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The Role of Mediation and its Working under Consumer Protection Act 2019

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Abstract

Consumer protection act 1986 was replaced by consumer protection act 2019. Mediation cells are introduced by this new act. To solve the problem of pending cases which are day by day increasing in consumer courts, this new act introduced mediation cells. Not only Mediation cells, certain new provisions like central consumer-authority, product liability, E-commerce were introduced in this act. The mediation concept is deeply rooted in our ancient Indian era on words. Comparing to court proceeds Mediation is very quick, private, confidential, fair, and less expensive. This is a strong weapon in the hands of the disputed parties to solve the matter through mediation. Mediation is a process where both the parties agree to make settlement. It is an alternative, method of resolution of a dispute. It consists of consensual process where the third party like the mediator appointed by the court assists the disputed parties to get an acceptable resolution. The Mediator assists the disputed parties to identify their interests and needs, to clear the differences and find an agreement. But most of the states in India still have not properly established these mediation cells for the consumers.: "The Functional stages "of Mediation is incorporated in "Consumer Hand Book on Mediation 2021 "which were prepared by Ministry of consumer affairs, Food and public Distributors, Government of India on consumer law and practice.

Keywords: Consumer protection act 2019, mediation, stages of mediation, arbitration vs. mediation

Introduction

Mediation is another form of alternative dispute resolving the problem of parties at various stages. We observe these mediations in ancient period onwards. We are aware of lord Krishna's Mediation to resolve the problems between Pandavas and Kauravas.

In Modern period, due to technology and rapid force in disputes, the mediation concept has increased to maximum extent.

The mediations is needed in various cases which is applicable to the consumers also. The consumer Law ^[1] which consists of 107 sections and spread into Eight Chapters, it has repealed the old act 1986. The new consumer act 2019 introduces new provisions which tightens the present regulations for safeguarding the consumer rights. The new provisions that are introduced by this act are

- Including E-Commerce, Establishing (CCPA) ^[2], direct selling.
- Providing strict rules and on misleading advertisements
- Mediation cell
- Changes the pecuniary jurisdiction ^[3].
- Unfair contract
- Provisions of strict rules on product liability.
- Charges in the provisions related to unfair practices of trade.

According to this act the definition is given for consumer. A person who purchase services or goods with particulars consideration is known as a consumer. That consideration has been paid to the consumer or promised or paid partly or under any systems and kind of deferred payments. This also includes the user with consents of such products or services of beneficiary.

According to this consumer protection Act-2019 who is not a consumer is also defined. A persons who acquires goods freely i.e., without any consideration i.e., free of charge, who gets mediation cells under consumer protection act.

Mediation Cells ^[4] under Consumer Protection Act Mediation cell was introduces by consumer protection (act 2019) in chapter V. it acts as a mechanisms of alternative resolutions. In this chapter we observe the working and composition of mediation cell. Theses mediation cell are interlinked and attached to consumer redressed commissions.

- Mediation cell for district consumer commissions.
- Mediation cell for state consumer commissions.
- Mediation cell for national consumer commissions.

These cells are known as district consumer mediation cells, state consumer mediation cells, appellate Jurisdiction and order passed by these cells are final.

Working of Mediation Cells

The consumer who approaches redressal commissions, their disputes can be referred to mediation cells. But certain matters relating to criminal nature such as death or grievous injury, or serious offenses such as fraud, forgery, coercion, fabricating the documents, impersonation cannot be referred to mediation cells. These matters are out of Jurisdiction of mediation cell. Mediation rules ^[5] under rule 4 provides about this.

The Mediators and their Active Role

Mediation can be defined as an informal process where the parties to the disputes get acceptable solutions. The mediators try to solve the problems not by order but by friendly suggestions. He acts without bias and gives recommendations impartially based on justice, equality and conscience, mediators ^[6] role in consumer disputes is very great. He creates communicable environment between the disputes parties, helps in resolving solutions between the parties.

The mediator's effective role are classified into two categories.

1. Facilitative role
2. Evaluative role

In first type of role the mediators creates a suitable environment for mediation, makes rules and uses different techniques to communicate between the parties such as physical mode conference call mode, online mode etc. He removes the obstacles that come between the disputed parties. He gathers the details of the case and understands and considers the interests of the parties and allows discussions related to the dispute. He held the parties to reach a conclusion and mutual settlement. Finally the mediators guides the disputed parties to reduce the settlement in to a written form.

In second role, i.e., Evaluation role, the mediators guides the parties to make an option & options to settle the matter which is acceptable to both parties.

Stages of Mediation

The mediation cells are attached to consumer redressal agencies i.e., District, State and national commission, the mediation cell cannot take a case voluntarily, only after refereeing the dispute by consumer commission. The consumer commission refers the matter at any stage, i.e., after admitting the case, or first hearing or at any stage, if the consumer commission thinks that the matter can be resolved through mediation. Then the commission instructs the parties to go for settlement through mediation. The consent of the parties has to give within five days in written form. Then the commission, within five days of consents given by the disputed parties it sends the matter to mediation cells.

It is also not barred, that the parties also can make an application to consumer commission to refer the matter to mediation cell, that they are willing to settle the matter through arbitration. On such consent application the consumer commission sends the matter for reference to the mediation cell.

