

LEGISLATIVE RECOGNITION OF MEDIATION IN INDIA AND THE MEDIATION BILL 2021**Amit Srivastav**Assistant Professor, Lloyd Law College Greater Noida, U.P
amit.llmnet@gmail.com

“Discourage litigation. Persuade your neighbor to compromise whenever you can. As a peacemaker, the lawyer has a superior opportunity of being a good man. There will still be business enough”.

Abraham Lincoln**INTRODUCTION**

Human beings are part of the society and when they co-exist as a society, disputes become an inevitable part of their lives. Disputes are bound to happen in any personal or commercial association, particularly when the contemporary time is witnessing growth, both in population as well as in economic activities of individuals. One cannot avoid occurrence of disputes otherwise we should not have had Dean Roscoe Pound's concept of "balancing of conflicting interests". These conflicting interests are the root cause of every dispute and once a dispute has arisen, it needs to be resolved in order to maintain peace and harmony in the society. A dispute may be addressed either through litigation and arbitration or through mediation. Mediation has numerous merits, particularly in a country like India where there is immense pendency of law suits, mediation may well prove to be a boon. Hence the Indian Legislature is working towards enacting a dedicated legislation on mediation through the Mediation Bill 2021, though mediation is not an alien concept for the Indian society.

RESEARCH METHODOLOGY

It is doctrinal research which studies the provisions of mediation under various Indian statutes. The major issue which the paper deals with is the viability of a dedicated legislation on mediation in contemporary facts and circumstances related to dispute resolution mechanism by analyzing the key highlights of the Mediation Bill 2021. The paper explains the scope of mediation as a method of dispute resolution. It explores whether the existing provisions of mediation under various statutes such as the "Civil Procedure Code", the "Hindu Marriage Act", the "Industrial Disputes Act", etc. are sufficient to extract the benefits of mediation to its fullest or a dedicated legislation has become the need of the hour. The paper discusses how the concept of mediation has been present from ancient times in India in formal or informal manner. The paper highlights that despite mediation being an effective system of dispute resolution, there was no dedicated legislation on the subject. The paper studies the developments which led to the tabulation of the Mediation Bill 2021. Secondary data has been studied to conduct this research which include the judicial decisions, the report of NITI Aayog and the India-Singapore Mediation Summit 2021. The limitation of the work is that since the Mediation Bill is yet to take the shape of Act, it has to be seen how effective the Bill will prove to be and whether there would be need for any changes to it.

What is Mediation?

Any kind of dispute has three facets- people, process and problem. The manner in which the disputing parties handle a dispute is much more important than the dispute itself. A dispute may be addressed by either through litigation and arbitration or through mediation and conciliation. The former is called adversarial and the latter non-adversarial mode of dispute resolution. The resolution of a dispute through adversarial system involves legal representatives or advocates who represent the opposing claims of their clients before an impartial deciding authority who acts as a referee. In contrast, the non-adversarial modes such as mediation is people friendly, simple and assists the parties to find out the real reason of the dispute and assists the parties in working out a reasonable solution to it themselves. Such modes of dispute resolution are viable, economic and efficient.

Scope of Mediation

Several matters, if not all, can be mediated. These matters may be commercial, contractual, consumer-based or those involving tortious liability. Currently, the world is battling against a global crisis in the form of COVID-19

International Journal of Applied Engineering & Technology

which was officially declared as a pandemic by the World Health Organization on March 11, 2020.¹ The pandemic has not just claimed human lives but has also adversely impacted the business, commerce and timely performance of contractual obligations. It has severely impacted the global economy owing to forced lockdowns and restriction of movements. In such a scenario, it is highly advisable that the parties to a contractual dispute should make their best efforts to settle their issues via mediation, rather than going for arbitration or litigation. A world which is already reeling under this inclement pandemic does not need further pressure of court visits and litigation.

It has been aptly said by the great Albert Einstein, "*In the middle of every difficulty lies opportunity.*" In such an adverse situation as mentioned above, the Courts have taken up the challenge. They have taken recourse to the technology and have started virtual hearings and online filings. Hence it is now the right time that we all realize the importance of mediation as the most preferred mode of dispute resolution. We must make mediation the first option of dispute resolution and resort to courts only when and if the mediation fails.

