

HISTORY OF MEDIATION ACT 2023

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ABSTRACT

With the penetration of various fundamental rights to the citizens, the Judiciary of India has faced the bulk of cases filed for getting justice. The Indian courts from lower to higher levels are overburdened because of insufficient judicial officers which led to a hike in the pendency of the cases before the courts that is in itself a challenge for the Indian judiciary. To deal with such a huge number of pending cases and to make the Indian judiciary more efficient the Central Government of India has taken many measures to boost infrastructure, also proper training and implementation of good management strategies. But, still, the problems have not been completely uprooted. ADR, alternative dispute resolution is a mechanism that includes mediation, arbitration, negotiation and conciliation as its part. This mechanism was adopted to reduce the burden of pending cases upon the Indian courts. ADR is an alternative to 'regular litigation' and it has been adopted worldwide. But in this paper only mediation discusses its history all over India, its basic principles on which it works, and how smoothly and efficiently it works. So, mediation is basically a process that includes a mediator who enables the disputing parties to settle by being neutral and completely impartial.

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INTRODUCTION

Mediation is a constructed process where a mediator (neutral third party) uses his unique communication skills and artistry to settle the dispute between the disputed parties. Mediation has never had its own continuance in any of the laws, it took its meaning from Section 89 of CPC and Section 61 of the Arbitration Act, 1996. It means a neutral third party helps the disputed parties to resolve the conflict by providing the pathway of pact.

Though there has been no detached legislation to date with respect to Mediation in India, many statutes have provisions for the determination of disputes by way of an alternative mode of dispute resolution which is known to be the best form through Mediation. These are the Code

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of Civil Procedure, 1908¹ (Section 89 read with Order X Rule 1A), Arbitration and Conciliation Act, 1996² (Section 30) Micro Small & Medium Enterprises Development Act, 2006³ (Section 18), Companies Act, 2013⁴ (Section 442), Companies Mediation and Conciliation Rules, 2016⁵ and Consumer Protection Act⁶.

Before the first introduction of the Mediation Bill in 2021, some contemplation was held in Rajya Sabha, it was then further referred to the Parliamentary Standing Committee, grievances, law and Justice which gave its report on 13th July 2022. Yet, the Act has partially welcomed some basic important recommendations from the Standing Committee report. This also included the recommendation to reduce the time frame for finalization of the mediation from 180 days to 120 days, and to assimilate the voluntary pre-litigation mediation framework, instead of a binding framework as provided in the Bill's provisions. Both houses of Parliament passed the Mediation Bill, 2023 after receiving the assent of the President of India which led to the establishment of the Mediation Act, 2023. In addition to this, India was one of the first signatories to the United Nations International Convention on Settlement Agreements for Mediation, 2019 ("Singapore Convention"), an international convention that corresponds to resolving cross-border disputes by way of mediation. In light of the drawbacks within the existing legal framework and pursuant to the Singapore Convention, it was crucial for India to introduce a comprehensive framework for mediation.

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Civil Procedure Code, 1908⁷

During the British administration, the use of mediation declined, which resulted in a rise in disputes and a backlog in the adversarial court system. Courts are authorized to recommend arbitration, conciliation, judicial settlement, or mediation as a means of resolving disputes under Section 89(1) of the Code of Civil Procedure, 1908.

The traditional idea of 'Mediation' was officially recognized in India for the first time through the Industrial Disputes Act, of 1947, followed by the Legal Services Authorities Act, of 1987.

