



International Journal of Research in Academic World



Received: 06/December/2023

IJRAW: 2024; 3(1):222-225

Accepted: 10/January/2024

Mediation - Its Role in Resolving Consumer Disputes

*¹Dr. N Ramprasad

¹Associate Professor, Department of Law, Osmania University, Hyderabad, Telangana, India.

Abstract

Mediation provisions in Consumer Protection Act, 2019 as a Consumer Dispute Redressal mechanism has strengthened the Consumers' right of an expeditious settlement of their disputes. Consumer mediation makes Consumer Protection Act, a better consumer protection legislation. The provisions requiring physical presence of parties at Mediation cells put hurdles in Mediation, ignoring the increasingly large number of young, tech savvy, internet connected consumers in Bharat who being e-commerce lovers; like to see fast results. Also, it adds a substantial financial burden on the government by challenging the Infrastructure cost of developing huge mediation infrastructure at District commission level across Bharat. The Mediation Act, 2023 takes consumer mediation in its fold with features like pre-litigation, online-mediation, registration and enforcement of mediated settlements, which can fill the gaps. The implementation of Mediation with use of consumer mediation depends upon the readiness of mediation cells at each district commission which may be a time testing affair.

Keywords: Redressal, mechanism, commission, internet, protection.

Introduction

The consumer is a weaker party in every process of dispute resolution. Consumers do not know enough about the quality and characteristics of technically advanced and/or demanding products, and lack comprehensive knowledge about the quality standards pertaining to services. They are unable to assess the risk of particular contracts, while they are heavily exposed to psychological pressure of advertising (Zabel, 1999, p. 468) ^[1]. In addition, judicial proceedings can be long and complex. The small claims in which consumers are harmed by an illegal practice of a trader, face difficulties in accessing effective and affordable means to obtain appropriate compensation.

Consumer Alternative Dispute Resolution (CADR) can help enterprises to maintain good relationships with consumers and gain a positive reputation in transactions. It also promotes competition. But, the main advantage of the efficient use of CADR and Online Dispute Resolution (ODR) in consumer matters is the increased satisfaction of the users that get another option to protect their rights—a process that is fair and appropriate, and uses of simpler, cheaper and faster dispute resolution methods.

ADR and Its Role in Consumer Disputes

The ADR methods may be used in relation between consumers and businesses (C2B or B2C) or in relations between businesses (B2B). In any case, the process presupposes the involvement of an independent and neutral third party—a mediator, conciliator, ombudsman or similar person. The CADR procedure seeks to secure interaction

between the parties and facilitates finding of consensual solutions. For instance, consumers are actively involved in the dispute settlement procedure—be it mediation, conciliation or negotiation and participate in the process of finding effective redress for their violated rights.

In India, Alternate Dispute Resolution System in the form of Arbitration and conciliation act was already in practice which went under drastic change in the year 1996 by repealing the earlier act 1940.

Though the consumer is awakened under the present scenario where variety of goods and services with ample choice due to tough competition in the market are available to them, our consumer is yet not selective about his priorities. He is often seen unsatisfied due to his own wrong choices. It is mainly because of the mind set of our consumers who tend to compromise on quality and not the cost. They are attracted towards advertisements which offer them bonus and allure them to pay less and get more. They are basically tuned to Stocking and stuffing nature more for lust and less for need. This attitude leads them to opting for gift schemes which are at times misleading ending up with the purchase of inferior goods and services. Seller tends to cheat more to such customers. Consequently, gets inferior quality and pays more on repairs. Invites day to day troubles and disturbs mental peace. Create quarrels on petty matters and loses shopping spirit. This Rat race leads to stress depression, anxiety and other mental illnesses. Causes environmental crisis. Nature destroyed by more buildings, more vehicles more pollution affecting the weather. Over-dependence on labour saving devices.

Before we moving into the question of scope of mediation in consumer related matters, we need to know the mind-set of the consumers in the country and work on the ground realities present before us. Under the present scenario where variety of goods and services with ample choice due to tough competition in the market are available to the consumers, our consumer is yet not selective about his priorities. His wrong choice often leads to rift and unsatisfying. Consumer courts are there to help them all over the country and are doing remarkable job in redressing their grievance. But at the same time, increasing number of cases pouring into the consumer courts day by day are again making consumer forums also overburdened. Since the consumers are now much awakened about their rights, looking into this fact, it is equally important to set up alternate Redressal system of mediation annexed with the consumer courts as has been done in civil courts which has already shown a great success

Mediation-Consumer Disputes and Role of Judiciary

The concept of mediation received legislative recognition in India for the first time through Industrial Disputes Act, 1947. Section 4 of the Act has provided for conciliation efforts and duty was assigned to the Presiding officer for mediating and promoting the settlement of Industrial disputes. Detailed procedures were prescribed for conciliation proceedings under the Act. Further, The Legal Services Authorities Act, 1987 came into existence by which the National Legal Services Authority was constituted as a Central Authority. The aim of these authorities is to encourage the settlement of disputes by way of negotiations and settlements.