Jurisprudence of Mediation

The notion of mediation is not strange in India. It is, in fact, well-known since ancient times. The roots of the concept of mediation are deep rooted in India. Whether we look as to how Lord Krishna tried to mediate between the Pandavas and the mighty Kauravas in the Mahabharata or we talk about how the elderly members of a family try to pacify any dispute between the younger family members, such instances are nothing but a form of mediation. If we add to it the functioning of Panchayats, we would realize that there exists a solid mediation culture in India. As per Mulla's Hindu Law, India began its quest for laws since Vedic period i.e. approximately 4000-1000 years B.C and there is a probability that some of the hymns were composed even earlier than 4000 B.C.² The early Aryans had behind them ages of civilized history and thought. They believed and practiced the unwritten law of right reason and divine wisdom which, in their belief, governed heaven and earth. Hence, right reason, divine wisdom and prudence were the initial philosophies of mediation. These philosophies are now practiced even in the western countries.

Mediation during Pre-British and British India

Historically, mediation and conciliation are much more ancient than the adversarial legal system.³ During pre-British era in India, various forms of mediation and conciliation gained tremendous popularity amongst the businessmen. The disputes between the traders were resolved by the Mahajans, who were prudent businessmen, through mediation. The Mahajans made themselves readily available at various business centers to mediate any kind of dispute between members of business association.⁴ The constitution of the Association contained a rule that if any member approached the court without subjecting his case for mediation, he shall be dismembered. This informal procedure was in practice in Gujarat which was a combination of Mediation and Arbitration (commonly termed as Med-Arb in the West). This kind of mediation had no legal basis despite its wide acceptance in the business community. Then, the East India Company took control over the Indian rulers and by 1753⁵, India was converted into a British Colony. British also had alternate dispute resolution system in India to settle disputes

¹ <https://www.mondaq.com/india/arbitration--dispute-resolution/957898/mediation--current-jurisprudence-and-the-path-ahead> last visited June 15, 2023

² Mulla, Principles of Hindu Law, 10th edition, p.9

³ <https://main.sci.gov.in/pdf/mediation/MT%20MANUAL%20OF%20INDIA.pdf> last visited June 15, 2023

⁴ Ibid

⁵ Ibid

between intra-governmental entities, between government agencies and undertakings, in labour disputes, and in public utility service disputes.⁶ By 1775, India saw establishment of British style courts.⁷

The indigenous adjudication modes were totally disregarded and ignored by the British and they modelled the procedure on the lines of British courts. There was, however, a prominent conflict between the British values and the Indian values. While the former wanted a definite decision, the latter encouraged the parties to settle their differences through compromise, in an amicable manner. Gradually, the British system of justice delivery became our primary justice delivery system and it remained as such throughout the 250 odd years of British rule in India. The local customs, the mediation procedures, the conciliation procedures, all these were termed as discriminatory on the ground that such procedures prevented a party to exercise their right to go to courts. The British courts slowly gained the confidence of people and became famous for their integrity. Even after the independence, the Indian judicial system has been propagated as the pride of nation.

In the recent past, Hon'ble Justice N.V. Ramana (then CJI), while speaking at the "India-Singapore Mediation Summit" in July 2021 opined, "mediation should be made mandatory as a first step in dispute resolution and that a law should be framed in this regard". In his speech called "Mediation for everyone: Realizing mediation's potential in India", he emphasized upon the need to popularize and give wide publicity to mediation as it was an economic and a swift mode of dispute resolution.⁸

Provisions of Mediation under Indian Statutes

As stated, mediation is not an alien concept to the Indian society. Apart from having ancient roots, various Indian laws have incorporated the provisions of mediation. Such legislations consist of, but not limited to the following:

1. Section 89 read with Order X Rule 1A of the Code of Civil Procedure, 1908 ("CPC" hereinafter)

The incorporation of Section 89 in the CPC is indicative of the fact that the utility of mediation as a mode of dispute resolution is being recognized. The Section states "Where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of a possible settlement and refer the same for: (a) arbitration; (b) conciliation; (c) judicial settlement including settlement through Lok Adalat: or (d) mediation."⁹ Order X Rule 1A of the CPC requires the parties to choose either mode of dispute resolution as mentioned in Section 89. As stated, the insertion of such a provision is a commendable step towards promoting dispute resolution through extra judicial modes.

