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Redressal of Consumer Disputes through Mediation

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ABSTRACT

Mediation being an ADR mechanism, is a procedure for amicable resolution of cases with settlement elements. Quick Litigation, Low transaction costs, Flexibility, Preservation of Relationships, etc. are some of the attributes of Mediation creating it suitable a suitable platform for the resolution of conflicts related to consumer disputes. Due to growth of consumerism in recent times, Indian Legal System is constantly making efforts to embrace Mediation as a viable option to resolve consumer disputes. Frameworks are being instituted to make mediation more accessible to consumers, through the establishment of user-friendly mechanisms and the provision of information and support. The Consumer Protection Act, 2019 and the Mediation Act, 2023, in India, specifically provides for the procedure of mediation at District, State or National level through the Consumer Commission. Continued efforts to promote awareness, enhance accessibility and address implementation challenges is important to further vitalize the mediation role in safeguarding consumer rights and endorsing fair market operations. The disputes like product defects, service issues, contract disputes, pricing disputes, deceptive practices, etc. may be referred to mediation by the consumer commission or the parties themselves may choose mediation, with appointment of a qualified and impartial mediator facilitating the communication between the parties, helping them to understand each other's perspectives and explore possible solutions. Despite legal recognition, awareness and utilization of mediation among consumers and businesses still vary and the challenges remain prevalent in effectively implementing mediation mechanisms within the existing consumer protection framework. A consistent supply of well-trained and experienced mediators is crucial for the successful implementation of mediation, ensuring fairness and addressing potential power imbalances between consumers and businesses. The researcher aims to analyse the role of mediation related frameworks in the adjudication of Consumer disputes.

Keywords: Mediation, Consumer Dispute, ADR, Justice, State Commission.

I. INTRODUCTION

In the era of globalisation and commercialization, consumer disputes are bound to happen in

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the sphere of dynamic market economy. Disagreements arise between the parties in dispute i.e. the buyers and sellers, regarding the quality of product, delivery of services, contractual obligations, etc. and hence finding efficient and amicable resolution is essential. Mediation as a form of Alternative Dispute Resolution (ADR), has come out as a valuable tool in settling such aforementioned conflicts. The goal of mediation is for a neutral third party to help disputants come to a consensus on their own.³ Rather than imposing a solution, a professional mediator works with the conflicting sides to explore the interests underlying their positions.⁴ Such a mutual co-operative approach advances an impression of collaboration between both the parties for future relations.

One of the prime merit of mediation is the resolution of consumer disputes with efficacy and efficiency. In comparison to the elongated and expensive court litigation, mediation has the ability to sort out the issues speedily without any delay in Justice dispensation. Such responsive resolution aids both consumers and businesses due to the reduced time-frame and economical load. The emphasis on open communication and understanding, allows the parties in dispute to resolve the conflict and reconstruct tensed relationships. Mediation provides amicable settlement of the disputes which in turn helps to maintain, improve and restore relationships of the disputed parties.⁵ However, it is significant to understand that the successful outcome of the mediation (ADR) mechanism is interdependent on the willingness of parties in disputes; both the parties should engage on a mutual basis as held in the case of *Jagdish Chander v. Ramesh Chander*⁶.

II. MEDIATION: A BRIEF GLIMPSE

Mediation is a process by which disputing parties engage the assistance of a neutral third party to act as a mediator.⁷ Mediation is another voluntary and interaction based technique of ADR, which is more informal and aids negotiations between the disputant parties which may end up in an amicable settlement (binding).⁸ Mediation put forwards a beneficial supplant to

³ Pon Staff, What are the Three Basic Types of Dispute Resolution? What to Know About Mediation, Arbitration, and Litigation How to choose the best dispute resolution process, Program on Negotiation Harvard law School, (Dec. 26, 2024), <https://www.pon.harvard.edu/daily/dispute-resolution/what-are-the-three-basic-types-of-dispute-resolution-what-to-know-about-mediation-arbitration-and-litigation/>

⁴ idib

⁵ Consumer Handbook On Mediation (FAQ), Prof. (Dr.) Ashok R. Patil, Ministry of Consumer Affairs, Food & Public Distribution, Government of India, New Delhi & Chair on Consumer Law and Practice, National Law School of India University, Bengaluru, Karnataka (2021), https://consumeraffairs.nic.in/sites/default/files/file-uploads/latestnews/consumerhandbook_Mediation.pdf

⁶ *Jagdish Chander v. Ramesh Chander*, (2007) 5 SCC 719, (India).

