A Critical Analysis of India's Current Mediation Mechanism

Arun Sharma¹ and Dr. Rakhi Singh Chouhan²

¹PhD Scholar & Assistant Professor, Amity Law School, Amity University Madhya Pradesh, INDIA.
²HoD & Professor, Amity Law School, Amity University Madhya Pradesh, INDIA.

²Corresponding Author: rsingh2@gwa.amity.edu


Date of Submission: 20-08-2022 Date of Acceptance: 10-09-2022 Date of Publication: 13-09-2022

ABSTRACT

In any kind of relationship, whether it be a personal one or a professional one, there is certain to be at least one argument at some point or another. Disagreements may be deconstructed into three distinct parts: the individuals involved, the approach that was used, and the core matter that is being discussed. Disagreements may be settled in a variety of ways, some of which include conflict resolution methods such as litigation or arbitration. These are only two of the many options available. We polled 500 mediators, all of whom were based in either the United States or India, and the results were split evenly between the two countries. The ages of the respondents ranged from as young as 21 to as old as 81, and many of them had more than 40 years of experience working in the field of Mediation. Some of the respondents were also female. At this point in time, it would seem that India does not have a legal precedent that is suitable for the Mediation procedure.

Keywords- Mediation, ADR, out of Court settlement, Dispute Resolution

I. INTRODUCTION

Everyone goes through rough patches in their lives at some point. Disagreements are inevitable to emerge in any form of relationship, whether it be a personal one or a professional one. Every disagreement may be broken down into these three components: the people involved (Aucejo et.al., 2016), the method that was applied, and the primary issue at hand. It is inevitable for there to be contention between the parties; what matters is how they resolve their disputes. There are a number of ways that disagreements can be resolved, some of which include conflict resolution procedures such as litigation or arbitration, while others utilise tactics that are less confrontational, such as Mediation or conciliation. In a system known as adversarial, each side makes its case to a neutral third party that has the capacity to impose authority. This third party then decides which of the two sides is in the right. Litigation is an adversarial kind of alternative dispute resolution (ADR) (Anukriti et.al., 2017), whereas Mediation is a form of non-adversarial ADR that is less formal, more user-friendly, and less complex. In addition to this, they make it possible for the parties involved to communicate with one another in order to get to the bottom of the issue, determine the interests that lie under the surface, and concentrate on finding a solution on their own. It is beneficial for mending broken fences and hearts. It is possible that the parties might save both time and money by using a method of conflict resolution that does not involve a legal battle.

II. INDIA’S RELATIONSHIP WITH MEDIATION

The practice of Mediation may be traced back to its birthplace, India, where it established profound historical and cultural roots. Since the time of the Mahabharata, when Lord Krishna served as a mediator between the Kauravas and the Pandavas, India has a long history of employing Mediation to address problems at all levels of society. Examples of this can be found in the Mediation of family disputes as well as the resolution of communal issues via Panchayats. The passage of time has led to the enactment of laws that mandate the use of Mediation as a technique for the resolution of legal
disputes (Shahen. et. al., 2017). The following legal provisions consist of, but are not limited to, those listed below:

**Section 89 in conjunction with Order X Rule 1A of the 1908 Code of Civil Procedure ("CPC" hereinafter)**

The incorporation of Section 89 into the CPC is a positive development that, among other things, ought to contribute to increased public knowledge of Mediation and other forms of alternative conflict resolution. After the court has recorded the documents that have been admitted and denied, it must then direct the parties to the suit to settle the matter through Arbitration, Conciliation, Judicial settlement, including settlement through Lok Adalat, Mediation, or any of the other methods of settlement outside of Court that are specified in Section 89 (1) of the Code of Civil Procedure. As a consequence of this, it makes it possible for pending cases to be transferred from the courts to the conflict resolution mechanisms outlined before.

**Legal Services Authority Act of 1987 read with Section 89 of the Code of Civil Procedure**

The Legal Services Authorities Act, 1987 mandates the creation of statutory agencies at the national, state, and taluka levels (Trivedi et. al., 2021). These bodies are charged with the responsibility of guaranteeing that all inhabitants, regardless of their socioeconomic standing, have equal access to the legal system. If a disagreement has been referred to Lok Adalat, the court is required to send it there in line with Section 20 (1) of the Legal Services Authority Act, 1987. All of the other requirements of that Act are also applicable to the dispute that has been sent to Lok Adalat in this manner. This is required under paragraph 2 of Article 89 of the CPC. According to Section 21 of the Legal Services Authority Act of 1987, a settlement reached by a Lok Adalat has the same legal weight and implications as a decision made by a court.

