PRE-INSTITUTION MEDIATION: A RULE OR A LAW?

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ABSTRACT

Due to the parties' failure to come to an agreement, a dispute may not be resolved amicably and litigation may become competitive and turn into a zero-sum game where one party wins and the other loses. Therefore, bringing a lawsuit may not be the best course of action. The Pre-Institution Mediation and Settlement under Chapter III A under Section 12 A of the Commercial Courts Act, 2015, has been added as a requirement by the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Act, 2018, also known as the Commercial Courts Act of 2015. This part was added with the intention of resolving initial commercial disagreements through mediation. According to its provisions, no lawsuit that does not call for urgent relief should be filed unless the plaintiff has exhausted all pre-institution mediation and settlement options in accordance with the Central Government's 2018 Commercial Courts (Pre-Institution Mediation and Settlement) Rules. In this paper, we will examine whether forced mediation is necessary to resolve the issue of multiple lawsuits pending in court that can be quickly resolved through Alternative Dispute Resolution. We'll look at the many benefits and drawbacks of mandating mediation in some situations, the current legal system prevailing it and the role of the Commercial Courts Act, 2015 and the various judicial decisions affecting it.

INTRODUCTION

The Commercial, Commercial Division, and Commercial Appellate Division of High Courts (Amendment) Act, 2018, has revised the Commercial Courts Act, 2015 to allow for an effective method of resolving commercial disputes, which are steadily increasing day by day. In every jurisdiction, barring those where the High Courts have ordinary civil jurisdiction, this Act established Commercial Courts below the District Judge level. It also established Commercial Appellate Courts at the District Level to hear appeals from the Commercial Courts below the District Judge level. The addition of Section 12 A under Chapter III A of the Commercial Courts Act of 2015 is the other significant change that follows. Pre-institution mediation is now required before initiating a lawsuit in court, even if the parties do not need immediate relief. A limit of 3 months (extendable by 2 months), within which the mediation must be completed whether settled or unsettled, has been provided by the 2018 amendment in an effort to ensure a swift resolution of commercial disputes[1].

According to Section 30(4) of the Arbitration and Conciliation Act, 1996, a mediated settlement has the same legal standing as an arbitral judgement and may be enforced as such. Using the concepts of voluntariness and self-determination, the Commercial Courts Act of 2015, and The Commercial Courts (Pre-Institution Mediation and Settlement) Rules of 2018 create a facilitative mediation paradigm. Additionally mandated are the mediator's ethical requirements with regard to the privacy of the mediation process[2].

The process for these pre-institution mediations is outlined in the Commercial Courts Rules of 2018. The plaintiff must apply to the State or District Legal Services Authority created by the Legal Services Authorities Act of 1987 in order to start the mediation. The Authority will issue a notice to the opposing party following receipt of the application, asking him to present and consent to participate in the mediation within ten days of receiving the notice. The Authority will give a final notice to the opposing party in accordance with the Rules if it doesn't hear back from the other party within ten days of receiving the initial notice. The mediation process shall be viewed as a non-starter and a report to that effect will be prepared if the opposing party

[1] The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Bill, 2018, https://prsindia.org/billtrack/the-commercial-courts-commercial-division-and-commercial-appellate-division-of-high-courts-amendment-bill-2018

[2] Ritika Ghosh, Resolving Commercial Disputes Through Pre-Institution Mediation and Its Challenges: Indian Perspective, Supremo Amicus, Vol. 13 ISSN 2456-9704, https://supremoamicus.org/wp-content/uploads/2019/08/A28.v13.pdf

refuses, does not comply, or shows up after receiving the final notice. The mediation process will begin if the other side consents to participate and accepts, which will trigger legal action. If the parties reach a resolution following discussions, negotiations, and passing through the various phases of mediation, the mediator will draught a settlement agreement that will be legally binding on the parties.

When one considers the issues, the Indian judiciary is dealing with, pendency in the courts is the first thing that springs to mind. As of November 12, 2020, there were 3,590,08679 active cases (civil and criminal) across all federal courts in the nation, according to information from the National Judicial Data Grid. Out of them, there are 98,01,986 civil cases, or little more than 27% of all outstanding cases. India is ranked 63 overall in the World Bank's Ease of Doing Business Rankings for 2020, but it comes in at a pitiful 163 (out of 190) when it comes to contract enforcement, which is mostly a judicial role[3].

