RESOLVING COMMERCIAL DISPUTES IN INDIA: FOCUS ON 'MEDIATION' AS AN EFFECTIVE ALTERNATIVE 'TOWARDS EASE OF DOING BUSINESS'

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ABSTRACT

Disputes are inevitable in commercial transactions and this gets further complicated when it comes to cross-boundary commercial transactions. It has frequently been experienced that the parties to a commercial dispute, including international commercial transaction disputes, take a recourse to arbitration. Institutions like I.C.C., L.C.I.A. and I.C.S.I.D. have evolved and are handling the matters relating to international commercial disputes. While one may say that, the international dispute settlement mechanism in commercial matters is invariably 'arbitration', as parties do not prefer to choose litigation due to its inherent lacunae of delay and costs, the new methods or alternate methods of dispute settlement are still evolving. Mediation is one such method and has proven itself to be unique and quite successful settlement process when conducted by a skilled mediator. As regards its utility, mediation is more useful as compared to arbitration because of its principle of parties themselves coming to a settlement and 'without prejudice' process. However, the parties to a commercial dispute or an international commercial transaction dispute have not accepted mediation that readily. This paper explores the reasons behind that by examining the

existing literature and the efforts put in by the countries in promoting mediation as a method of settlement of commercial disputes. It explores if 'mediation' can emerge as an important alternative to the dispute settlement mechanism for settling commercial disputes.

1. INTRODUCTION

Contracts govern the commercial relationships and an efficient enforcement of contract is essential to economic development and sustained growth. This is especially applicable to international commerce and business transactions. Advancements in technology, transportation, and communication have made international business the "most significant, ever-growing, and predominate aspect of the modern world".[1] India is not untouched by these developments and accordingly is concerned about various indices including the one on 'Ease of Doing Business'. Selection of a proper dispute resolution clause in commercial arrangements is an important risk management strategy. Though there cannot be a straightjacket formula, as each transaction has its own risk analysis matrix, which needs to be examined at the contract negotiations stage to project potential disputes. Like every industry, International

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[1] Julie Barker, *International Mediation - A Better Alternative for the Resolution of Commercial Disputes: Guidelines for a U.S. Negotiator Involved in an International Commercial Mediation with Mexicans*, 19 LOY. L.A. INT'L & COMP. L. REV. 1 (1996).

Investment has its own peculiarities, and the dispute resolution mechanisms are to be chosen based on such analysis.[2]

2. MEDIATION OF COMMERCIAL DISPUTES

While mediation may not be a right option for all types of commercial cases, for example, the Petroleum Sector disputes,[3] mediation may be suited for resolving commercial disputes in a majority of the matters as the mediators are able to bring parties closer by creating an overall atmosphere conducive to information sharing,[4] confidence building and cooperation.[5] There are many types of dispute resolution mechanisms available to the parties, which may be characterized ranging from 'negotiated settlement to all-out-war (referring to litigation)'.[6] The oldest mode of dispute resolution is litigation, however, is not a preferred mode nowadays. Parties to a commercial transaction prefer Alternative Dispute Resolution ("ADR") modes, which are negotiation, mediation, conciliation, and expert determination other than arbitration, which is the most preferred mode of dispute resolution in international commercial matters.[7]

[2] MUSTAFA ERKAN, INTERNATIONAL ENERGY INVESTMENT LAW: STABILITY THROUGH CONTRACTUAL CLAUSES 239 (2011).
[3] *Id.*
[4] *See* Moti Ram v. Ashok Kumar, (2011) 1 S.C.C. 466.
[5] CHRISTOPHER MOORE, THE MEDIATION PROCESS 211-94 (3d ed. 2003).
[6] A. Redfern, *Having Confidence in International Arbitration*, 57 DISPUTE RESOLUTION JOURNAL, no. 4, Nov., 2002, at 60.
[7] J.M. Hertzfel, *Applicable Law and Dispute Settlement in Soviet Joint Ventures*, 3 ICSID Rev. Foreign Investment L. J. 249 (1988).

