

LEGAL FRAMEWORK FOR MEDIATION IN INDIA – A CASE STUDY

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ABSTRACT

This paper discusses the legal framework and the laws governing Mediation in India. In the last decade, there has been a tremendous increase in the pendency of cases across the courts in India. The Indian Judicial system needs to look for an alternative to dispose of the cases at the earliest. Mediation is one of the best ways to solve this. Decisions made in the process of Mediation will have legality if they are backed by any law or legislation governing the subject matter.

Though Mediation is seen as the future of dispute resolution and a perfect alternative to court litigation, India lacks a proper law and framework governing Mediation. Thus, bringing mediation legislation into force would improve the disposal rate of pending court cases.

The mediation procedure in India is not a recently created technique for dispute redressal; it is an age-old process since the Vedic period. But Mediation has yet to be very popular. One reason is that Mediation is not a formal proceeding, and courts of law cannot enforce it. It is helpful for both sides - the courts are somewhat less burdened with cases, and the parties are getting their issues settled rapidly with fewer problems and in a smoother way.

Having a proper law or legislative framework governing Mediation in India is the need of the hour. Because this mechanism in Indian Judiciary aims to reduce the burden on the courts by applying scientifically developed techniques to resolve disputes between the parties, if such resolutions are not given legal authority, then there is a chance of increasing the appellate Jurisdiction in the higher-level courts. It will defeat the whole purpose of ADR.

Any Social constructs, such as marriage, organized religions, education, etc., find their meaning and purpose only when backed by the respective laws governing them. Similarly, Mediation also requires governing laws to meet their meaningful goal. This will immensely help society in delivering justice rapidly and effectively. Until then, in social justice, Mediation remains an eternal toothless tiger.

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2. INTRODUCTION:

Mediation is one of the Alternative Dispute Resolution Mechanisms in which the mediator, a neutral person to both parties, will help the disputants to resolve the dispute peacefully without a court proceeding. A mediator is a facilitator who can help the parties to understand the issues/interests of the opponents and try to reach a common goal to resolve the dispute. In this mediation process, the mediator does not make the decision; it is a collaborative and amicable solution by the parties to the dispute.

The mediator arranges a private, confidential meeting where the parties can speak face-to-face. Both parties will have the chance to express their points of view and hear what the other has to say. The parties are not forced to accept the mediator's recommendation.

Mediation is one of the best Alternative Dispute Resolution mechanisms for small to medium-level enterprises/businesses in case of commercial disputes, as the other alternative dispute resolution mechanisms will have a systematic procedure to be followed and cost involved, such as arbitration and conciliation. Whereas the mediation process does not involve any special procedures or professional setup to handle the process, small and medium businesses would like to opt for this process.

In addition to commercial disputes, it is the best and proven mechanism for conflicts related to marital, family disputes, partnership disputes, property-related issues, etc., which are of domestic nature. This mechanism is more to convince the parties to the dispute; the mediator has a lot of importance. The mediator must use different techniques and methods to open a dialogue and empathy between the parties to dispute, aiming to reach a common goal.

Either an evaluative or a facilitative style can be used to define the mediator's approach. The "settlement range" is said to be more aggressively narrowed by evaluative mediators, who weigh the law, the merits, and what seems fair before trying to persuade the parties to agree. They try to explain and force their point of view on the matter. The active evaluation and expression of opinions on the merits are left in the hands of the parties, while facilitative mediators help the parties achieve a resolution through the process.

The Apex Court recognizes mediation, and the Mediation and Conciliation Project Committee has been formed to train and encourage this dispute resolution process.

3. CONCEPT & ADVANTAGES OF MEDIATION IN INDIA:

Although informal Mediation has been used in India for ages, a settlement reached through Mediation is still not recognized by Indian law. Mediation is beneficial, and a great method for resolving disputes, but its non-binding nature (and consequent reliance on the disputing parties' free will) leaves it open to abuse. In that regard, the implementation of legislation governing Mediation is likely to promote the adoption of a tier-based dispute resolution clause, which first provides for Mediation and, subsequently, arbitration.

Parties usually voluntarily agree to mediate to address their legitimate dispute, making Mediation in India a party-centric and impartial process. A neutral third party, such as a mediator, is chosen to assist the parties in coming to a mutually acceptable resolution of their differences. With the aid of a mediator, parties present each other with their problems and potential solutions through coordinated conversation and negotiation.

