ROLE OF MEDIATION IN THE INSOLVENCY PROCESS

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ABSTRACT
The insolvency process in India, primarily governed by the Insolvency and Bankruptcy Code, 2016 (IBC), has significantly transformed the resolution landscape for distressed entities. However, the formal litigation-driven structure of the IBC often results in delays, adversarial proceedings, and value erosion of assets. In this context, mediation emerges as a constructive alternative dispute resolution (ADR) mechanism that promotes efficiency, preserves commercial relationships, and reduces the burden on insolvency courts. This paper explores the evolving role of mediation within the insolvency regime in India, emphasizing its compatibility with the objectives of the IBC — timely resolution, value maximization, and balancing stakeholder interests. The study examines relevant legal provisions, judicial interpretations, and comparative insights from jurisdictions like the UK and Singapore, where mediation is effectively integrated into insolvency proceedings. It also highlights recent developments such as the proposal of pre-packaged insolvency schemes and the institutional push toward incorporating ADR into insolvency resolution processes. While mediation is yet to be formally embedded in the IBC framework, this research argues for its strategic inclusion to foster a more collaborative and expedited resolution environment.

Keywords: Mediation, Insolvency, IBC, Alternative Dispute Resolution, Pre-packaged Insolvency, Stakeholder Interests, Commercial Resolution.

INTRODUCTION

Mediation is a methodical and informal process that facilitates the amicable resolution of disputes between parties. It is characterized by confidentiality, non-binding nature, voluntary participation, and a focus on the parties' interests. The mediator's role is to facilitate the negotiation process and assist the parties in settling. Insolvency refers to the state of being unable to repay debts, which can occur when a corporation or person is no longer capable of meeting their financial obligations. Bankruptcy may trigger the initiation of insolvency processes for individuals or organizations.[1] Business owners have the choice to directly communicate with creditors and distribute debt into smaller, more feasible instalments. Creditors are often receptive to this approach due to their desire for recovery and avoidance of damages. When a business owner plans to reorganize the company's debt, they formulate a pragmatic strategy that details how they can reduce expenses while keeping the firm running. The plan outlines the company's potential to produce sufficient cash flow to operate with profitability and meet its debt obligations.

Mediation serves as a pre-bankruptcy tool in India, where the IBC, 2016 provides a resolution mechanism driven by deadlines and creditors. The mediation process relies on mediation as a voluntary process where a neutral third party assists the disputing parties in reaching a mutually acceptable solution. Mediation is crucial for the efficient and prompt resolution of disputes throughout the

[1] Mani, Rajiv. "Mediation in Insolvency Matters." (2020). *available at:* https://www.ibbi.gov.in/uploads/resources/1acc8439aab101c013221a481fe108a6.pdf (last visited on March 24, 2024).

bankruptcy procedure.[2] One of the primary benefits of mediation in the bankruptcy process is its capacity to preserve the relationship between the debtor and the creditor. Mediation facilitates improved communication and cooperation among the parties involved, enabling them to achieve a mutually acceptable conclusion. Mediation also has the additional benefit of reducing litigation expenses. In the context of bankruptcy, mediation can help resolve disputes related to claims, asset valuation, and the allocation of funds. The IBC permits the selection of a mediator if the involved parties agree to engage in mediation to resolve the dispute, as it recognizes the significance of mediation in the insolvency procedure. A mediator can be selected at any point during the insolvency procedure, and the mediation process can continue even after the commencement of insolvency operations.

THE INSOLVENCY AND BANKRUPTCY CODE, 2016

Prior to the enactment of the IBC, India's legal framework for addressing corporate insolvency was fragmented and inefficient. The primary legislation, such as the Companies Act, of 1956 and the Companies Act, of 2013, provided limited options for distressed companies, primarily winding up or entering into schemes of arrangement with creditors or members. Additionally, separate laws catered to specific stakeholders, like the “Recovery of Debt Due to Banks and Financial Institutions Act, 1993” (RDDBFI Act), the “Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002” (SARFEASI Act), and the “Sick Industrial Companies (Special Provisions) Act, 1985” (SICA). However, these legislations were criticized for their inefficiencies, delays, and inadequate institutional capacity.[3]

