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ARBITRATION AND MEDIATION IN INDIA

~Nupur Mehra

INTRODUCTION-

In the evolving era, several advancements are taking place in the field of globalization, technology, education, healthcare, foreign policies, world affairs, etc. Likewise, advancements and growth of the same, both pros and cons can be seen. Disputes including commercial and legal are also rapidly growing. To settle such disputes for justice, peace and harmony in the society, Courts and other dispute resolution mechanisms are there for settlement of the disputes. However, to reduce heavy workload on courts and as a less expensive alternative for parties to dispute, the Alternative Dispute Mechanisms are widely used in India. ADR methods such as Arbitration, Mediation, Conciliation, Online Dispute Resolutions, Medola, etc. These mechanisms act as an easy, less expensive, quick, and transparent dispute resolution method for parties to dispute. Also, it imposes less burden on courts. Both Mediation and Arbitration acts as a quick settlement method and generally arbitrator and mediator acts as a judgement giving person in both dispute resolution methods and their decisions are binding on both the parties.

LEGAL FRAMEWORK GOVERNING ARBITRATION AND MEDIATION ACT IN INDIA-

The Arbitration, Conciliation, and enforcement of arbitral awards is governed under Arbitration and Conciliation Act, 1996 and Code of Civil Procedure, 1908, in India while the Mediation is governed under the Mediation Act, 2023. Both ADR mechanisms assist the parties to dispute with the help of neutral third parties, i.e., the arbitrator and mediator, to deal with settlement of disputes amicably.

LEGAL BASIS AND EVOLUTION OF ARBITRATION AND CONCILIATION ACT, 1996 AND MEDIATION ACT, 2023-

Earlier the arbitration was governed by the Indian Arbitration Act, 1899, the arbitration provisions under Code of Civil Procedure, 1908 and laws relating to foreign awards. However, these laws were widely criticized for excessive court interference, procedural delay, and procedural complexity.

With globalization and increasing international trade, India required a law based on international standards. Therefore, **the Arbitration and Conciliation Act, 1996** Act was enacted with effect from 22nd August, 1996. There are 86 sections beside the preamble and 3 schedules in this Act. However, the president gave their assent to the Act on 16th August, 1996. The Act is largely based on the UN Commission on International Trade Law (UNCITRAL) and UNCITRAL Conciliation Rules.

Before the enactment of the Mediation Act, 2023, mediation in India was governed by scattered provisions in different laws, and there was no single comprehensive legislation exclusively dealing with mediation. It was mainly governed by Section 89 of the Code of Civil Procedure, 1908¹, which empowered courts to refer pending civil disputes to mediation, arbitration, conciliation, judicial settlement, or Lok Adalat. Mediation was also recognized under several special enactments, including the Commercial Courts Act, 2015 (pre-institution mediation), the Companies Act, 2013, the Consumer Protection Act, 2019, the Family Courts Act, 1984, and the Legal Services Authorities Act, 1987. Since these provisions were fragmented, there was no comprehensive legal framework regulating mediation. To address this gap and to promote institutional mediation, the Government introduced the Mediation Bill, 2021 in the Rajya Sabha on 20 December 2021. The Bill was referred to the Parliamentary Standing Committee, which submitted its report on 13 July 2022. After incorporating several recommendations, the Bill was passed by Rajya Sabha on 1 August 2023 and the Lok Sabha on 7 August 2023. It received the President's assent on 14 September 2023 and became the Mediation Act, 2023 (Act No. 32 of 2023).

The **Mediation Act, 2023** is based on both international standards and the need to strengthen Alternative Dispute Resolution in India. It is primarily inspired by the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, 2018, which provides a uniform legal framework for mediation across countries. The Act also reflects the principles of the Singapore Convention on Mediation, 2019,

¹ Inserted by the CPC Amendment Act, 1999 and brought into force in 2002

which facilitates the recognition and enforcement of international mediated settlement agreements.

ARBITRATION V. MEDIATION-

As per **Section 2(a)** of Arbitration and Conciliation Act, 1996, the term “arbitration” means any arbitration whether or not administered by permanent arbitration institutions while **Section 3(h)** of the Mediation Act, 2023, prescribes that “mediation” includes a process, whether referred to by the expression mediation, pre-litigation mediation, online mediation, community mediation, conciliation or an expression of similar import, whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person referred to as mediator, who does not have the authority to impose a settlement upon the parties to the dispute.

