**Adopting a transformative vision for mediation**

In an era dominated by judicial backlog and prolonged litigation, the emphatic directive from the Chief Justice of India, Justice D.Y. Chandrachud, in April 2024, to “mediate, not litigate”, echoes with increasing urgency. The Mediation Act, 2023, notified on September 15, 2023, promises a transformative shift towards alternative dispute resolution. This legislation not only formalises mediation but also provides a comprehensive definition that includes pre-litigation and court-annexed mediation, online platforms, and community mediation among its forms, all aimed at facilitating amicable settlements through the intervention of a neutral mediator.

The reflections of the former Supreme Court of India judge, Justice S.K. Kaul, further illuminate the nuanced role of mediation. Speaking at a recent event, he recognised the evolution of mediation from a concept met with scepticism to one that is now warmly embraced by the legal community. Justice Kaul underscored that mediation should not be seen as a replacement for established legal procedures such as the Insolvency and Bankruptcy Code (“IBC”), but rather as a synergistic approach.

Echoing the ethos of Mahatma Gandhi, who saw the true role of a lawyer not in litigation but in uniting parties in dispute, mediation reorients the focus from adversarial confrontation to reconciling differences and healing relationships. As peacemakers, mediators foster a democratic space for open dialogue, allowing individuals to express their emotions and grievances freely, thereby paving the way for mutual understanding and the restoration of balance.

This narrative not only showcases the expanding scope of mediation but also emphasises its critical role in streamlining both legal and economic dispute resolutions. It underscores our collective need to integrate mediation more deeply into our dispute resolution framework and, more importantly, cultivate a new generation of mediators.

**Barriers to skill development**

To ensure the effectiveness of mediation, it is critical to recognise certain flaws which may hinder the successful on-ground implementation of the Mediation Act, 2023. While the legislation sets a strong foundation, the true efficacy of mediation relies equally on practical on-ground implementation and further improvements in the legislation.

Under current guidelines, aspiring mediators are required to have 15 years of professional experience in their field before they qualify to practise as mediators. This experience equips mediators with a deep understanding of the nuanced dynamics necessary to effectively guide disputing parties toward resolution.

However, the path from initial basic mediation understanding in law school to becoming a practising mediator involves significant challenges. Law students are typically and specifically trained to advocate strongly from their client’s perspective, a necessary skill in litigation but one that contrasts sharply with the mediator’s role, which emphasises neutrality, impartiality, and an unbiased commitment to the mediation process rather than to a specific outcome.

This bifurcated approach — where one must unlearn mediation to practise advocacy and then, years later, unlearn advocacy to return to mediation — underscores a deeper disconnect in our legal education and practice. It suggests a need for continuous, integrated learning that allows legal professionals to wear multiple hats, switching from advocate to mediator with fluidity rather than viewing these roles as mutually exclusive stages of their career. Such an integrated approach would not only maintain the mediator’s skill set throughout their career but also enhance their overall effectiveness by combining deep legal knowledge with core mediation competencies.

**Fostering the next generation of mediators**

To elevate the effectiveness of mediation, it is essential to recognise the distinct skill sets required beyond traditional legal expertise. Innovative training methods such as co-mediation and shadow mediation should be incorporated under the Mediation Act 2023 for young lawyers. Co-mediation pairs novice mediators with experienced counterparts in actual mediation sessions, facilitating a dynamic learning environment where skills can be actively observed and practised. Concurrently, shadow mediation offers novices a chance to observe these sessions without direct involvement, providing them with insights into the subtleties of the mediation process and various conflict resolution strategies. By merging direct participation and observational learning, these training methods equip emerging mediators with a deeper understanding and practical experience, crucial for handling complex disputes effectively and confidently. This dual approach ensures a comprehensive learning experience, paving the way for well-rounded professional development in the field of mediation.

Such practical exposure will ensure that emerging mediators develop the nuanced skills and the confidence necessary for mediating complex disputes effectively.

Additionally, embedding a structured mediation training module within the law school curriculum is vital. Introducing law students early to mediation training can ignite their interest and equip them with critical skills for resolving disputes empathetically and efficiently, setting the stage for a new generation of adept mediators.

Adoption of these strategic enhancements will not only tweak existing frameworks but also spearhead a significant evolution in the legal landscape.

These changes shall promise to transform the Mediation Act, 2023, from statute to a dynamic catalyst for growth and innovation in dispute resolution across India.

By empowering the next generation of mediators with the tools to succeed, we will be setting the stage for a more harmonious, efficient, and just society. Let us seize this opportunity to foster a robust culture of mediation, ensuring that every mediator not only learns the craft but also masters the art of peace making.