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THE EVOLUTION OF MEDIATION IN INDIA: A PARADIGM SHIFT TOWARDS ALTERNATIVE DISPUTE RESOLUTION

~ *Ayushi Sharma*

INTRODUCTION-

The Mediation Act, 2023, marks a significant milestone in India's journey towards promoting Alternative Dispute Resolution (ADR) mechanisms. Mediation has emerged as a vital component of ADR in India, offering a viable alternative to traditional litigation. The Act provides a structured framework for mediation, recognizing online mediation and establishing the Mediation Council of India to oversee and regulate the mediation ecosystem. This development is expected to reduce the burden on the judiciary, promote peaceful resolution of disputes, and increase access to justice.

Mediation has gained prominence in India due to its benefits, including cost-effectiveness, time-saving, preservation of relationships, flexibility, and confidentiality. The Indian judiciary has also played a crucial role in promoting mediation, with the Supreme Court and High Courts encouraging the use of ADR mechanisms. As awareness about mediation increases and the regulatory framework evolves, mediation is likely to become a preferred method of dispute resolution in India.

The Mediation Act, 2023, is a comprehensive legislation that aims to promote mediation and provide a framework for its implementation. The Act has several key features, including recognition of online mediation, enforceability of mediated settlement agreements, and establishment of the Mediation Council of India. These features are expected to increase the adoption of mediation, improve efficiency, and increase access to justice.

THE RISE OF MEDIATION IN INDIA-

As a starting point, once the Mediation Council of India is constituted, pro-active steps need to be undertaken to promote mediation. This includes the largest litigator in India, i.e., government/public sector undertakings to include mandatory mediation in their contracts; having multi-tier dispute resolution clauses, collaborating with the business community, corporates, and in-house counsels to spread awareness; cutting through all medium and small cities in India which are business-centric and promote mediation within the micro, small and medium enterprises; and demonstrate effectiveness of mediation with empirical data and share practical examples of success stories. Having said that, the Mediation Act is a step in a right direction. It will break the unwavering perception of the business community on mediation and foster confidence to include institutional mediation in dispute resolution clauses.¹

Mediation has gained prominence in India as a means of resolving disputes in a peaceful and efficient manner. The concept of mediation is rooted in the Indian culture, where disputes are often resolved through community-based mediation. The Indian judiciary has also played a crucial role in promoting mediation, with the Supreme Court and High Courts encouraging the use of ADR mechanisms.

The rise can be attributed to several factors. Growing awareness about the benefits of mediation, such as cost-effectiveness, time-saving, and preservation of relationships, has contributed to its increasing popularity. The Indian judiciary has also played a crucial role in promoting mediation, with courts encouraging parties to explore alternative dispute resolution mechanisms.

The increasing backlog of cases in Indian courts has further highlighted the need for alternative dispute resolution mechanisms like mediation. Mediation provides a faster and more efficient means of resolving disputes, allowing parties to move forward with their lives and businesses. The flexibility and confidentiality of mediation have also made it an attractive option for parties seeking to resolve disputes in a peaceful and collaborative manner.

As a result, mediation is becoming increasingly popular in India, with more parties opting for mediation to resolve their disputes. The growth of mediation in India is expected to continue, driven by the increasing awareness of its benefits and the need for efficient dispute resolution

¹ <https://www.ibanet.org/india-mediation-act-2023-will-the-ADR-wave-pick-up-momentum>

mechanisms. Mediation is poised to play a vital role in India's dispute resolution landscape, providing a peaceful and effective alternative to traditional litigation.

The growth of mediation in India can be attributed to several factors, including:

- Increasing backlog of cases: The Indian judiciary is facing a significant backlog of cases, which has led to a growing recognition of the need for alternative dispute resolution mechanisms.
- Need for efficient dispute resolution: Mediation offers a faster and more efficient means of resolving disputes, which is essential for businesses and individuals seeking to resolve disputes quickly.
- Preservation of relationships: Mediation helps parties maintain relationships by promoting understanding and cooperation, which is essential for businesses and individuals who need to maintain ongoing relationships.

BENEFITS OF MEDIATION-

Mediation offers several benefits, including:

- Cost-effectiveness: Mediation is often less expensive than litigation, as it eliminates the need for lengthy and costly court proceedings.
- Time-saving: Mediation can resolve disputes quickly, reducing the time spent on litigation and enabling parties to move forward with their lives.
- Preservation of relationships: Mediation helps parties maintain relationships by promoting understanding and cooperation.
- Flexibility: Mediation allows parties to tailor the process to their needs, providing a more personalized approach to dispute resolution.
- Confidentiality: Mediation is a confidential process, which helps to maintain the privacy of the parties involved.

