



MEDIATION: A METHOD OF ALTERNATIVE DISPUTE RESOLUTION

By Rithvik Kumar

*From School of Legal Studies, Central
University of Kashmir, Kashmir*

By Gitartha Deka

*From NEF Law College, Department of Law,
University of Gauhati, Guwahati*

Abstract

In a dispute, parties may be unable to resolve their outstanding issue because of their inability to find common ground litigation can be competitive and turn into a zero/sum game where one group benefits and other doesn't law suit may not be the best manner in which to resolve dispute. If you are having a conflict and feeling nervous about legal proceeding alternative dispute resolution could be a best option for you Alternative Dispute Resolution is a faster way of resolving disputes, cost effective and highly successful, ADR is a confidential process resolution can be more creative than courts are legally allowed to enforce. It can help you to agree on matters relating to property money and children. Mediation is a process where both the parties have to sit in front of each other, tries to resolve the dispute, it is a win win process where both the parties win no one loses. Mediation is a process of compromise, in this process there will be a mediator, advocate or any professional person should sit and listen both the parties without being impartial he tries to resolve the matter between both the parties. This process is very cheap or cost you around a minimum expense. Mediation center are available at door step. You can opt for mediation at pre

stage or post stage. You can share all your details without being worried that it got leaked because there is no record of your proceedings. Mediate can be any one or advocate who has completed fifteen years of practice in law and who undergone the required forty hours training as stipulated by the mediation and conciliation project committee (MCPC) of the supreme court can be mediator.

Keywords: ADR, Conflict, Mediation, Conciliation.

Literature Review

JURISPRUDENCE

The word jurisprudence derive from the latin term juris prudentia which means the study, knowledge, or science of law in united state jurisprudence commonly means the philosophy of law. Jurisprudence provide theoretical foundation on the principles of law. It provides clear conception about the legal philosophy and unable us to discover legal fallacies. It is said that jurisprudence is the eye of law. It is the knowledge of fundamental principles. It is very difficult to formulate a uniform definition of jurisprudence. Each jurist has his own notion about jurisprudence.

INDUSTRIAL DISPUTE ACT 1947

The Industrial Dispute Act, 1947 enacted on 11 march 1947, objective of industrial dispute act is to secure industrial peace and harmony by providing machinery and procedure for the investigation and settlement of industrial dispute by negotiation. The Industrial Dispute Act has been described as the latest milestone in the industrial development in India. The act has seen new additions in the past few years.



CODE OF CIVIL PROCEDURE 1908

The Civil Procedure Code regulates every action in civil code and the parties before it till the execution of the degree and order. The aim of procedural law is to implement the principles of substantive law, the code ensures fair justice by enforcing the rights and liabilities. The issues which include in CPC is a single material point of fact or law in litigation that is affirmed by one party and denied by the other party to the suit and that subject of the final determination of proceeding.

**LEGAL SERVICE AUTHORITY ACT
1987**

An act to constitute legal service authorities to provide free and competent legal service to the weaker section of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, and to organise Lok Adalat to secure that the operation of the legal system promotes justice on a basis of equal opportunities.

COMPANIES ACT 2013

Company is an association of a person who took their meal together. The term derived from the latin word (“com” meaning “with” or “together”; “panis” that is “bread”) section 2 (20) of companies act 2013 states that a company means any association of person registered under the present or the previous companies act. It is called a “body corporate” because the persons composing it are made into one body by incorporating it according to the law.

REAL ESTATE ACT 2016

An act to establish the real estate regulatory authority for regulation and promotion of the real estate sector and to ensure sale of the plot , apartment or building, as the case may be ,

or sale of real estate is ab efficient and transparent manner and to protect the interest of consumer in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the appellate tribunal to here appeals from the decisions, direction or order of the real estate regulatory authority and the adjudicating officer and for matters connected therewith or incidental thereto.

**MEDIATION AND CONCILATION
RULE 2004**

Mediation is a process of resolving issue between parties wherein a third party assist them in arriving act an agreement conciliation is a alternate dispute resolution method in which an expert is appointed to settle the dispute by persuading parties to reach agreement.