In 1999, the Indian Parliament passed the Civil Procedure Code Amendment Act of 1999 inserting Sec.89 in the Code of Civil Procedure 1908, providing for reference of cases pending in the Courts to ADR which included mediation. The Amendment was brought into force with effect from 1st July, 2002 [2].

The Mediation and Conciliation Project Committee (MCPC) was constituted by the Hon'ble Supreme Court of India on 9th April, 2005. Hon'ble Mr. Justice N.Santosh Hegde was its first Chairman. It consisted of other judges of the Supreme Court and High Court, Senior Advocates and Member Secretary of National Legal Services Authority. The Committee in its meeting held on 11th July, 2005 decided to initiate a pilot project of judicial mediation in lower courts which were found a great success in this field resulting into mediation centers annexed with all lower courts and High courts in the country and also in the Supreme court.

For the first time, the Hon'ble Supreme Court of India confirmed legal and constitutional validity of the new law reforms in the case filed by Salem Bar Association, TN V/S Union of India (2003) SCC 499. The Law Commission of India was then directed to remove the anomaly in order to make section 89 of CPC workable. After getting directions from the Supreme Court, Law Commission organized an International conference on cases related to Management, Conciliation and Mediation at New Delhi on 3rd and 4th May 2003, which was a great success. Delhi District Courts invited to train their Judges as mediators and help in establishing court annexed mediation centers. Delhi High Court started its own lawyers managed mediation and conciliation centers. Karnataka High Court also started a court-annexed mediation and conciliation centers and trained their mediators. Now court-annexed mediation centers have been started in trial courts.

Working of court annexed mediation centers has now got a legal sanction. Court-Annexed Mediation and Conciliation Centers are working now under the supervision of the court and services are provided to the litigants as part and parcel of the same judicial system. The most important feature of this mediation system is that advocate, litigant and even judges become participant in the mediation process and litigant gets a feeling that he is the person deciding for himself and is equally important to the entire process. Once the judge refers the case for mediation, the same advocate briefs the mediator. The litigants are given an opportunity to play their own participatory role in the resolution of disputes. This also creates public acceptance for the process as a time-tested court system.

Looking into the above scenario in the country and finding this method of resolution a great success, Ministry of Consumer Affairs has now taken steps towards establishing consumer forums annexed mediation advisory centres for resolution of consumer matters through mediation system. As on now consumer awareness movement has picked up momentum and consumers are now awakened about their rights which is obviously resulting into pouring of cases to the consumer forums.

Looking into the effective role of mediation in the civil courts and mediation centres running through all over the country very successfully, Ministry of consumer affairs, Govt. of India has added a new chapter specifically for introducing Mediation as a part of adjudicating consumer related matters through court annexed mediation centres in the new Consumer Protection Act 2019.

In pre-litigation matters Consumers can opt to go for MEDIATION EVEN before filing the case before consumer court. For this they need to contact other party and both the parties must agree for mediation. In some cases, other party is not approachable to consumer for any reason. In such case, any one of the parties may register with the mediation center with willingness to go for mediation. Mediation center on the request of one party may send notice to the other party inviting them for mediation and if other party also gives consent, mediation can be initiated. There can be no mediation if both the parties are not willing to go ahead with it.

Mediation center shall prepare a settlement document educating all the terms in writing, getting signatures of both the parties in case parties succeed in setting up their terms and mediation is successful. Settlement needs to be signed by mediators witnessing the agreement. This document of agreement shall have the same legal validity as of a contract under contract law.

Types of Mediation

Court-Referred Mediation: Court referred mediation is one where a case has been filed before the Court and Court refers such matter for mediation under Sec. 89 of the Code of Civil Procedure, 1908. Court referred mediation is post litigation mediation. As in case of Consumer Protection Act 2019, wherein Section 37, 49 & 59 empowers the Consumer Commissions to refer the Cases to the Mediation Cell Attached to it.

In after litigation matters cases are referred by the courts as per section 89 of CPC. Section 89 of CPC provides:

“Where it appears to the court that their exists element of settlement of a settlement which may be acceptable to the parties, the court may formulate the terms of settlement and give them to the parties for their observations and after

receiving the observations from the parties, court may reformulate the terms of possible settlements and refer the same for Mediation”^[3].

