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**MEDIATION IN THE MODERN SOCIETY.**

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*“An ounce of mediation is worth a pound of Arbitration and a ton of Litigation”.***- Joseph Grynbaum****ABSTRACT :**

Mediation is one of the modes of Arbitration that resolves the dispute between the people in a society. It is a supplement to the Court system. In mediation, a sort of autonomy is given to the parties. The object of the Mediation process is to preserve relationships, serve the people, minimise the conflicts in society, etc. The Mediation techniques consist of many stages and are discussed in the Article. The types of approaches used in the Mediation process are three-fold and have a drastic effect on the scope of Mediation.

The term ‘Mediation’ is used interchangeably by some researchers. Though the concept of Mediation is a prerequisite for a competitive world today. It has been considered that Litigation alone cannot serve the purpose of dispute resolution. In this article, I have discussed the concept and nuances of Mediation with a highlight on the role of the Mediator. The laws are the bare perusal of our lives. Therefore, I have discussed the laws governing the Mediation process. Then the types of Mediation have been discussed. The court-annexed mediation and private mediation have been elaborately laid down. The scope of mediation has reached new heights in day-to-day life. The number of cases has been resolved throughout the years.

At the end of the Article, the Scope of Mediation has been discussed. The Scope of Mediation is multi-dimensional. Majorly every dispute is resolved in the mediation process—for instance, commercial disputes, matrimonial disputes, family disputes, environmental disagreements, etc. Read more in the Article.

**INTRODUCTION :**

The term Mediation has been derived from the Latin word *medicare*, which means to halve. In the Chinese, it means to step up between the two disagreed parties and solve their problems. Further, in Arabic it means manipulation and for Western people, it is a method of resolving disputes.<sup>1</sup> Mediation is one of the modes of Arbitration. It is an alternative method of resolving disputes outside the legal framework of courts. It is the use of the 3<sup>rd</sup> party to resolve the disputes of the people in disagreement. It is a party-centric process, where the interests and rights secured by the parties are the main priority.<sup>2</sup> It is a dynamic concept used by people who want to preserve their relationships, for instance, partnerships, long-term contracts, etc. In mediation, parties have full autonomy on the decisions of the agreement and its term<sup>3</sup> The process of mediation has to undergo 6 main steps: Planning, Mediator's introduction, Opening remarks, Joint Discussion, Caucuses and Negotiation.<sup>4</sup> The mediation revolves around the following disputes; Breach of an agreement, personal injury, petty business issues, families dispute, and much more.<sup>5</sup> Mediation is a non-binding method solely controlled by the parties. It must be served in confidence.<sup>6</sup>

The role of a mediator is to create a conducive environment so that parties to the dispute can reach an amicable solution.<sup>7</sup> Parties need to agree on the appointment of the mediator, he assists in the process of Mediation. After appointing a mediator, parties can look into the variety of the issues and whether they will be applicable for mediation.<sup>8</sup> Mediators actually use three types of approaches in their Mediation process –

- Facilitative Approach,
- Evaluative Approach and

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<sup>1</sup> James A. Wall, Jr. and Ann Lynn, "Mediation: A Current Review", *The Journal of Conflict Resolution*, Vol. 37, No. 1 (Mar., 1993), pp. 160-194.

<sup>2</sup> Akansha Mathur, How Does The Mediation Process Work – Steps and Procedure, (Blog iPleaders, December 28, 2017), <https://blog.iplayers.in/mediation-in-india-process/?amp=1>, accessed 06 June 2022.

<sup>3</sup> Mediation, (International Chamber of Commerce), <https://iccwbo.org/dispute-resolution-services/mediation/>, accessed 06 June 2022.

<sup>4</sup> PON STAFF, The Mediation Process and Dispute Resolution, (Program on Negotiation, Harvard Law School, APRIL 18<sup>TH</sup>, 2022) <https://www.pon.harvard.edu/daily/mediation/dispute-resolution-how-meditation-unfolds/?amp> accessed 06 June 2022.

<sup>5</sup> Cara O'Neill, Mediation: The Six Stages, (Nolo 50 years), <https://www.nolo.com/legal-encyclopedia/mediation-six-stages-30252.html>, accessed 06 June 2022.

<sup>6</sup> What is Mediation?, (Wipo), <https://www.wipo.int/amc/en/mediation/what-meditation.html> accessed 06 June 2022.

<sup>7</sup> Mediation and Conciliation Project Committee, (Supreme Court of India), <https://main.sci.gov.in/pdf/mediation/Brochure%20-%20MCPC.pdf> accessed 06 June 2022.