Transnationally, arbitration is still the preferred method of resolving international commercial disputes following the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).[8] However, over a period, the international corporate community has become somewhat disenchanted with International Commercial Arbitration as a mode of dispute settlement because of concerns about rising costs, delays, and procedural formality.[9]

As a result, parties are looking for other means of resolving international commercial disputes.[10] Mediation is one of the popular ones around the world.[11] Mediation introduces effective procedures to generate and evaluate options for settlement.[12]

A study conducted in 1997 by Cornell University of the general counsels of 528 large and medium-sized US corporations revealed a high utilization of ADR in commercial disputes. Mediation was the preferred mode as it provided greater control over the process, especially over potentially risky disputes and ultimately preserved good relationships.[13]

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[8] Ellen E. Deason, *Enforcement of Settlement Agreements in International Commercial Mediation: A New Legal Framework?*, DISPUTE RESOLUTION MAGAZINE, Fall 2015: 32.
[9] *See* WILLIAM PARK, ARBITRATION OF INTERNATIONAL BUSINESS DISPUTES: STUDIES IN LAW AND PRACTICE 3–27 (2d ed. 2012); S.I. Strong, *Increasing Legalism in International Commercial Arbitration: A New Theory of Causes, a New Approach to Cures*, 7 WORLD ARB. & MEDIATION REV. 117, 117–18 (2013) [hereinafter Strong, Increasing Legalism].
[10] S. I. Strong, *Beyond International Commercial Arbitration? The Promise of International Commercial Mediation*, 45 WASH. U. J. L. & POL'Y 11 (2014).
[11] Neil H. Andrews, *Mediation: International Experience and Global Trends*, University of Cambridge Faculty of Law Research Paper No. 42/2018 (June 1, 2018).
[12] CHRISTOPHER MOORE, THE MEDIATION PROCESS 211-94 (3d ed. 2003).
[13] John Weingarth, *ADR as a Risk Management Tool for Business*, 1 THE ADR BULLETIN, no. 9, Mar., 1999.

However, this does not hold good for India where while Mediation has been successful in resolving a number of matrimonial/family and small consumer disputes, it has not been a demonstrated success in managing commercial disputes. Ironically, Indian business scenario is ruled by privately owned companies (even public ones known by its promoter houses, say for e.g. reliance, Mahindra, Infosys, etc.) where preserving relationships becomes very important, yet, mediation has not been preferred. Supreme Court in a number of decisions has emphasized the role of mediation in such cases.[14]

3. MEDIATION: THE TERMINOLOGICAL CONFUSION

Many authors use the terms mediation, conciliation, and good-offices interchangeably. Technically, a mediator is an active participant in the process and informally makes suggestions to the parties, based on the information that the parties supply.[15] A conciliator has more rights to make formal proposals for resolutions, based on independent investigation of the dispute. A good- officer is not an active participant in the dispute and simply encourages the parties to resume negotiations or provides them with an additional channel of communications.[16] In practice, however, these distinctions tend to blur, making it very difficult to draw the line among the three different procedures.

[14] B.S. Krishna Murthy v. B.S. Nagaraj, (2011) 15 S.C.C. 464.
[15] JAMS International, *Winning at Mediation Getting the Best Outcomes from Mediation*.
[16] *See* R (Cowl) v. Plymouth City Council [2001] E.W.C.A. Civ. 1935; Dunnett v. Railtrack PLC [2002] E.W.C.A. Civ. 303; Hurst v. Leeming [2001] E.W.H.C. 1051 (Ch.).

This confusion was also an important element of debate at the UNCITRAL Working Group discussions, deliberating upon the Model Law on Conciliation.[17]

> *At its sixty-fourth session, the Working Group considered whether the term "mediation" should replace the term "conciliation" throughout the instruments and, if so, the possible implications on existing UNCITRAL texts, which were prepared using the term "conciliation". At that session, a view was expressed that the instruments should refer to "mediation" instead of "conciliation", as it was a more widely used term.*[18]

In India, the term mediation got focused attention in the *Salem Bar Association (I).*[19] Among other things, the newly introduced section 89 in the Code of Civil Procedure was being challenged which provided for 'settlement of disputes outside courts' including 'mediation'.[20] The Supreme Court ruled out a possibility of the provisions being *ultra vires* the Constitution of India; however, it agreed with the suggestion to constitute a Committee "so as to ensure that the amendments made become effective and result in quicker dispensation of justice". Accordingly, a Committee constituted under the Chairmanship of Justice

[17] U.N. Comm'n on Int'l Trade Law (UNCITRAL), *Model Law on Conciliation*; *see* U.N. Comm'n on Int'l Trade Law (UNCITRAL), *Report of Working Group II (Dispute Settlement) on the work of its sixty-eighth session*, A/CN.9/934 (Feb. 19, 2018).

[18] At its sixty-seventh session, the Working Group reached a shared understanding that the terms "conciliation", "conciliator" and other similar terms should be replaced with the terms "mediation", "mediator" and corresponding terms in the instruments as well as in the UNCITRAL Conciliation Rules (1980).