Private Mediation: The private mediation is one where qualified mediators offer the services of mediation on a private, fee-for-service basis to the Court, to members of the public, to members of the commercial sector and also to the governmental sector to resolve disputes through mediation. Private mediation can be used in connection with disputes pending in Court and pre-litigation disputes. The list of recognised private mediation institute can be accessed at this web link: http://www.ciac.in/download/GOI_ODR.pdf.

As per general principal of law and in the interest of natural justice, settlements are always welcomed by all the courts, tribunals all over the world. Under our jurisprudence also, settlements were always encouraged even before the amendment in CPC inserting section 89 to it, for making settlement more system oriented

Reference of Consumer Disputes for Mediation;

Mediation in chapter V is a non-mandatory (S.37(2)), independent process facilitated by the Mediator (Regulation 12), nominated from the list of empanelled Mediators (S.76), away from the influence of the consumer commission (Regulation 14), in the Mediation cell annexed to the respective District/State/National Consumer Commission (S.79(1)), assisting the parties in their negotiations to reach at their own decision while keeping a record of daily proceedings of each case (Regulation 11(7))^[4].

Types of Consumer Disputes are appropriate to settle through Mediation

All the consumer disputes can be referred for mediation, except the following matters:

- a) The matters relating to proceedings in respect of medical negligence resulting in grievous injury or death;
- b) Matters which relate to defaults or offences for which applications for compounding of offences have been made by one or more parties;
- c) Cases involving serious and specific allegations of fraud, fabrication of documents, forgery, impersonation, coercion;
- d) Cases relating to prosecution for criminal and non-compoundable offences;
- e) Cases which involve public interest or the interest of numerous persons who are not parties before the Commission.
- f) Provided that, in any case other than those mentioned in this rule, the Commission before which the case is pending may choose not to refer it to mediation if it appears to the Commission that no elements of a settlement exist which may be acceptable to the parties or that mediation is otherwise not appropriate having regard to the circumstances of the case and the respective positions of the parties. [Rule 4 of Consumer Protection (Mediation) Rules, 2020.]

The role of the commission in Mediation is limited to refer a dispute for Mediation, after admission of complaint or at any later stage (S.37(1)) assigning a suitable, independent and impartial mediator (Regulation 10), if at all it finds that there exist elements of an amicable settlement and if the parties give their written consent for it. However, it has administrative responsibilities (S.74, 75, Regulations 5-9) in selection, empanelment, replacement of Mediators, monitoring overall performance of Annexed Mediation Cell

through quarterly activity reports. Also, certain matters involving criminal elements are barred to be referred to Mediation (Rule 4).

The Role of Mediator is of facilitation to the parties to negotiate, assisting in removing their misunderstandings, if any, generate options to resolve their disputes (Regulation 12) thereby reaching at their own settlement. The Mediator is not expected to impose any solution (Regulation 11, 12) or term of settlement but create a conducive, non-threatening environment between them, must be guided by fair play and principles of natural justice to carry out mediation, giving regard to parties' rights and obligations, usages of trade, if any, circumstances that gave rise to the dispute (S.79(2)).

Settlement Agreement reached in Mediation between parties or their authorized representatives, in resolution of all or some of the issues, is reduced to writing, signed by parties, submitted to the commission by Mediator or a failure report in three months (S.80, Reg 11) during which Parties are barred to seek any judicial or Arbitral remedies (Rule 6). Full Refund of Fees (S.81 and Rule 5) is given by the commission while recording the settlement agreement and disposing of the dispute^[5].

Neither CPA nor its Rules or Regulations provide any Mediation Process; though a Consumer Handbook on Mediation^[6], broadly defines its four functional stages. Opening Statement is the rapport building stage between the Mediator and parties followed by the Joint Session where parties hear each other's perspective while the Mediator collects info/facts, identifies issues/hurdles, gauges mutual relationships/feelings to assess the possibilities of settlement. Mediator sits with each party in Separate Session(s) for them to vent their emotions, share any confidential information and using 'option generation process'; tries to understand their underlying interests and common grounds. In Closing; Mediator seeking oral clarifications; documents terms of settlement, parties have come-up with during mediation, in form of a Settlement Agreement, after parties' signatures provides them each a certified copy, sending the original to commission or report with remarks "not settled" if no settlement. Neither any audio/video recording of Mediation process is permitted nor the reliance on verbal or written expressions, proposals of parties can be made elsewhere or before the Commission. All involved in Mediation process are bound to maintain full confidentiality.

