

Mediation Act 2023: A Clear Message to Industry on Dispute Resolution

By IAS Toppers | 2023-09-27 14:00:00



Introduction:

- The Mediation Act encourages the process of **mediation** by institutionalising **mediation centres**, and registering **mediators** for resolving commercial disputes.
- India had 464 Alternative Dispute Resolution (**ADR**) **centres** (397 functional), 570 **mediation centres**, and 16,565 **mediators**.
- About **53,000 cases** were settled through **mediation** in 2021-22. (National Legal Services Authority)

About Alternative Dispute Resolution (ADR):

- Alternative Dispute Resolution (ADR) refers to the mechanisms that enable disputing parties to **resolve** their differences, **without** the intervention of **courts**.
- It is significant in India considering **delays in Indian court** proceedings and high cost of litigation.

- In India, modes of ADR include **arbitration, negotiation, mediation**, and **Lok Adalats**.
 - **Mediation** is a **voluntary process** (not obligatory) in which parties try to settle disputes with the assistance of an independent third person (the **mediator**).
- They are largely focussed on **arbitration** or **conciliation** of disputes under the **Arbitration and Conciliation Act, 1996** (A&C Act).

The Mediation Act, 2023:

- The Mediation Act aims to **promote and facilitate** the process of **mediation** between the parties in commercial disputes to encourage ADR.
- It will encourage parties to take steps to **resolve** their dispute through **pre-litigation mediation** before approaching a court.
- It seeks to codify, institutionalise and promote mediation, by establishing the **Mediation Council of India**, recognising **mediation service providers**, and registration of **mediators**.
- It **bridges mediation and arbitration** of commercial disputes, thus reducing the burden on the courts.
- **Courts** and **relevant institutions** also maintain a **panel of mediators**.
- For dispute settlement, India encourages courts to **refer** the disputing parties to **ADR** procedures.
- It will **not** completely remove the role of courts. In **exceptional cases**, a party may reach a court **before** the commencement or during the **continuation of mediation**.

What is Mediation?

- **Mediation** is the effort between conflicting parties to solve their differences and make **compromises** to resolve business disputes.
- It is a **confidential process** and must be completed within **180 days**.
 - It may be **extended by 180 days** by the parties.
- A party **may withdraw** from mediation **after two sessions**.
- **Court-annexed mediation** must be conducted as per the rules framed by the Supreme Court or High Courts.
- It will require the mediation to be conducted by a **neutral** and **expert mediator**.
 - The mediator puts forth **workable solutions** that can be agreeable to both parties.
- **Mediation in India may be:**
 - **Court referred** (Under the Code of Civil Procedure, 1908),
 - **Private** (Under a contract having a mediation clause), or
 - Under a **specific statute** (such as the Commercial Courts Act, 2015, the Consumer Protection Act, 2019, or the Companies Act, 2013)