2. Order XXXIIA of CPC

This Order relates to the matters concerning families and it has within its sweep the matters such as matrimonial, legitimacy of any person, guardianship, maintenance, adoption, etc. The law considers such matters as too sensitive to be dealt with through adversarial mode of dispute resolution and hence, very aptly, this Order recommends mediation in such matters. The intention of the legislature seems to keep intact the sensitive and personal relationships intact by avoiding direct litigation. The courts, in such matters, endeavour to assist the parties in reaching a solution in an amicable manner. For that purpose, it is open to the court to avail the aid of such persons (preferably women where they are available).¹⁰

⁶ Legislative Note No. 29/LN/Ref./December/2022

⁷ <https://main.sci.gov.in/pdf/Museum/m2.pdf> last visited June 15, 2023

⁸ <https://www.livelaw.in/top-stories/mediation-cji-ramana-speech-india-singapore-meditation-cji-summit-177662> last visited June 15, 2023

⁹ Section 89, "The Code of Civil Procedure 1908"

¹⁰ Civil Procedure, Takwani C.K., Fifth Edition, Eastern Book Company, P.298

3. Section 4, 12 and Section 10A of the “Industrial Disputes Act, 1947”

The importance of mediation is not limited to contractual or family matters but it equally holds importance in employer-employee relationships. Section 4 of the Industrial Disputes Act, 1947 makes ample provisions relating to promotion of mediation and arbitration as a potent tool for resolution of dispute between employer and employee. Section 4 of the Act makes provision for the appointment of Conciliation Officers¹¹ by the appropriate government and Section 12 provides for the duties of such officers where they require to, at their discretion, hold conciliation proceedings for an industrial dispute. Moreover, if the dispute relates to a public utility service, they are mandated to hold conciliation proceedings without any discretion¹². Similarly, insertion of Section 10A¹³ in the Act is also indicative of further recognition of extra judicial mode of dispute resolution by allowing the parties to voluntarily refer their dispute to arbitration¹⁴.

4. Matrimonial Dispute Therapy; Section 14 (2) of the “Hindu Marriage Act, 1955” and Section 29(2) of the “Special Marriage Act, 1954”

Poor communication is the reason for all relationship disputes. Mediation is a platform where a neutral mediator acts as a facilitator between the disputing parties to assist them in reaching a feasible solution to their dispute. Mediation is typically suitable in matrimonial matters because in most of such matters, the parties themselves are, within their minds, interested in preserving their relationship, particularly those couples who have issues. Apart from the above-mentioned benefit, mediation in such matters also ensures confidentiality, as well as is cost effective and less time consuming.

As per “Section 14 (2) of the Hindu Marriage Act, 1955”, “it shall not be competent for any court to entertain any petition for dissolution of a marriage by a decree of divorce, unless at the date of the presentation of the petition one year has elapsed”. We find similar law under “Section 29 (2) of the Special Marriage Act, 1954”.

Section 23(2) & (3) of Hindu Marriage Act, 1955, provides "Before proceeding to grant any relief under this Act, it shall be the duty of the Court, in the first instance, in every case where it is possible to do so consistently with the nature and circumstances of the case, to make every endeavour to bring about reconciliation between the parties."

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

5. “Legal Services Authority Act, 1987” read with Section 89 of CPC

In order to provide free legal aid and related services to the weaker sections of the society and to ensure that because of economic or any other disability justice is not denied to any citizen, “Legal Services Authorities Act, 1987” establishes legal services authorities at the centre, state and taluka level.

CPC provides that where the parties agree that dispute should be referred to Lok Adalat, the Court shall compulsorily refer it to the Lok Adalat. The matter shall be dealt in accordance with the provisions of Section 20 (1) of the “Legal Services Authority Act, 1987”.¹⁵ Consequently, all other provisions of that Act shall apply in

¹¹ Section 4, Industrial Disputes Act, 1947

¹² Section 12, Industrial Disputes Act, 1947

¹³ Ins. by Act 36 of 1956 (w.e.f. 10.3.1957)

¹⁴ Section 10A, Industrial Disputes Act, 1947

¹⁵ Section 89(2), Civil Procedure Code, 1908

respect of the dispute so referred to the Lok Adalat. Section 21 of the “Legal Services Authority Act, 1987” further, provides that a settlement arrived at before a Lok Adalat is enforceable as a decree of a civil court.

6. “Micro, Small and Medium Enterprises (MSME) Development Act, 2006”, Section 18

It has been enunciated under Section 18 of the (MSME) Development Act that Micro & Small Enterprises Facilitation Council should be taken into recourse with respect to any sum due under Section 17 (it relates to disputes concerning the payment of any amount to MSMEs) on reference of any of the parties. After the receipt of a reference, the Council shall either itself carry out conciliation in the matter or seek the support of any institution or centre providing alternate dispute resolution services by referring it to such an institution or centre. In such cases the provisions of Sections 65-81 of the “Arbitration and Conciliation Act, 1996” shall apply.