More than 80 cases between the parties are currently waiting as a result of the seeds of mutual mistrust and lack of faith planted in a special leave petition in the case of ***Mr. Vikram Bakshi & Ors. v. Ms. Sonia Khosla, 2014***[4]. The Apex Court held the following position in this case: "There is always a difference between winning a case and seeking a solution, and via mediation the parties will become partners in solution rather than partners in problem." The benefits of mediation for the economic, commercial, and financial advancement of the nation as well as the condition of peace it fosters in society were also emphasized by the Court[5]. It can be shown that the Court in this commercial action, which involved a protracted legal battle, had selected mediation as an appropriate means of resolving the disagreement.

MEDIATION AND THE PREVAILING LEGAL SYSTEM

In mediation, a neutral third party assists the disputing parties in coming to a mutually agreeable settlement. Mediation is a form of alternative dispute resolution. This neutral third party, also referred to as the mediator, assists the disputants in reaching a mutually agreeable resolution. The mediator is intended to act impartially and only serve as a conduit through which the parties can reach a solution. The mediator facilitates discussion between the parties

[3] Deepika Kinhal, Apoorva, Mandatory Mediation in India - Resolving to Resolve, Indian Public Policy Review 2020, Vol. 2 No. 2, https://ippr.in/index.php/ippr/article/view/38
[4] 2014 (II) CLR (SC) 385
[5] Odisha Judicial Academy Monthly Review of Cases on Civil, Criminal & Other Laws, 2014, https://orissajudicialacademy.nic.in/monthly_case_review/sep14.pdf

by helping them to identify issues, reduce misunderstandings, clarify priorities, explore areas of compromise, and generate options, according to Rule 4 of the Civil Procedure Alternative Dispute Resolution and Mediation Rules, 2003. In contrast to arbitration, mediation is typically the best option for specific lawsuits that don't include complex legal or factual issues. Additionally, mutual dispute settlement outside of the established adjudicatory system is more advantageous[6].

The main benefit of mediation is that it gives the parties involved a forum on which to communicate, bargain, and ultimately come to a mutually acceptable resolution. Another important aspect of mediation is that it provides the parties the freedom to choose the course of action they want to take, maintaining goodwill between the parties. Internationally, mediation has advanced significantly, and the majority of people now recognize it as a successful alternative to litigation for resolving problems. However, mediation has not yet received the proper legitimacy in India.

In India, there are now few ways to start mediation[7]:

(i) by including a mediation clause in the contract and using it. It may be institutional or ad hoc;

(ii) by court-referred mediation as permitted by Section 89 of the Code of Civil Procedure, 1908;

(iii) by mandatory pre-litigation mediation as permitted by Section 12A of the Commercial Courts Act, 2015; or

(iv) by other laws, such as Section 37 of the Consumer Protection Act, 2019.

MEDIATION UNDER THE COMMERCIAL COURTS ACT, 2015

The Commercial Courts Act, 2015, which was later revised in 2018 to include a provision about "pre-institution mediation and settlement," is one example of how Indian legislators have tried to establish mandatory mediation as an alternative. This is covered under Section 12A, which

[6] Susmita Mandal, Is Mandatory Mediation the Future of Dispute Resolution in India?, Indian Journal of Legal Review, Volume I Issue II, ISSN - 2583-2344, https://ijlr.iledu.in/wp-content/uploads/2022/09/I27.pdf
[7] Ibid 6

requires the parties to a dispute to first attempt mediation before proceeding with litigation. According to subsection (4) of section 30 of the Arbitration and Conciliation Act, 1996, the settlement agreement that the disputants sign "shall have the same status and effect as if it is an arbitral award on agreed terms."

Deepak Raheja v. Ganga Taro Vazirani, 2021[8]

The Bombay High Court Division Bench noted that Section 12A of the Act is necessary when a commercial suit of a certain value lacks an application for urgent interim relief. This is because such a proceeding cannot be started until the plaintiff has exhausted pre-institution mediation.

Laxmi PolyFab v. Eden Realty, 2021[9]

The Calcutta High Court stated that a plaintiff does not have a guaranteed right to approach a Commercial Court or a Commercial Division of a High Court to have a matter involving a "commercial dispute" as defined by the Act of 2015 decided by such Court without following the provisions of Section 12A of the Act of 2015.

