



ISSN 2582 - 211X

# LEX RESEARCH HUB JOURNAL

On Law & Multidisciplinary Issues

Email - [journal@lexresearchhub.com](mailto:journal@lexresearchhub.com)

**VOLUME I, ISSUE III**  
**JUNE, 2020**

<https://journal.lexresearchhub.com>

**Lex Research Hub  
Publications**

## **DISCLAIMER**

All Copyrights are reserved with the Authors. But, however, the Authors have granted to the Journal (Lex Research Hub Journal On Law And Multidisciplinary Issues), an irrevocable, non exclusive, royalty-free and transferable license to publish, reproduce, store, transmit, display and distribute it in the Journal or books or in any form and all other media, retrieval systems and other formats now or hereafter known.

No part of this publication may be reproduced, stored, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior permission of the publisher, except in the case of brief quotations embodied in critical reviews and certain other non-commercial uses permitted by copyright law.

The Editorial Team of **Lex Research Hub Journal On Law And Multidisciplinary Issues** holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not necessarily reflect the views of the Editorial Team of Lex Research Hub Journal On Law And Multidisciplinary Issues.

**[© Lex Research Hub Journal On Law And Multidisciplinary Issues. Any unauthorized use, circulation or reproduction shall attract suitable action under applicable law.]**

## **EDITORIAL BOARD**

### *Editor-in-Chief*

**Mr. Shaikh Taj Mohammed**

Ex- Judicial Officer (West Bengal), Honorary Director, MABIJS

### *Senior Editors*

**Dr. Jadav Kumer Pal**

Deputy Chief Executive, Indian Statistical Institute

**Dr. Partha Pratim Mitra**

Associate Professor, VIPS. Delhi

**Dr. Pijush Sarkar**

Advocate, Calcutta High Court

### *Associate Editors*

**Dr. Amitra Sudan Chakraborty**

Assistant Professor, Glocal Law School

**Dr. Sadhna Gupta (WBES)**

Assistant professor of Law, Hooghly Mohsin Govt. College

**Mr. Koushik Bagchi**

Assistant Professor of law, NUSRL, Ranchi

*Assistant Editors*

**Mr. Rupam Lal Howlader**

Assistant Professor in Law, Dr. Ambedkar Government Law College

**Mr. Lalit Kumar Roy**

Assistant Professor, Department of Law, University of Gour Banga

**Md. Aammar Zaki**

Advocate, Calcutta High Court

## **ABOUT US**

**Lex Research Hub Journal On Law And Multidisciplinary Issues (ISSN 2582 – 211X)** is an Online Journal is quarterly, Peer Review, Academic Journal, published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essays in the field of Law and Multidisciplinary issues.

Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. **Lex Research Hub Journal On Law And Multidisciplinary Issues (ISSN 2582 – 211X)** welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

**MEDIATION IN CONSUMER DISPUTES WITH  
SPECIAL REFERNCE TO CONSUMER  
PROTECTION ACT 2019**

*Authors –*

**Chhabi Ojha Malik**

Assistant Professor

Vivekananda Institute of Professional Studies

**Mohita Yadav**

Assistant Professor

Vivekananda Institute of Professional Studies

## **ABSTRACT**

As it is rightly said by ancient Indian Jurist Patanjali, “Progress comes swiftly in Mediation for those who try hardest instead of deciding who was right and who was wrong”. Tracing its origin from private organizations mediation has gained popularity in our judicial system. Mediation is not only good in terms of attempting a mutual understanding between parties to address concerns but also is an important factor in all business practices more so in business to consumer relations. Being a less formal and friendly mechanism of dispute redressal, it should be adopted in resolving consumer disputes as well. Recently for more effective administration and on time settlement of consumer dispute the Centre gave assent to the Consumer Protection Act, 2019. This act aims at solely simplifying the entire process of consumer dispute redressal through speedier mediation proceedings. A reference can be made for mediation by Consumer Forum wherever there is a scope for early settlement if the parties agree to it. It provides for attaching mediation cells to consumer forums for the convenience of the consumers and ensures binding of the decision by providing for no appeal against the settlement. The act also aims at covering electronic transactions explicitly which the Consumer Protection Act did not have. It protects the consumers personal and confidential information which they usually share with the sellers. The objective of this paper is to study the advantages and disadvantages of mediation in solving consumer disputes and bring forth some of the legal and social challenges in making mediation an effective tool to resolving consumer disputes.