The use of Mediation as an Alternative Dispute Resolution mechanism dates to centuries before the British came to India. Back then, informal panchayats were used to resolve disputes between the parties where the respected elderlies of the villages or the Mahajans were appointed as mediators. Till date, Panchas or Pancha Parmeshwars, as neutral third parties, are used to settle disputes informally between the erring individuals or groups by some tribes in India. However, with the onset of British colonialism, Mediation began to be recognized as a formal and legalized ADR mechanism.

Now we have grown into a country of 139 crore people, and with liberalization and globalization, there is tremendous economic growth. This has caused the number of lawsuits to skyrocket in our nation. Even though our legal system is one of the greatest in the world and is well-respected, there is a lot of criticism since legal disputes often take a very long time to be resolved. A sincere litigant is now hesitant to ask the

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court to resolve his issue. We have therefore used channels for Alternative Dispute Settlement.

Advantages of the Mediation Process:

One of the primary benefits of Mediation in India is that it is an entirely private method of dispute resolution. The mediator and the disputing parties are the only persons involved, making the parties' affairs private and personal. Inordinate delays and growing court arrears have made Indian dispute resolution tiresome. In its fourteenth report, the Law Commission mentions ways and means to comprehend that justice is simple, quick, affordable, efficient, and significant.

The following are the benefits of the Mediation process in India :

Quick and Inexpensive:

Mediation is an alternative to consider when parties desire to move on with their lives and businesses. In general, Mediation takes less time to complete, enabling a quicker resolution than is feasible with the investigation. The mediation procedure typically takes far less time than moving a case through traditional legal channels, even though a mediator may charge a fee comparable to that of an attorney. A case may be resolved in a couple of hours through Mediation instead of months or years when handled by a lawyer or in court. Spending less time also implies paying lower hourly rates and expenses.

Confidential:

Mediation is a confidential process. The mediators shall not disclose any information disclosed during the Mediation. The sessions are not transcribed or recorded on tape. Whatever notes the mediators made throughout the Mediation are destroyed when it is over. While the mediation meetings are private and confidential, court hearings are open to the public. What took place throughout the mediation process is only known to the mediator and the disputing parties. A mediator cannot typically be compelled to testify in court about mediation details since confidentiality is crucial to the process.

Finding solutions to the pitfalls of Litigation:

Mediation at one level of perception is a means of avoiding the pitfalls of Litigation. The problems that arise in resolving disputes through Litigation are well known. These are broadly:

- delay.
- expense.
- rigidity of procedures; and
- a reduction in the participatory role of parties.

Greater Degree of Party Control:

The outcome of a disagreement is more in the power of the parties who negotiate their solutions. In the process, all parties have an equal voice. Instead of assigning blame, the parties settle their dispute in an acceptable way to both of them.

Preservation of Relationships:

In the framework of continuous professional interactions, many arguments take place. Working relationships are frequently preserved in ways that would not be conceivable in a win/lose decision-making process via mediated agreements that address the interests of all parties. A work relationship's ending can also be made more friendly through Mediation.

Mutually Satisfactory Results:

In general, parties are happier with solutions they helped develop than those that a third-party decision-maker forces.

A Foundation for Future Problem-Solving:

If a conflict arises after a mediation resolution, the parties are likelier to choose a cooperative venue for problem-solving to settle it than to take an adversarial route.

4. LEGAL FRAMEWORK FOR MEDIATION IN INDIA:

The possibility of enacting an act for Mediation to take care of various aspects of Mediation, in general, has already been recommended by the Apex Court in India. However, establishing a legal framework for an online dispute resolution (ODR) platform for parties seeking to resolve a commercial dispute must be emphasized. As India has signed the United Nations Convention on the International Settlement Agreements Resulting from Mediation, i.e., The Singapore Convention on Mediation, under the Convention, most agreements that are settled through a mediation process will be enforceable in the courts of any signatory state in accordance with their own rules of procedure and under the conditions

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laid down in the Convention, thus, paving the way for settlements to be recognized internationally.

As mentioned, there has been a sudden increase in disputes during the last decade. Indian courts are overwhelmed with pending issues/disputes at various stages. To lessen the burden on Indian courts, many statutory provisions direct compulsory Mediation as a prerequisite to filing the suit in court.