Advantages, Disadvantages, Challenges in Mediation

Mediation has advantages over adjudication, other ADR methods resolving not just consumer but variety of civil, commercial disputes i.e. Contractual, Property, Family, Probate, IPR:

- i). Parties being in control of the outcome of Mediation, have ownership of resolution reached through mediated negotiations thus, perceived as fair and least likely to be challenged.
- ii). Mediation provides an opportunity to vent out lingering emotions, grievances; not just the ones involving legalities which a suffering consumer likely to have.
- iii). Mediation is quicker, inexpensive, simpler and not only time but saves repeated appearances, written pleadings thus, may not require engaging an Advocate.
- iv). Conducted in the privacy of Mediation cell; it remains confidential yet opens communication and aids in resuming mutual workable relationships between disputants.

- v). With no win-lose and the collaborative negotiations in Mediation; possibly the parties may reach a non-conventional, out of box solution not otherwise possible in Court proceedings.
- vi). Trained in negotiation techniques to overcome deadlocks^[7], Mediator understands parties' needs/priorities, respect their rights/decisions, maintain neutrality and confidentiality thus, seen as a friend who helps parties to open up with possible solution.

Disadvantages of Mediation

- i). No appeal lies under S.41, CPA where settlement is reached by way of Mediation.
- ii). Not suitable for low value consumer goods/services as the procedure requires at least three Mediation meetings which may not happen the same day and if it fails, one has to go through process before the Commission. Also, Mediation may be abused as a delay tactic.
- iii). Where mighty Sellers/Manufacturers having been the subject of the repetitive Consumer Complaints, through Mediated settlements; may tend to save negative social media rather than eliminating the defects or improving the quality of their products.

Key Challenges in Mediation in Consumer Disputes:

The parties in consumer disputes usually are not on equal footing, the consumer being a Protected Class and the seller; a giant corporation thus, Consumer disputes sometimes stem from the ego of a party where the manufacturer/seller ready to fight on legal grounds backed by the best legal advice and may not budge from its original position in Mediation. It can also be an ego of a consumer who gives high credence to the fact that the Consumer Forum is his/her forum where consumer rights are upheld thus, feels protected and won't budge from the original position irrespective of Mediators' efforts/techniques. This may be a big hurdle in Mediation in Consumer disputes.

Also, long three months of Mediation period for a consumer of considerably smaller/medium value complaint who accepted Mediation to save time if unable to find a solution i.e. neither able to use the product/service for all such time nor getting the refund and can't even buy the same product of another manufacturer, is likely to see Mediation as a hindrance in justice.

Mediation therefore is not a solution fit for all and suits more to the high value disputes.

Conclusion

Inclusion of Mediation provisions in CPA as a Consumer Dispute Redressal mechanism; no doubt has strengthened the Consumers' right of an expeditious settlement of their disputes. Consumer mediation makes CPA a better consumer protection legislation.

The provisions requiring physical presence of parties at Mediation cells put hurdles in Mediation, ignores the increasingly large number of young, tech savvy, internet connected consumers in Bharat who being e-commerce lovers; like to see fast results. Also, it adds on Govt. a substantial financial burden and challenge of developing huge mediation infrastructure at District commission level across Bharat.

Now, the Mediation Act, 2023 takes consumer mediation in its fold with features like pre-litigation, online-mediation, registration and enforcement of mediated settlements, can fill the gaps.

Since, consumer mediation in new CPA introduced only in July-2020 in middle of Covid-19 lockdown; its full implementation with use of consumer mediation depends upon the readiness of mediation cells at each district commission that may take time.

References

1. https://pure.uva.nl/ws/files/1365104/88682_thesis.pdf
2. <https://slsa.tripura.gov.in/sites/default/files/Mediation%20Training%20Manual%20for%20Awareness%20Programme.pdf>
3. [https://indiankanoon.org/doc/139459658/#:~:text=\(1\)Where%20it%20appears%20to,the%20terms%20of%20a%20possible](https://indiankanoon.org/doc/139459658/#:~:text=(1)Where%20it%20appears%20to,the%20terms%20of%20a%20possible)
4. <https://www.researchgate.net/publication/365183385>
5. https://consumeraffairs.nic.in/sites/default/files/file-uploads/latestnews/ConsumerHandbook_Mediation.pdf
6. Consumer Handbook on Mediation book.cdr (consumeraffairs.nic.in) <https://consumeraffairs.nic.in/sites/default/files/file-uploads/latestnews/ConsumerHandbook_Mediation.pdf> accessed 12 April 2022.
7. Gregg and Niranjana (n 4).