it deems necessary to supplement the functioning of the Council and for the effective implementation of the provisions of the Act.

#### CHAPTER IX

##### MEDIATION SERVICE PROVIDERS AND MEDIATION INSTITUTES

Mediation service provider.

40. (1) "mediation service provider" includes—

(a) a body or an organisation that provides for the conduct of mediation under this Act and the rules and regulations made thereunder and is recognised by the Council; or

(b) an Authority constituted under the Legal Services Authorities Act, 1987, or 39 of 1987.

(c) a court-annexed mediation centre; or

(d) any other body as may be notified by the Central Government;

Provided that the bodies referred to in clauses (b), (c) and (d) shall be deemed to be mediation service providers recognised by the Council.

(2) The mediation service provider shall be recognised by the Council in the manner as may be specified.

Functions of mediation service providers.

41. The mediation service providers shall perform the following functions, namely:—

(a) accredit mediators and maintain panel of mediators;

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

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

- (d) promote professional and ethical conduct amongst mediators;
- (e) facilitate registration of mediated settlement agreements in accordance with the provisions of section 20; and
- (f) such other functions as may be specified.

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

## CHAPTER X

### COMMUNITY MEDIATION

43. (1) Any dispute likely to affect peace, harmony and tranquillity amongst the residents or families of any area or locality may be settled through community mediation with prior mutual consent of the parties to the dispute. Community mediation.

39 of 1987. (2) For the purposes of sub-section (1), any of the parties shall make an application before the concerned Authority constituted under the Legal Services Authorities Act, 1987 or District Magistrate or Sub-Divisional Magistrate in areas where no such Authority has been constituted, for referring the dispute to mediation.

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

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

(5) The following persons may be included in the panel referred to in sub-section (4)—

- (a) person of standing and integrity who are respectable in the community;
- (b) any local person whose contribution to the society has been recognised;
- (c) representative of area or resident welfare associations;
- (d) person having experience in the field of mediation; and
- (e) any other person deemed appropriate.

(6) While making panel referred to in sub-section (4) the representation of women or any other class or category of persons may be considered.

44. (1) Any community mediation shall be conducted by the panel of three community mediators referred to in sub-section (3) of section 43 who shall devise suitable procedure for the purpose of resolving the dispute. Procedure for community mediation.

(2) The community mediators shall endeavour to resolve disputes through community mediation and provide assistance to parties for resolving disputes amicably.

(3) In every case where a settlement agreement is arrived at through community mediation under this Act, the same may be reduced into writing with the signature of the parties and authenticated by the community mediators, a copy of which be provided to the parties and in cases where no settlement agreement is arrived at, a non-settlement report may be submitted by the community mediators to the Authority or the District Magistrate or the Sub-Divisional Magistrate, as the case may be, and to the parties.

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

(5) The provisions of section 20 shall, *mutatis mutandis* apply, in relation to the registration of mediated settlement agreement under this section.

## CHAPTER XI

## MISCELLANEOUS

Mediation  
Fund.

45. (1) There shall be a fund to be called "Mediation Fund" (hereinafter referred to as the "Fund") for the purposes of promotion, facilitation and encouragement of mediation under this Act, which shall be administered by the Council.

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

- (a) all monies provided by the Central Government;
- (b) all fees and other charges received from mediation service provider, mediation institutes or bodies or persons;
- (c) all monies received by the Council in the form of donations, grants, contributions and income from other sources;
- (d) grants made by the Central Government or the State Government for the purposes of the Fund;
- (e) amounts deposited by persons as contributions to the Fund;
- (f) amounts received in the Fund from any other source; and
- (g) interest on the above or other income received out of the investment made from the Fund.

(3) The Fund shall be applied towards meeting the salaries and other allowances of Member, Chief Executive Officer, Officers and employees and the expenses of the Council including expenses incurred in the exercise of its powers and discharge of its duties under this Act.

Accounts and  
audit.

46. (1) The Council shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, including the balance sheet, in such form and manner as may be prescribed in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Council shall be audited by the Comptroller and Auditor-General of India and any expenditure incurred by him in connection with such audit shall be payable by the Council to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of the Council shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the audit of the Government accounts, and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect the offices of the Council.

(4) The accounts of the Council as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

Power of  
Central  
Government  
to issue  
directions.

47. (1) Without prejudice to the foregoing provisions of this Act, the Council shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time:

Provided that the views of the Council shall be taken into consideration before any direction is given under this sub-section.

(2) The decision of the Central Government whether a question is one of policy or not shall be final.