<sup>8</sup> Dr Peter d'Ambrumenil, *Mediation and arbitration*, (first published 1997, Cavendish Publishing Limited) 44.

- Transformative Approach.<sup>9</sup>

Some of the concepts cannot become the subject matter of Mediation. For instance, sexual or physical abuse, and grave injuries, where parties are not interested to preserve the relationships.<sup>10</sup>

### **Recognition of Mediation in different statutes in Indian laws :**

Mediation is recognised in different Indian statutes. Some of them are as follows;

- Industrial Disputes Act, 1947 (Section 4)
- Code of civil procedure, 1908 (Section 89, Order 10, 32A)
- Legal Services Authority Act, 1987
- Companies Act, 2013 read with Companies rules, 2016 (Section 442).
- Micro, Small and Medium Enterprises (MSME) Development Act, 2006 (Section 18).
- Mediation and Conciliation Rules, 2004
- Chapter V of the Consumer Protection Act, 2019 (Section 37 -38).<sup>11</sup>
- Marriage Acts pertaining to the Hindu's - Hindu Marriage Act, 1955 Special Marriage Act, 1954.
- Real Estate (Regulation and Development) Act, 2016 – Section 32(g).<sup>12</sup>
- The Commercial Courts Act, 2015 (Section 12A).<sup>13</sup>
- The 129<sup>th</sup> Law Commission of India Report.<sup>14</sup>

Further, Mediation Bill 2021 was passed in the Rajya Sabha. The main objective of this bill is to promote research in mediation, providing a platform for Mediation. Standing Committee

<sup>9</sup> Charles B. Craver, The Use of Mediation to Resolve Community Disputes, 48 WASH. U. J. L. & POL'Y 231 (2015), [https://openscholarship.wustl.edu/law\\_journal\\_law\\_policy/vol48/iss1/13](https://openscholarship.wustl.edu/law_journal_law_policy/vol48/iss1/13), accessed 06 June 2022.

<sup>10</sup> Kneip, Julie R., "Mediation as an effective method to transform relationships and resolve conflict" (2010). Graduate Research Papers. 194, p.6.

<sup>11</sup> Geetanjali Sethi, India: Mediation : Current Jurisprudence And The Path Ahead, (Mondaq, 24 June 2020), <https://www.mondaq.com/india/arbitration-dispute-resolution/957898/mediation-current-jurisprudence-and-the-path-ahead>, accessed 07 June 2022.

<sup>12</sup> Statutory Provisions Relating To Mediation In India, (Via Mediation and Arbitration Centre), <https://viamediationcentre.org/readnews/NTY=/Statutory-Provisions-relating-to-Mediation-in-India>, accessed 07 June 2022.

<sup>13</sup> Aishwarya Paspulate and Shreyas Jayashima, Law on mediation in India and its recent developments, (International bar association, 20 December 2021), <https://www.ibanet.org/law-on-mediation-in-India-and-its-recent-developments>, accessed 07 June 2022.

<sup>14</sup> Manisha T Karia, Effective implementation of Mediation in India: The way forward, (Bar and Bench, 23<sup>rd</sup> Dec, 2019), <https://www.barandbench.com/amp/story/columns/effective-implementation-of-mediation-in-india-the-way-forward>, accessed 07 June 2022.

on Personnel, Public Grievances, Law and Justice were considered for the reference of this bill.<sup>15</sup>

### **Court Annexed Mediation :**

In the case of Moti Ram (D) Tr. LRs and Anr. Vs. Ashok Kumar and Anr<sup>16</sup>, Supreme Court pointed out that Mediation is a confidential proceeding and are taking steps for the court-directed mediation.<sup>17</sup> Court Annexed Mediation is a Mediation in which the judicial officials are mediators. Parties are not allowed to choose their mediator in the court-annexed mediation. Usually, an officer of the court, registrar, judge, etc. can be a mediator in this case.<sup>18</sup> In 2005, the first court-annexed mediation was established in Madras followed up in Delhi High Court, Samantha. In the present times, we have innumerable centres of court-annexed mediation centres in the Supreme Court of India.<sup>19</sup>

### **Private Mediation :**

It is a method of dispute resolution in which parties opt for private and confidence mediation. The mediation is cost-effective, speedy and quicker. It may be decided by both of the parties consensually before the litigation or during the litigation. The scope of private mediation is much wider than the traditional litigation.<sup>20</sup> It is availed by the parties for high commercial and family disputes. Though, there is no law governing private mediation but its impact on Dispute resolution has been impeccable. Due to its speedy and less costly module, it is appreciated by everyone.<sup>21</sup>

### **Scope of Private Mediation :**

<sup>15</sup> The Mediation Bill, 2021, (Prs), <https://prsindia.org/billtrack/the-mediation-bill-2021>, accessed 07 June 2022.