Introduction

Mediation is one of the many methods of Alternative Dispute Resolution. People face a number of issues while exercising the process of litigation. Alternative Dispute Resolution is, therefore, a substitute to the problems and difficulties faced by the people during litigation in pursuance of resolving dispute and justice. The aim of ADR is to provide justice through mutual agreement of the parties involved in the dispute in the minimum possible time by minimising the delay unlike litigation. ADR has been classified into four types: negotiation, collaborative law, arbitration, and mediation. Conciliation is also sometimes categorised as the fifth type of ADR, however it is very much like a form of mediation only. The usage of Alternative Dispute Resolution methods tries to resolve dispute in the most practical manner and depends entirely on the mutual consensus of the parties involved. ADR mechanism is used by those people who



wish to settle their dispute by avoiding the traditional justice delivery system or wish to resolve the dispute without the interference of the court. These methods have their own benefits and limitations just like any other dispute resolution process.¹

Mediation is one of the Alternative Dispute Resolution method which is an organised way of resolving dispute among parties by the assistance of a third party as a mediator among the disputing parties through the use of specialised negotiation and communication skills. Mediation primarily focuses on the interests, needs and rights of the parties involved and is thereby a "party-centered" process. The mediator applies various techniques to carry on the process of mediation to a logical and rational conclusion and assist the disputing parties find their desired solution. A mediator thus manages the interaction between the disputing parties by facilitating an open communication among them. Since disputes in a successful mediation is resolved through mutual agreement among the disputing parties, it is the most peaceful way of resolving conflict as all disputing parties in a successful mediation agrees with the outcome of the mediation unlike litigation where court decides the outcome of the case regardless of whether the disputing parties agrees to the judgement or not.²

Statement of the problem

The Indian court system has been chastised for its high rates of pending cases, poor operation, and use of an antiquated approach to conflict resolution. The Law Commission of India, together with renowned

academicians, have emphasised the importance of establishing alternative dispute resolution channels on several occasions. Legal professionals have identified Mediation as a viable method for settling a wide range of conflicts. However, in India, such an alternative form of dispute settlement has failed to gain traction. A lack of legislative support is recognised as one of the main reasons for its underdevelopment. This paper aims to provide an overview of Mediation as an alternative conflict resolution approach and reasons why it may be a viable option for litigants in India who want to settle their disputes in a friendly and cost-effective manner. In addition, this article examines the various kinds of mediation regulation in different jurisdictions, arguing that the formation of a national legislative framework in India would be the best next step.

Hypothesis

- 1) What are the essentials of a successful Mediation?
- 2) How is Mediation implemented?
- 3) Does Mediation have any statutory status?

Research Objectives

- 1) To find out the Meaning of Mediation.
- 2) To find out the Application of Mediation.
- 3) To find out the Feasibility of Mediation.

Research Questions

- 1) What are the limitations of Mediation?
- 2) What are the benefits of Mediation?

Essentials of Mediation

Parties should participate voluntarily

¹Sambhavi Kumar, Mediation in India, ipleader(April 4, 2022, 12:00p.m.) , <https://blog.ipleaders.in/mediation-meaning/?amp=1>

²Wikipedia, Mediation, Wikipedia(April 5, 2022 ,12:15 p.m.), <https://en.m.wikipedia.org/wiki/Mediation>



It is important that no one is compelled to mediate, it must completely depend at the will of the disputing parties and they should have the liberty to decide whether they wish to mediate or litigate. Mediation is fruitful only when parties take part in it voluntarily. People will feel more comfortable to participate in mediation upon knowing that they have the freedom to leave this process at any time. This allows them to lead the process towards an agreement rather than to be led to an understanding by a third party. When the decision of the mediation takes place through the agreement among all disputing parties, they are more likely to be committed toward the decision.³

Confidentiality matters in the process

The mediator involved in mediation should not reveal any information received from any of the disputing parties which they expect to be kept confidential unless permitted by the respective party except when someone shares a criminal intent or act that involves harm to self or other.