*Keywords: Mediation, Consumer Protection Act, Electronic Transactions, Consumers.*

## **INTRODUCTION**

In order to securing to all or any residents equity, social, monetary and political, as guaranteed within the Preamble of the Constitution, cannot be acknowledged unless the three organs of the State, i.e., the law making body, the administration and therefore the courts join together to get ways and implies for giving to the Indian poor equivalent access to the State’s equity framework. the buyer Protection Act, 1986 was established to assure better interests of

consumers and for the settlement of consumers dispute. The Act gives compelling, economical and rapid redressal of customers' grievances, which can't be obtained by common courts. This Act is another case of ADR for the compelling meditation of consumers' debate. The Act accommodates three-level fora, that is, District Forum, State Commission and thus the National Commission for redressal of grievances of consumers. Extensive quantities of consumers are drawing nearer these forums to seem for quick redressal of their grievances.

The Arbitration and Conciliation Act of 1996 was subsequently authorized by the Parliament getting generous changes in mediation, with reference to the local and global disputes in question. Tracing its origin from private organizations mediation has gained popularity in our judiciary. Mediation isn't only good in terms of attempting a mutual affection between parties to deal with concerns but is also a crucial thinker about all business practices more so in business to consumer relations. Being a less formal and friendly mechanism of dispute redressal, it should be adopted in resolving consumer disputes also.

In simple terms "Mediation" may be a process of dispute resolution during which impartial third parties with its specialized communication skills and negotiation techniques intervenes during a conflict or dispute with the consent of the participants and assists them to succeed in a consensual and informed agreement. There exists a strong culture of mediation in India. Tracing down its roots from the time of Mahabharata where Lord Krishna mediated between Kauravas and Pandavas, we will see ongoing mediation procedures in daily lives also like elders within the family resolving domestic and property issues to panchayats providing community mediation. Mediation is, known to be the oldest and best way that societies have resolved their differences.

Recently for simpler administration and on time settlement of consumer disputes the Centre gave assent to the Consumer Protection Act, 2019. This act aims at simplifying the whole process of consumer dispute redressal through speedier mediation proceedings. A reference is often made for mediation by Consumer Forum wherever there's a scope for early settlement if the parties comply with it. It provides for attaching mediation cells to consumer forums for the convenience of the consumers and ensures binding of the choice by providing

for no appeal against the settlement. The act also aims at covering electronic transactions explicitly which the buyer Protection Act didn't have. It protects the consumers personal and tip which they typically share with the sellers.

## **ROLE OF MEDIATION IN CONSUMER DISPUTES**

The route towards the choice dispute resolution mechanism in India are often traced back to the Bengal Regulation Act, 1772 which said that “in all instances of questioned records, parties are to present an equivalent to mediators whose choice are regarded a final judgment and will be last and left unquestioned.”

A suggestion made to the Second Law Commission by Sir Charleswood to follow a consistent law with reference to arbitration led to enactment of The Code of Civil Procedure. Indian Contract Act, 1872 additionally perceives discretion understanding as a special case to Section 28, which imagines that any agreement in restriction of remedy through lawful procedure is void. Later, the Arbitration Act, 1899 was likewise sanctioned to use to the Presidency towns to encourage settlement of questions out of court. The Arbitration Act, 1940 repealed and supplanted the previous Act of 1899. When India became a state signatory to the protocol on arbitration under the Geneva Convention and keeping in mind the highest goal to provide impact to the same, the Arbitration (Protocol and Convention) Act was passed. Later, India likewise became a signatory to the any Convention and to supply effect Foreign Awards (Recognition and Enforcement) Act, 1961 was passed.

After liberalization within the year 1990's Arbitration and Conciliation Act, 1996 was ordered which superseded the previous Act of 1940 and achieved radical changes within the law of arbitration and acquainted ideas like Conciliation with a guarantee of the expedient settlement of issues/problems/disputes of mainly business. a number of the key features being:

- it is less costly.
- it is comparatively less tedious.