[19] Salem Bar Ass'n (I) v. Union of India, (2003) 1 S.C.C 49.

[20] Others being arbitration, conciliation, and judicial settlement through lok adalat.

M. Jagannadha Rao, gave a detailed report in three parts.[21] The second report provided for a Model Alternative Dispute Resolution and Mediation Rules. These rules focused in detail on the concept and procedures of mediation including the role of a mediator. These rules got a stamp of approval from Supreme Court in *Salem Bar Association (II)*,[22] resulting in the creation of the Supreme Court Mediation Training Manual,[23] and the establishment of mediation centres in High Courts throughout the Country.

In the landmark decision of *Afcons Infrastructure*,[24] Supreme Court examined the scope of Section 89 in detail and provided the much-needed clarity on the process required to be followed by the courts in referring the disputes to ADR under the modes prescribed in section 89. Applying a purposive construction,[25] this decision also corrected an important draftsman's error by interchanging the definition of "judicial settlement" and "mediation" in Sections 89(2) (c) and (d).

In Para 12 of the *Afcons* decision a reference is drawn to Black's Law Dictionary to say that 'it is (mediation) also a synonym of the term conciliation'; however, it may be noted that the focus of the discussion in that para is not difference between mediation and conciliation. The focus

[21] The first part dealt with various grievances relating to amendments to the CPC 2002 and the third part dealt with Case Flow Management and Model Rules.
[22] Salem Bar Ass'n (II) v. Union of India, (2005) 6 S.C.C. 344.
[23] https://www.sci.gov.in/pdf/mediation/MT%20MANUAL%20OF%20INDIA.pdf
[24] Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P.) Ltd., (2010) 8 S.C.C. 24.
[25] *See* Tirath Singh v. Bachittar Singh, A.I.R. 1955 S.C. 830; Shamrao Parulekar v. District Magistrate, Thana, A.I.R. 1952 S.C. 324; Molar Mal v. Kay Iron Works, 2004 (4) S.C.C. 285; Mangin v. Inland Revenue Comm'n, 1971 A.C. 739; Salem Bar Ass'n (II) v. Union of India, (2005) 6 S.C.C. 344; Stock v. Frank Jones (Tipton) Ltd., (1978) 1 W.L.R. 231.

is as to the difference between 'judicial settlement' and 'mediation'. Conciliation is separately addressed in para 35 of *Afcons* decision. In fact, according to Justice R.V. Raveendran who wrote *Afcons*, there is a difference between mediation and conciliation in a degree of professional training, i.e.:

> *Where the conciliator is a professional trained in the art of mediation (as contrasted from a layman, friend, relative, well-wisher, or social worker acting as a conciliator), the process of conciliation is referred to as mediation. In cases where the third party assisting the parties to arrive at a settlement is not a trained professional mediator, the process is referred to as conciliation.*[26]

Internationally also, Government of India has maintained the distinction between the concepts of 'mediation' and 'conciliation'.[27]

4. ARBITRATION AND CONCILIATION LAW IN INDIA: SCOPE OF MEDIATION

Under the Arbitration and Conciliation Act, the arbitral tribunal may use mediation, conciliation, or other procedures at any time during the arbitral proceedings to encourage settlement.[28]

[26] R.V. Raveendran, *Section 89 CPC: Need for an Urgent Relook*, *in* REPORT 238 OF THE LAW COMMISSION OF INDIA ON AMENDMENT OF SECTION 89 OF THE CODE OF CIVIL PROCEDURE, 1908 AND ALLIED PROVISIONS, 2011(2007) 4 S.C.C. J23.

[27] *See* U.N. Comm'n on Int'l Trade Law (UNCITRAL), *Comments by India at the Sixty-third Session on Settlement of Commercial Disputes: Enforcement of Settlement Agreements*, A/CN.9/WG.II/WP.191.

[28] Arbitration and Conciliation Act, 1996, § 30.