**48.** Subject to the provisions of this Act, the Central Government or the State Government or any of its entity or agency, as the case may be, may frame any schemes or guidelines, for resolution of any dispute through mediation or conciliation in cases where the Central Government or the State Government or any of its entity or agency is one of the parties and in such cases mediation or conciliation may be conducted in accordance with such schemes or guidelines.

Power to frame schemes or guidelines.

**49.** Notwithstanding anything contained in this Act, no dispute including a commercial dispute, wherein the Central Government or State Government or any of its agencies, public bodies, corporations and local bodies including entities controlled or owned by them is a party, the settlement agreement arrived at shall be signed only after obtaining the prior written consent of the competent authority of such Government or any of its entity or agencies, public bodies, corporations and local bodies, as the case may be.

Mediated settlement agreement where Government or its agency, etc., is a party.

**50.** No suit, prosecution or other legal proceeding shall lie against the Central Government or a State Government or any officer of such Government, or the Member or Officer or employee of the Council or a mediator, mediation institutes, mediation service providers, which is done or is intended to be done in good faith under this Act or the rules or regulations made thereunder.

Protection of action taken in good faith.

**51. (1)** The Central Government may, by notification, make rules for carrying out the provisions of this Act.

Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may make provision for—

(a) the salaries and allowances and the terms and conditions of the Members under sub-section (3) of section 32;

(b) the travelling and other allowances payable to the Member under sub-section (4) of section 32;

(c) the form and manner of annual statement of accounts, including the balance sheet under sub-section (1) of section 46, and

(d) any other matter which is to be, or may be prescribed.

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

Power to make regulations.

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

(a) qualification, experience and accreditation for mediators of foreign nationality under the proviso to sub-section (1) of section 8;

(b) manner of conducting mediation proceeding under sub-section (1) of section 15;

(c) standards for professional and ethical conduct of mediators under sub-section (3) of section 15;

(d) manner of registration of mediated settlement agreement under sub-section (1) of section 20;

(e) fees for registration of mediated settlement agreement under the proviso to sub-section (2) of section 20;

(f) cost of mediation under sub-section (1) of section 26.

(g) manner of process of conducting online mediation under sub-section (2) of section 30;

(h) the terms and conditions of experts and committees of experts under section 36;

(i) qualifications, appointment and other terms and conditions of service of the Chief Executive Officer under sub-section (2) of section 37;

(j) the number of officers and employees of the Secretariat of the Council under sub-section (4) of section 37;

(k) the qualification, appointment and other terms and conditions of the employees and other officers of the Council under sub-section (5) of section 37;

(l) conditions for registration of mediators and renewal, withdrawal, suspension or cancellations of such registrations under clause (d) of section 38;

(m) criteria for recognition of mediation institutes and mediation service providers under clause (i) of section 38;

(n) manner of maintenance of electronic depository of mediated settlement agreement under clause (m) of section 38;

(o) manner for recognition of mediation service provider under sub-section (2) of section 40;

(p) such other functions of mediation service provider under clause (f) of section 41;

(q) duties and functions to be performed by mediation institutes under section 42; and

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

Laying.

**53.** Every notification issued under sub-section (2) of section 6, sub-section (2) of section 55, rule and regulation made under this Act shall be laid, as soon as may be after it is issued or made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification, rule or regulation or both Houses agree that the notification, rule or regulation should not be issued or made, the notification, rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification, rule or regulation.

Power to remove difficulties.

**54.** (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to it to be necessary for removing the difficulty:

Provided that no such order shall be made under this section after the expiry of a period of five years from the date of commencement of this Act.

(2) Every order made under sub-section (1) shall be laid, as soon as may be after it is made, before each House of Parliament.

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

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

(2) If the Central Government is satisfied that it is necessary or expedient so to do, it may, by notification, amend the Second Schedule and thereupon it shall be deemed to have been amended accordingly.