The same court determined that the purpose of the Act of 2015 is to hasten the resolution of a commercial dispute in ***Dredging and Desiltation Company Pvt. Ltd. v. Mackintosh Burn and Northern Consortium, 2021***[10]. Mandatory pre-institution mediation is used to attain this goal. A commercial dispute may be effectively settled within the time frame allotted under the mandatory pre-institution mediation in order to avoid the need for the court to render a final decision on the case.

REQUIREMENT OF MANDATORY MEDIATION IN INDIA

In India, it is customary for people to go to court to resolve any form of disagreement, which overstretched the court system and caused the caseload to increase. People become quite angry as a result because they no longer believe the legal system will uphold their rights.

The Supreme Court of India ruled in ***Hussainara Khatoon v. Home Secretary, the State of***

[8] 2021 SCC OnLine Bom 3124
[9] 2021 SCC OnLine Cal 1457
[10] 2021 SCC OnLine Cal 1458

Bihar, 1979[11] that the right to a speedy trial is an essential right implied in the protection of life and personal freedom provided by Article 21 of the Indian Constitution, making mediation a requirement for quick access to justice.

The following are the benefits of mandatory mediation[12] –

1) Fast –

   In comparison to formal litigation or an arbitration process, mediation takes considerably less time to complete. As a result, at any point during the conflict, the parties may choose to mediate. It also helps the mediator concentrate just on the most crucial topics while ignoring the rest.

2) Cost-effective –

   Because mediation is less formal, less complicated, and often takes less time than formal litigation or arbitration, it can be used early in the dispute resolution process to settle differences and lower the likelihood of a trial.

3) Friendly –

   According to Order 32A of the Code of Civil Procedure, 1908, mediation is suggested in situations involving family issues or personal affairs that call for the development of trust and confidentiality. In the case of conventional adjudication, these might not be available. The parties in mediation are completely free to pursue any course of action they see fit. In these situations, there is either victory or defeat, but it is typically a win-win scenario for both parties. This aids in maintaining the closeness between people and the sacredness of family ties.

In the case of ***Salem Advocate Bar Association, Tamil Nadu v. Union of India, 2003***[13], the Hon'ble Supreme Court of India made the observation that it is required for court cases to refer to mediation, conciliation, and arbitration. This will aid in the acceptability of compulsory mediation as a remedy for issues currently plaguing our legal system.

[11] 1979 SCR (3) 532
[12] Ibid 6
[13] AIR 2003 SC 189

The following are the disadvantages of mandatory mediation[14] –

1) The word "mandatory" itself indicates that the parties have no other option but to embrace mediation as their preferred alternative conflict resolution process. While mediation grants each party total autonomy, it also denies them the option of using the dispute resolution process they choose. On this point, it is also possible to argue that mandated mediation just serves to compel the parties to use mediation for their own benefit. However, the process itself is not mandatory, and the parties are allowed to end it whenever they like and use another dispute resolution technique instead, such as litigation.

2) Practicing solicitors strongly oppose mandatory mediation because they believe it deprives the parties of their ability to reach a compromise and forces them to use mediation. However, the motivation behind such criticism is that it has a negative impact on the income of the solicitors as more and more people choose to settle disputes outside of court rather than engaging in a protracted, tiresome litigation process that takes years to complete.

In a word, mediation is a very successful instrument for lowering the workload of the courts and the length of litigation. In every manner, whether it be in terms of costs, time, consensus, or confidentiality, it is advantageous to the parties. If the parties are unhappy with the outcome of the mediation procedure, they are also able to initiate a lawsuit. Due to public ignorance, many instances that could be quickly handled through mediation outside of court instead choose the protracted and expensive litigation route[15].

CURRENT SITUATION

In India, litigation is the most common method of resolving disputes. In an adversarial system where the judge serves as an umpire, courts administer justice. Around 95 lakh civil cases are pending in India right now, with 2 lakhs of those cases concentrated in the nation's capital, New Delhi. Additionally, there are 21 commercial courts that are currently hearing 8,634 business

[14] Ibid 6
[15] Karthik Adlakha, Mandatory Mediation in India - A boon or a bane to the legal system in the country?, CIARB, https://www.ciarb.org/resources/features/mandatory-mediation-in-india-a-boon-or-a-bane-to-the-legal-system-in-the-country/

cases[16]. It is significant to note that business conflicts with values lower than INR 3,00,000 still fall under the category of "civil disputes."