> *It is permissible for parties to arrive at a mutual settlement even when the arbitration proceedings are going on. In fact, even the tribunal can make efforts to encourage mutual settlement. If parties settle the dispute by mutual agreement, the arbitration shall be terminated. However, if both parties and the Arbitral Tribunal agree, the settlement can be recorded in the form of an arbitral award on agreed terms, which is called consent award. Such arbitral award shall have the same force as any other arbitral award. Under Section 30 of the Act, even in the absence of any provision in the arbitration agreement, the Arbitral Tribunal can, with the express consent of the parties, mediate or conciliate with the parties, to resolve the disputes referred for arbitration.*[29]

However, experience shows that arbitral tribunal rarely uses these procedures. For that matter, even response from courts is not very encouraging.[30] Internationally, however, the trend is towards adopting hybrid models of dispute resolution like med-arb, co-med-arb, arb-med, etc.[31] It is interesting to note that the Justice B.N. Srikrishna Committee on Arbitration,[32] has recognized this trend by recommending that the Government may examine the feasibility of a standalone legislation for mediation, post-debate, and discussions with the relevant stakeholders.

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[29] Nishith Desai Associates, *International Commercial Arbitration: Law and Recent Developments in India*, Mar., 2018.

[30] VIDHI CENTRE FOR LEGAL POL'Y, STRENGTHENING MEDIATION IN INDIA: A REPORT ON COURT-CONNECTED MEDIATIONS.

[31] *See* Mark Baril & Donald Dickey, *MED-ARB: The Best of Both Worlds or Just A Limited ADR Option?*, *available at* https://www.mediate.com.

[32] B. N. Srikrishna (Chairman), *Report of the High-Level Committee to Review the Institutionalization of Arbitration Mechanism in India*, Govt. of India, July, 2017.

5. COMPANIES ACT: MEDIATION AND CONCILIATION PANEL - A NON-STARTER

Companies Act, 2013 provides for maintenance of Mediation and Conciliation Panel as per Section 442 of the Act and the rules made thereunder. In fact, the Regional Directors (RDs) have been authorized to maintain the panel and they are doing so. However, the concept has not seen the light of the day in terms of actual commercial disputes being referred to by the National Company Law Tribunal (NCLT). Though legislated with a noble objective, the law leaves the discretion to the parties to move for settling the disputes through a mediation and conciliation panel maintained by the Central Government (Regional Director). The Regional Directors just put up a list of names and addresses of empanelled mediators without any further efforts to sensitize the disputants to try the methods. It should be maintained on an interactive website and there should be some compulsion as per law on the NCLT to at least allow the parties to explore the option before they fully litigate the matter. This would be in line with Section 89 CPC proceedings.

Ministry of Corporate Affairs ("MCA") regulates the corporate affairs in India through various legislations. Majority of commercial disputes involve companies (public and private), LLPs, partnership firms, societies, government companies, and foreign companies. As a regulator, integrator, facilitator, and educator, MCA could be a natural partner in promoting ADR as a mechanism of dispute resolution, which would

ultimately improve our ranking in EODB, which is presently being dealt with by Ministry of Law and Justice, as noted above.

6. INSOLVENCY AND BANKRUPTCY CODE, 2016 (IBC) AND MEDIATION

IBC does not formally recognize the concept of mediation, except under the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017.[33] Internationally, mediation is used in restructuring and insolvency cases by the insolvency professionals. In USA and Europe, mediation is frequently used in insolvency proceedings.[34] However, a ray of hope is that the adjudicating authority under IBC i.e. NCLT may provide some direction to this in future.

7. MEDIATION UNDER THE CONSUMER PROTECTION BILL, 2018

It is proposed in the Consumer Protection Bill 2018 that, the Central Government shall establish a Consumer Mediation Cells attached to the National Commission, State Commission, and District Commissions. These mediation cells would empanel mediators.[35] There would be a compulsory reference to mediation at the first hearing of the complaint after admission, or at any later stage in the opinion of the District Commission.[36] Department of Consumer Affairs has already established The Online Consumer Mediation Centre (OCMC) at NLSIU,

[33] *See* Regulation 12.
[34] BOB WESSELS, MEDIATION IN RESTRUCTURING AND INSOLVENCY (2016).
[35] Consumer Protection Bill, 2018, Chap. V, Cl. 74.
[36] *Id.* cl. 37.

Bengaluru.[37] While mediation has been used successfully to resolve the consumer disputes by the mediation centres,[38] this is another formal introduction of the concept of mediation in a commercial welfare legislation.

8. COMMERCIAL COURTS AND PRE-INSTITUTION MEDIATION (PIM)

India leapt 30 points to reach 100 in the Ease of Doing Business (EODB) 2018 ranking of the World Bank, compared to 130 in the previous year. One of the significant indicators (out of 11 indicators) which restricted India from performing better was raking on the indicator 'Enforcing Contracts' which stood at 164. There was only an improvement of 8 positions on this indicator. One of the major reasons was the delay in settlement of disputes. As per reports, it takes 1445 days to dispose of a commercial case (out of these 1095 days are spent on the trial and judgment phase and 305 days on enforcement of the judgment).