- Parties are allowed to speak freely about their disparities with no apprehension of exposure within the witness of any law courts
- Parties have a psychological aspect that there's no losing or winning side between them be it their grievance is reviewed and their relationship is restored.

If we mention the role of the ADR within the settlement of consumer disputes and also the effectiveness with reference to the buyer dispute resolution in India, we may even see that it's gaining more importance now. It's emphasised that speedy justice is the privilege of every contesting individual. Within the present set-up, it takes 10 to 30 or could also be more years before a matter is eventually decided<sup>1</sup>. Within the recent past, the sector of litigation has seen tons of growth and has expanded tremendously. Recently, one Hon'ble Judge of Delhi Supreme Court ascertained that around 464 years are going to be required to clear the overdue cases. Such scenarios make the people disappointed towards Mediation in resolving the buyer disputes.

With ADR, there's another road for the overall population to settle their disputes. ADR methods specially mediation will truly accomplish the target of rendering social equity to the overall population, which truly is that the objective of the effective legal framework.

It is important to comprehend the advantages of Mediation to know how it helps and supplements the Courts.

The essential aim with regard to Consumer Protection, of ADR development is that the evasion of vexation, cost and defer and advancement of the proper of "access of equity" for all. ADR can be divided into two classes; court-added alternatives (it incorporates mediation, conciliation) and community-based dispute resolution instrument (Lok-Adalat). So far as the different consumer fora under the Act<sup>2</sup> are concerned, they are of the view that the said fora

---

<sup>1</sup> Report No. 222 of Law Commission of India, Need for Justice-dispensation through ADR etc., (2009).

<sup>2</sup> The Consumer Protection Act, 1986.

must have the advantage of the provisions identifying with ‘general procedural. After the revival of Section 89<sup>3</sup> by the Law Commission, it was proposed to be amended as under: “Section 89: Settlement of disputes outside the court through may be by Arbitration, Conciliation, Judicial settlement where the Judicial Officer shall endeavour to effect a compromise between the parties and shall follow such procedure as could even be prescribed; to Lok Adalat, the provisions of sub-sections (3) to (7) of section 20, sections 21 and 22 of the Legal Services Authorities Act, 1987 shall apply in respect of the dispute so referred and the Lok Adalat shall send a replica of the award to the 25 court concerned and just in case no award is passed, send a quick report on the proceedings held and the outcome thereof and for mediation, the court shall refer the same to a suitable institution or person or persons with appropriate directions such as time-limit for completion of mediation and reporting to the court.

In the judgment of the Supreme Court of India in **Salem Bar Association vs. Union of India**<sup>4</sup>, the Supreme Court had requested to prepare draft model rules for Alternative Disputes Resolution (ADR) and also draft rules for mediation under section 89(2)(d) of the Code of Civil Procedure, 1908. Pursuant to the said judgment, the Law Commission prepared a group of draft rules. They are in two parts – the primary part consisting of the procedure to be followed by the parties and therefore the Court within the matter of selecting the actual method of ADR. The second part consists of draft rules of mediation under section 89(2)(d) of the Code of Civil Procedure, 1908.

Thus, from the above importance of the part of “mediator” in India is very clear and can be acknowledged, in connection to section 89 of the Code of Civil Procedure moreover<sup>5</sup>.

The distinction lies in the way that the “conciliator” can make a proposition for settlement, “formulate” or “reformulate” the terms of a conceivable settlement while a “mediator” would not do intrinsically but rather would just encourage a settlement between the parties. Out of the methods of ADR, mediation is that the most suited system for a nation like.

---

<sup>3</sup> Code of Civil Procedure, 1908.

<sup>4</sup> 2003 (1) SCC 49.

<sup>5</sup> Mediation Clinic at University of Houston, available at <https://www.law.uh.edu/clinic/mediate.asp>, (last visited on April 28, 2015).

India, on the grounds that each one around individuals in India at any rate in the provincial ranges might want to settle their question agreeably. Arbitration has certain disadvantages:

The Consumer Protection Act, 2019 was framed for speedy disposal of cases and therefore it focuses on ADR in consumer dispute resolution. The consumer courts are getting to be similar to common courts, with presidents (legal individuals) requesting a more formal methodology. Presently, the framework has improved significantly due to a change within the law requiring a selecting committee to appoint them. Commercially are additionally being discharged for a better choice. Much of the time the arrangements of the State Commission Presidents don't keep going for over two years on a normal when they are really required to be in office for five years or up to the age of 65, whichever is prior. There is a lazy methodology in selecting such individuals.

