

An aerial photograph of a coastline, showing a mix of brownish land and blue water. A white rectangular frame is overlaid on the image, with the text centered within it.

# RESOLUTION IS JUSTICE!

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## THE JURISPRUDENCE OF MEDIATION – CURRENT SCENARIO AND PATH AHEAD

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### Abstract:

When it comes to dispute resolution, most people think of litigation. Litigation can be competitive and turn into a zero-sum game, where one group benefits and the other doesn't. And here other methods of dispute resolution such as Mediation, come to the rescue of the parties. Hence, the topic "The Jurisprudence of Mediation: Its Current Scenario and Path Ahead" is of great importance to our legal system as it talks about a method of dispute resolution other than litigation. The article takes you through the journey of Mediation right from its inception, i.e., from the period of Mahabharat to the current period, and has seen various advancements throughout the period. With the passage of time and with the boost of technical advancement, the scope and usage of this method of dispute resolution is gradually increasing, and people's notion regarding Mediation is also transforming. Mediation Bill 2021 had been introduced recently, but the provisions related to Mediation are found in various legislations and have been highlighted in the article. "Justice delayed is justice denied" is an adage that means if justice is not served timely, it is as if no justice is served. Therefore, in the current situation where the courts are already burdened with lakhs of cases and also in the light of the jurisprudence as it stands today, **Mediation is considered one of the best Alternate Dispute Resolution modes.**

### Introduction:

*"Conflict is inevitable, but combat is optional"*- Max Lucado

Conflicts and disputes have always been an inevitable part of every aspect or phase of the world. The society is a co-existence of people, and where there are a number of people/thoughts/motives - bound to be disputes and conflicts. Whether it be a contractual dispute, commercial dispute, family matters, etc., conflicts may arise. And when it comes to its resolution, what method comes to everyone's mind? Most people think of litigation. Litigation can be competitive and turn into a zero-sum game, where one group benefits and the other doesn't. Lawsuits may not be the best manner to resolve disputes. It has been rightly said by Joseph Grynbaum "*An ounce of mediation is worth a pound of arbitration and a ton of litigation.*" Our legal system provides other methods of dispute resolution also, which the parties can use by the parties either by themselves or under the supervision of the court. Such methods include Negotiation, Arbitration, and "**Mediation**"!!

Mediation has been defined in the Cambridge Dictionary as "Mediation is a process of talking to two separate people or groups involved in a disagreement to try to help them to agree or find a solution to their problems". It is a kind of negotiation facilitated by a third party, called the mediator, who does not have a stake in the outcome of a dispute. In a dispute, parties may be unable to resolve their outstanding issues because of their inability to find common ground. The mediator helps the parties to find common ground and exits with the drafting of a settlement agreement.

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## **History:**

**The Concept of Mediation is ancient and deep rooted in our country. In olden days disputes used to be resolved in a Panchayat at the community level. Panches used to be called Panch Parmeshwar. We can in fact trace it from the period of Mahabharat, where we can find Lord Krishna mediating between Kauravas and Pandavas in the Mahabharata, to family elders resolving domestic issues.**

**The Supreme Court of India has started the process of reforms in the Indian Judicial System. Studies were made in respect of the causes of delay in the civil jurisdiction in our country.**

Hon'ble Mr. Justice R.C. Lahoti, the then Chief Justice, Supreme Court of India constituted a Mediation and Conciliation Project Committee (then chaired by Hon'ble Mr. Justice N. Santosh Hegde). A Pilot Project on Mediation was initiated in Delhi in the month of August, 2005. The first batch of Senior Additional District Judges were imparted Mediation Training of 40 hours duration. The trained mediators started judicial mediation from their chambers in the end of August, 2005. Thereafter, 24 more Additional District Judges have been trained as mediators during the month of September and November, 2005. A permanent Mediation Centre with all modern facilities was established at Tis Hazari court complex in October, 2005 and Mediation Centre at Tis Hazari was inaugurated by Hon'ble Mr. Justice Y.K. Sabharwal, Judge, Supreme Court of India/Chairman, NALSA on 24<sup>th</sup> October, 2005.

Judicial mediation was started at Karkardooma Court Complex in the month of December, 2005 and a litigant-friendly and modern Mediation Centre was established in May 2006. Eleven more Additional District Judges have been trained as mediators during the month of June 2006. A Mediation Centre at Karkardooma Court was inaugurated by Hon'ble Mr. Justice S.B. Sinha, Judge, Supreme Court of India on 5<sup>th</sup> May, 2006. New Complex of Delhi Mediation Centre, Karkardooma, was also inaugurated by Hon'ble Mr. Justice Madan B. Lokur, Judge, Supreme Court of India/Member, Mediation & Conciliation Project Committee on 14<sup>th</sup> December, 2015.