Mediation in Matrimonial Disputes:

The institution of marriage has altered in the modern world. It is no longer taken for granted that it is a lifetime commitment. Due to several factors, including economic independence, globalization, and other factors, marriage connections are becoming relatively weak. A man and his wife can no longer be said to be in a sacred union. Many matrimonial cases are emerging because of the changed circumstances. The Judiciary cannot handle these issues since the growing quantity of cases already overburdens it. Alternative conflict resolution is the best option with such a burden. It offers a framework for the legal resolution of disputes involving private parties. A third party known as the mediator acts as a mechanism for Mediation, a type of alternative dispute resolution.

There are references to mediation/conciliation in family dispute resolution, which are present in Family Courts Act 1984, Civil Procedure Code 1908, Hindu Marriage Act 1955, and the Legal Services Authorities Act 1987 that gives a special status to Lok Adalat as it has been very effective in mediating family disputes.

Mediation in Industrial Disputes:

Industrial disputes typically occur when there is a disagreement or conflict between employees and their employers, or amongst employees themselves, that has to do with employment, non-employment, the terms of employment, or working conditions. Common industrial issues include lockouts, layoffs, retrenchments, and so on. There are several options available to settle such conflicts or concerns. Mediation is the best, fastest, and most affordable method of resolving such conflicts. The Industrial Disputes Act of 1947 makes mention of conciliation and Mediation.

Section 4 of the Industrial Disputes Act 1947 gives conciliators the responsibility to mediate

and settle industrial disputes and prescribes the procedure to be followed in depth.

Mediation in Companies Act:

The Companies Act of 2013 makes an effort to modernize how businesses are owned and run in India to keep up with international standards. In the same vein, The Companies Act 2013 permits parties to a dispute to ask to be referred to Mediation or conciliation before government officials (such as Regional Director, Registrar of Companies, etc.) or the tribunals established by The Companies Act 2013, i.e., National Company Law Tribunal or National Company Law Appellate Tribunal. According to The Companies Act of 2013, the mediation and conciliation process must be carried out before specialists are appointed to the mediation and conciliation panel (the "Panel").

The National Company Law Tribunal and the Appellate recommend the issues to Mediation under Section 4 of The Companies Act, 2013. Mediation was made available as an alternative dispute resolution method inside the Companies Act 2013, according to Section 442 of that law. The Businesses (Mediation and Conciliation) Regulations, 2016 (Rules) were announced on September 9, 2016, and will be used to execute this clause.

Mediation in Consumer-related Issues:

The 2019 amendment to the Consumer Protection Act devotes a whole Chapter to using Mediation as a first resort before turning to a consumer redressal body to resolve disputes. The provisions for establishing the Consumer Mediation Cell, the mediators' empanelment, the mediators' nomination from the panel, the mediation procedure, the settlement through Mediation, etc., are all included in Chapter V of the Consumer Protection Act, 2019's section on Mediation.

Mediation in Family disputes:

Regarding family law conflicts, Mediation has proven to be a smart alternative. Family conflicts are fundamental, and they must be handled with patience to find a resolution that benefits both sides. Also, it settles disagreements more quickly than what happens in court. Conflicts arise over family-related issues, including inheritance, worries for extended family, elder care, etc., between couples, siblings, parents, etc.

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Early in our civilization, it was common to practice gathering around and discussing to resolve conflicts between family members. At the village level, disagreements were frequently brought before the panchayats, where a judgment was made after hearing from both sides. The mediation method serves the similar purpose of allowing family members who are at odds to try to resolve their differences via dialogue rather than by going to court. Peace and harmony among family members are of utmost importance in family relationships.

Other Legal Provisions of Mediation in India

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Apart from the provisions mentioned above, other legislations also refer various matters to Mediation before making an application at the courts.

Code of Civil Procedure, 1908

One of the significant developments of the mediation system in India is amending the Civil Procedure Code 1908, which refers all the pending court cases to Mediation if there is an element of the settlement. This Code was amended in 2002, providing for transferring all pending court cases to Mediation. The amendment also encourages Mediation for all family and personal matters due to their sensitivity.