The International Mediation Institute (IMI) has addressed that it's required for consumers to consent to sponsored or free mediation by means of lawful guide plans would be important since numerous won't have encountered mediation and might how or another reject the thought through the absence of experience or understanding. it's to be noticed that ADR too isn't flawless and Arbitration in India has neglected to accomplish its targets by the problems of problems of conventional litigation, almost like the postponement, over-accentuation of procedural law and regular suspensions. These elements have welcomed the consideration of partners in build up a solid institutional arbitration advancing their interests. As has been demonstrated within the present study, without an all-around sorted out institutional setup, the act of assertion i.e. arbitration wouldn't realize the wanted results. As inspected in several sections, different methods of ADR viz. intervention and Lok Adalats then forth are, because it were, effective in determining debate in sight of their institutional setup<sup>6</sup>.

It is perceived that obligatory mediation provisions in consumer contracts are characteristically unjustifiable, and are unmistakable from understandings made by parties of

---

<sup>6</sup> Mediation Clinic at University of Houston, available at <https://www.law.uh.edu/clinic/mediate.asp>, (last visited on April 28, 2015).

equivalent bartering power with a through and thru freedom to hunt after substitute method of remedy. Pre-dispute mediation provisos in consumer contracts should be set under a special legitimate class and ought to not tend an equivalent reverence as different understandings to parley.

After the enactment of the new Consumer Protection Act, 2019 the entire concept of consumer Dispute resolution has changed. Bringing into the image Mediation as dispute resolution mechanism, the act focusses on quick redressal. CHAPTER V of the 2019 Act talks about MEDIATION. this act by providing a separate chapter has made mediation strong because it provides for a stringent mediation. the provisions handling mediation under chapter V are from section 74-81. S 74. The government shall establish, by notification, a consumer mediation cell to be attached to every of the District Commissions and therefore the refore the State Commissions and the Central Government shall establish, by notification, a consumer mediation cell to be attached to the National Commission and every of the regional Benches. Every consumer mediation cell shall maintain<sup>7</sup>:

- a list of empanelled mediators;
- a list of cases handled by the cell;
- record of proceeding; and
- any other information as may be specified by regulations.

Every consumer mediation cell shall submit a quarterly report back to the District Commission, State Commission or the National Commission to which it's attached, within the manner specified by regulations. For the aim of mediation, the National Commission or the State Commission or the District Commission, because the case could also be , shall prepare a panel of the mediators to be maintained by the buyer mediation cell attached thereto , on the advice of a variety committee consisting of the President and a member of that Commission<sup>8</sup>.

---

<sup>7</sup> Singh Avtar, Law of Consumer Protection: Principles and Practices, (Eastern Book The company, Lucknow, 1997).

<sup>8</sup> S.74 of the Consumer Protection Act. 2019.

The act has also laid down the detail provision for qualifications and knowledge required for empanelment as mediator, the procedure for empanelment, the way of coaching empanelled mediators, the fee payable to empanelled mediator, the terms and conditions for empanelment, the code of conduct for empanelled mediators, the grounds on which, and therefore the manner during which, empanelled mediators shall be removed or empanelment shall be cancelled and other matters relating thereto, shall be like could also be specified by regulations<sup>9</sup>. 9A provision has also been made for the panel of mediators prepared under sub-section (1) who shall be valid for a period of 5 years, and therefore the empanelled mediators shall be eligible to be considered for re-empanelment for an additional term, subject to such conditions as could also be specified by regulations. The District Commission, the State Commission or the National Commission shall nominate a person from the panel of mediators mentioned in section 75, consider his suitability for resolving the buyer dispute involved<sup>10</sup>.

**It shall be the duty of the mediator to disclose:**

- any personal, professional or financial interest in the outcome of the consumer dispute;
- the circumstances which may give rise to a justifiable doubt as to his independence or impartiality; and
- such other facts as may be specified by regulations.