"The enforcing contracts indicator measures the time and cost for resolving a commercial dispute through a local first-instance court, and the quality of judicial processes index, evaluating whether each economy has adopted a series of good practices that promote quality and efficiency in the court system."[39] Availability and effectiveness of 'Alternate Dispute

[37] https://onlinemediationcenter.ac.in/about-online-consumer-mediation-centre/.
[38] *See for e.g.*, The Mediation Center of Delhi Dispute Redressal Society (DDRS), *Samadhan* at Delhi High Court, Bengaluru Mediation Center, etc.
[39] E.O.D.B .REPORT 2018.

Resolution (ADR)' mechanism is also measured as one of the sub-parameters.

In view of the EODB statistics, Government of India constituted a Task Force for Improving India's Ranking in the World Bank Report on Ease of Doing Business for Indicator of 'Enforcing Contracts' under Ministry of Law and Justice.[40] The Task Force has met six times as of 28th March 2018 and as a result, we saw an amendment introduced into the Commercial Courts, Commercial Division and Commercial Division of High Courts Act of 2015 ("Commercial Courts Act") by way of an Ordinance,[41] passed on 3rd May of 2018. The Ordinance introduces the concept of Pre-Institution Mediation (PIM) process:

> *In cases where no urgent, interim relief is contemplated which will provide an opportunity to the parties to resolve the commercial disputes outside the ambit of the courts through the authorities constituted under the Legal Services Authorities Act, 1987 ("LSA"). It is also contemplated to help in reinforcing investor's confidence in the resolution of commercial disputes. A new section 21A is inserted which enables the Central Government to make rules and procedures for PIM.*

The Government has further authorized the State Authority and District Authority constituted under the LSA, for the purposes of pre-institution mediation and settlement under the Commercial Courts Act.[42]

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[40] http://doj.gov.in/sites/default/files/Minutes%20of%20Task%20Force%20First%20%20Meeting.pdf.

[41] No. 3 of 2018.

[42] Notification S.O. 3232 (E) (July 3, 2018).

While this action on part of the Government of India is laudable, the question is whether the authorities so notified under LSA, will be able to do justice to the cause. This concern is not unfounded, as Supreme Court has reiterated in a number of cases that *Lok Adalats* must act only as statutory conciliators having no judicial role.[43] This responsibility seems to be an onerous task on the authorities under LSA, unless there is a special focus on the cause and action is taken accordingly.

9. CHALLENGES AND WAY FORWARD

Hon'ble Justice A.K. Sikri, Judge Supreme Court of India emphasized the virtues of Mediation in commercial disputes in the case of *Vikram Bakshi v. Sonia Khosla*,[44] as follows:

> *Mediation can provide a cost-effective and quick extrajudicial resolution of disputes in civil and commercial matters through processes tailored to the needs of the parties. Agreements resulting from mediation are more likely to be complied with voluntarily and are more likely to preserve an amicable and sustainable relationship between the parties. These benefits become even more pronounced in situations displaying cross-border elements.*

We are witnessing a movement towards utilization of mediation in commercial matters already as may be noticed by insertion of mediation and conciliation panel in the Companies Act, 2013, introduction of the

[43] B.P. Sevamandir v. A.M. Hassan, (2009) 2 S.C.C. 198; United India Insurance Co. Ltd. v. Ajay Sinha, (2008) 7 S.C.C. 4549; State of Punjab v. Jalour Singh, (2008) 2 S.C.C. 660; P.T. Thomas v. Thomas Job, (2005) 6 S.C.C. 478.
[44] Special Leave Petition (Criminal) No. 6873 of 2010 (May 8, 2014).

concept of mediation in the Consumer Protection Bill, and introduction of the concept of Pre-Institution Mediation (PIM) by way of an Ordinance to the Commercial Courts, Commercial Division, and Commercial Division of High Courts Act of 2015. However, one of the major challenges is the advocacy of the concept by natural stakeholders. "Mediation generally is still regarded with considerable suspicion by many lawyers and with profound ignorance by some commercial organizations".[45]

` The Singapore Report of the GPC Series,[46] gives very important findings, for example, that the 'parties see lawyers, whether external or in-house, as primarily responsible for advising them about their dispute resolution process options.' Irrespective of the innovation or reform, education is perceived as a driving force behind the evolution of commercial dispute resolution. In U.K., because of the Court of Appeal judgment in *Halsey v. Milton Keynes*:[47]

