1. **Introduction:**

1.1 **PREAMBLE**
In a developing country like India with major economic reforms under way within the frame-work of rule of law, strategies for swifter resolution of disputes, there is no better option but to strive to develop alternative modes of dispute resolution by establishing facilities for providing settlement of disputes through arbitration, conciliation, mediation, negotiation, etc.

1.1.2
“The philosophy of Alternate Dispute Resolution Systems is well-stated by Abraham Lincoln : “discourage litigation, persuade your neighbours to compromise whenever you can. Point out to them how the normal winner is often a loser in fees, expenses, cost and time.” Litigation does not always lead to a satisfactory result. It is expensive in terms of time and money. A case won or lost in court of law does not change the mindset of the litigants who continue to be adversaries and go on fighting in appears after appeals. Alternative Dispute Resolution system enable the change in mental approach of the parties ….. A Conference on ADR systems is being held in Mumbai on 20th November this year where, leading experts in the world on ADR system would be available for launching the movement on a large scale”

1.1.3
There is now a growing shift the world over to Mediation/Conciliation which unlike Mediator / Conciliator is a neutral third party appointed with the mutual consent of the disputants to facilitate a negotiated settlement of the dispute. Today Mediation / Conciliation is the most rapidly growing form of ADR. It is being actively utilized in almost every conceivable type of dispute resolution and come in various forms. The process has also been effectively adapted for multiple party dispute resolution with tremendous success. On average the success rates of mediation processes range from 80% to 85%.

1.1.4
The Government of India also took initiative in the matter. It repealed the old Arbitration Act 1940 and introduced new and effective arbitration system by enacting the Arbitration and Conciliation Act, 1996. It came into force on 22nd August 1996. It is based on the United Nations Commission
on International Trade Law (UNCITRAL) model law on International Commercial Arbitration. The objectives of this Act re to make provision for an arbitral procedure which is friar, efficient and capable of meeting the needs of the specific arbitration; and to permit an arbitral tribunal to use mediation, conciliation or other procedures during the arbitral proceedings to encourage settlement of disputes.

1.1.5

**Overview of the Mediation process:**

Mediation means a process in which a Mediator assists and facilitates two or more parties to a controversy, in reaching a mutually acceptable resolution.

**MAHATMA GANDHI**

Mahatma Gandhi, the Father of the Nation, believed, as an article of faith, in people’s participation and decentralized justice. He said:

My idea of village Swaraj is that it is complete republic, independent of its neighbors for its own vital wants, and yet inter-dependent for many others in which dependence is a necessary. The Government of the village will be conducted by the Panchayat of five persons annually elected by the villagers, male or female, possessing minimum prescribed qualifications. These will have all the authority and jurisdiction required. So there will be no system of punishments in the accepted sense, this Panchayat will be the legislature, judiciary and executive combined to operate for its year of office. Any village can become such a republic today without much interference.

**Woodrow Wilson**

If you come at me with your fists doubled, I think, I can promise you that mine will double as fast as yours’ but if you come to me and say, “Let us sit down and take counsel together; and if we differ from one another, (let us), understand why it is that we differ from one another (and understand) just what the points at issue are”.
We will presently find that we are not so far apart after all, that the points on which we differ are few and that if we only have the patience and the candor and the desire to get together, we will get together.

Mediation unlike arbitration and court trial does not involve a determination of issues by a third party. A Mediator is a neutral third party appointed with the mutual settlement of the dispute. Mediation is the most rapidly growing form of ADR. It is being actively utilized in almost every conceivable type of dispute resolution and comes in various forms. The process has also been effectively adopted for multiple party dispute resolution with tremendous success. On average the success rates of Mediation processes range from 20% to 85%.

Mediation is a fascinating journey. It is rational and irrational, cognitive and intuitive, and there is no shortage of challenge.

As Mediation is a voluntary process, no resolution is imposed on any party.

Self Determination is the Fundamental principle of Mediation. It requires that the Mediation process rely upon the ability of the parties to reach a voluntary, uncoerced agreement. Any party may withdraw from Mediation at any time.

The Mediator may provide information about the process, raise issues and help parties explore option.

The Primary Role of the Mediator is to facilitate a voluntary resolution of a dispute Parties shall be given the opportunity to consider all proposed option.

The overall chronologic model for Mediation can be stated as under:

**Informed Consent as to Process**
( The process is always negotiable and must be agreed to).

**Sharing Perspectives**
(Separating rational issues from substantive issues; discuss both, just separately).

**Remember the Common Ground**
(Common interests, interdependence and initial points of agreement).

**Establish a Problem-Solving Agenda**
(Questions seeking solutions).

**Identify Desired Information and Documentation Clarify Desired Outcomes, interests and Positive Intentions.**

**Develop Options:**
(Based upon outcomes, interests and positive intentions; separate from evaluation process).

**Select from Options:**
(Evaluation based upon participant desires, criteria, standards, principle, rationale or rationalization and considering personal, procedural and substantive BATNAs).

**Integration and Finalization:**
(Any possible improvement, drafting, review, revision, implementation).

“Mediation is Win – Win”

2. **Scope of the Study:**
The scope of the study shall be limited to Indian Courts, pending litigation, Social awareness in the masses. The study will Concentrate at changing pattern of litigation and lack of Strategic Solution to deal with new litigation with new techniques such as Mediation. To have implementing solutions, through Mediation, by study of Methods adopted, policy drafted and implemented in other Countries, for Mediation.

3. **Utility of the Study:**
   a) It will be helpful in managing abuses that emanate from Economic and Social circumstances, where parties in disputes have strong family or community ties and are interdependent on each other in communal setting. It will help making justice accessable and affordable to women and children.

   b) The research aim at solving the problem of burden of pending cases and highlighting reforms for speedy justice to litigants, which is not only cheaper but most effective.
c) To discourage litigations, and change the mental approach and persuade litigants to compromise with the help of Mediation.

d) To emphasize the grave need for more and more Mediation Centers in each and every City and Villages to make justice more accessible to vulnerable in Society and to provide proper Mechanism for the same.

4. **Limitations of the study:**
Mediation as one of the Alternative Dispute Resolution Method is not yet fully and effectively implemented in India. There is no much research work on the subject in India and the Indian Literature on this subject, is quiet less  The awareness amongst the litigants, members of the Bar and Courts as to the Mediation, as effective method to resolve the dispute is lacking. There are very few Mediation Centers in India and very few Trained, qualified and experienced Mediators.