**Madhya Pradesh Mediation Rules 2016**

These orders were handed down by the Honorable High Court of Madhya Pradesh in accordance with the authority granted to it by Part X and Section 89 (2) (d) of the Code of Civil Procedure. The United Nations Convention on International Settlement Agreements Resulting from Mediation, often known as the Singapore Mediation Convention, has been adopted by India. This gives mediated accords the same legal weight as other agreements. It would be incorrect to state that India does not have any legislation pertaining to Mediation or conciliation. However, the differences that exist between Indian Mediation and USA Mediation make it more difficult for any of these processes to be successful. The present patchwork of legislation that are relevant to Mediation may be made more manageable with the help of a Mediation Act or single, all-encompassing statute. In spite of the fact that a number of statutes have given the parties the ability to resolve their disputes via Mediation and that there are both Court-referral and private means to participate in Mediation, there is a lack of procedural advice in this area. This is the case despite the fact that there are both private and public means to participate in Mediation. The Honorable Supreme Court of India established the panel as a first-of-its-kind effort in order to have a draught law drafted to lend legal validity to disputes that were addressed by Mediation; the top court would then suggest the legislation to the government. The "Indian Mediation Act" proposed by the Supreme Court of India is an excellent proposal that has a great deal of untapped potential in that particular country.

### III. DATA ANALYSIS

As the time for research draws near, a wide range of research methods, such as doctrinal research methodologies and empirical research methodologies, will be used in order to carry out the study in order to complete the research. These methods of study shall be referred to simply as research techniques from here on. Primary research approaches have been used during the course of this inquiry. According to the findings of our survey, there are 212 people in India who engage in the practice of Mediation, out of a total population of 500 people in India who do so. We questioned them about this subject because we were interested in finding out whether or not they considered the laws that were now in place in India to control Mediation were adequate for the job that they undertook. Seventy-four percent of the individuals who took part in the study were of the view that the Mediation legislation that is now in existence in India does not go far enough to tackle the problems that need to be addressed in the country (Figure 1). After that, a chi-square test was performed (with each category being given the same amount of importance), and the results were analyzed to determine whether or not there was a statistically significant difference (p<0.05) between the proportions of respondents who answered "yes" and those who answered "no." The results showed that there was not a statistically significant difference between the proportions of respondents who answered "yes" and those who answered "no."

<table>
<thead>
<tr>
<th>Table 1: Chi-Square Test</th>
</tr>
</thead>
<tbody>
<tr>
<td>Observed frequency (yes)</td>
</tr>
<tr>
<td>Expected frequency (yes)</td>
</tr>
<tr>
<td>Observed frequency (no)</td>
</tr>
<tr>
<td>Expected frequency (no)</td>
</tr>
<tr>
<td>Chi-square</td>
</tr>
<tr>
<td>(p)</td>
</tr>
</tbody>
</table>

The fact that the findings are summarized in Table indicates that the gathered information does, in point of fact, lend support to the hypothesis that was posed. It appears that there is not a suitable legal precedent for Mediation in India at this time. The absence
of any precedence in this area lends credence to this theory.

Figure 1: The existing law on Mediation is successful

IV. FINDINGS AND CONCLUSION

The results of our chi-square test are presented in Table 1, which may be accessed here. These findings indicate that the facts in question do, in fact, provide evidence that lends credence to the hypothesis that we developed. It would appear that India does not currently have a legal precedent that is appropriate for the process of Mediation at this time. This idea is given further weight by the fact that there is no precedence in this particular field. It was found that there was a difference in the two percentages that was statistically significant, and the existence of this difference was demonstrated by the discovery of this difference. Seventy-four percent of those who participated in the study and provided their responses thought that the law did not go far enough.

<table>
<thead>
<tr>
<th>The existing law on Mediation in India is sufficient.</th>
<th>Chi-square test</th>
<th>47.17</th>
<th>&lt;.001</th>
<th>Significant difference found between the two proportions. 74% respondents said the law was insufficient.</th>
</tr>
</thead>
</table>

We conducted a survey with a total of five hundred mediators, all of whom were located in either the United States or India. 221 of these mediators were male, which is equivalent to 56.2 percent of the whole group, and 172 of them were female, which is equivalent to 43.8 percent. The average age of the respondents was 40.2 years, with a standard deviation of 13.2 years. The bulk of the respondents were between the ages of 40 and 50. The ages of the respondents varied from as young as 21 to as elderly as 81, and some of them had more than 40 years of experience working in the area of Mediation. Figure 9 presents the age distribution of our participants, which very closely corresponds to a normal distribution while having a minor positive skew (skew =.78). This skew is displayed in the figure. It was determined that this distribution was reasonably accurate.

REFERENCES