⁷ Dr Avtar Singh, *Law of ARITRATION AND CONCILIATION* 582 (Abhinandan Malik 11th ed. EBC 2021)

⁸ Santosh Namdeo Sapre, A Brief Overview of Alternative Dispute Resolution Mechanisms in India, Volume 7, Issue 5 INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES, Page 2231 – 2239 (2024)

conventional legal proceedings and dilemma of judicial backlog, compelling to settle consumer disputes through open communications and empowerment of parties promoting a more just and efficient consumer dispute redressal mechanism. The role of the mediator is to bridge the interests of two opposing parties by defining their issues and eliminating obstacles to communication.⁹

Thus, in comparison to Arbitration and other ADR tools, Mediation has the potential to resolve plethora of cases instituted by consumers, and can be disposed of effortlessly rather than diverting the attention of the judiciary from other intricate and knotty matters. The provisions laid by the Mediation Act, 2023¹⁰ authorize and acknowledge resolution of compoundable offences. Section 6 of the Mediation Act, 2023 enables the court to refer the case for mediation, if deemed appropriate, any dispute relating to compoundable offences including the matrimonial offences which are compoundable and pending between the parties. However, the outcome of such mediation shall be further considered by the court in accordance with the law for the time being in force.¹¹ The Mediation Act, 2023, has been specially intended to fuse with the Consumer Protection Act, 2019, aiming to provide a secure, faster, more cost-effective and compatible approach to enhance consumer dispute resolution and promote a more harmonious and just society.

III. CONSUMER PROTECTION ACT, 2019

The Supreme Court in the case of *Afcons Infrastructure Ltd. and Anr. v. Cherian Varkey Construction Co. Pvt. Ltd. and Ors.*¹² held that mediation mechanism can lead to settlement of claims for aggrieved consumers. The legislature of Consumer Protection Act, 2019¹³, provides a legal framework to seek redressal for various consumer grievances, through the establishment of a three-tiered system of consumer courts: District Consumer Commission, State Consumer Commissions and the National Consumer Disputes Redressal Commission. The Section 37(1) of the Consumer Protection Act, 2019 provides where the relevant Commission can refer a consumer dispute to settle through mediation, when there are elements of settlement between the parties in disputes. However, parties to the mediation are given a time frame of 5 days to accept or reject the process of mediation, as consent is vital for it as per Section 37(2) of the

⁹ Indeed Editorial Team, What Is A Mediator? Definition, Roles and Steps, Indeed (Aug. 16, 2024), <https://www.indeed.com/career-advice/career-development/what-is-a-mediator>

¹⁰ Mediation Act, 2023, no. , Acts of Parliament, 2023 (India)

¹¹ Government of India at forefront to promote Alternative Dispute Resolution Systems, Ministry of Law and Justice (Feb. 08 2024 12:04PM), <https://pib.gov.in/pressreleaseiframepage.aspx?PRID=2003844>

¹² *Afcons Infrastructure Ltd. and Anr. v. Cherian Varkey Construction Co. Pvt. Ltd. and Ors.*, (2010) 8 S.C.R. 1053 (India).

¹³ Consumer Protection Act, 1986, No. 68, Acts of Parliament, 1986 (India).

Act.¹⁴ Once a dispute is referred to mediation, the fee paid to the Commission for dispute redressal is refunded to the parties as per the Rule 5, Consumer Protection (Mediation) Rules, 2020¹⁵.

IV. RESOLUTION OF CONSUMER DISPUTES VIA MEDIATION

Generally, Consumer disputes are referred to consumer commission by the aggrieved consumers to seek remedies for unfairness or disservices as a result of arising from fraudulent transactions in businesses. These transactions typically may include breach of consumer protection regulations, flawed commodities or services, not meeting safety standards, unfair trade practices arising from deceptive marketing, misleading advertisement, unfair pricing, breach of contract, inadequate or unsatisfactory service delivery, such as poor customer service, delayed services, or services not rendered as promised.

The mediator chosen will be impartial, neutral and independent.¹⁶ The Consumer Protection Act, 2019 also makes sure that the mediators are qualified and experienced so they identify and concern for larger public interest that generally exist within the dispute and bring such matters in the notice of the Court or District Commission.

If a party reasonably comes across a belief that the appointed mediator is biased or has a conflict of interest, they can request a replacement, this encourages openness and honesty between the parties in dispute and is vital for the success of mediation procedure. This provision safeguards the integrity of the mediation process and ensures that parties have confidence in the impartiality of the mediator. The Act emphasizes the confidentiality of mediation proceedings.¹⁷ Mediation process is much more confidential than conventional methods of dispute resolution.¹⁸ By incorporating these measures, the Consumer Protection Act, 2019, seeks to create a framework that fosters trust and confidence in the mediation process, thereby enhancing its effectiveness in resolving consumer disputes.

V. STAGES OF REDRESSAL OF CONSUMER DISPUTES THROUGH MEDIATION

At the first hearing of the complaint after its admission, or at any later stage, if it appears to the District Commission that there exists elements of a settlement which may be acceptable to the parties, except in such cases as may be prescribed, it may direct the parties to give in writing,

¹⁴ Mediation as a Dispute Settlement Resolution, Nyaaya, (Nov. 11, 2020), <https://nyaaya.org/legal-explainer/mediation-as-a-mode-of-consumer-dispute-settlement/>.