Recognizing the need for reform, the “Bankruptcy Law Reforms Committee” (BLRC) was established to overhaul the insolvency regime. The BLRC saw the need for a streamlined mechanism that could efficiently restructure profitable enterprises and liquidate non-viable ones, hence minimising losses for all parties involved. The identification of delays in the process was deemed a significant problem, which can be attributed to various factors including strategic delays by corporate managers, excessive judicial intervention, misuse of the moratorium period, a bias towards rehabilitation, complex distribution systems, resistance from creditors, and the existence of multiple forums resulting in overlapping legal proceedings.[4]

The introduction of the IBC in 2016 has three primary goals: expediting settlement, minimising loss in recovery, and increasing debt financing across various debt instruments. The BLRC emphasized the 'need for speed' as the most important objective, as delays could push corporations towards liquidation and erode the value of assets, harming all stakeholders.

The IBC allows both creditors and the corporate debtor to initiate the “Corporate Insolvency Resolution Process” (CIRP). When a 'default' takes place which means that a debt is not paid on time, the party involved may start the procedure. Originally, the minimum default amount was set at INR 1 Lakh, but it was subsequently increased to INR 1 crore in order to safeguard Medium, Small, and Micro Enterprises, especially in light of the COVID-19 outbreak.[5]

An interim resolution professional is appointed within 14 days of the case being accepted by the adjudicating authority, which is the National Company Law Tribunal (NCLT). At this stage, they also issue a public notification. We enjoin the debtor, a corporation, from taking further legal action and from selling or otherwise disposing of any of its assets.In contrast to the debtor-in-possession model used in the United States, the IBC allows creditors to take full control of the company debtor during CIRP via the interim resolution professional (and later by the resolution professional appointed by the CoC). The concept aimed to prevent the debtor's management from eroding value during the bankruptcy process.

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[2] Tripathi, Ishana. “The Indian Viewpoint on Mediation.” *American Bankruptcy Institute Journal 40, no. 4, 30-85* (2021).

[3] Goel, Shivam. “The Insolvency and Bankruptcy Code, 2016: Problems & Challenges.” *IJIR 3 2454-1362 (2017).*

[4] Goswami, Dr Parineeta. “Resilience and Adaptation: The Insolvency and Bankruptcy Code in the Era of Covid-19.” *RGNUL Law Review* (2022).

[5] Das, I., “The Need for Implementing a Cross-Border Insolvency Regime within the Insolvency and Bankruptcy Code, 2016.” *Vikalpa, 45(2), pp.104-114.* (2020).

Assembling the CoC—comprised of the corporate debtor's financial creditors—and ensuring that the debtor continues to operate as a going concern are the primary functions of the interim resolution professional. Before the resolution professional can oversee the debtor's affairs during the CIRP, the CoC must approve certain steps. The CoC is responsible for deciding the corporate debtor's destiny.

Creditors holding claims against a debtor for products delivered, services given, employment dues, or government dues are known as operational creditors, according to the IBC. Financial creditors are usually involved in a financial transaction with the corporate debtor. Operational creditors must have dues equal to or more than 10% of the total debt in order to be present in person at the CoC, but financial creditors enjoy voting rights.

The CoC determines if the company can continue operations and looks into possible solutions to their bankruptcy. In order for the CoC to examine resolution proposals, the resolution specialist creates an information memorandum and an assessment matrix. A resolution expert reviews the plans of applicants for resolutions to ensure they adhere to all IBC guidelines, and then presents the plans to the CoC for discussion and vote. The majority of the financial creditors in the CoC, as measured by claim value, must approve a resolution plan for it to be finalised.

The NCLT checks that the resolution plan follows all the rules and regulations and meets all the criteria of the IBC once the CoC approves it. All parties involved, including those with dissenting creditors, are bound by the plan once it is authorised, marking the successful conclusion of the CIRP. If the NCLT rejects a plan, it must grant an order for liquidation. The NCLAT may hear appeals against the resolution plan's approval based on certain reasons.