## **Current Scenario:**

If we consider the current scenario of mediation, a study of 449 cases administered by four major providers of alternative dispute resolution services revealed that mediation was capable of settling 78% of cases, regardless of whether it has been through the court or voluntarily by the parties. Though today we do not have a dedicated legislation that governs mediation (the final draft is yet to be revealed) following are the statutory enactments which specify the provision for mediation-

## **Legislative provisions:**

- **Order X Rules 1-A of the CPC**
- **Section 4 in The Industrial Disputes Act, 1947**
- **Rule 3 of the Companies (Mediation and Conciliation) Rules, 2016**
- **Order XXXIIA of CPC**
- **Section 14 (2) of the Hindu Marriage Act, 1955 and Section 29(2) of Special Marriage Act, 1954**
- **Section 32 (g) of the Real Estate (Regulation and Development) Act, 2016**
- **Section 12A of the Commercial Courts Act, 2015**
- **The Commercial Courts (Pre- Institution Mediation and Settlement) Rules, 2018**
- **Sections 37-38 and Chapter V of the Consumer Protection Act, 2019**

- **Mediation and Conciliation Rules, 2004**
- **Section 18 of the Micro, Small and Medium Enterprises (MSME) Development Act, 2006**
- **Section 442 of the Companies Act, 2013, read with the Companies (Mediation and Conciliation) Rules, 2016, etc.**

Till now, we have talked about the mediation in which both the parties are from India, but what about the situation where parties have different jurisdictions? As the country is being developed, transnational transactions are on the rise. So, it is not necessary that the parties will be from India only; there is a need to formulate laws that cover such multilateral or bilateral disputes that arise out of international commercial transactions. Keeping such an issue in mind, the Singapore Convention on Mediation, also known in short as the Singapore Convention was formed. It is a multilateral treaty that offers a uniform and efficient framework for enforcement and invocation of international settlement. This convention provides the power to enforce mediation equivalent in commercial disputes involving India and any other signatories to the convention. There are 56 signatories, including our most frequently used trading partners, China and America, and India themselves became signatories to this convention on 7 August 2019. So, being a signatory to the convention, instead of enforcing the settlement agreement's current legal framework, India would have to enforce the settlement agreement as a contract, now as signatory to this convention, and if this treaty is ratified by India, we would be able to enforce mediated settlement agreement directly by the court of our country who have that mediated settlement agreement to be treated as decree of the court. That is the big change that will happen once we ratify the treaty. So, the Singapore convention gives certain rights and obligations to each of the signatories, and one of the obligations that each country then has to be adhere is to have its own version of the Act that largely encompasses the principle enumerated in the convention.

To that end, in our country, we have introduced the Mediation Bill 2021. Recently, the cabinet has given its consent to the bill. The picture is still not clear on whether the cabinet has approved all the amendments or some of the amendments proposed by the parliamentary committee or whether they have made any changes, as the final draft is not yet out. The purpose of the bill is to facilitate advanced institutional mediation as a means to resolve things.

### **Future path:**

It has been rightly said by Albert Einstein, "*In the middle of every difficulty lies opportunity.*"<sup>2</sup> In the light of a grim situation, like the Covid situation, the courts have risen to the occasion and gradually evolved the virtual hearings by way of video conferencing in urgent matters and having online filings. This has led to the rise of a new concept that is "Online Mediation," which is obviously the future of mediation.

Mediation has always been a better way or approach for the resolution of disputes. It is cost effective, time effective, and also not burdensome on any of the parties. The decision taken by the arbitrator under arbitration is compulsorily binding on the parties, whereas it is not so under mediation proceedings.

So, it is time that we understand the merits of mediation and resort to mediation as a professional and sophisticated mode of settlement of disputes between the parties. There is a need to change the mindset about mediation. It should be mandatorily resorted to as a mode of addressing the disputes between the parties. If mediation does not work out, only then should parties approach the courts by way of litigation or arbitration, as the case may be. Mahatma Gandhi, in his autobiography, described his experience at amicable dispute resolution as an exercise in uniting parties riven asunder. This is really the essence of mediation!!

## **Conclusion:**

The current situation where the courts are already burdened with lakhs of cases and also in the light of the jurisprudence as it stands today, mediation is considered as one of the best Alternate Dispute Resolution modes. The need of the hour is to resort to mediation not as an Alternate Dispute Resolution mode but as a Primary or First mode of Dispute Resolution. However today there is a need to show more confidence and trust on mediation and get the disputes settled without getting engaged in the litigation.