



Mediation in Judicial Process

For Prelims: Mediation, Supreme Court, Arbitration, Negotiation, Conciliation, Various laws Related to Mediation.

For Mains: Dispute Redressal Mechanisms, Mediation Process, Laws related to it, Issues and Way Forward.

Why in News?

While addressing the **National Judicial Conference on Mediation and Information Technology**, the President advocated the concept of **Mediation in the Judicial Process**.

What is Mediation?

- Mediation is a **voluntary, binding process in which an impartial and neutral mediator facilitates disputing parties in reaching a settlement.**
- A mediator **does not impose a solution but creates a conducive environment** in which disputing parties can resolve all their disputes.
- Mediation is a **tried and tested alternative method of dispute resolution.** It has **proved to be a great success** in the cities of Delhi, Ranchi, Jamshedpur, Nagpur, Chandigarh and Aurangabad.
- Mediation is a **structured process where a neutral person uses specialised communication and negotiation** techniques. Litigants participating in the mediation process have unequivocally endorsed it.
- It is a settlement process whereby disputing parties arrive at **mutually acceptable agreements.**
- Other than mediation there are some other dispute resolution methods such as [Arbitration](#), [Negotiation and Conciliation](#).

Who can be a Mediator?

- Any person who **undergoes the required 40 hours training stipulated by the Mediation and Conciliation Project Committee** of the [Supreme Court \(SC\)](#) can be a mediator.
- He also needs to have at least **ten mediations resulting in a settlement and at least 20 mediations in all** to be eligible to be accredited as a qualified mediator.

What is the Role of a Mediator?

- To be **Impartial And Neutral.**
- **Manage interaction** between the parties
- **Facilitate communication** between the parties.
- **Identify barriers** to an agreement.
- **Identify interests** of the parties.
- **Develop** terms of **agreement.**

What is the Significance of Mediation?

- Quick And Responsive.
- Economical.
- There is no extra cost.
- Harmonious settlement.
- Creating solutions and remedies.
- Confidential and informal.
- Parties controlling the proceedings.

What are some Challenges to the Process of Mediation?

- **Lack of Codification:** In January 2020, the SC in *MR Krishna Murthi v. New India Assurance Co. Ltd* pointed out the **urgent need for enacting a uniform legislation for mediation in India.**
- **Apprehension towards mediation & Lack of Awareness** – Mediation has never garnered sufficient reception among the legal fraternity.
 - In order to popularise mediation **as a dispute resolution mechanism, training sessions and seminars should be conducted** to familiarise judges with the benefits of mediation.
- **Infrastructural Concerns and Quality Control**– Improved emphasis on mediation will directly increase the workload on mediation centres which lack administrative strength.
 - This can lead to the languishing of cases that go against the basic tenet of mediation i.e. fast resolution of disputes.
 - To tackle this, **the practice of mediation should be professionalised in India.**
- **Inconsistency between existing laws on Mediation**– The Supreme Court in a case stated that the **terms ‘mediation’ and ‘conciliation’ are synonymous with each other.**
 - Contrastingly, the language of Section 89 of **Code of Civil Procedure (CPC), 1908** shows that the legislative intent behind the section was to differentiate between mediation and conciliation.
 - Thus, **the existing ambiguity has created a lot of vagueness in the process of mediation.**

What are the Legal Provisions Related to Mediation?

- Mediation in India is primarily governed by two legislative acts viz. the **CPC 1908** and the [Arbitration and Conciliation Act, 1996 \(ACA\)](#).
- There are many other statutory provisions that make mediation a compulsory prerequisite to filing a suit in court. Some of these statutes are:
 - [Industrial Disputes Act, 1947](#)
 - [Companies Act, 2013](#)
 - [Micro, Small and Medium Enterprises Development Act, 2006](#)
 - [Hindu Marriage Act, 1955](#)
 - [Special Marriage Act, 1954](#)
 - [Real Estate \(Regulation and Development\) Act, 2016](#)
 - [Commercial Courts Act, 2015](#)
 - [Consumer Protection Act, 2019](#)

Way Forward

- The [Covid-19 pandemic](#) has increased the prominence of mediation as a means for dispute resolution. **The plethora of cases initiated by the pandemic warrants a swift and effective redressal and mediation can be the perfect solution.**
- However, there are a lot of challenges that restrict the effectiveness of mediation. The **existing framework of having different mediation rules for different High Courts has further contributed to the element of uncertainty** in the mediation process.

- Thus, the most important step towards recognizing mediation as an effective tool for resolution would be to **enact a statute solely for mediation.**
 - **Mediation Bill, 2021** should be passed with all necessary inputs from all the stakeholders as soon as possible.
- The statute should strive towards **addressing the concerns of enforcement and quality control.**
- However, care and precaution should be taken to ensure that the **legislation does not intrude into the autonomy of the parties engaging in mediation.**
- The enactment should **supplement the flexible nature of mediation and should help in standardising the procedures involved in mediation.**
- Further, attempts should be made to promote mediation by making it a **mandatory step before litigation.**

[Source: TH](#)

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