¹ Code of Civil Procedure 1908, s 89

² Arbitration and Conciliation Act 1996, s 30

³ Micro Small & Medium Enterprises Development Act 2006, s18

⁴ Companies Act 2013, s442

⁵ Companies Mediation and Conciliation Rules 2016

⁶ Consumer Protection Act 2019

⁷ Civil Procedure Code 1908

The increasing backlog of cases and the urgent need to relieve our overwhelmed judicial system resulted in the promotion of Alternate Dispute Resolution (ADR) mechanisms in India. This collaborative approach led to the enactment of the Code of Civil Procedure (Amendment) Act, 1999, which modified Section 89 of the CPC starting from July 1, 2002, allowing for the referral of cases pending in courts to ADR, including mediation

Arbitration and Conciliation Act,1996⁸

Then mediation took its significance from the Code of Civil Procedure, 1908 and the Arbitration and Conciliation Act, 1996

Salem Advocate Bar Association v/s Union of India, 2003

In the present case, the court requested the Drafting Committee to draft Model Rules on Alternative Dispute Resolution.

The court, after giving notice to the parties, resolves the dispute and passes a decree in accordance with the terms of settlement accepted by the parties. The Judge only considers a few questions as to whether there are reasonable grounds to expect that there will be a settlement or the payment made where the court mandatorily refers a matter for conciliation/mediation, if the parties feel that they have to incur extra expenditure for resorting to such ADR modes, it is likely to act as an obstacle for adopting these methods.

The suggestion is admirable. The Central Government is directed to inspect it and if agreed, it shall request the Planning Commission and Finance Commission to make specific financial allotment for the judiciary including the expenses involved for mediation/conciliation under Section 89⁹ of the Code.

Mediation Model Rules 2003¹⁰

These rules in Part II will be referred to as the Civil Procedure Mediation Rules, 2003.¹¹ Rule 2: Appointment of mediator:

⁸Arbitration and Conciliation Act ,1996

⁹ <https://indiankanoon.org/doc/221396/>

¹⁰Civil Procedure Alternative Dispute Resolution and Civil Procedure Mediation Rules 2003 (Part II) Rule2

¹¹Salem Advocate Bar Association, Tamil ... vs Union Of India (2005) AIR,3353SUPREME COURT (2005) 4 BOM CR 839

The parties involved in a lawsuit may all come to an agreement on the name of a single mediator to mediate between them.

If there are two sets of parties who are unable to agree on a single mediator, each set of parties will nominate a mediator.

If parties agree on a single mediator under clause (a) or if parties nominate more than one mediator under clause (b), the mediator does not necessarily have to be from the panel of mediators mentioned in Rule 3 or have the qualifications mentioned in Rule 4, but should not be a person who is disqualified as mentioned in Rule 5.

Smt. Amrawati Devi And Others vs State Of U.P. And Others on 4 January 2010

The court held that if the person fails to deposit the amount or appear before the Mediation Centre on the specified date, the interim order preventing arrest will no longer be in effect. The Mediation Centre will then promptly notify the office, which will schedule the case before the relevant Bench within a week to make a decision on the matter.

Consumer Protection Act, 2019

Mediation shows its existence in the Consumer Protection Act, 2019 as follows =

Section 2 (25)¹² - "Mediation" means the process by which a mediator mediates the consumer disputes

Section 2 (26)¹³ "mediator" means a mediator referred to in section 75¹⁴;

India signed the Singapore Convention on Mediation [UNISA,2019]

The Singapore Convention on Mediation was signed by India on August 7, 2019. But it is not yet sanctioned. Therefore, the Mediation Act does not contain anything about the Singapore Convention on Mediation, which is equivalent to the way in which the 'United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards' is subsumed into the Arbitration and Conciliation Act, 1996 ("A&C Act"). The Singapore Convention

¹² Consumer Protection Act 2019, s2(25)

¹³ Consumer Protection Act 2019, s2(26)

¹⁴ Consumer Protection Act 2019, s75

accompanies together and establishes a framework for settlement agreements obtained in the course of international mediation to be executed across national boundaries.¹⁵

Mediation Bill, 2021 in Lok Sabha & Rajya Sabha

On December 20, 2021, the Mediation Bill was introduced into the Rajya Sabha, and the Standing Committee on Personnel, Public Grievances Law & Justice ("Standing Committee") conveyed the bill on December 21, 2021.¹⁶

MEDIATION ACT, 2023

The Standing Committee released its 117th Report on the Mediation Bill on July 13, 2022, initiating changes to the provisions. Some of these exhortations were welcomed by the Union Cabinet. The Mediation Bill 2023, also known as the "Mediation Bill," was passed by the Rajya Sabha on August 02, 2023, and by the Lok Sabha on August 07, 2023. On September 15, 2023, the President signed the Mediation Bill into law, now known as the "Mediation Act 2023"¹⁷ or "Mediation Act."