Information that comes up during the course of mediation must be kept confidential and such information cannot be used during court hearings by the mediators nor court can ask why the mediation did not work.⁴

Mediators are impartial

The mediator must act neutrally and impartially. He/she should strictly abide by all the essential requirements for a successful mediation and consider only matters of procedure. He/she should not give any opinion, pronounce judgments, nor provide any advice or suggest solutions. Impartiality

of the mediator must be ensured so that the disputing parties accept him/her as a person who is genuinely dedicated to resolving the conflict and who rs all sides in the conflict, seeking solutions that would satisfy all disputing parties. When that happens, the mediation goes the wrong way. The mediator cannot perform the function if there are circumstances that indicate doubts about his objectivity and impartiality.⁵

An agreement has to be settled with the satisfaction of the disputing parties

The job of explaining the issue, framing the agenda and consenting to the solution depends on the will of the disputing parties. The process of mediation can be initiated only when there is a consensus between the disputing parties. This ADR method cannot be initiated without all disputing parties agreeing to resolve their dispute through mutual agreement. In such cases, the mediation procedure is misused only as a way of withholding the court proceedings and keeping the matter at the “status quo”.

A mediator must know to explain the benefits of mediation to the disputing parties, so that they themselves voluntarily agree to be part of such process. The parties should be informed on the possibility to discontinue the mediation process at any stage, if they wish. The disputing parties and the mediator are not bound to continue the mediation procedure at any stage of its proceedings. Any of them may leave the mediation procedure at any point of time and transfer the case for litigation to the concerned judicial court.

³ Sambhavi Kumar, Mediation in India, ipleader(April 4, 2022, 12:00p.m.) , <https://blog.ipleaders.in/mediation-meaning/?amp=1>

⁴ Ibid

⁵ Ibid



A mediator may leave or dissolve the mediation proceedings if he/she feels that parties to the dispute have moved away from the solution or that they are even more opposed than what they were at the beginning of the mediation procedure. The principal aim of the mediation procedure is that the mediation proceedings must not harm the parties to the dispute in any form but help them resolving their conflict.

Since mediation is an Alternative Dispute Resolution method, it is completely voluntary in nature and hence should not prohibit anyone from exercising the right of approaching the court and use of judicial protection.⁶

Mediation is without prejudice to other procedures

It is essential that people have the right to exercise other measures. If the mediation were seen as an enforced procedure or one that removes an individual's rights, it would constrict the creativity and increase the potential for resistance against mediation.⁷

Application

Value of money

Mediation is regarded as a cost-effective, time-saving, and less adversarial method of resolving disputes between parties. It urges the parties to establish common ground in order to reach a mutually beneficial agreement. It is said to be a successful technique to mediate issues between parties in commercial disputes since it maintains secrecy between the mediator and the two parties. Furthermore, the primary reason that parties choose Mediation over litigation or arbitration is that it provides a common

platform for the parties to resolve their disputes amicably in front of the facilitator, the mediator, and reach a cordial settlement by mutual agreement without jeopardizing the parties' business relationship. Although Mediation is popular and prevalent in almost all nations, at the international level, the parties choose to abandon it due to the lack of a consistent framework for the execution of the mediated settlement, unlike the New York Convention, which is accessible for arbitration.

Evolution of Mediation mechanism

Mediation is a conflict resolution tool. Our ancient scripture tells about the mediation process in Ramayana when Lord Ram sends Prince Angad to Lanka Naresh Ravana king court to resolve the conflict and end the war. In Mahabharata, Lord Krishna attempted to use Mediation for conflict resolution, where Lord Krishna attempted to mediate the dispute between the Pandavas and Kauravas. These two may be worthwhile to recall that the failure of Mediation in Mahabharata led to disastrous consequences.

Its origins in history are now at their pinnacle. In the Mauryan era, Alexander sends diplomat Selcuacas Nicator to Chandragupta Maurya to resolve the conflict. In India's history too, many mediation events have happened. Mediation has been a recognised practice in various forms throughout history. Although the primary goal of reaching an acceptable agreement through Mediation has remained the same, the process has changed. Mediation has a wide history, originating in a variety of nations, social groups, religious texts, and other sources practise. International Mediation has evolved over time, and there is no one-size-fits-all

⁶ Ibid

⁷ Ibid



solution. To Long before the establishment of the British adversarial system in India, Mediation was profoundly ingrained in the Indian mindset.