In the current situation, the Code of Civil Procedure, 1908 (herein referred to as “CPC”) and the Commercial Courts Act, 2015 herein referred to as “CCA”) are principally two acts that deal with the resolution of commercial disputes. Commercial disputes with values greater than INR 3,00,000 are handled by the latter, and those with values less than that level are handled by the former. The concept of the CCA had been discussed since 2003, but it wasn't until 2015 that it was officially introduced with the aim of creating a system that allows for the swift and equitable resolution of commercial disputes with the use of novel features like case management hearings, summary judgement, stricter deadlines, and pre-litigation mediation[17].

The legislators attempted to define commercial conflicts under the CCA under Section 2(c) of the act, and the definition provided is fairly broad and comprehensive in character. However, it cannot be argued that no issue may be classified as "commercial" outside of the aforementioned criterion. In this regard, it should be noted that if "all suits that in common parlance may be stated to be of commercial nature cannot be brought within the ambit of Commercial Courts Act and that if the same is done and the doors of the commercial courts and the commercial division of the High Court are opened too wide, the purpose of enacting the Commercial Courts Act would be defeated, as the specialized courts would be inundated with such cases, rendering expeditious dispositive motions impossible,"[18]

In a case, the Hon’ble High Court of Delhi ruled in the case of ***Havells India Limited v. The Advertising Standards Council of India, (2016)[19]*** that "the precise definition of what a commercial dispute "means" has been consciously provided by parliament." The precise matters that qualify as relevant to "commercial disputes" have been carefully outlined in sections (i) to (xxii), and the term is not all-inclusive.

In ***Jagmohan Behl v. State Bank of Indore, 2017[20]***, the court further stated that "a harmonious reading of the explanation with sub-clause (vii) to clause (c) would include all disputes arising

[16] Ishaan Sharma, Dr. Vandana Singh, Mediation- A Panacea or an Unavailing Practice: With Special Reference to Commercial Disputes, Journal of Positive School Psychology, Vol. 6, No. 2, 360 – 368, https://journalppw.com/index.php/jpsp/article/view/1308
[17] Ambalal Sarabhai Enterprises Ltd v. K.S. Infraspace LLP &Anr., (2019) ibclaw.in 209 SC
[18] Sanjeev Kumar Arora v. Satish Mohan Agarwal, 2017 (163) DRJ 541
[19] (2016) 155 DRJ 435
[20] 2017 SCC OnLine Del 10706

out of agreements relating to immovable property when used exclusively for trade and commerce, be it an action for recovering immovable property or realizing money given in the form of security or any other relief pertaining to immovable property."

High case pending times can also be attributable to judges' understaffing. According to a poll[21], there is one judge for every 75,102 litigants in subordinate courts, or 1 judge to population. With 1 judge overseeing 2,24,364 litigants, the situation is significantly worse at the High Court level. Recently, the Hon'ble Supreme Court of India in the case of ***M/S Plr Projects Pvt. Ltd. v. Mahanadi Coalfields Limited & Ors., 2022***[22] made the point that vacancies at both the high court and subordinate court must be filled quickly.

A worrying trend is the late disposition rate, both generally and with regard to business disputes in particular. Adoption of a prompt and effective resolution is crucial because any delay could have harmful results. These not only result in a rise in litigation costs but also damage the reputation of the legal system and foster mistrust. Another significant negative of this is that witnesses may not always recall events exactly as they were at the time of the dispute until the stage of recoding of evidence is reached, and this clouded memory has the potential to degrade the standard of justice.

INDIA'S LEGAL STATUS OF MEDIATION

The following are the statutory provisions governing mediation in India[23] –

1) **Section 4 of the Industrial Disputes Act, 1947 –**

   Conciliators are individuals tasked with mediating and advancing the resolution of workplace conflicts through the use of exhaustive conciliation procedures.