Composition of Consumer Medication Cell

The mediation cell ^[7] consists of mediators. On the recommendations of the Selections committee which consists of the president for the mediation cell and a member of that concerned consumer commission.

The qualifications, ^[8] experience, procedure manner of training the mediators, code of conduct to conduct the proceeds of mediation cell, the manner on which mediators can be removed one given under regulations of consumer act. The tenure of the mediators are five years and they are eligible for another term, subject to the conditions specified by regulations.

Procedure and Stages of Mediations

In introduction state the mediator at first creates awareness about mediation to the parties so that they understand the nature of mediation. He communicates with the parties in a friendly atmosphere to develop trust and confidence. He encourages the parties to get an easy and reliable and acceptable settlement of that particular dispute.

Individual sessions as well as Joint session are conducted in mediation cells, where the parties to the disputes are called and their versions and opinions are openly discussed with this the parties become aware of the perspectives of opposite parties. This joint session is very useful to understand the real facts, obstacles and solutions to the disputes. In joint session all the parties are given opportunity to be heard and express their free opinions.

Separate sessions are also held in mediation cells to discover the hidden interests of the parties are allowed to provide their confidential and private information.

After the required sessions, the settlement reached between the parties are framed in written mode and conditions or terms of the settlement are written in the agreement. This agreement has to be signed by the parties. The mediators also signs on the agreement declaring that this settlement is reached before his presence. Thus the mediators certifies the settlement. A duplicate copy of this agreement is given to the parties and the original one is sent to the concerned referred consumer commissions. Then according to the settlement reached by the disputed parties the appropriate mediator delivers the orders

What if there is no settlement between the parties? Then, the matter is returned to the referred commission saying that the settlement was not reached. Here it is important to note that there is no need to mention the reason of non-settlement and also not necessary to point out the responsibility of not getting the settlement on any are of the parties ^[9].

There are several instances where we observe that replacement of mediators took place. In many cases if the consumer commission is satisfied for genuine reasons it replaced the mediator.

The mediators can be changed on two occasion's i.e.

1. When the mediators furnished information related to replacement.
2. When the information parties of the case, but the replacement mediators is done only after hearing the versions of the mediators.

The information given by the parties at the mediation cell are kept confidential. It cannot be shared unless the purpose of settlements. The mediation cell strictly prohibits the audio or video recording of the proceeds of the mediation cell.

We may have a doubt that how could we believe that the mediator acts without bias or partiality? Weather he has any interest in one of the parties or the disputed matter? The mediator before taking the mediation proceeding, has to disclose of there is any professional, personal or financial interest he has in that particular dispute.

Consumer protection-act 2019 by introducing mediation cell has really done a good effort of solving the disputes in shorter

period. The period to complete the matter in three months. After the expiry of this three months the mediation is terminated unless it is extended period the matter stand as terminated. The parties are allowed to appear in person or through their representative or advocate in proceeds of mediation.

Mediation is not mandatory, only if the consent given by both the parties' mediation can be done. On failure of the settlement between the parties in mediation cell, the concerned consumer commission proceeds to take the complaint. No appeal can be made from any judgment passed by the consumer commission pursuant to an agreement made by the mediator.

Maintenance of Records and Reports

The mediation cell maintains

- The cases dealt by mediation cell.
- Information related by regulations prescribed by information instructed by regulations prescribed by NCDRC ^[10]. Also the mediation cells have to submit records to the concerned commission in quarterly basis. These are provided by rules under consumer protection (Mediation) 2020.
- Proceeds and its records.
- Mediator's panel list.

Arbitration VS Mediation

Arbitration is a way of settling disputes without need of parties to approach court.

Third party is involved in this. He passes award after hearing both the parties. This award is Final. Mostly arbitration clauses are included in the contract. Now a day's mandatory arbitration has gained popularity. In our country we have this act related to Arbitration ^[11]. This act gives instructions to complete the arbitration within one year.

The advantages of Arbitration is

- Fairness
- Grant of award
- Simple and easy procedure

Consumer Mediation

Where the parties agree for mediation the consumer courts refer the disputed matter to mediation. It can be referred at any stage i.e. admission or final hearing stage. The Panel of mediators are appointed by the concerned consumer court. After the settlement, the Mediator forwards the agreement to the concerned consumer court. The time period to complete the mediation is three months. If the disputed mediation fails then the mediator passes the matter to the attached consumer redressal.

Conclusion

The consumer protection act 2019 replaced the previous act 1986 ^[11]. This act was framed to fulfill the needs of the consumers, from the welfare and protection of the consumer. This act provides a three tier system. The consumer redressal forum consists of mediation cells. These mediation cells are attached to district, state, national consumer forums. These mediation cells are functioning effectively is solving the dispute among the parties.

There is negative opinion on establishment of mediation cells, as consumer forums are there already for speedy disposal of a dispute. Also the act could not clearly define on what kind of disputes could be sent to mediation, as there may be backlog of dispute cases referred to mediation cell.

However we can say these mediation cells are working in an informal way and there is no need of legal experts, especially there are online mediation centers ^[12] which are giving direct access, without making a complaint in the consumer forums, as provided by the new act. Mediation cells performance, excellences and success depends on the speedy disposal of disputes referred to it.

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