7. 129th Law Commission of India Report

With the object to reform judicial system the 129th Law Commission Report recommends urban litigation mediation as an alternative to adjudication. The commission suggested to appoint honorary magistrates to take old cases on which they can concentrate with the object to reduce burden on the regular court.

8. Section 32 (g) of the “Real Estate (Regulation and Development) Act, 2016”

The said Section lays down the functions of the Authority for the promotion of real estate sector. Sub clause (g) of Section 32 of the Act makes it mandatory for the Authority to recommend the government/competent authority such measures as would facilitate a peaceful settlement of disputes between the promoters and the allottees via various dispute settlement fora set up by the consumer or promoter associations.

9. Section 442 of the Companies Act, 2013 read with the Companies (Mediation and Conciliation) Rules, 2016

Section 442 of the “Companies Act, 2013” prescribes the Central government to maintain a panel of experts called the Mediation and Conciliation Panel. The Section states “the panel shall consist of such number of experts, having such qualifications, as may be prescribed for mediation between the parties during the pendency of any proceedings under this Act”.

Rule 3 of the Companies (Mediation and Conciliation) Rules, 2016 provides for a Panel of Mediators or Conciliators. These provisions are meant for referring the disputes to mediation pending adjudication before the National Company Law Tribunal and Appellate Tribunal.

10. “The Commercial Courts (Pre- Institution Mediation and Settlement) Rules, 2018”

This Commercial Courts Act, 2015 had come into existence to set up an alternative and speedier dispute resolution for Commercial matters. The Central Government introduced an amendment in year 2018 to choose mediation as preferred obligatory mode before initiating any legal proceedings in court. This is a welcome step by the government to promote mediation as the most sought after mode of dispute resolution.

11. Chapter V of the Consumer Protection Act, 2019 and “Consumer protection (Mediation) Rules, 2020”

The recent amendment to Consumer Protection Act provides that the disputes covered under this Act should be first referred to mediation. Section 37 (1) categorically states that at the first hearing of a complaint after its admission or at any later date, “if it appears to the District Commission that there exist elements of a settlement and which may be acceptable to the parties. In such cases the District Commission may direct the parties to give in writing within 5 days, their consent to refer the matter to mediation”.

The Union Government notified the “Consumer Protection (Mediation) Rules” in 2020. These rules strengthened the mediation as a mode to resolve disputes. A Mediation Cell in every Commission was set up and it shall have a panel of mediators on the recommendation of a selection committee consisting of the President and a member of that Commission.

To provide strength to the mediation in the Act, the parties are restricted to initiate any arbitral or judicial proceedings in respect of a matter which is the subject-matter of the mediation. Settlement agreement is not

International Journal of Applied Engineering & Technology

supposed to be discharged by death of party thereto and it shall be enforceable by or against the legal representative of the deceased party.¹⁶

Beside legislations promoting mediation the Judiciary also time and again promoted mediation as a mode of dispute resolution. There are various judgments by the Hon'ble Supreme Court wherein in a terse and straight manner emphasis was put upon to resort to mediation in respect of those matters which can be mediated. The best part of the mediation is that the interests of both the parties are taken care of rather than the divergent interests or competing claims are settled. Therefore, there is a win-win status for both the parties.

In “**Salem Bar Association v. Union of India**”, the Hon'ble Apex Court observed that the provision of Section 89 of the Civil Procedure Code has been included to guarantee speedy trial of the cases. It is not necessary to decide all the cases through regular medium of dispute resolution. Alternate Dispute Resolution mechanisms was emphasized to be promoted. Section 89 is considered to be a milestone in the history of legislation. It was recommended by the Hon'ble Court, that a Committee should be constituted so as to ensure that the amendments made to the Code of Civil Procedure become more effective and result in speedier disposal of cases.¹⁷

In “**Afcons Infrastructure v. Cherian Varkey Construction Co. Ltd.**”, the Hon'ble Apex Court listed down the matters which may be mediated and the matters which may not be mediated. In the former, the Court put cases involving forgery, fabrication of documents, cases involving minors whereas in the latter, it put the matters relating to commerce, trade and contracts. Further, the Court highlighted the drawbacks in Section 89 of the Civil Procedure Code and explained that when it may and may not be invoked.¹⁸