THE MEDIATION ACT, 2023: A GAME-CHANGER FOR DISPUTE RESOLUTION IN INDIA-

The Mediation Act, 2023, is a landmark legislation that's transforming India's dispute resolution landscape. By promoting mediation as a faster, cost-effective, and less adversarial alternative to traditional litigation, this Act is set to reduce the burden on the judiciary and provide timely justice. The Act's emphasis on pre-litigation mediation will help parties resolve disputes before they escalate into full-blown court cases.

The Act's recognition of online mediation is a significant step forward, making the process more accessible and convenient for parties across geographical boundaries. The establishment of the Mediation Council of India will ensure that mediation practices are consistent and effective, and the enforceability of mediated settlement agreements will provide parties with a sense of security and finality. This will encourage more parties to opt for mediation, reducing the backlog of cases and promoting a culture of peaceful resolution.

Overall, the Mediation Act, 2023, has the potential to revolutionize the way disputes are resolved in India. By providing a structured framework for mediation, the Act will promote a culture of collaborative conflict resolution and increase access to justice. As the Act is implemented and refined, it is likely to have a significant impact on India's dispute resolution landscape, making it more efficient, cost-effective, and peaceful.

THE KEY FEATURES OF THE MEDIATION ACT, 2023, INCLUDES-

- Recognition of online mediation: The Act formally acknowledges online mediation, allowing parties to conduct mediation proceedings digitally.
- Enforceability of mediated settlement agreements: The Act provides for the enforcement of mediated settlement agreements, making them binding and enforceable.
- Establishment of the Mediation Council of India: The Act establishes the Mediation Council of India to oversee and regulate the mediation ecosystem.
- Regulation of mediation institutions: The Act provides for the regulation of mediation institutions, ensuring that they meet certain standards and criteria.

IMPACT OF THE MEDIATION ACT, 2023-

The Mediation Act, 2023, is set to revolutionize India's dispute resolution landscape. By providing a structured framework for mediation, the Act aims to reduce the burden on the judiciary, promote peaceful resolution of disputes, and increase access to justice. The recognition of online mediation will expand the reach of mediation services, making it more accessible to parties across geographical boundaries.

The Act's impact will be multifaceted. It will increase the adoption of mediation as a preferred method of dispute resolution, improve efficiency, and enhance access to justice. The establishment of the Mediation Council of India will ensure that mediation practices are consistent and effective. The Act will also foster a culture of peaceful resolution, encouraging parties to work together to find mutually beneficial solutions.

As a result, the Mediation Act, 2023, will transform the way disputes are resolved in India. It will provide a faster, more efficient, and more cost-effective alternative to traditional litigation, reducing the backlog of cases and improving access to justice. By promoting mediation, the Act will help parties resolve disputes in a peaceful and collaborative manner, preserving relationships and promoting understanding. This will have resolved disputes in a more efficient and effective manner, promoting peace and stability in the community.

CHALLENGES AND LIMITATIONS-

Despite its benefits, mediation faces several challenges, including:

1. **Lack of Awareness:** Many parties are unaware of the benefits and process of mediation, which can limit its adoption.
2. **Regulatory Framework:** The regulatory framework for mediation is still evolving and requires further clarification to ensure consistency and effectiveness.
3. **Enforceability of Mediated Settlement Agreements:** The enforceability of mediated settlement agreements remains a challenge, particularly in cases where parties fail to comply.
4. **Resistance from Stakeholders:** Some stakeholders may resist mediation due to concerns about loss of control or unfamiliarity with the process.

5. Implementation Challenges: Effective implementation of mediation in India requires addressing these challenges and limitations to ensure that mediation becomes a viable and effective dispute resolution mechanism.

CONCLUSION-

In conclusion, the Mediation Act, 2023, is a significant step towards promoting mediation in India. The Act provides a structured framework for mediation, recognizing online mediation and establishing the Mediation Council of India to oversee and regulate the mediation ecosystem. Mediation offers several benefits, including cost-effectiveness, time-saving, preservation of relationships, flexibility, and confidentiality.

The Mediation Act, 2023, is expected to increase the adoption of mediation, improve efficiency, and increase access to justice. However, challenges and limitations remain, including lack of awareness, regulatory framework, and enforceability of mediated settlement agreements. Further refinement of the regulatory framework is necessary to ensure the effective implementation of mediation in India.

Despite these challenges, the future of mediation in India looks promising. As awareness about mediation increases and the regulatory framework evolves, mediation is likely to become a preferred method of dispute resolution in India. The Mediation Act, 2023, provides a solid foundation for the growth of mediation, and its impact is expected to be significant. With its benefits and potential, mediation is poised to play a vital role in India's dispute resolution landscape.