In 1775, the British courts' system was established, signalling the end of community-based indigenous conflict resolution methods in India. The British legal system has eventually created the framework for India's modern judicial system, with necessary amendments. comprehend the same, a strict sequence or chain of events must be followed.

Even technology is helping in Mediation. The P.C. algorithm, which comes at a low cost, is very helpful. For example, in a disputing case where both parties give conflicting arguments, the algorithm calculates and get the answer based on various parameters (Digital technologies increase the volume, variety and velocity of information that can be gathered for conflict analysis. They also provide innovative means for managing and organizing it. Data derived from digital sources should, however, be triangulated with other sources of information to ensure a more informed analysis). It is artificial intelligence that resolved the Mediation.

Singapore Convention on Mediation

To address this gap, the United Nations General Assembly enacted the U.N. Convention on International Settlement Agreements Resulting from Mediation, sometimes known as the "Singapore Mediation Convention," in December 2018 and proclaimed it open for signature in 2019.

The Singapore Mediation Convention (hereafter "the Convention") entered into force on September 12, 2020, with 53 signatories, including significant economic powers such as China, the United States, and India. Through efficient Mediation, the Convention attempts to make the cross-border dispute resolution mechanism easier. It focuses on developing a treaty-based mechanism for executing agreements obtained through international Mediation on the international frontier.

The authors examined the scope of the provisions involved in the Convention and attempted to interpret the provisions of the Convention using Travaux Préparatoires Reports, Discussions of the Working Groups while drafting the Convention, as well as the authors' own understanding of the provisions based on online sources and reports on file. Furthermore, the article addresses the major concerns that must be addressed when enforcing cross-border mediated settlements, and finally, the authors provide an overall understanding of the Convention and suggest a course of action. The Singapore Convention establishes a regime in which contracting states are required (except in limited circumstances) to cognize settlement agreements that result from Mediation in international commercial disputes, either to enforce the agreement or to allow it to be invoked as a defence to a claim.⁸

Applicability

1. Enhances the credibility of cross-border conflict resolution.— The enforcement of mediated settlement agreements is usually done by recording it in the form of a court

⁸ Dhruv Nyayadhish and Harshita Palrecha , ENFORCING THE OUTCOME INTERNATIONAL COMMERCIAL MEDIATION VIS-À-VIS

SINGAPORE CONVENTION ON MEDIATION, manupatra 2021



order or consent awards for implementation of the settlement, resulting in additional expenses, delays, and the loss of confidentiality, which is one of the primary benefits of Mediation. With this Convention in place, the parties will be able to enforce mediated settlements directly and compare them to arbitral awards or judgements, demonstrating that Mediation is a credible source for international commercial dispute resolution.⁹

2. The Convention will encourage international trade and commerce, resulting in economic development and aiding the progress of the regions represented by the Convention's parties.

3. It establishes an extra tool for resolving cross-border conflicts and strengthens the international dispute settlement system.

4. Framework for enforcing international settlement agreements that is consistent.—The Convention establishes a consistent and harmonious conflict resolution procedure of Mediation via which signatory countries can establish harmonious economic connections despite variations in their domestic social, economic, and legal systems by embracing this framework.

5. It will assist in saving money time and achieving a mutually accepted solution, which is a major characteristic of mediation-based dispute resolution.

6. It will assist in removing one of the barriers to foreign investment, namely the perceived risk of commercial disputes being brought before municipal courts and the judgement being Ordinarily enforced through contract law provisions or other applicable laws, which is costly, time-consuming, and fraught with uncertainty.

7. Mediation applicable in the field of Sports, Divorce, Family, Civil & Property disputes, and Businesses.

8. It is also used in cross border mediation.

Feasibility

The feasibility of mediation as an effective method of Alternative Dispute Resolution can be determined only after analysing its benefits and limitations.

Benefits

1) The primary and the most obvious benefit of mediation is that since it is an Alternative Dispute Resolution method, it allows the parties in the dispute to avoid all the delays and technicalities that arise during the proceedings in a court due to the complexity and inflexibility of procedural laws.