In, “**M.R. Krishna Murthi v. New India Assurance Co. Ltd.**”, while taking into account a plea seeking reform in the scheme of Motor Vehicle Accident Claims, the Hon'ble Apex Court suggested the Government of India to explore the feasibility of creating a Motor Accident Mediation Authority by bringing suitable amendments to the “Motor Vehicles Act 1988”.¹⁹

The Mediation Bill 2021

As discussed and highlighted above, mediation has plethora of advantages. We have seen how the provisions of mediation find place in various legislations, in order to provide a quick, cost-effective resolution to certain disputes. It also ensures lesser burden on our courts which already have huge pendency of cases, which not only refuses to come down, but keeps on growing.²⁰

The NITI Aayog has stated that compulsory mediation sessions, before the parties can approach court, have been successful in countries like Brazil, Turkey and Italy.²¹ The report further states that such kind of compulsory pre-litigation mediation would demand sufficient trained mediators.²²

In the light of the above we may conclude that India has been looking to have a dedicated legislation on mediation. To end such a quest and to further extend the legislative recognition of mediation, The Mediation Bill

¹⁶ <https://consumeraffairs.nic.in/sites/default/files/Mediation%20Rules.pdf> last visited June 15, 2023

¹⁷ (2003) 1 SCC 49

¹⁸ (2010) 8 SCC 24

¹⁹ 2019 SCC Online SC 315

²⁰ <https://prsindia.org/policy/vital-stats/pendency-and-vacancies-in-the-judiciary> last visited June 15, 2023

²¹ ‘Designing the Future of Dispute Resolution: The ODR Policy Plan for India’, NITI Aayog, October 2021

²² Ibid

International Journal of Applied Engineering & Technology

2021 was introduced in Rajya Sabha on 20th December, 2021.²³ The introduction of the Bill was based on the recommendation of the Supreme Court upon the report of a panel headed by Shri Niranjana Bhat.²⁴ The Bill was referred to the Standing Committee which submitted its report on July 13, 2022.²⁵ The Bill seeks *"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"*.²⁶

KEY HIGHLIGHTS OF THE BILL

1. Applicability of the Bill

The Bill shall apply to a mediation conducted in India where both the parties are domestic, or to international mediation, or where the agreement states that any dispute shall be resolved by the provisions of this Bill.²⁷

2. Pre-litigation mediation

The Bill compulsorily requires the parties, in civil and commercial disputes, to attend a minimum of two mediation sessions, failing which costs may be imposed on them.²⁸ It is pertinent to mention that the Standing Committee has recommended to make pre-litigation mediation optional and not mandatory and to introduce it in a phased manner.²⁹

3. Exclusion of certain disputes

The Bill contains a list of disputes or matters which are not fit for mediation and hence have been kept out of the purview of the Bill.³⁰ Such disputes include "disputes which by virtue of any law for the time being in force may not be submitted for mediation, disputes involving allegations of serious and specific fraud, fabrication of documents, forgery, impersonation, coercion, 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, disputes involving prosecution for criminal offences"³¹ and certain other disputes. It may be noted that the Standing Committee has recommended to reduce the number of disputes which have been

²³ https://loksabhadocs.nic.in/Refinput/New_Reference_Notes/English/19122022_103126_102120526.pdf last visited June 15, 2023

²⁴ *ibid*

²⁵ https://prsindia.org/files/bills_acts/bills_parliament/2021/SCR_Mediation%20Bill,%202021.pdf last visited June 15, 2023

²⁶ Preamble, "The Mediation Bill, 2021"

²⁷ Section 2, "The Mediation Bill, 2021"

²⁸ Section 6(1) and 20(2), "The Mediation Bill, 2021"

²⁹ https://prsindia.org/files/bills_acts/bills_parliament/2021/SCR_Mediation%20Bill,%202021.pdf last visited June 15, 2023

³⁰ The First Schedule, read with Section 7, "The Mediation Bill, 2021"

³¹ *Ibid*

taken out of the ambit of the Bill so as to ensure maximum possible disputes going for pre-litigation mediation.³² It has also recommended not to exclude disputes involving disabled persons from the ambit of the Bill.³³

4. Time bound process

The Bill requires the completion of mediation process within 180 days from the date of its commencement, while allowing extension for a further period of 180 days, if the parties consent to it.³⁴ It is pertinent to note that The Standing Committee recommended to reduce it to 90 days with a further extension of 60 days.³⁵