> *Legal advisers must ensure that they not only know about mediation but that they are able to and do advise their clients before and during litigation (including arbitration) whether to use mediation and, if so, when to do so. Equally, legal advisers must be able to protect their clients (and themselves!) against an adverse cost order or suit if they decide not to try to resolve the dispute by mediation.*

[45] Michel Kallipetis, *Mediation in Civil and Commercial Disputes: Top 5 Things Everyone Should Know About Mediation*, A.P.P.G. on ADR (May 25, 2016).
[46] Int'l Mediation Institute, *Global Pound Conference Series 2016-17: Shaping the Future of Dispute Resolution & Improving Access to Justice: The Singapore Report 2016*
[2004] E.W.C.A. (Civ.) 576, 47.

The major role in promoting mediation lies with the lawyers and judges. We need more champions of mediation in the Judiciary.

While mediation is becoming the predominant mechanism for third-party intervention in the settlement of international disputes, one of the challenges is that there are no international instruments that oblige national courts to enforce agreements to mediate and none that guarantee enforceability of mediated settlements.[48] It may be noted that international mediated settlements have not been attractive due to uncertainty around its enforceability by the countries, as UNCITRAL Model law on conciliation does not have a similar treatment as the New York Convention. This is in spite of the fact that several authors have stated that international mediation can make an important contribution to global peace and stability.[49]

On this point, it would not be out of place to reiterate the seven suggestions made by the Committee on Arbitration headed by Justice B.N. Srikrishna.

1. Promote Med-Arb: Every arbitral institution should provide mediation services, through a cell or panel. Such mediation cell or centre should, in turn, enrol trained mediators. This service should be provided by the centre as part of its routine, where parties should be encouraged to strive to settle the dispute without

[48] Bobette Wolski, *Recent Developments in International Commercial Dispute Resolution: Expanding the Options*, 13 BOND L. REV., no. 2, 2001.
[49] Gary Mendoza, *Mediation as an Instrument of International Crisis Management: Cyprus-A Case Study*, 7 YALE J. INT'L L. (1981).

recourse to arbitration. Attempt to settle (through mediation) every dispute referred should be first made, within a limited time frame. If this effort does not succeed, the parties should then revert to the adjudicatory mode in arbitration.

2. Standard Setting: The proposed A.P.C.I.,[50] should indicate standards that institutions can adopt, for enrolling mediators in every institution, in terms of minimum training, experience, etc. The APCI should prescribe the necessary standards or experience which mediators ought to possess.
3. The possibility of parties seeking mediation, as a method of arriving at a settlement, before or during the course of the arbitral proceedings, in respect of one or some points of dispute, should be available. Like in the case of the AMA protocol[51] devised by the SIAC[52] and the SIMC[53], this may be through a limited stay of arbitral proceedings (barring hearings on interim measures) for a specified time, when the parties should make intensive efforts to arrive at a mutually acceptable settlement. This can be a full settlement of all disputes, or partial settlement, that can be embodied in an award; other unresolved issues of the dispute may be a subject matter of the reference to arbitration.

[50] Arbitration Promotion Council of India (proposed).
[51] Arb-Med-Arb protocol.
[52] Singapore International Arbitration Centre.
[53] *Id.*

4. The Government should discuss and debate the feasibility of a standalone mediation law, its scope and ambit, and the way forward for its drafting.
5. The Government should consider separating the mediation and conciliation regimes in the country.
6. ADR culture has to be developed, disseminated and inculcated at the stage of contract formation to parties and counsel. This is often necessary because ADR requires both parties to see the long-term benefits of private dispute resolution; convincing parties or lawyers once the dispute has arisen to give up the perceived advantages of litigation is more difficult.
7. The general focus on legal training in India is on dispute resolution through court proceedings or threat of court proceedings. The professional lawyer is also supposed to be an advisor looking after the best interests of the client but often lacks the training to conduct professional negotiations in a dispassionate manner. Law schools and colleges in India should concentrate on this aspect of legal training, which prevents disputes from escalating into emotional diatribes through notices, and builds capacities and skills to negotiate, mediate and settle disputes. Mediation shall be introduced as a compulsory clinical paper for study/practice in the LL.B. Course.

One of the major stakeholders in a growing number of disputes is the Government Departments. Last but not the least, the Government

Departments must understand the virtues of this form of dispute resolution and promote it in its National Litigation Policy (rather, it should be renamed as National Dispute Resolution Policy).