Sec. 1]	THE GAZETTE OF INDIA EXTRAORDINARY	19
<b>56.</b> This Act shall not apply to, or in relation to, any mediation or conciliation commenced before the coming into force of this Act.		Act not to apply to pending proceedings.
<b>57.</b> The rules in force governing the conduct of court-annexed mediation shall continue to apply until regulations are made under sub-section (J) of section 15: Provided that the rules shall continue to apply in all court-annexed mediation pending as on the date of coming into force of the regulations.		Transitory provision.
<b>58.</b> The Indian Contract Act, 1872, shall be amended in the manner specified in the Third Schedule.		Amendment of Act 9 of 1872.
<b>59.</b> The Code of Civil Procedure, 1908, shall be amended in the manner specified in the Fourth Schedule.		Amendment of Act 5 of 1908.
<b>60.</b> The Legal Service Authorities Act, 1987, shall be amended in the manner specified in the Fifth Schedule.		Amendment of Act 39 of 1987.
<b>61.</b> The Arbitration and Conciliation Act, 1996, shall be amended in the manner specified in the Sixth Schedule.		Amendment of Act 26 of 1996.
<b>62.</b> The Micro, Small and Medium Enterprises Development Act, 2006, shall be amended in the manner specified in the Seventh Schedule.		Amendment of Act 27 of 2006.
<b>63.</b> The Companies Act, 2013, shall be amended in the manner specified in the Eighth Schedule.		Amendment of Act 18 of 2013.
<b>64.</b> The Commercial Courts Act, 2015, shall be amended in the manner specified in the Ninth Schedule.		Amendment of Act 4 of 2016.
<b>65.</b> The Consumer Protection Act, 2019, shall be amended in the manner specified in the Tenth Schedule.		Amendment of Act 35 of 2019.

## THE FIRST SCHEDULE

(See section 6)

## DISPUTES OR MATTERS NOT FIT FOR MEDIATION

1. Disputes which by virtue of any law for the time being in force may not be submitted for mediation.
2. Disputes relating to claims against minors, deities, persons with intellectual disabilities under paragraph 2 of the Schedule and person with disability having high support needs as defined in clause (t) of section 2 of the Rights of Persons with Disabilities Act, 2016 (49 of 2016); persons with mental illness as defined in clause (s) of sub-section (1) of section 2 of the Mental Healthcare Act, 2017 (10 of 2017); persons of unsound mind, in relation to whom proceedings are to be conducted under Order XXXII of the Code of Civil Procedure, 1908 (5 of 1908); and suits for declaration of title against Government, declaration having effect of right *in rem*.
3. Disputes involving prosecution for criminal offences.
4. Complaints or proceedings, initiated before any statutory authority or body in relation to registration, discipline, misconduct of any practitioner, or other registered professional, such as legal practitioner, medical practitioner, dentist, architect, chartered accountant, or in relation to any other profession of whatever description, which is regulated under any law for the time being in force.
5. Disputes which have the effect on rights of a third party who are not a party to the mediation proceedings except only in matrimonial disputes where the interest of a child is involved.
6. Any proceeding in relation to any subject matter, falling within any enactment, over which the Tribunal constituted under the National Green Tribunal Act, 2010 (19 of 2010), has jurisdiction.
7. Any dispute relating to levy, collection, penalties or offences, in relation to any direct or indirect tax or refunds, enacted by any State legislature or the Parliament.
8. Any investigation, inquiry or proceeding, under the Competition Act, 2002 (12 of 2003), including proceedings before the Director General, under the Act, proceedings before the Telecom Regulatory Authority of India, under the Telecom Regulatory Authority of India Act, 1997 (24 of 1997) or the Telecom Disputes Settlement and Appellate Tribunal established under section 14 of that Act.
9. Proceedings before appropriate Commissions, and the Appellate Tribunal for Electricity, under the Electricity Act, 2003 (36 of 2003).
10. Proceedings before the Petroleum and Natural Gas Regulatory Board, and appeals therefrom before the Appellate Tribunal under the Petroleum and Natural Gas Regulatory Board Act, 2006 (19 of 2006).
11. Proceedings before the Securities and Exchange Board of India, and the Securities Appellate Tribunal, under the Securities and Exchange Board of India Act, 1992 (15 of 1992).
12. Land acquisition and determination of compensation under land acquisition laws, or any provision of law providing for land acquisition.
13. Any other subject matter of dispute which may be notified by the Central Government.

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THE SECOND SCHEDULE

*(See section 55)*

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

## THE THIRD SCHEDULE

(See section 58)

In section 28 of the Indian Contract Act, 1872 (9 of 1872), for *Exception 1* and *Exception 2*, the following shall be substituted, namely:—

*Exception 1.—Saving of contract to refer to arbitration or mediation dispute that may arise.*—This section shall not render illegal a contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to resolution through arbitration or mediation.

*Exception 2.—Saving of contract to refer questions that have already arisen.*—Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration or mediation any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration or mediation.”.