¹⁵ *ibid*

¹⁶ *Supra* at 5

¹⁷ MA Section 22: Confidentiality, The Mediation Act 2023, KanoonGPT, <https://kanoongpt.in/bare-acts/the-mediation-act-2023/ma-section-22-67d0cdb2a8e39398>

¹⁸ *Supra* at 5

within five days, consent to have their dispute settled by mediation in accordance with the provisions of Chapter V.¹⁹ Where the parties agree for settlement by mediation and give their consent in writing, the District Commission shall, within five days of receipt of such consent, refer the matter for mediation, and in such case, the provisions of Chapter V, relating to mediation, Shall apply.²⁰ A panel of fair and impartial mediators to settle the consumer disputes is instituted at a ‘Consumer Mediation Cell’, which maintains a list of cases and records as per the regulation 11(7), Consumer Protection (Mediation) Regulations, 2020²¹ of the proceeding under section 74 of the Consumer Protection Act, 2019. A fee is also paid to the mediator before the proceedings begin.²² Mediation is conducted in the presence of both parties in disputes and both are entitled to offer all the relevant information or documents to the mediator which will remain confidential. If the parties referred to mediation come to a mutual agreement within 3 months, a settlement report is advanced to the commission (who referred the matter to mediation) and the concerned commission is required to pass an order within 7 days of receiving the same. If the parties hasn’t been reached to a mutual agreement or the settlement brought about by the mediation is not acceptable, the same is communicated through a report of proceeding and then the commission hears the matters and continues further proceedings.²³ Also, a once a dispute is referred to mediation, it cannot be taken to other ADR proceedings, like arbitration or court litigation. However matters like serious medical negligence or one that results in death, fraud, forgery, coercion, etc cannot be referred to mediation. Proceedings for compounding offences can be settled between the parties upon the payment of fine unless the commission of such offence has recurred in a span of 3 years.

VI. ABOUT E-JAGRUTI PLATFORM

e-Jagruti app and Jago Grahak Jago app were launched by the Indian Government in December 2024 specially designed for the consumer commissions to streamline consumer dispute resolution processes and promote consumer welfare. This initiative is part of the ongoing efforts to enhance transparency and efficiency in the grievance redressal system.²⁴ The platform intends to offer a simple, fast, and cost-effective resolution of redressing consumer disputes at all levels. While launching the initiatives, union minister of consumer affairs, food and public distribution

¹⁹ Section 37: Reference to Mediation, Consumer Protection Act, <https://www.consumerprotection.in/section-37-reference-to-mediation/>

²⁰ *ibid*

²¹ Consumer Protection (Mediation) Regulations, 2020, (India).

²² *Supra* at 13

²³ *Supra* at 13

²⁴ Dharendra Kumar, Govt unveils revamped e-Jagruti app and Jago Grahak Jago app to boost consumer protection, *Mint*, (Dec. 24, 2024, 08:06 PM), <https://www.livemint.com/news/india/govt-unveils-revamped-e-jagruti-app-and-jago-grahak-jago-app-to-boost-consumer-protection-11735047234458.html>

Pralhad Joshi emphasized the importance of virtual hearings in providing consumers with easy access to justice. It provides a simple, fast, and more cost-effective consumer dispute redressal software solution at all levels.²⁵

It is envisaged to integrate consumer grievance platforms, namely, Online Case Monitoring System (OCMS), E-Daakhil, NCDRC Case Monitoring System, CONFONET website, mediation application, in a single platform.²⁶ The e-Jagriti platform has case filing, online fee payment, case monitoring modules for seamless disposal of cases by all the Commissions, has Smart search facility on archived consumer complaints / cases / judgements using AI technology for metadata and keyword creation, and Voice-to-text conversion of judgements, case history and other details using AI / ML technology. The portal will integrate Virtual court facility for a convenient and accessible resolution of consumer complaints, reducing the time of disposal, multiple hearings and physical court appearances bringing effective and fast decisions & disposals in all Consumer Commissions.²⁷ As the portal is integrating Virtual court proficiency it is a convenient and accessible resolution platform for consumer grievances redressal, reducing the time taken for case disposal, innumerable hearings, and face-to-face court appearances, thus, promoting efficient and quick resolutions & disposals at all levels of Consumer Commissions.

VII. CONCLUSION

Mediation holds significant place in the sphere of consumer disputes as an effective mechanism, reducing judicial backlog and the overall time and money spent in litigation. Its inherent advantages, such as speed, cost-effectiveness, flexibility, and focus on preserving relationships, align well with the needs of both consumers and businesses. The legislative framework, particularly the Consumer Protection Act, 2019 and the Mediation Act, 2023, provides a foundation for integrating mediation into the consumer dispute resolution process. However, despite this legal recognition and the efforts to promote mediation, challenges remain. Awareness and utilization of mediation among consumers and businesses are still not widespread. Implementation issues, including the need for trained mediators and addressing power imbalances, need careful attention. Effectively addressing these challenges is crucial to

²⁵ *ibid*

²⁶ One Day Capacity Building Workshop on Modernized CONFONET software called e-Jagriti discusses consumer redressal, Ministry of Consumer Affairs, Food & Public Distribution, (Feb. 13, 2024, 5:13PM), <https://pib.gov.in/PressReleasePage.aspx?PRID=2005604>

²⁷ *ibid*

realizing the full potential of mediation in safeguarding consumer rights and fostering a fair marketplace.

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