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ARBITRATION AND MEDIATION IN INDIA

-KANAV GUPTA

The current Indian system for resolving disputes has shifted from the old way of fighting in court to a friendlier, less strict approach. This new way is called Alternative Dispute Resolution, or ADR¹. Arbitration and mediation are two parts of this system. Arbitration is a way where the decision is final and has to be followed. Mediation is a way where people talk and try to find a solution. Laws cover these two. One is the Arbitration and Conciliation Act from 1996. The other is the Mediation Act from 2023. Both of these laws try to make things fair, let people decide for themselves, and involve the courts.

The Arbitration and Conciliation Act from 1996 is the law that deals with arbitration in India. This law covers cases, including big international cases, and makes sure that decisions from other countries are followed. It is based on a model from a group called UNCITRAL. This law tries to keep the courts out of the way as much as possible and makes sure that the final decision from the arbitration is respected. This idea is in a part of the law called Section 5, which says that courts can get involved if it is allowed.

Arbitration in India is a way where people who are in a disagreement send their case to a group of people who're not part of the case. This group makes a decision called an award. This decision has to be followed, like a court decision. This process is based on the idea that people

¹ Arbitration and Conciliation Act, 1996, pmbl., No. 26, Acts of Parliament, 1996 (India).

can decide how they want to handle their case. They can choose the rules, where the case is held, and what law applies. They have to be fair and follow the right steps.

The way courts look at arbitration has changed a lot. In a case called Bharat Aluminium Co. V. Kaiser Aluminium Technical Services Inc., the court in India said that the law applies in a certain way. Later in another case called Vidya Drolia v. Durga Trading Corporation the court said that courts should only check if there is a reason to get involved. They should do this quickly. Not get too deep.

There is a rule called "competence-competence" in the 1996 Act. This rule says that the people dealing with the case can decide if they have the right to handle it. This means that courts do not get involved at the start. Changes made in 2015 and later made things even better for arbitration and added time rules. This shows that the law is trying to be more friendly towards arbitration.

Mediation is different. It is not a way in which a decision is made. It is a way where a person helps people talk and find a solution. The Mediation Act from 2023 is a law that gives real support to agreements made in mediation and helps set up places where mediation can happen.

In mediation, the person helping doesn't make a decision. They just help people talk and find a way to agree. This matches the idea of solving problems and being fair. Courts in India can send cases to mediation if it is possible. A big court case called Afcons Infrastructure Ltd. V. Cherian Varkey Construction Co. said that mediation is a way to solve problems when it fits.

Another law called the Commercial Courts Act from 2015 says that some business cases must go to mediation before going to court. This is a change in the way things are done. It helps reduce the number of cases in courts and makes people try to solve problems

From the way the law is written, arbitration and mediation are very different. Arbitration gives a decision that has to be followed. Mediation gives a solution that everyone agrees on. The top court in India says that courts should not get involved with arbitration decisions unless it is allowed by the law.

With all these changes, there are problems. Arbitration can take long be too complicated and cost too much. Mediation also has problems, like not enough people knowing about it and not enough places to do it.

New laws, like the India International Arbitration Centre and the Mediation Act from 2023 show that the government wants India to be a place where people from other countries come to solve their problems.

In the end, arbitration and mediation are two ways to solve problems in India. Each has its job. Arbitration makes sure that decisions are final. Mediation helps people find a way to agree. Together, they help make the system better, make things faster, and help people solve problems in a way. They match the ways to solve problems around the world.