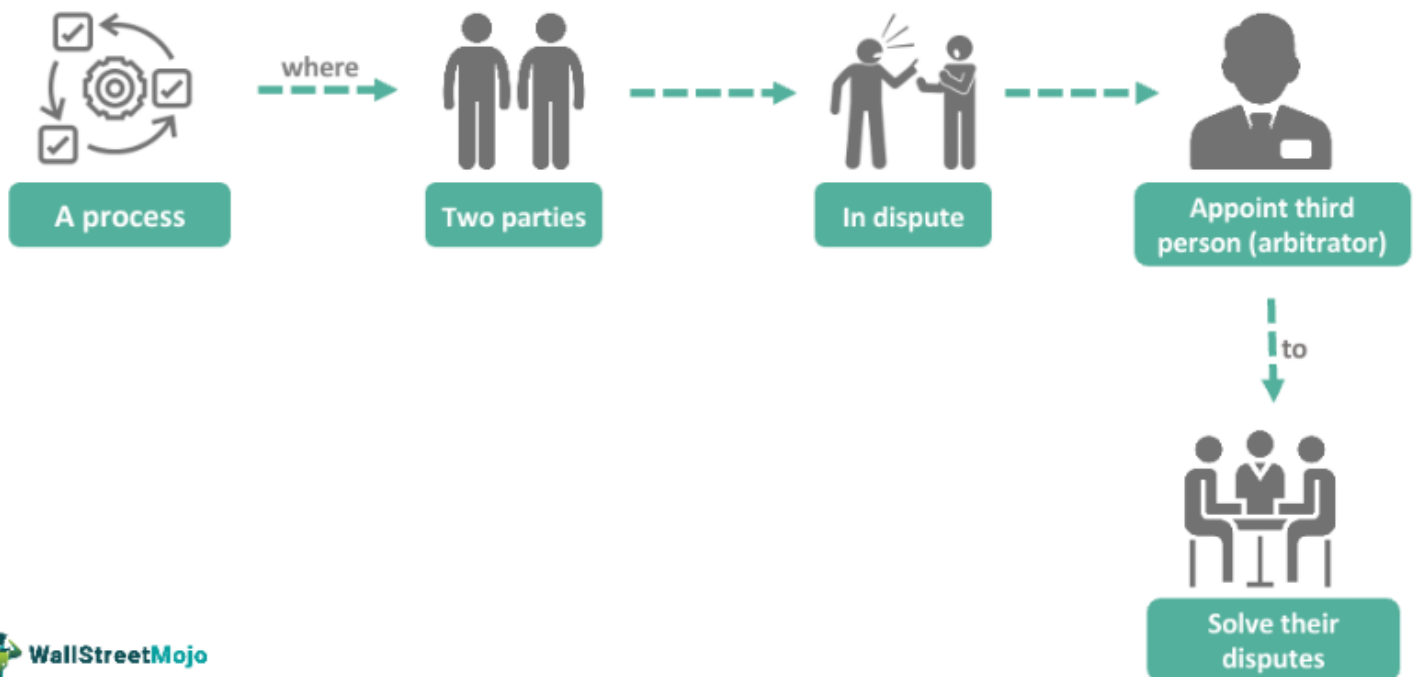
Benefits of Mediation:

- **Reduce** the filing of **non-serious claims** before courts.
- **Mitigate** the risk of deterioration of the **parties' relationship** due to a publicly fought dispute.
- **Flexible** and **confidential process**.
- **Faster** and **cost-effective**.
- **Lesser burden** of cases on courts.

- Encourages the parties to **focus** more on their **commercial dealings** than their disputes.

What is arbitration?

What Is Arbitration?



[Ref – WallStreetMojo]

- Arbitration** is an **alternate method of litigation** for settling disputes **without** either party going to court.
- It involves a **neutral third party** who receives evidence, hears the arguments, and passes an order known as an **award**.
 - The award is **final, impartial**, and has to be enforced under the **Code of Civil Procedure, 1908**.
- In India, arbitration is backed by the **Arbitration and Conciliation Act, 1996** which was **amended** by the **Arbitration and Conciliation (Amendment) Act, 2015**.
 - The Act mandates arbitration proceedings to be completed within **twelve months** and can be extended further by **six months**.

Mediation and Arbitration:

Similarities:

- These are two different methods of **dispute settlement** that are broadly placed under alternate dispute resolution (**ADR**) **methods**.
- Both involve **out-of-court settlements** to avoid **unnecessary litigation** and receive **quick settlement**.

Differences:

- Mediation is when a neutral third party aims to assist the parties in arriving at a **mutually agreeable solution** whereas arbitration is like **litigation** outside the court and which results in an **award** like an **order**.
- Mediation is **not binding on the parties** whereas arbitration is.
- Mediation is **more collaborative**, and arbitration is more **adversarial**.
- The mediation process is **more informal** than arbitration.
- The outcome in mediation is **controlled by the parties** whereas in arbitration it is controlled by the **arbitrator**.
- In mediation, the dispute **may or may not be resolved** whereas in arbitration it is **always settled** in either party's favour.

About Mediation Council of India:

- It will **register mediators**, provide effective **mediation**, and recognise **mediation service providers** and institutes.
- It is a **neutral third party**.
- It makes the process a **time-bound mechanism** which saves **time** and **money** of parties.

About Mediation Service Providers:

- They are synonymous with **arbitration institutions**.
- They provide the services, facilities, secretarial assistance, and infrastructure for the efficient conduct of mediation under the **A&C Act**.

Conclusion:

The Mediation Act is a welcome step towards transforming the landscape of dispute resolution by effective and efficient ways to resolve conflicts voluntarily and without any form of adjudication. It can foster a culture of ADR in India.