A PROPOSAL TO EMPLOY MEDIATION WITHIN THE CIRP

Mediation and other ADR methods have been more and more used in corporate bankruptcy cases in different jurisdictions, highlighting their acknowledged advantages. In his distinguished role, Justice James M. Farley praised the benefits of ADR in bankruptcy cases, highlighting its ability to accelerate procedures compared to lengthy conventional litigation methods. Efficiency in managing time is especially important in the field of bankruptcy, as the worth of troubled assets may quickly decrease, highlighting the need for prompt responses. The NCLTs in India, which have a significant number of cases to handle, often have unavoidable delays in legal proceedings, highlighting the need for efficient means of resolving disputes promptly.

The effectiveness of mediation in bankruptcy situations has been shown in countries such as the United States and Europe. As an example, in the United States, bankruptcy courts have established court-connected mediation programmes, which have resulted in beneficial results, such as the reorganisation of Macy & Co. in 1993.[6] Similarly, European nations, albeit to a lesser degree than the US, have recognised the need for mediation in corporate bankruptcy situations. France employs mediators in preventative restructuring actions as a means to promote discussions between corporations and their main creditors.

India has recently implemented pre-packaged bankruptcy resolution tools for small and medium-sized firms as part of its ongoing changes in the IBC, 2016, particularly in response to the COVID-19 epidemic. Although pre-packaged deals provide efficiency, legal action from dissatisfied parties continues to be a major cause of delays in bankruptcy processes. Although pre-packs provide some relief to NCLTs, they fail to fully resolve the fundamental concerns raised by feminist studies of the IBC.[7]

In order to reduce delays and foster collaboration among stakeholders, it is advisable to promote the use of mediation in conjunction with official insolvency procedures. NCLTs might have a significant impact by suggesting mediation to parties involved in conflicts, especially when ongoing cooperation is crucial for post-settlement activities. India's legislative structure, which includes provisions in the Civil Procedure Code and the Companies Act, already facilitates the development of ADR procedures such as mediation. Developing the ability of institutions to have skilled mediators who specialise in business problems is crucial in order to fully use mediation in the CIRP process.

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[6] Wilk, Michael S., and Rik H. Zafar. "Mediation of a bankruptcy case." Am. Bankr. Inst. J. 22 (2003): 12-60.

[7] Goswami, Dr Parineeta. "Resilience and Adaptation: The Insolvency and Bankruptcy Code in the Era of Covid-19." *RGNUL Law Review* (2022).

The Companies (Mediation and Conciliation) Rules, 2016 provide a structured system for conducting mediation, with a focus on the mediator's responsibility to assist in achieving a mutually agreed settlement, while also safeguarding the parties' independence in making decisions.[8] Mediation serves as a forum for expressing complaints and also facilitates dialogue and bargaining, therefore safeguarding important relationships with stakeholders. Mediation, which adheres to the IBC's commitment to speed, offers a specified completion schedule and the ability to avoid lengthy legal disputes. Creating a group of skilled mediators who are knowledgeable about the complexities of business matters will encourage parties to choose mediation, leading to more efficient outcomes in insolvency cases.

EXISTING MEDIATION LANDSCAPE IN INDIA

The lack of explicit provisions for mediation in insolvency and bankruptcy disputes under the IBC highlights the importance of the recently implemented Mediation Act, of 2023. The objective of this Act is to encourage the use of mediation as a method of resolving disputes in different industries. Nevertheless, the outcome of mediation depends on the parties' willingness to participate in the procedure and their confidence in its efficacy. In order to establish mediation as a reliable way of resolving disputes, a change in cultural attitudes is required, notwithstanding the implementation of the 2023 Act. An analysis of the modifications implemented by the 2023 Act and the current legal environment in India highlights the need for well-defined frameworks and skilled mediators to improve the perception and effectiveness of mediation, especially in business disputes.[9]

These observations have influenced discussions on incorporating mediation into the IBC, acknowledging the deficiencies in the existing legal structure and the regulatory measures introduced by the 2023 Act to resolve them.