5. Appointment of mediators

The Bill provides complete freedom to the parties to appoint a mediator by mutual agreement. They may even appoint a mediator of any nationality, subject to his possessing such qualification and experience as may be specified in this behalf. In case of failure to appoint a mediator, the parties may apply to a mediation service provider for appointing a mediator.³⁶ The parties themselves may lay down the procedure of appointment of the mediator.³⁷

6. Mediation Council of India

The Bill has a dedicated Chapter for the establishment of Mediation Council of India, containing elaborate provisions for its establishment, composition, vacancies, resignation, removal, appointment of experts, Secretariat and Chief Executive Officer of Council and duties and functions of the Council.³⁸ The Council shall be a body corporate.³⁹

7. Enforcement of mediated settlement agreement

Once a settlement has been arrived at between the parties and been signed, it shall be binding upon them and “be enforced in accordance with the provisions of the Code of Civil Procedure, 1908, in the same manner as if it were a judgment or decree passed by a court, and may, accordingly, be relied on by any of the parties or persons claiming through them, by way of defence, set off or otherwise in any legal proceeding”.⁴⁰

8. Community Mediation

The Bill makes provisions for community mediation also. “Any dispute likely to affect peace, harmony and tranquility amongst the residents or families of any area or locality may be settled through community mediation with prior mutual consent of the parties to the dispute”.⁴¹

³² https://prsindia.org/files/bills_acts/bills_parliament/2021/SCR_Mediation%20Bill,%202021.pdf last visited June 15, 2023

³³ Ibid

³⁴ Section 21, “The Mediation Bill, 2021”

³⁵ https://prsindia.org/files/bills_acts/bills_parliament/2021/SCR_Mediation%20Bill,%202021.pdf last visited June 15, 2023

³⁶ Section 10, “The Mediation Bill, 2021”

³⁷ Ibid

³⁸ Chapter VIII, Section 33-40, “The Mediation Bill, 2021”

³⁹ Ibid

⁴⁰ Section 28, “The Mediation Bill, 2021”

⁴¹ Section 44, “The Mediation Bill, 2021”

CONCLUSION

There are so many options available to us when it comes to dispute resolution. It is well understood that parties in dispute are often not sure about the course which they should adopt to resolve their dispute. The underlying objective of mediation is to let the disputing parties seek assistance and aid of a third person, who is neutral, to help them reach a consensus on their own rather than imposing a solution, as was aptly said by Abraham Lincoln, *“Discourage litigation. Persuade your neighbour to compromise whenever you can. As a peacemaker, the lawyer has a superior opportunity of being a good man. There will still be business enough”*. The best of the professional mediators works with the disputant parties to explore the underlying interests of them and then use their positions.⁴²

A mediator can work with the parties together as well as separately, one by one, with the object of coming up with an arrangement which is feasible yet non-binding. Indian law very much protects mediation as a medium of dispute resolution in various statutes. It shows the seriousness of the government towards easy, amicable, party friendly and non adversarial method of dispute resolution.

As was emphasized by Hon’ble Justice Ramanna, *“Perhaps, an omnibus law in this regard is needed to fill the vacuum”*. This is high time to enact a Uniform statute for resolving disputes through mediation. There must be a law to make mediation the mandatory first step in dispute resolution process. Such a statute should make mediation as the compulsory first step for dispute resolution. Instead of approaching the court to address their disputes by way of litigation or arbitration before an Arbitral Tribunal, the parties should try mediation as mandatory. Institutions with well trained mediation professionals are required. Besides that, there requires a regulatory body which lays down the essential qualifications for a person to be a mediator and reviews the performance of the current mediators from time to time. Training sessions, workshops, courses, webinars and legal discourses by experts and qualified mediators are to be organized to raise Public awareness about mediation.

The Mediation Bill 2021 is a commendable step as it will be the first dedicated legislation on mediation in India. It is still taking shape but we can say that the ice has been broken in the matter. It is true that the Bill does not apply to international mediations conducted outside India but, as per the report of the Standing Committee, by revisiting the definition of international mediation, it can be brought in conformity with the Singapore Convention on Mediation.⁴³ Once the Bill takes the shape of Act and starts functioning, the study of its working will pave the way for making it more efficient and then we surely will have a dedicated and complete statute on mediation which will make the life easy and, more importantly, litigation-free.

⁴²<https://www.pon.harvard.edu/daily/dispute-resolution/what-are-the-three-basic-types-of-dispute-resolution-what-to-know-about-mediation-arbitration-and-litigation/> last visited June 15, 2023

⁴³ <https://www.singaporeconvention.org/convention/text> last visited June 15, 2023