2) In the process of mediation, the matter is kept largely confidential and the privacy of the parties involved in the dispute is significantly maintained during the procedure. This is very much useful for traders or big corporations who do not feel like revealing their management techniques and secrets for debate in a court whose proceedings are open to the public.

3) Settling dispute through the process of mediation gives an opportunity to resolve conflict in an amicable manner. This process does not promote grudges or hostility between the disputing parties and aims at resolving the dispute through conciliation. This is mostly useful in disputes involving family members and companies that trade with each other regularly.

4) In mediation, the disputing parties are more likely to accept the ultimate outcome or decision as it is reached upon through consent and negotiation between both the parties to

⁹ Ibid



the conflict as compared to the judgement of the court which is forced on the parties.

5) Since mediation is completely voluntary in nature, any of the disputing party may choose to opt out of it and try to resolve the dispute through another form of Alternative Dispute Resolution or take up the matter before a court.

6) The process of mediation is much less time consuming and cost effective than the court proceedings.¹⁰

Limitations

1) The most significant limitation of mediation is that it can be used only in civil cases. Since criminal cases involves penalty, hearing of such cases can take place only in a court of law.

2) Since mediation is a form of Alternative Dispute Resolution and thereby voluntary in nature, it entirely depends on the will of the parties to the dispute whether or not to resolve their dispute in a peaceful manner through dialogue and negotiation by using this process.

3) In most cases, people do not chose mediation because the disputing parties feel that they have a better chance of winning the case upon choosing litigation and that the reward they will receive upon the conclusion of mediation may be less than what they may be awarded by the court.

4) It has been observed in various cases of Lok Adalats that the parties to the dispute tend to chose mediation, just because of constraint of time, so that they can delay the procedure of trial in the court and after some time they deny the procedure of mediation.

5) Usually the advocates appointed by the disputing parties tend to discourage their clients not to use the method of mediation to resolve their dispute because they do not earn much profit if their clients use the process of mediation over litigation as a case which gets solved through the process of mediation will actually get solved through negotiation, conciliation and agreement between all disputing parties and hence there is little chance of any future dispute which means that the advocates won't be appointed for any more case on those issues.¹¹

Analysis

Upon carefully analysing the benefits and limitations of Mediation, we can say that mediation, since it is a method of Alternative Dispute Resolution, is a perfect method for resolving any civil dispute peacefully as it negates the chances of conflict on the same issue in future because the matter resolves through mutual agreement between all disputing parties unlike in litigation where decision is forced upon disputing parties following which such decisions may even be challenged by the unsatisfied or losing party in higher courts. However, being an Alternative Dispute Resolution method, it is applicable only in civil cases as mediators do not have any power to penalise or punish anyone. So mediation is highly feasible as far as civil cases are concerned but cannot be applied at all in any criminal case.

Statutory Status of Mediation in India

Jurisprudence

¹⁰Kopal Bansal, Pros And Cons Of Mediation As ADR, White Code Via Space Mediation and Arbitration Centre, (April, 5 ,12:30 p.m.),

<https://viamediationcentre.org/readnews/MTcx/PROS-and-CONS-of-Mediation-as-ADR>

¹¹ Ibid



1) Section 4 of the Industrial Disputes Act, 1947

Conciliators are appointed with the responsibility of mediating and promoting the settlement of workplace disputes via the use of thorough conciliation processes.

2) Section 89 read with Order X Rule 1A of the Code of Civil Procedure, 1908

The addition of Section 89 to the Code of Civil Procedure, 1908 (hereafter referred to as "CPC") is a positive move toward encouraging mediation and other forms of alternative conflict resolution. After recording the admission and denial of documents, the Court shall direct the parties to the suit to choose one of the modes of settlement outside of court as specified in Section 89 (1) of the CPC, namely arbitration, conciliation, judicial settlement, including settlement through Lok Adalat, or mediation. As a result, it stipulates that cases pending before the courts be referred to the aforementioned mechanisms of dispute settlement.

3) Order XXXIIA of CPC

Mediation is recommended by CPC Order XXXIIA. This is obvious from Rules 3 and 4 of Order XXXIIA, which the lawmakers deliberately placed because concerns such as personal, family, matrimonial, guardianship, custody, and maintenance can be settled more effectively through non-adversarial procedures. Although the parties may hold opposing viewpoints, the goal must be to safeguard the underlying interest, which can be accomplished through mediation.