The nature of Arbitration is rights based and adjudicatory while the nature of mediation is interest based and collaborative. Thus, in arbitration, the arbitrator is given the authority to decide the matter while in mediation, the parties themselves retain control over the outcome, with the mediator merely facilitating the settlement process.

Arbitration is commonly used in commercial, shipping, infrastructure, investment disputes etc, while Mediation is commonly used in matrimonial, family, consumer, workplace disputes etc.

ARBITRATION AND MEDIATION AS A TOOL OF SETTLEMENT ALONG WITH OTHER MERITS-

Arbitration and mediation evolved as Alternative Dispute Resolution mechanisms to provide a faster, less expensive, and more efficient alternative to court litigation. They originated from the traditional practice of resolving disputes through neutral third parties and mutual negotiation. They help in confining disputes as a private matter. With the growth of trade and increasing court delays, these methods gained legal recognition for settling disputes amicably. Today, arbitration and mediation are widely used to ensure speedy, confidential, and effective dispute resolution while reducing the burden on courts.

ARBITRATION AND MEDIATION AS A TOOL TO REDUCE COURT’S BURDEN-

Both Arbitration and Mediation can be initiated anytime, whenever disputing parties take recourse to ADR. They have become essential tools for reducing the burden on courts by promoting the settlement of disputes outside the formal judicial process. As the number of pending cases continues to increase, these Alternative Dispute Resolution mechanisms provide an efficient means of resolving conflicts without prolonged litigation. By encouraging timely

and consensual dispute resolution, both processes help reduce court congestion, conserve judicial resources, and promote a more accessible and efficient justice delivery system.

PARTY AUTONOMY AND THE ROLE OF NEUTRAL THIRD PARTY-

Party autonomy is the cornerstone of both arbitration and mediation, as the parties voluntarily choose these mechanisms for resolving their disputes. However, the extent of party autonomy differs in each process. In arbitration, the parties enjoy autonomy in selecting the arbitrator by their own choice, determining the seat of arbitration, applicable procedural rules, language, and governing law. However, if parties fail to choose these, the sole arbitrator is being appointed by an arbitral institution or court². Once the proceedings commence, the arbitral tribunal assumes control over the conduct of the proceedings and ultimately determines the dispute by rendering a binding arbitral award. In contrast, mediation places greater emphasis on party autonomy throughout the process. The parties retain control over the negotiations and the final outcome, while the mediator acts only as a neutral facilitator who encourages communication, assists in identifying common interests, and helps the parties reach a mutually acceptable settlement without imposing any decision. Thus, although both mechanisms recognize party autonomy, arbitration balances it with adjudicatory authority, whereas mediation preserves party autonomy until the dispute is resolved.

ARBITRATOR, ARBITRAL TRIBUNAL AND ARBITRAL INSTITUTION v. MEDIATOR, MEDIATION INSTITUTE AND MEDIATION SERVICE PROVIDER-

In the Arbitration and Conciliation Act, 1996, the “arbitrator” is the neutral and independent person appointed by parties to decide disputes through arbitration instead of courts. The “arbitral institution” means an arbitral institution designated by the Supreme Court or a High Court.³

The arbitral tribunal means a sole arbitrator or a panel of arbitrators.⁴ All of them help in settlement of the case amicably.

In the Mediation Act, 2023, “mediator” means a person who is appointed to be a mediator, by the parties or by a mediation service provider, to undertake mediation, and includes a person registered as mediator with the Council. “Mediation Institute” means a body or organization that provides training, continuous education and certification of mediators and carries out such

² Section 11, Arbitration and Conciliation Act, 1996

³ Section 2(c)

⁴ Section 2(d)

other functions.⁵ A “Mediation Service Provider” is an institution that organizes and administers mediation proceedings by providing mediators and necessary administrative support.⁶

HOW ARBITRATION AND MEDIATION PROCESS IS BEING INITIATED-

There are two ways through which the Arbitration and Mediation process can be initiated. Firstly, by the 'parties' and secondly through 'courts referral' depending upon the nature of the dispute.