The IBBI has established an expert group to assess the practicality of settling conflicts via mediation and the extent to which it may be used under the IBC. The committee's comprehensive study strongly supports and suggests a specific mediation framework inside the IBC, which is in line with its core goals of timely reorganisation and maximising value. This framework seeks to provide parties with the freedom to willingly choose the "out-of-court" mediation procedure, thus improving the effectiveness of the bankruptcy resolution process.

The proposals seek to enhance knowledge and bolster stakeholders' and users' trust in settling conflicts by promoting the use of mediation, particularly in bilateral matters.

The suggested mediation framework inside the IBC is designed to be a comprehensive plan that includes its separate infrastructure. This framework aims to achieve the goals of the IBC without sacrificing or weakening its fundamental structure. The committee has suggested incorporating provisions to allow for the implementation of mediation as an ADR technique within the IBC. This would involve specifying the role of the NCLT as the Adjudicatory Authority (AA) in relation to matters such as extending mediation timelines and providing interim reliefs. The study acknowledges the need to grant legal validity to settlements and aims to enforce Mediated Settlement Agreements (MSAs) under the IBC.[10]

An outstanding characteristic of the proposals is the effort to settle conflicts via mediation within the legally mandated timeframes of the CIRP - 180 days, which may be extended to 270 days, with an absolute maximum of 330 days. The purpose of this is to prevent any delays in the bankruptcy resolution process and to accomplish the objective of mediating a dispute alongside this procedure.

The committee has proposed granting authority to the Central Government and IBBI to establish rules, regulations, and notices as necessary. The Central Government has the authority to establish

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[8] Gayo, Sabela. "Advantages & Disadvantages of Mediation and Conciliation as an Industrial Relations Dispute Resolution Option." *IAML 2, no. 1 25-32* (2023).

[9] Khan "Mediation Act 2023, International Mediation, Mediation Council, Legal Services Act, ADR" (Live Law, January 25, 2024) *available at:* https://www.livelaw.in/articles/mediation-act-2023-international-mediation-mediation-council-legal-services-act-adr-247652# (last visited on March 29, 2024).

[10] Kamalnath, Akshaya, and Aparajita Kaul. "Adding mediation to India's corporate resolution process." *International Insolvency Review 31, no. 2 163-182* (2022).

regulations for the fundamental framework of the insolvency mediation system. This includes defining the types of conflicts that are eligible for mediation. The Central Government has the authority to create an in-house insolvency mediation cell/secretariat that is affiliated to the NCLT.
The suggestions aim to empower the IBBI to establish detailed guidelines for procedural details such as the conduct of mediations, the procedures for appointing and removing mediators, the operations of the secretariat, training programmes for mediators, and the enforcement of mediated settlement agreements.
The paper recommends that voluntary mediation should be chosen over mandatory mediation. The proposal suggests that "Operational Creditors" (OCs) might submit issues for voluntary mediation after the initiation of the insolvency resolution process, with the agreement of the NCLT. Nevertheless, the voluntary mediation rules cannot include the initiation of the CIRP petitions made by "Financial Creditors" (FCs) or the "Corporate Debtor" (CD) itself during the early phases of implementing the mediation framework.
In addition, the study suggests certain kinds of conflicts that should be referred to mediation under the IBC. This includes recommending the selective referral of applications by OCs and corporate applicants under the CIRP. The committee suggests that the possibility of conducting pre-institution mediations in cases launched by FCs should be considered in the later stages of implementing the insolvency mediation framework. The report aims to encompass various aspects such as pre-packaged CIRP, expedited CIRP, personal bankruptcies, and conflicts that arise during these processes. This includes the process of collecting claims, resolving issues among creditors at the CoC level, applications filed under Section 60(5) of the Code, actions taken to avoid certain transactions, and so on.[11]
The proposed mediation framework includes a specialised system and infrastructure, which involves expert mediators who are dedicated to resolving bankruptcy issues. Mediation is a process that intends to decrease the number of cases in the NCLT docket. It will be introduced gradually in a controlled environment called a regulatory sandbox. The purpose is to remove obstacles in the present system of the IBC and the Mediation Act and to allow for the integration of practical knowledge gained from its implementation.