4) Legal Services Authority Act, 1987 read with Section 89 of CPC

The Legal Services Authorities Act, 1987 established statutory authorities at the national, state, and taluka levels with the goal

of providing free and competent legal services to the weaker members of society and ensuring that no citizen is denied justice due to economic or other disabilities.

Where a disagreement has been referred to Lok Adalat under Section 89 (2) of the CPC, the Court shall refer the dispute to Lok Adalat in line with Section 20 (1) of the Legal Services Authority Act, 1987, and all other provisions of that The Lok Adalat's decision will be governed by the Act. A settlement reached before a Lok Adalat is also enforceable as a court decree, according to Section 21 of the Legal Services Authority Act, 1987.

5) Section 442 of the Companies Act, 2013 read with the Companies (Mediation and Conciliation) Rules, 2016

According to Section 442 of the Companies Act of 2013, the Central Government shall maintain a panel of experts known as the Mediation and Conciliation Panel, which shall consist of such number of experts, with such qualifications, as may be prescribed for mediation between the parties while any proceedings before the Central Government, the Tribunal, or the Appellate Tribunal under this Act are pending.

Rule 3 of the Companies (Mediation and Conciliation) Rules, 2016 establishes a Panel of Mediators or Conciliators.

Under the aforementioned regulations, disputes before the National Company Law Tribunal and Appellate Tribunal are directed to mediation.

6) Section 18 of the Micro, Small and Medium Enterprises (MSME) Development Act, 2006



Section 18 of the aforementioned Act expressly states that any party to a disagreement over any amount owed under Section 17 (disputes over the payment of amounts to MSMEs) must refer the matter to the Micro & Small Enterprises Facilitation Council. Following receipt of a referral, the Council may either conduct conciliation itself or seek the assistance of any institution or centre providing alternative dispute resolution services by making a referral to such an institution or centre, with the provisions of Sections 65-81 of the Arbitration and Conciliation Act, 1996 applying.

7) Section 14 (2) of the Hindu Marriage Act, 1955 and Section 29(2) of Special Marriage Act, 1954

In deciding any application under Section 14 for leave to present a petition for divorce before the expiration of one year from the date of marriage, the court shall have regard to the reasonable probability of reconciliation between the parties before the expiration of one year, according to Section 14 (2) of the Hindu Marriage Act, 1955. As a result, the legislators' objective is for the court to undertake mediation between the parties in the first instance.

Section 29 (2) of the Special Marriage Act, 1954 contains a similar provision.

Unlike the adversarial system, in which competing claims of parties are represented by legal representatives who have an interest in the outcome of the dispute, it is critical to visualise and analyse the underlying interests of the parties in matrimonial and family matters, no matter how divergent their positions may be. The mediator's job is to make it easier for the parties to reach an acceptable agreement.

8) Section 32 (g) of the Real Estate (Regulation and Development) Act, 2016

The Authority for the Promotion of the Real Estate Sector is established under Section 32 of the aforementioned Act. The Authority shall, in order to facilitate the growth and promotion of a healthy, transparent, efficient, and competitive real estate sector, make recommendations to the appropriate Government or competent authority, as the case may be, to facilitate amicable conciliation of disputes between promoters and allottees through dispute settlement forums established by consumer or promoter associations.

9) 129th Law Commission of India Report

According to the aforementioned Law Commission Report, courts should send disputes to mediation on a mandatory basis.

10) Section 12A of the Commercial Courts Act, 2015

Pre-Institution Mediation and Settlement is covered by Section 12A of the aforementioned Act, which is part of Chapter IIIA. The aforementioned Act was amended in 2018 to include Chapter IIIA. A suit that does not contemplate any urgent interim relief shall not be instituted unless the plaintiff has exhausted the remedy of pre-institutional mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government, according to Section 12A.

As a result, it is mandatory for parties to exhaust the Act's pre-institution mediation remedy before filing a lawsuit.