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### THE FOURTH SCHEDULE

(See section 59)

In the Code of Civil Procedure, 1908 (5 of 1908),—

(i) under Part V, under the heading SPECIAL PROCEEDINGS, the sub-heading "ARBITRATION" shall be omitted;

(ii) for section 89, the following section shall be substituted, namely:—

"89. Settlement of disputes outside the Court.—Where it appears to the Court that the dispute between the parties may be settled and there exists elements of settlement which may be acceptable to the parties, the Court may—

(a) refer the dispute to arbitration, and thereafter, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration were referred for settlement under the provisions of that Act; or

(b) refer the parties to mediation, to the court-annexed mediation centre or any other mediation service provider or any mediator, as per the option of the parties, and thereafter the provisions of the Mediation Act, 2023 shall apply as if the proceedings for mediation were referred for settlement under the provisions of that Act; or

(c) refer the dispute to Lok Adalat, in accordance with the provisions of sub-section (1) of section 20 of Legal Services Authorities Act, 1987 (39 of 1987) and thereafter, all other provisions of that Act shall apply in respect of the dispute;

(d) effect compromise between the parties and shall follow such procedure as deemed fit for judicial settlement."

THE FIFTH SCHEDULE

(See section 60)

In the Legal Services Authorities Act, 1987 (39 of 1987), in section 4, for clause (f), the following clause shall be substituted, namely:—

"(f) encourage the settlement of disputes, including online by way of negotiations, arbitration, mediation and conciliation;"

THE SIXTH SCHEDULE

(See section 61)

In the Arbitration and Conciliation Act, 1996 (26 of 1996),—

(a) in section 43D,—

(i) in sub-section (1), the words "mediation, conciliation" shall be omitted;

(ii) in sub-section (2), in clauses (e), (f) and (i), the words "and conciliation" wherever they occur shall be omitted;

(b) for sections 61 to 81, the following sections shall be substituted, namely:—

"61. Reference of conciliation in enactments.—(1) Any provision, in any other enactment for the time being in force, providing for resolution of disputes through conciliation in accordance with the provisions of this Act, shall be construed as reference to mediation as provided under the Mediation Act, 2023.

(2) Conciliation as provided under this Act and the Code of Civil Procedure, 1908 (5 of 1908), shall be construed as mediation referred to in clause (h) of section 3 of the Mediation Act, 2023.

62. Saving.—Notwithstanding anything contained in section 61, any conciliation proceeding initiated in pursuance of sections 61 to 81 of this Act as in force before the commencement of the Mediation Act, 2023, shall be continued as such, as if the Mediation Act, 2023, had not been enacted."

## THE SEVENTH SCHEDULE

(See section 62)

In the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006), for section 18, the following section shall be substituted, namely:—

"18. Reference to Micro and Small Enterprises Facilitation Council.—(1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.

(2) On receipt of a reference under sub-section (1), the Council shall either conduct mediation itself or refer the matter to any mediation service provider as provided under the Mediation Act, 2023.

(3) The conduct of mediation under this section shall be as per the provisions of the Mediation Act, 2023.

(4) Where the mediation initiated under sub-section (3) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any institution or centre providing alternative dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996), shall, then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of section 7 of that Act.

(5) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternative dispute resolution services shall have jurisdiction to act as an Arbitrator or mediator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India."



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### THE EIGHTH SCHEDULE

(See section 63)

In the Companies Act, 2013 (18 of 2013), for section 442, the following section shall be substituted, namely:—

"442. Reference to mediation.—(1) Any of the parties to a proceedings before the Central Government, Tribunal or the Appellate Tribunal may, at any time apply to the Central Government, Tribunal or the Appellate Tribunal, as the case may be, in such form along with such fees, if any, as may be prescribed, for referring the matter pertaining to such proceedings for mediation and the Central Government, Tribunal or the Appellate Tribunal, as the case may be, shall refer the matter to mediation to be conducted under the provisions of the Mediation Act, 2023.

(2) Nothing in this section shall prevent the Central Government, Tribunal or the Appellate Tribunal before which any proceeding is pending from referring any matter pertaining to such proceeding *suo motu* to mediation to be conducted under the provisions of the Mediation Act, 2023 as the Central Government, Tribunal or the Appellate Tribunal, deems fit.

(3) The mediator or mediation service provider shall file the mediated settlement agreement arrived at between the parties with the Central Government or the Tribunal or the Appellate Tribunal under the Act.

(4) The Central Government or the Tribunal or the Appellate Tribunal shall pass an order or judgment making the said mediated settlement agreement as part thereof.

(5) The fee of the mediator shall be such as may be prescribed."