NEED OF MEDIATION ACT, 2023

Pendency Of Cases In Litigation

With the passage of time, there has been overcrowding in a number of litigations all over India. There has been a delay in the disposal of litigation for various reasons like the shortage of judges and judicial officers, the shortage of infrastructure and the increase in population. Better understanding and awareness of their rights by the general public have also led to the filing of more cases in the courts. Accordingly, it was thought that as there is heavy traffic in the main thoroughfare, a by pass is to be opened to ease the pressure in the main thoroughfare and consequently the device of Alternative Dispute Resolution (ADR) mechanism that is inclusive of Arbitration, Conciliation, Negotiation and Mediation has been carved out.¹⁸

The National Judicial Department Data Grid (NJDG) is a database of orders, judgments and case details of 18,735 District & Subordinate Courts and High Courts created as an online

¹⁵ Singapore Convention on Mediation (Conventional Text), last accessed on July 1, 2024

¹⁶ Designing the Future of Dispute Resolution: The ODR Policy Plan for India, NITI Aayog, October 2021

¹⁷ Mediation Act 2023

¹⁸ Priyanka & Abhishek, Arbitration: A Tool to Curtail the Pendency of Court Cases (2021)

<https://articles.manupatra.com/article-details/Arbitration-A-Tool-to-Curtail-the-Pendency-of-Court-Cases> accessed 13 July 2024

rostrum under the Courts Project. This data is updated on a near real-time basis by the associated District courts. It also provides data relating to judicial proceedings/decisions of all computerized district and subordinate courts of the country. All High Courts have also united the National Judicial Data Grid (NJDG) via web services, providing a smooth access facility to the litigant public.¹⁹ Their data shows that there are 11093616 pending civil cases and 33422973 pending criminal cases.

ADR mechanism is a fast track and is definitely cost-efficient. It also helps the parties to adopt a problem-solving approach to find a “win-win” outcome. When a dispute is resolved through this process, there is no winner or loser for the parties agree to the solution whereas in litigation there is always a loser and even the winner of the litigation goes back home at times feeling fully exhausted physically, mentally and also financially.

Lengthy Process Of Litigation

Mediation is not only cost-efficient but is also on the other hand time-saving. It saves the time of both the parties, the third party and the Hon’ble Court. It involves a very fast-track procedure that is quick and extremely flexible. The third party is also impartial and gives time to both parties, hears both properly and ensures a quick pathway of solution to avoid any delayed justice.

CONCLUSION

As the concept of mediation remains a completely optional choice, the recognition of it and its structured procedure depict its growth as an effective form of ADR. The implementation of the Mediation Act, 2023 shows that it’s an extremely crucial step towards the promotion of forms of ADR.

Mediation and other forms of ADR ensure speedy trials and have definitely proven as cost- be cost-efficient and time-saving. Mediation also has proven to be a tool that reduces the burden upon the courts as they are already overburdened and a huge number of cases are already pending before the Hon’ble Courts.

The act has been through a journey since its recommendations by the Standing Committee then being established, the appointment of mediators and then the passing of a decree by the court.

¹⁹ The National Judicial Data Grid (NJDG), Department of Justice : ecourts achievements Para1

The act also ensures that the information shared by the parties is confidential and hence its confidentiality is well maintained.

The mediation act is one of the most prominent steps taken in the history of ADR, which has completely changed the judicial system by offering parties an effective and efficient process of dispute settlement.