11) The Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018



In exercise of the powers given by subsection (2) of Section 21A read with subsection (1) of Section 12A of the Commercial Courts Act, 2015, the Central Government drafted and subsequently issued these Rules on July 3, 2018.

12) Sections 37-38 and Chapter V of the Consumer Protection Act, 2019

The aforementioned provisions require that all conflicts arising under this Act be referred to mediation first. Under Section 37 (1) of the aforementioned Act, if the District Commission believes that there are features of a settlement that the parties may find satisfactory, it may direct the parties to give their consent in writing within 5 days to refer the matter to mediation, and the provisions of Chapter V of the Act shall apply.

13) Mediation and Conciliation Rules, 2004

The Hon'ble High Court of Delhi has framed these regulations in the exercise of its authority under Part X and Section 89 (2) (d) of the CPC.¹²

Analysis—

It's also worth noting that India is a party to the UN Convention on International Settlement Agreements Resulting from Mediation (Singapore Mediation Convention), which gives mediation agreements legal standing.

On the basis of the aforementioned statutory provisions, it cannot be stated that India does not have mediation or conciliation laws. However, the differences between mediation and conciliation make these rules ineffective.

A universal mediation law would provide legal sanctity and eliminate contradictions between several sections of existing laws. Despite the fact that numerous statutes have provided parties the autonomy to resolve their conflicts through mediation and that there are court-ordered as well as private mediation options, there is a dearth of procedural guidance in this area.

The Supreme Court of India has established a team to develop laws to give legal credibility to conflicts handled through mediation, which would be given to the government as a recommendation from the apex court. 10 The Hon'ble Supreme Court's suggestion of a "Indian Mediation Act" is a viable proposition in India.¹³

Judicial Precedents

1) Salem Advocate Bar Association v. Union of India (2005)

In this case, the amendments made by the Code of Civil Procedure (Amendment) Act, 1999 and the Code of Civil Procedure (Amendment) Act, 2002 were challenged through Writ Petitions. The focus of the Supreme Court was drawn to Section 89 of the Code of Civil Procedure, 1908.

The Hon'ble Supreme Court observed that the provision of Section 89 of the Code of Civil Procedure, 1908 has been inserted to ensure that all the cases which are filed in the courts need not necessarily be decided by the courts. The Hon'ble Supreme Court suggested the necessity to encourage Alternate Dispute Resolution. Hence Section 89 is considered

¹² Geetanjali Sethi, Indian: Mediation: Current Jurisprudence And The Path Ahead ,Mondaq(April,5 ,2022, 12:50 p.m.), <https://www.mondaq.com/india/arbitration-dispute->

[resolution/957898/mediation-current-jurisprudence-and-the-path-ahead](https://www.mondaq.com/india/arbitration-dispute-resolution/957898/mediation-current-jurisprudence-and-the-path-ahead)

¹³ Ibid



to be a positive step. It was therefore suggested by the Hon'ble Supreme Court, that a Committee be constituted in order to ensure that the amendments made to the Code of Civil Procedure, 1908 are efficient and result in faster disposition of cases.

2) Afcons Infrastructure Ltd. & Anr. v. Cherian Varkey Construction Co. (P) Ltd. & Ors. (2010)

The Supreme Court said that even though it is impossible to make an exhaustive list regarding the issues which can be mediated, yet an illustrative list was made. This list consists of all cases with regard to commerce and trade, consumer disputes, tortious liability, stained relationships and cases where there is a need of continuation of the pre-existing relationship inspite of the disputes. All such issues as mentioned in the aforesaid list can be mediated. Further, the Apex Court explained the anomalies in Section 89 of the Code of Civil Procedure, 1908, when it may be exercised, the categories of cases which are not appropriate for Alternate Dispute Resolution and the extent and scope of agreement.

3) M.R. Krishna Murthi v. The New India Assurance Co. Ltd. (2019)

The Supreme Court while hearing a petition seeking changes in the Motor Vehicle Accident Claims system, asked the Government to enquire the feasibility of enacting Indian Mediation Act in order to cover various aspects of Mediation in general and issued several directions to the Government. The Supreme Court also directed the Government to enquire the feasibility of establishing a Motor Accidents Mediation Authority (MAMA) by making the required amendments in the Motor

Vehicles Act. Also the Supreme Court issued orders to the National Legal Services Authority (NALSA) to establish Motor Accident Mediation Cells (MAMC) that functions autonomously under the aegis of NALSA or can be handed over to Mediation and Conciliation Project Committee (MCPC).