MEDIATION IN THE CORPORATE INSOLVENCY RESOLUTION PROCESS

The Committee has undertaken a comprehensive examination regarding the potential application of mediation within various stages of the CIRP, aiming to address specific circumstances and issues more effectively compared to traditional litigation before the NCLT.[12]

- **Stage I: Pre-commencement Phase:** During this preliminary stage, the Committee recommends harnessing the substantial time gap between the occurrence of default and the initiation of insolvency proceedings under the IBC for mediation purposes. This approach can be particularly beneficial in facilitating the resolution of disputes between OCs and Corporate Debtors (CDs) at the outset of the admission process. Moreover, the Committee highlights the potential for mediation to aid FCs in amicably resolving issues before resorting to NCLT proceedings.
- **Stage II: Post-commencement/Admission of CIRP:** At this juncture following the NCLT's admission of the CIRP, the Committee acknowledges the limited scope for mediation due to previous unsuccessful attempts at amicable dispute resolution. Notably, concerns arise regarding the willingness of hostile promoters and suspended directors to engage in mediation. Furthermore, regulatory provisions such as Section 29A of the IBC pose constraints on negotiations with ineligible promoters. As a result, the Committee proposes initially excluding post-admission stage cases from mediation to assess their feasibility and mitigate potential legal challenges.

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[11] Kumar, Vivek. "Reforms Brought in the Insolvency Regime: The Insolvency and Bankruptcy Code, 2016." *Issue 2 Indian JL & Legal Rsch. 5* (2023): 1.
[12] Singh, Vijay Kumar. "Resolving Commercial Disputes in India: Focus on 'Mediation' as an Effective Alternative 'towards' Ease of Doing Business." *RGNUL Fin. & Mercantile L. Rev.* 5 (2018).

- **Stage III: Approval of Resolution Plan:** The Committee underscores the significant delays in the insolvency resolution process attributable to litigation, particularly challenges to bid rejections or approval of resolution plans. Discontent among OCs and other stakeholders often precipitates disputes, which may prompt the NCLT to suggest mediation. However, the involvement of multiple parties, including OCs, the CoC, and Resolution Applicants (RAs), may complicate the mediation process and impede its efficacy.
- **Stage IV: Implementation of Resolution Plan:** In order to address disputes or conflicts that may arise during the implementation phase, the Committee advocates for the inclusion of a mediation clause within the resolution plan. This measure aims to prevent liquidation by facilitating the resolution of issues such as creditor priorities and fund distribution. Notably, the Committee emphasizes strict adherence to the agreed terms of the resolution plan during mediation, barring any unilateral modifications unless mutually consented.
- **Stage V: Liquidation Phase:** The initiation of liquidation proceedings typically signifies the exhaustion of alternatives for enterprise revival or creditor settlement, thereby diminishing the viability of mediation. As all pertinent issues are presumed to have been addressed by this stage, mediation is perceived as least advantageous and may potentially undermine the objective of maximizing enterprise value as envisaged by the IBC. Additionally, mediation may prove ineffective in cases where the continuation of the corporate debtor is deemed unfeasible. Consequently, the Committee refrains from recommending mediation during the initial phase of liquidation implementation.

WHAT CAN INDIA BORROW FROM GLOBAL PRACTICES?

India, like many other jurisdictions, faces challenges in its insolvency resolution processes. Drawing from global practices, there are several areas where India can benefit from incorporating mediation into its insolvency framework.