## THE NINTH SCHEDULE

(See section 64)

In the Commercial Courts Act, 2015 (4 of 2016),—

(a) for Chapter IIIA, the following Chapter shall be substituted, namely:—

## "CHAPTER IIIA

## PRE-LITIGATION MEDIATION AND SETTLEMENT

12A. Pre-litigation Mediation and Settlement.—(1) A suit, which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of pre-litigation mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.

(2) For the purposes of pre-litigation mediation, the Central Government may, by notification, authorise—

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

(ii) a mediation service provider as defined under clause (m) of section 3 of the Mediation Act, 2023.

(3) Notwithstanding anything contained in the Legal Services Authorities Act, 1987 (39 of 1987), the Authority or mediation service provider authorised by the Central Government under sub-section (2) shall complete the process of mediation within a period of one hundred and twenty days from the date of application made by the plaintiff under sub-section (1).

Provided that the period of mediation may be extended for a further period of sixty days with the consent of the parties:

Provided further that, the period during which the parties spent for pre-litigation mediation shall not be computed for the purposes of limitation under the Limitation Act, 1963 (36 of 1963).

(4) If the parties to the commercial dispute arrive at a settlement, the same shall be reduced into writing and shall be signed by the parties and the mediator.

(5) The mediated settlement agreement arrived at under this section shall be dealt with in accordance with the provisions of sections 27 and 28 of the Mediation Act, 2023."

(b) in section 21A, in sub-section (2), for clause (a), the following clause shall be substituted, namely:—

"(a) the manner and procedure of pre-litigation mediation under sub-section (1) of section 12A,".

THE TENTH SCHEDULE

(See section 65)

In the Consumer Protection Act, 2019 (35 of 2019),—

(a) in section 2, clauses (25) and (26) shall be omitted;

(b) for section 37, the following sections shall be substituted, namely:—

"37. Reference to mediation.—The District Commission or State Commission or the National Commission, as the case may be, shall either on an application by the parties at any stage of proceedings refer the disputes for settlement by mediation under the Mediation Act, 2023.

37A. Settlement through mediation.—(1) Pursuant to mediation, if an agreement is reached between the parties with respect to all of the issues involved in the consumer dispute or with respect to only some of the issues, the terms of such agreement shall be reduced to writing accordingly, and signed by the parties to such dispute or their authorised representatives.

(2) The mediator shall prepare a settlement report of the settlement and forward the signed agreement along with such report to the concerned Commission.

(3) Where no agreement is reached between the parties within the specified time or the mediator is of the opinion that settlement is not possible, he shall prepare his report accordingly and submit the same to the concerned Commission.

37B. Recording settlement and passing of order.—(1) The District Commission or the State Commission or the National Commission, as the case may be, shall, within seven days of the receipt of the settlement report, pass suitable order recording such settlement of consumer dispute and dispose of the matter accordingly.

(2) Where the consumer dispute is settled only in part, the District Commission or the State Commission or the National Commission, as the case may be, shall record settlement of the issues which have been so settled and continue to hear other issues involved in such consumer dispute.

(3) Where the consumer dispute could not be settled by mediation, the District Commission or the State Commission or the National Commission, as the case may be, shall continue to hear all the issues involved in such consumer dispute.":

(c) in section 38, in sub-section (1), the words "or in respect of cases referred for mediation on failure of settlement by mediation," shall be omitted;

(d) in section 41, the third proviso shall be omitted;

(e) Chapter V shall be omitted;

(f) in section 101, in sub-section (2),—

(i) clause (r) shall be omitted;

- (ii) clause (zf) shall be omitted;
- (g) in section 102, in sub-section (2), clause (p) shall be omitted;
- (h) in section 103, in sub-section (2), clauses (c) to (h) shall be omitted.

DR. REETA VASISHTA,  
*Secretary to the Govt. of India.*

CORRIGENDA

In the *JANVISHWAS* (Amendment of Provisions) Act, 2023 (18 of 2023), published in the Gazette of India, Extraordinary, Part II, Section 1, dated the 11th August, 2023, Issue No. 21,—

- (i) at page 56, in line 12, *for* "substituted" *read* "inserted";
- (ii) at page 57, in line 46, *for* "section" *read* "sections".

CORRIGENDUM

In the Central Goods and Services Tax (Amendment) Act, 2023 (30 of 2023), published in the Gazette of India, Extraordinary, Part II, Section 1, dated the 18th August, 2023, Issue No. 33, at page 2, in line 37, *for* "occurring" *read* "occurring".

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