2) **Section 89 r/w Order X Rule 1A of the Code of Civil Procedure, 1908 –**

   A step in the right direction towards promoting mediation and other kinds of alternative dispute resolution is the insertion of Section 89 to the Code of Civil Procedure, 1908 (hereinafter referred to as the "CPC"). The Court shall instruct the parties to the suit to

[21] Ibid 16
[22] 2022 LiveLaw (SC) 1006
[23] Rithvik, Gitartha Deka, Mediation: A Method of Alternative Dispute Resolution, Supremo Amicus, Vol. 29, ISSN:2456-9704,https://heinonline.org/HOL/LandingPage?handle=hein.journals/supami29&div=8&id=&page=

select 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, after recording the admission and denial of documents. It therefore mandates that cases now before the courts be sent to the aforementioned conflict resolution processes.

3) **Order XXXIIA of the Code of Civil Procedure, 1908 –**

CPC Order XXXIIA recommends mediation. This is clear from Rules 3 and 4 of Order XXXIIA, which the legislators purposefully inserted because non-adversarial methods are more effective in resolving issues relating to personal, family, matrimonial, guardianship, custody, and maintenance. The parties may have divergent points of view, but the main objective must be to protect the fundamental interest, which can be done through mediation.

4) **Legal Services Authority Act, 1987 r/w Sec. 89 of Code of Civil Procedure, 1908 –**

To ensure that no citizen is denied justice owing to financial or other barriers, the Legal Services Authorities Act of 1987 established statutory bodies at the national, state, and taluka levels. Its objectives were to provide free and competent legal services to the weaker segments of society.

When a matter has been referred to Lok Adalat pursuant to Section 89(2) of the CPC, the Court shall do so in accordance with Section 20(1) of the Legal Services Authority Act, 1987; all other provisions of that Act shall apply to the Lok Adalat's ruling. According to Section 21 of the Legal Services Authority Act, 1987, a settlement struck before a Lok Adalat is also enforceable as a court order.

5) **Section 442 of the Companies Act, 2013 r/w the Companies (Mediation and Conciliation) Rules, 2016** –

The Mediation and Conciliation Panel, which consists of the number of experts with the qualifications required for mediation between the parties while any proceedings before the Central Government, the Tribunal, or the Appellate Tribunal under this Act are pending, shall be maintained by the Central Government in accordance with Section 442 of the Companies Act of 2013.

A Panel of Mediators or Conciliators is established by Rule 3 of the Companies (Mediation and Conciliation) Rules, 2016.

The aforementioned regulations require mediation in cases going before the National Company Law Tribunal and Appellate Tribunal.

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

According to Section 18 of the aforementioned Act, the Micro & Small Enterprises Facilitation Council must be consulted in cases of dispute over any sum owed under Section 17 (disputes over the payment of amounts to MSMEs). The provisions of Sections 65–81 of the Arbitration and Conciliation Act, 1996 are applicable. After receiving a referral, the Council may either conduct conciliation on its own or seek the assistance of any institution or centre offering alternative dispute resolution services by making a referral to such an institution or centre.

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

The court shall have regard to the reasonable probability of reconciliation between the parties before the expiration of one year in determining any application under Section 14 for leave to present a petition for divorce before the expiration of one year from the date of marriage, as stated in Section 14(2) of the Hindu Marriage Act, 1955. The goal of the legislators is for the court to mediate disputes between the parties in the initial stages.

The Special Marriage Act of 1954 provides a similar clause in Section 29(2).

In matrimonial and family matters, it is crucial to visualize and analyze the underlying interests of the parties, regardless of how divergent their positions may be. This contrasts with the adversarial system, in which contending claims of parties are represented by attorneys who have an interest in the resolution of the dispute. The mediator's role is to facilitate the parties' ability to come to a mutually agreeable resolution.

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

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

9) **129th Law Commission of India Report** –

The aforementioned Law Commission Report recommends that courts require parties to mediate conflicts.

10) **The Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018** –

The Central Government formulated and subsequently published these Rules on July 3, 2018, acting within the authority granted by subsection (2) of Section 21A read with subsection (1) of Section 12A of the Commercial Courts Act, 2015.

11) **Sections 37-38 and Chapter V of the Consumer Protection Act, 2019** –

All disputes originating under this Act must first be submitted to mediation per the aforementioned clauses. According to Section 37(1) of the aforementioned Act, the District Commission may instruct the parties to consent in writing within 5 days to refer the dispute to mediation, and the rules of Chapter V of the Act shall apply, if it believes that there are aspects of a settlement that the parties may find satisfactory.