4) M Siddiq (D) Thr Lrs v. Mahant Suresh Das & Ors (2019)

A Five Judge Constitution bench of the Hon'ble Supreme Court of India ordered a court-monitored mediation in the Ayodhya dispute vide its Order dated March 8, 2019. The Supreme Court's suggestion to transfer such a sensitive case for mediation has put the process of mediation in the limelight.¹⁴

Analysis—

In the light of the aforesaid judicial precedents laid down, it is clear that the judicial approach of India has been always towards promoting mediation as a mode of dispute resolution. The Hon'ble Supreme Court has in the aforesaid judgements in a straightforward and precise manner emphasised the need to use mediation with regard to those matters which can be mediated. Through mediation, the underlying interests of the parties are taken care of rather than the different positions or conflicting claims and a settlement, if arrived, may result in a win-win situation for all the disputing parties.

Effective working of the judiciary is important for every nation. The hierarchy of courts in India are bound to function as per the procedure established by law. Everyone is equal before law but the delays in litigation makes it a slow and complicated process. So,

¹⁴ Ibid



it is necessary that the disputing parties must get a chance to resolve their dispute without being involved to formal litigation. Giving such a opportunity to the disputing parties is clearly as per the legislative intent of Article 39A (equal justice and free legal aid for all) in Part IV of the Constitution of India. Encouraging mediation is not only in the interest of the parties to the dispute but is also the need of the hour.

In order to take the mediation ahead and use it in the best possible manner, it is important to spread its awareness among the public. Those involved in mediation must acquire skills for mediation in an organised and scientific way. This will not only help to reduce the burden of cases upon the courts but also save many relationships which otherwise may get strained if any of the disputing party remains unsatisfied following a judgement by a court unlike in mediation where decision is taken by agreement of all sides.¹⁵

Conclusion

After thorough analysis of this research paper, we can say that mediation is an effective method of resolving a dispute through mutual agreement without the intervention of any court. During the research, we also found out that mediation is not a completely new dispute resolution technique as they have been in use since ancient time in various ways. However, with time, it has evolved to suit and adapt into today's needs and conditions and continues to evolve as per the changing requirements. Nevertheless, be it in the ancient times or in the 21st century, mediation have always been used to resolve disputes that are non-criminal in nature and does not include anyone to be

penalised or punished. It must be noted that as of September 15, 2021, there 4.5 crore cases pending in various in India. So if majority of the people tend to use the process of mediation to resolve disputes that are civil in nature, it will not only help them to save time and money by avoiding the delays which they may have to face in courts during the course of hearing of their cases but also help the judicial system of the country by freeing them up for hearing the criminal cases as they cannot be resolved through any form of Alternative Dispute Resolution method. Moreover, cases resolved through mediation almost nullifies the possibility of any future dispute over the same issue among the same disputing parties as the dispute gets resolved through mutual agreement among all parties to the dispute and that no third party decides the outcome unlike in litigation where a judge or a panel of judges decide the outcome of a case that is enforced upon all disputing parties regardless of whether or not they are satisfied by the judgement for which the unsatisfied parties to the dispute may decide to challenge the judgement in higher courts or even file cases for reconsideration if they are not satisfied with the judgement of the Supreme Court. Also, as seen in the previous section, there are various jurisprudential provisions of many parliamentary acts with regard to mediation. Moreover, the Supreme Court from time to time while delivering verdicts in various cases have emphasised on the need to establish an organised mechanism for the promotion of mediation.

Therefore we can conclude that mediation as a method of Alternative Dispute Resolution, which has been in use since ancient times and has been provided in various parliamentary laws as well as encouraged by the judiciary, is a highly cost effective voluntary dispute

¹⁵ Ibid



resolution technique for civil matters that must be used by people as far as possible. The fact the dispute resolves through mutual agreement makes mediation a very feasible method of resolving disputes.