In Arbitration, the process is being initiated through an arbitration clause or through an arbitration agreement made by the parties themselves, and both parties must adhere to that clause. The agreement may exist as an arbitration clause in the main contract or as a separate agreement. When a dispute arises, a party invokes the arbitration agreement by issuing a notice to the other party seeking reference of the dispute to arbitration⁷. Courts can also refer parties to arbitration where a valid arbitration agreement exists, the referral is generally governed by Section 8⁸, which requires the judicial authority to refer the parties to arbitration if the conditions of Section 8 are satisfied. In Mediation, the process is being initiated through a mediation clause or through a mediation agreement⁹ by parties while through court's referral by relying on Section 89, of Code of Civil Procedure, 1908¹⁰

ENFORCEABILITY AND BINDING NATURE OF ARBITRAL AWARDS AND MEDIATION SETTLEMENT AGREEMENT-

In Arbitration, the judgement is being passed by the arbitrator in the form of an arbitral award; the arbitral award includes an interim award.¹¹ It is an instrument which embodies a decision of an arbitrator or arbitrators as regards matters referred to him or them. An arbitral award generally covers determination of contractor's disputes between parties, award of damage or compensation, interest and costs and interim reliefs. An arbitral award shall be enforced as if it were a decree of a court once the time for challenging the award under Section 34 has expired,

⁵ Section 3(l)

⁶ Section 3(m)

⁷ Section 7 of Arbitration and Conciliation Act, 1996

⁸ Arbitration and Conciliation Act, 1996.

⁹ Section 4 of Mediation Act, 2023

¹⁰ Empowers courts to encourage settlement of disputes through Alternative Dispute Resolution mechanisms instead of continuing with a full trial.

¹¹ Section 2(c), Arbitration and Conciliation Act, 1996

or the challenge has been rejected. Filing a Section 34 application does not operate as a stay on enforcement.¹² The award is binding on both parties.

In Mediation, the process concludes with a mediated settlement agreement (other than one resulting from community mediation) is final, binding, and enforceable as if it were a judgment or decree of a court.¹³

JUDICIAL INTREPRETATIONS-

In the leading case, **Bharat Aluminum Co. (BALCO) v. Kaiser Aluminum technical Services Inc**¹⁴, the dispute arose from a 1993 contract between BALCO and Kaiser, a US firm, which contained a London arbitration clause under English law. When the arbitration award favored Kaiser, BALCO sought to set them aside in Indian Court under Section 34 of the Arbitration and Conciliation Act, 1996. The central issue was whether Part 1 of the Act covering domestic arbitration and judicial supervision applied to foreign seated arbitrators. The Supreme Court held that Part 1 applies only to arbitrators seated in India and overruled the earlier rulings which had permitted the Indian Courts intervention in foreign seated arbitrators. Hence, it can be concluded that courts must not interfere beyond statutory limits, and arbitration is party driven and final.

In the case, **Booz-Allen & Hamilton Inc. v. SBI Home Finance Ltd. & Ors**,¹⁵ the Supreme Court held that the arbitration clause is binding only for arbitration disputes. Mortgage enforcement disputes involve personal rights and are generally non-arbitrable. Hence, the court refused to refer the matter to arbitration.

CONCLUSION-

Arbitration and mediation represent significant developments in the evolution of dispute resolution by providing alternatives to the conventional court-based approach. Although both mechanisms aim to achieve efficient resolution of disputes, they differ in their approach: arbitration determines disputes through an adjudicatory process, whereas mediation facilitates settlement through cooperation and negotiation between the parties. Their growing acceptance reflects the need for flexible, time-efficient, and relationship-oriented methods of resolving conflicts. In India, the strengthening of the legal framework through the **Arbitration and**

¹² Section 36, Arbitration and Conciliation Act, 1996

¹³ Section 27 of Mediation Act, 2023

¹⁴ 2010 1 SCC 72

¹⁵ (2011) 5 S.C.C. 532

Conciliation Act, 1996 and the **Mediation Act, 2023** has provided greater recognition and legitimacy to ADR processes. Moving forward, effective institutional support, professional expertise, and increased public confidence will be crucial for making arbitration and mediation more accessible and widely adopted.