12) **Mediation and Conciliation Rules, 2004** –

These regulations were created by the Hon'ble High Court of Delhi in accordance with the jurisdiction granted by Part X and Section 89(2)(d) of the CPC[24].

[24] Geetanjali Sethi, Indian: Mediation: Current Jurisprudence And The Path Ahead, Mondaq, https://www.mondaq.com/india/arbitration--dispute-resolution/957898/mediation--current-jurisprudence-and-the-path-ahead

JUDICIAL PRECEDENTS

The following are the landmark judgements prevailing over the mediation process –

1) ***Patil Automation Pvt. Ltd. & Ors. v. Rakheja Engineers Pvt. Ltd., 2022***[25]

Facts –

Due to the respondents' failure to use the pre-litigation mediation remedy, the appellants requested that the plaint be rejected in accordance with Order VII Rule 11 of CPC. The Commercial Court, however, denied the request to dismiss the complaint.

Issues –

a) Whether the pre-litigation mediation that is required by law and contemplated by Section 12A of the Commercial Courts Act, 2015, is required.

b) Whether the mediation goes against the core idea of access to justice.

Observations of the Court –

Pre-institution mediation is required by Section 12A of the Commercial Courts Act, according to the SC, and lawsuits filed in violation of this requirement risk having their claims rejected at the threshold under Order VII Rule 11 of the CPC. The plaintiff will not be eligible for relief if the plaint is filed alleging a violation of Section 12A after the jurisdictional High Court has deemed Section 12A mandatory as well. A "meaningful choice" in the age of docket explosion, according to the judgement, is mediation. SC further emphasized the value of having a bar specifically for mediation and asked HC to periodically conduct an exercise to create a panel of qualified mediators at the District and Taluka levels as needed.

2) ***Afcons Infrastructure Ltd. & Anr. v. Cherian Varkey Construction Co. (P) Ltd. & Ors., 2010***[26]

Although it is impossible to create an entire list of the issues that can be resolved by

[25] 2022 SCC OnLine SC 1028
[26] 2010 (8) SCC 24

mediation, the Supreme Court stated that an example list had been created. This list includes all issues involving business and trade, consumer disputes, tort responsibility, damaged relationships, and situations where it is necessary to maintain an existing relationship despite disagreements. All of the difficulties on the aforementioned list can be resolved through mediation. The Apex Court also clarified the inconsistencies in Section 89 of the Code of Civil Procedure, 1908, when it may be used, the types of circumstances in which alternate dispute resolution is not applicable, and the breadth and scope of agreement.

3) ***M.R. Krishna Murthi v. The New India Assurance Co. Ltd., 2019***[27]

While hearing a petition seeking improvements to the Motor Vehicle Accident Claims system, the Supreme Court directed the government to investigate the viability of passing the Indian Mediation Act to address various elements of mediation generally. The Supreme Court also ordered the Government to investigate the viability of creating a Motor Accidents Mediation Authority (MAMA) by amending the Motor Vehicles Act as necessary. Additionally, the Supreme Court instructed the National Legal Services Authority (NALSA) to create Motor Accident Mediation Cells (MAMC), which may operate independently under NALSA's supervision or may be transferred to the Mediation and Conciliation Project Committee (MCPC).

4) ***M Siddiq (D) Thr Lrs v. Mahant Suresh Das & Ors., 2019***[28]

With its Order dated March 8, 2019, a five-judge Constitution bench of the Hon'ble Supreme Court of India ordered a court-monitored mediation in the Ayodhya issue.

The Supreme Court's recommendation to mediate such a delicate issue has brought mediation into the spotlight.

THE PATH AHEAD

At August 2020, the Bar Council of India mandated that mediation be studied as a required subject at Indian legal institutions. From the very beginning of one's legal career, this shows the importance of the procedure. In September 2021, the Union Law Minister announced that

[27] 2019 SCC OnLine SC 315
[28] 2019 SCC SC 1440

the national government was prepared to present a measure on mediation during the approaching winter session of parliament in 2021. With strong aspirations to turn a new page in the overburdened Indian court system, all eyes are focused on this new law.