UNITED STATES:

The United States has been a pioneer in integrating mediation into its bankruptcy courts, facilitated by Section 105 of the Bankruptcy Code. This provision empowers courts to establish mediation programs, covering a vast array of insolvency-related disputes, from individual creditor claims to intricate restructuring negotiations. These court-annexed mediation programs have proven to be highly effective in resolving complex insolvency matters through facilitated negotiations, reducing the burden on the judicial system and promoting expeditious resolution. India could consider adopting a similar statutory provision within the IBC, granting courts the authority to establish tailored mediation mechanisms. Such a provision would enable courts to leverage the expertise of trained mediators, who could facilitate negotiations between parties, fostering mutually acceptable settlements and minimizing the need for protracted litigation.[13]

SINGAPORE:

Singapore has taken a proactive approach by integrating mediation into its insolvency resolution procedures since 2017. The country has not only encouraged parties to consider mediation but has also established specialized mediation centers staffed with experienced professionals well-versed in insolvency matters. India could follow Singapore's lead by promoting mediation as a viable alternative dispute resolution mechanism and establishing dedicated mediation centers equipped with experts in insolvency resolution. These centers could serve as hubs for efficient and effective resolution of disputes arising in the context of insolvency proceedings, leveraging the expertise of specialized mediators to facilitate negotiated settlements between parties.[14]

UNITED KINGDOM:

The United Kingdom has embraced a collaborative approach by actively encouraging mediation as an alternative to litigation in insolvency cases. Courts in the UK have been granted the authority to stay

[13] Casey, Anthony J. "Lessons from Mediation in United States Chapter 11 Cases." *Available at SSRN 4737816* (2024).

[14] Peck, James M. "Singapore Academy of Law Distinguished Speaker Lecture 2019 Plan mediation as an effective restructuring tool." *SAcLJ 32* 23 (2020).

proceedings to facilitate mediation, promoting a cooperative and consensual approach to dispute resolution. India could explore similar mechanisms to incentivize parties to engage in mediation, fostering a culture of amicable dispute resolution and reducing the burden on courts. By empowering courts to stay proceedings and facilitate mediation efforts, India could leverage the benefits of mediation, such as cost-effectiveness, time efficiency, and the preservation of commercial relationships, while ensuring that parties have the opportunity to explore negotiated settlements before resorting to adversarial litigation.[15]

EUROPEAN UNION:

The European Union has recognized the importance of mediation in pre-insolvency workout plans, emphasizing the need for a case-by-case approach. This approach acknowledges that mediation can be particularly effective in facilitating voluntary restructuring agreements between debtors and creditors, potentially preventing the initiation of formal insolvency proceedings. India could consider incorporating mediation into its pre-insolvency procedures, encouraging parties to explore facilitated negotiations before commencing formal insolvency proceedings under the IBC. By promoting mediation at the pre-insolvency stage, India could foster an environment conducive to voluntary restructuring agreements, preserving the value of distressed entities and minimizing the need for formal insolvency proceedings in cases where parties can reach a mutually acceptable agreement through mediation.[16]

To enhance the effectiveness of mediation within India's IBC, specific provisions could be introduced. For instance, a mechanism similar to Section 12A of the Commercial Courts Act could be incorporated, mandating pre-litigation mediation before initiating the CIRP.

The NCLT could be empowered to refer matters to mediation, allowing for the resolution of disputes between creditors and debtors outside of formal proceedings. This could help address disputes early on and prevent unnecessary litigation.

Strict timelines for the mediation process, akin to those in the Arbitration & Conciliation Act, could be introduced to ensure efficiency and prevent delays. Additionally, a fast-track procedure similar to Section 29B of the Arbitration Act could be considered to expedite the mediation process in insolvency cases.

Overall, by incorporating mediation into its insolvency framework and implementing necessary procedural changes, India can enhance the efficiency and effectiveness of its insolvency resolution processes.

CONCLUSION

The incorporation of mediation within the bankruptcy system shows great potential for enhancing India's resolution procedures. Global practices and changing legal environments demonstrate that mediation is a versatile method of resolving disputes, focusing on cooperation, efficiency, and maintaining relationships. This research article has analysed the function of mediation in the bankruptcy process, specifically in the Indian context, emphasising its ability to tackle obstacles, improve effectiveness, and promote prompt resolution.

The enactment of the IBC, 2016 in 2016 was a crucial move in simplifying India's bankruptcy system, with a focus on expeditious resolution and minimising recoverable losses. Nevertheless, obstacles like delays and legal obstacles continue to exist, emphasising the need for additional methods such as mediation. India may gain significant insights for incorporating mediation into its bankruptcy system by studying global models such as the United States, Singapore, Spain, the United Kingdom, and the European Union.