<sup>16</sup> Civil Appeal No. 1095 of 2008

<sup>17</sup> Nishith Desai Associates, Mediation: The Go-To Dispute Resolution Mechanism in India!, (December 2020), p.3.

<sup>18</sup> Court-annexed mediation, (Supreme Court Justice), [https://www.supremecourt.justice.nsw.gov.au/Pages/sco2\\_practiceprocedure/sco2\\_mediationinthesc/court\\_annexed\\_mediation.aspx#:~:text=does%20mediation%20cost%3F-,What%20is%20court%2Dannexed%20mediation,registrar%20will%20mediate%20their%20dispute.,](https://www.supremecourt.justice.nsw.gov.au/Pages/sco2_practiceprocedure/sco2_mediationinthesc/court_annexed_mediation.aspx#:~:text=does%20mediation%20cost%3F-,What%20is%20court%2Dannexed%20mediation,registrar%20will%20mediate%20their%20dispute.,) accessed 07 June 2022.

<sup>19</sup> - Veena Ralli & Iram Majid, The Court Annexed Mediation Mechanism: An Overlooked Avenue For Justice, (LiveLaw, 2020-09-21), <https://www.google.com/amp/s/www.livelaw.in/amp/law-firms/articles/the-court-annexed-mediation-mechanism-an-overlooked-avenue-for-justice-163279>, accessed 07 June 2022.

<sup>20</sup> Private Mediation Services, (Wescot law), <https://www.wescottlawnh.com/practice-areas/private-mediation-services/>, accessed 07 June 2022.

<sup>21</sup> Om Daga, Is Mediation Gaining Popularity in India?, (Blog iPleaders, January 14, 2019), <https://www.google.com/amp/s/blog.ipleaders.in/mediation-popularity-india/%3famp=1>, accessed 07 June 2022.

Private mediation provides a wide array of affordable and flexible options. In Private Mediation, a person is rendered with infinite options for addressing multiple issues. In private mediation, either part or whole of the dispute is solved. For instance, in the case of divorce, every aspect of the Dispute is resolved.<sup>22</sup>

The organization of court-annexed mediation centres has overseen the alley for emergence and development of private mediation organizations throughout the length and breadth of the country, viz.:

- ASSOCHAM International Council of Alternative Dispute Resolution (AICADR), New Delhi
- International Centre for Alternative Dispute Resolution (ICADR), New Delhi
- Centre for Advanced Mediation Practice (CAMP), Bangalore
- Centre for Alternative Dispute Resolution, Mumbai
- Indian Institute of Arbitration & Mediation (IIAM), Cochin
- India International ADR Association (IIADRA), Cochin
- Mediators India, Chennai
- Foundation for Comprehensive Dispute Resolution (FCDR), Chennai
- Meta–Culture Consulting, Bangalore
- Prachi Mediation Chamber, Mumbai
- Bangalore International Mediation, Arbitration and Conciliation Centre (BIMACC), Bangalore
- Institute for Arbitration, Mediation, Legal Education and Development (AMLEAD), Ahmedabad
- Alternative Dispute Resolution(ADR) Centre, Kerala (an initiative of the Centre for Public Policy Research)<sup>23</sup>

The scope of these Centres is multi-dimensional. Disputes in the commercial sector, breach of contracts, family disputes, environmental disputes, etc. revolve around these centres. These centres provide conference facilities with anterooms to the parties to dispute. Presently,

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<sup>22</sup> Private Mediation, (Weinberger Mediation Centre), <https://www.weinbergermediation.com/about/private-mediation/>, accessed 10 June 2022. (<<https://blog.iplayers.in/mediation-popularity-india/>>)

<sup>23</sup> Supra note 21.

London, Hong Kong and Singapore are the leading Centres in the view. The centres in London and Hong Kong have established their centres in India as well.<sup>24</sup>



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<sup>24</sup> Ashish Rukhaiyar, International Arbitration Centre, (The Hindu, April 2016), <https://www.thehindu.com/news/cities/mumbai/business/international-arbitration-centre/article8420946.ece>, accessed 10 June 2022.