Surprisingly, India has not yet fully embraced mediation, primarily due to a lack of awareness, improper legislative norms and regulations, a dearth of qualified mediators, and a general lack of confidence in methods of dispute settlement other than formal adjudication. N.V. Ramana C.J. says, mandating mediation as the first step in the resolution of any allowable dispute will do much to advance mediation. Perhaps an omnibus law is required in this area to bridge the gap[29].

When it comes to realising the full potential of pre-litigation mediation in India, the legal community there has a very important role to play. However, completing it is in and of itself a Herculean task. The various causes of forced mediation's severely stunted growth in India have been discussed above. The public should be made aware of mediation and other alternative dispute resolution procedures, and lawyers and law students should get mediation training as a minimal requirement for advocating obligatory mediation in India. Since the Mediation Bill of 2021 has not yet taken effect, there is still a gap in the legal foundation for mediation. When this Bill is put into effect, it will close various loopholes and ambiguities in the laws. The range of mediation should include not only business disputes but also other civil ones. To get individuals to choose mediation over going to court, there needs to be a dramatic shift in the way that people think.

A unified statute that controls the mediation process in India is urgently needed. There are laws regulating mediation in more than 18 different countries, including Singapore, Malaysia, and Ireland. To manage disputes in line with a "Arb-Med-Arb" clause for business contracts, the Singapore International Arbitration Centre (SIAC) and the Singapore International Mediation Centre (SIMC) have developed the ‘SIAC-SIMC Arb-Med-Arb Protocol (AMA Protocol)’. In India, parties typically choose court-annexed mediation, which is governed by rules established by the relevant High Courts. Lack of recognition makes private mediation less popular. The enactments mentioned above have already been or are currently being enacted in our nation, therefore what we also need is a rapid evolution of the mediation mechanism. For this, the

[29] Ibid 6

legislative branch and the judicial branch would both need to formally recognise mediation procedures, whether they are court-annexed or private[30].

The judiciary primarily handles cases that need to be decided, however there are some circumstances where mediation procedures might be more suitable and advantageous to the parties. Therefore, it becomes highly vital and crucial for the promotion of the mechanism when such issues and situations are identified by parties, solicitors, and judges.

The following steps have to be taken[31] –

1) Public knowledge of mediation at the grass-roots level, with easy access for parties, solicitors, judges, and other stakeholders.

2) Laws governing mediation and its use have already been implemented by many other nations, and India has just ratified the UN Convention on International Settlement Agreements.

3) To make the parties comfortable, mediation centres need a robust infrastructure and a set structure.

4) Since mediation provides lawyers with a great opportunity to showcase their legal, analytical, and professional talents, it must become a full-time profession (efforts by senior lawyers, members of the judiciary, and all state bar councils will be required for development of this mechanism).

5) Rewards and incentives for solicitors who inform parties on the inner workings of mediation so they can make wise decisions.

6) To be adhered to are high ethical standards (a code of ethics and conduct).

7) Law schools' curricula should incorporate theoretical and practical mediation training, and all active solicitors should take a mediation introduction course. All around India, cost-effective structured mediation training with specialisation accreditation should be

[30] Manisha T. Karia (Advocate-on-Record at the Supreme Court of India), Effective implementation of Mediation in India: The way forward, Bar & Bench, https://www.barandbench.com/columns/supreme-court-collegium-chief-justice-of-india-dy-chandrachud
[31] Ibid 30

made available. For lawyers and other professionals who want to pursue mediation as a career, periodic skill-updating seminars should be held.

8) Courts should hold a number of mediation campaigns at different levels, whether they are district- or country-level. These initiatives may be incredibly effective and aid in reducing the backlog of cases that are now waiting before the courts. Out of the 2,884 cases that the Family Courts recommended to mediation during the recently concluded Delhi High Court Family Courts Mediation Drive, 2,171 cases were effectively resolved, yielding a 75.27% success rate. This makes it quite evident that the judicial system needs to heavily promote the mediation process.

9) The method for choosing mediators and creating suitable training requirements for mediators should be devised. There is a need to maintain information about the professional and educational background of the mediators, including previous mediations conducted, areas covering the issues involved in prior mediations, expertise in other discipline(s), if any, etc. Standardised training programmes for potential mediators must be ensured.

10) For mediation to become a substantial field of practise, mediators must be affiliated with prestigious, highly transparent professional organisations that are actively supervised by the executive and judicial branches of government.