The inclusion of mediation in the IBC framework is a forward-thinking measure that aims to improve the efficiency and efficacy of bankruptcy resolution proceedings in India. The Mediation Act of 2023

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[15] Berkoff, Leslie A. "Mediation in International Cases to Advance Cross-Border Disputes." *American Bankruptcy Institute Journal* 41, *no. 12 22-70* (2022).

[16] Didea, Ionel, and Diana Maria Ilie. "Insolvency-Evolutions and Perspectives of Legislative Reform at National, European and International Level." *Perspectives of Law and Public Administration 8, no. 2 230-244* (2019).

and the proposals of expert panels indicate a deliberate attempt to investigate the possibilities of mediation, in line with the wider goals of the IBC.

The study highlights the significance of voluntary mediation as a preliminary measure before bankruptcy, providing parties with a chance to peacefully address conflicts before turning to official insolvency procedures. India may promote early participation in mediation and provide a favourable regulatory environment to motivate parties to choose mediated resolutions. This approach would alleviate the workload on courts and accelerate the process of resolving disputes.

In addition, the mediation framework suggested by the IBC provides a systematic method for integrating mediation into different phases of the bankruptcy process. Mediation offers parties the chance to discuss mutually agreeable solutions, reducing delays and maximising value, from the pre-commencement stage to the implementation phase.

This study highlights the need for capacity-building activities, infrastructural development, and legal adjustments to effectively integrate mediation in the insolvency system. Implementing dedicated mediation centres, providing comprehensive training for skilled mediators, and imposing stringent timeframes for the mediation process are crucial measures for fully harnessing the effectiveness of mediation in resolving bankruptcy cases.

The incorporation of mediation into India's bankruptcy law signifies a fundamental change towards a more cooperative and effective settlement procedure. India can effectively tackle chronic difficulties, encourage stakeholder collaboration, and create a favourable atmosphere for prompt dispute resolution by including mediation in addition to formal insolvency proceedings. As India progresses in its efforts to reform insolvency, the incorporation of mediation is positioned to have a significant impact on the future of insolvency resolution in the nation.

Moreover, the suggested changes highlight the need for a culture transformation towards adopting mediation as a reliable approach to resolving conflicts. Although legal changes and institutional reforms provide a structure for mediation, it is equally important to foster trust among parties and raise knowledge about the advantages of mediation. Education and outreach initiatives targeting legal professionals, companies, and the general public have the potential to debunk misunderstandings about mediation and promote its adoption as a favoured approach for resolving bankruptcy issues.

Furthermore, the effectiveness of mediation in the context of bankruptcy depends on the presence of competent and unbiased mediators who possess specialised knowledge in commercial affairs. Allocating resources towards training programmes and certification procedures for mediators may guarantee the availability of competent specialists who are capable of assisting in successful discussions and achieving mutually agreeable agreements. In addition, creating explicit criteria and protocols for mediator behaviour and protocols helps improve the trustworthiness and honesty of the mediation process, fostering assurance among participants.

It is crucial to acknowledge that incorporating mediation within the bankruptcy framework is not a universal solution for all difficulties. Although mediation has many advantages, there are situations when formal adjudication is required to settle disputed matters. Nevertheless, mediation offers parties a voluntary and collaborative option instead of litigation, which may help relieve the strain on courts, lower expenses, and facilitate a more streamlined settlement of conflicts.

Integrating mediation within India's insolvency framework is a notable advancement in improving the efficacy, productivity, and equity of bankruptcy resolution procedures. India can effectively tackle persistent difficulties, encourage stakeholder collaboration, and create a favourable atmosphere for prompt conflict resolution by adopting global best practices and including mediation as a supplementary approach to formal processes. India's ongoing development of its bankruptcy law is expected to be significantly influenced by the incorporation of mediation, which has the potential to bring about a profound change in the way insolvency cases are resolved in the nation.

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