Alternative Dispute Resolution and Mediation Rules, 2017

This is the latest legislation in the field of Mediation. This is the legislation that governs the system of Mediation in India. It describes the ethics of mediators, appointment, role, removal, the time limit for completion of Mediation, etc.

Real Estate (Regulation and Development) Act, 2016

Section 32(g) of the Real Estate (Regulation and Development) Act, 2016, provides for the amicable settlement of disputes by establishing a dispute resolution forum.

5. MEDIATION – A POWERFUL TOOL WITH LEGAL BINDING:

The Code of Civil Procedure, 1908, was legally amended in India to allow Mediation as a means of alternative conflict resolution in civil proceedings. If

there is a chance of a resolution through Mediation, it motivates the parties to switch from Litigation to Mediation. If the judge believes the disagreement may be resolved peacefully outside of court, the courts will send the cases to the mediation centers.

The Supreme Court of India acknowledged that, despite the ADR framework already in existence, there needed to be more case management to carry out the procedures envisioned under section 89 of the Civil Procedure Act 1908. The court has the authority to refer open matters to Mediation under section 89 of the Civil Procedure Law. The Law Commission of India had recommended Mediation as an alternative to Litigation over ten years before the Civil Process Act modifications.

The Civil Procedure – Mediation Rules 2003 provides for mandatory Mediation under rule 5(f) (iii); these allow the court to refer cases for Mediation even when the parties are not ready for reference for Mediation if there is an element of the settlement. The Mediation and Conciliation Committee (MCPC) was constituted to regulate the mediation process as a method of dispute resolution.

The top court attempts to promote India's mediation system with these most recent changes to the Civil Process Act and other laws. This will lessen the strain on the courts and allow the judicial system to concentrate on other crucial issues.

6. DRAFTING OF MEDIATION LAW BY APEX COURT:

The Supreme Court has stressed the significance of India's mediation mechanism. To include the mediation provisions, it has established various mediation regulations. The Indian Government has been urged to pass legislation and revise existing laws to incorporate provisions for Mediation by the Supreme Court, which has repeatedly emphasized the value of ADR.

To reduce this scepticism, the Apex Court of India appointed a committee to draft a law that governs mediation proceedings. The drafted legislation will then be sent to the Government as a recommendation from the Supreme Court. The committee consists of renowned mediators from all over India and is headed by Niranjana Bhat, who will recommend a code of conduct for mediators,

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who are legal experts, and consider suggestions for legislation put forth by mediators from all over India. The mediators emphasized confidentiality, the voluntary nature of the process, neutrality, avoiding conflicts of interest, the enforceability of settlement, etc. The other members of the panel, appointed by the Mediation and Project Conciliation Committee (MCPC) of the Supreme Court, included Justices, former ASGs, senior advocates, and senior mediators.

A group of professionals in Mediation, such as CAMP Bangalore, FCDR-Chennai, Maadhyam Delhi, retired judges, senior partners of law firms, and academicians from leading national and international universities, has also suggested certain areas on which the panel should emphasize upon.

According to the Supreme Court, promoting Mediation as a viable dispute resolution method may be accomplished by creating and enacting legislation. It also helps eliminate the contradictions in the rules of several laws.

7. CONCLUSION:

Mediation as a process of dispute resolution has its importance from the beginning. In modern India, the concept of Mediation has taken a different turn. The development of the mediation system

started after judicial recognition was made available to it via the amendment of the Civil Procedure Code. The Apex Court of India has repeatedly promoted the importance of mediation by granting orders in favor of it. The Mediation & Conciliation Project Committee (MCPC) and some other individual institutions are evolved and become involved in the judicial evaluation of Mediation and issues regarding the regulations, structure, principles, and methodology.

The Supreme Court of India has played an essential role in developing the laws that govern the concept of Mediation in India. The apex court has taken unique steps in setting up committees and panels to draft the legislation and recommend amendments to the existing legislation to include the provisions for Mediation. The then Hon'ble Chief Justice of India, Justice N.V. Ramana, was also very keen on developing the mediation system in India.

From the discussion above, the time is ripe, and all the required factors favor a robust mediation framework. The authors strongly believe that the necessary laws shall be made very soon and bring them to fruition. The urgency in doing this can't be overemphasized, given the socio, economic and global impacts on Indian society due to overburdening the Judiciary.

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