The lack of national and international mediation institutions offering accessible and high-quality training is one of the factors contributing to the slow expansion of mediation. Unfortunately, since mediations take place in private, confidential settings, mediators might overstate their knowledge and experience in ways that cannot be refuted. So, it can be difficult to assess a mediator's proficiency. Therefore, it is crucial to establish a regulatory framework to promote trust and guarantee that moral standards are upheld throughout the mediation process.

CONCLUSION

After carefully examining this study paper, we can conclude that mediation is an efficient way to settle a disagreement amicably and without the involvement of a judge. We learned during the investigation that mediation is not a brand-new method of resolving disputes because it has

been practised in various forms since antiquity. However, over time, it changed to meet and adapt to the conditions and needs of today, and it continues to change in accordance with the shifting demands. However, whether in the past or the present, mediation has always been used to settle disputes that are not criminal in character and do not include anyone who has to be penalised or fined.

It should be remembered that there were 4.5 crore cases pending in India as of September 15, 2021[32]. Therefore, if the majority of people choose to use the mediation process to settle civil disputes, it will not only help them to save time and money by avoiding the delays they might experience in court during the course of hearing their cases, but it will also help the country's judicial system by freeing them up to hear the criminal cases since they cannot be resolved through any form of ADR method. Furthermore, since the conflict is settled with mutual consent of all opposing parties, situations resolved through mediation virtually exclude the chance of any further argument over the same topic among the same disputing parties.

Unlike in litigation, where a judge or a panel of judges decide the outcome of a case, which is enforced upon all disputing parties regardless of whether 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, there is no third party that determines the outcome.

Even though mandatory mediation has great potential, it shouldn't be seen as a fix for the broken and overburdened legal system. Parallel reforms must be implemented to strengthen our society's overall legal system. However, as has already been seen in a few jurisdictions, it can significantly contribute to lowering the strain on the courts while still offering a useful method of resolving conflicts. Mandatory mediation calls for a certain reorganisation of how we perceive the judicial system. The idea of using the court system as a first option for dispute resolution should be abandoned in favour of using it as a last resort[33]. By demanding mediation first, the parties' lines of communication are maintained or restored, allowing them to control their own destinies rather than leaving them in the hands of an outsider.

Therefore, we can draw the conclusion that mediation, a form of ADR that has been practised since antiquity and is recognised by a number of parliamentary laws as well as supported by

[32] Ibid 23
[33] Ibid 3

the judiciary, is a highly efficient voluntary dispute resolution method for civil matters that should be utilised by people as much as possible. Mediation is a very practical means of settling disagreements since the parties reach a mutually acceptable resolution of the conflict.

REFERENCES

1) The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Bill, 2018.

2) Ritika Ghosh, Resolving Commercial Disputes Through Pre-Institution Mediation and Its Challenges: Indian Perspective, Supremo Amicus, Vol. 13 ISSN 2456-9704.

3) Deepika Kinhal, Apoorva, Mandatory Mediation in India - Resolving to Resolve, Indian Public Policy Review 2020, Vol. 2 No. 2.

4) Odisha Judicial Academy Monthly Review of Cases on Civil, Criminal & Other Laws, 2014.

5) Susmita Mandal, Is Mandatory Mediation the Future of Dispute Resolution in India?, Indian Journal of Legal Review, Volume I Issue II, ISSN - 2583-2344.

6) Karthik Adlakha, Mandatory Mediation in India - A boon or a bane to the legal system in the country?, CIARB.

7) Commercial Court Act, 2015.

8) SCC Online.

9) Ishaan Sharma, Dr. Vandana Singh, Mediation- A Panacea or an Unavailing Practice: With Special Reference to Commercial Disputes, Journal of Positive School Psychology, Vol. 6, No. 2, 360 – 368.

10) Rithvik, Gitartha Deka, Mediation: A Method of Alternative Dispute Resolution, Supremo Amicus, Vol. 29, ISSN:2456-9704.

11) Geetanjali Sethi, Indian: Mediation: Current Jurisprudence and The Path Ahead, Mondaq.

12) Manisha T. Karia (Advocate-on-Record at the Supreme Court of India), Effective implementation of Mediation in India: The way forward, Bar & Bench.