The District Commission or the State Commission or the National Commission, because the case could also be are when satisfied, on the knowledge furnished by the mediator or on the knowledge received from the other person including parties to the complaint and after hearing the mediator, it shall replace such mediator by another mediator<sup>11</sup>.

The mediation shall be held within the consumer mediation cell attached to the District Commission, the State Commission or the National Commission, because the case could also be. Where a consumer dispute is referred for mediation by the District Commission or the State Commission or the National Commission, depending upon the case may. the mediator

---

<sup>9</sup> S.75 of the Consumer Protection Act. 2019.

<sup>10</sup> S.75 of the Consumer Protection Act. 2019.

<sup>11</sup> S.76 of the Consumer Protection Act. 2019.

nominated by such Commission shall have reference to the rights and obligations of the parties, the usages of trade, if any, the circumstances giving rise to the buyer dispute shall be guided by the principles of natural justice while completing mediation. The mediator nominated shall conduct mediation within such time and in such manner as could also be specified by regulations. If an agreement is reached between the parties with reference to all of the problems involved within the consumer dispute or with reference to just some of the problems, the terms of such agreement shall be reduced to writing accordingly, and signed by the parties to such dispute or their authorised representatives<sup>12</sup>. The mediator is required to organize a settlement report and forward the signed agreement alongside such report back to the concerned Commission. Cases where no agreement is reached between the parties within the required time or the mediator is of the opinion that settlement isn't possible, he shall prepare his report accordingly and submit an equivalent to the concerned Commission. The District Commission or the State Commission or the National Commission, because the case could also be, shall, within seven days of the receipt of the settlement report, pass suitable order recording such settlement of consumer dispute and eliminate the matter accordingly. In situations, where the buyer dispute is settled only partially, the District Commission or the State Commission or the National Commission, because the case could also be, shall record settlement of the problems which are so settled and still hear other issues involved in such consumer dispute<sup>13</sup>. In case of failure in mediation, the District Commission or the State Commission or the National Commission, because the case could also be, shall still hear all the problems involved in such consumer dispute. Of these provisions prove that mediation under this act are going to be far more reform because it has proper framed rules to deal with the grievances of the buyer. The new act also says that Mediation cells to be attached to Consumer Forum making it easier for the consumers to urge justice through Mediation. The simplest provisions. No appeal against settlement through mediation is allowed as per the new act.

---

<sup>12</sup> S.77 of the Consumer Protection Act, 2019.

<sup>13</sup> S.78 of the Consumer Protection Act, 2019

## **MEDIATION AS AN EFFECTIVE TOOL OF DISPUTE RESOLUTION: CHALLENGES**

The 2019 Act establishes mediation centre to require control of consumer grievances and providing a swift resolution. It suggested some mediation mechanisms setup like Referring cases to Consumer forums where an opportunity exists for prompt settlement of parties in order that the buyer who has already suffered suffers no delay in getting his rights. By disallowing appeals against settlements made through mediation the new act gives a robust message that the buyer should choose mediation rather than normal courtrooms. It also covers the Electronic Transactions explicitly which the buyer Protection Act (COPRA), 1986 did not have. Business houses, consumer activists, government and international bodies are increasingly taking over to such technology-driven negotiations and mediation in settling commercial disputes.<sup>14</sup> Still there are some hurdles which a consumer may need to face during a developing nation like India where in people aren't only unaware about their rights but also are unaware about the concept of mediation.

### **LACK OF TRAINED MEDIATORS:**

Essence of mediation lies within the role of the mediator. The role of the mediator is to make such an on parties that they get motivated towards resolving the dispute during a purely voluntary settlement of agreement. He has got to understand the problems between the parties and for that he has got to have open communication between the parties and between the parties and himself<sup>15</sup>. Considering the techniques of mediation, imparting formal training for mediators may be a necessary. Widely it's accepted and put into practice by the varied legal systems within the world that training is being imparted to the persons for becoming mediators to mediate between the parties. thus far as India cares, the Mediation and Conciliation Project Committee, Supreme Court of India is conducting the training programme. However, if we have an in depth look we will see that in India overall that there's shortage of trained mediators. within the 3rd National Conference on Mediation

---

<sup>14</sup> S.81 of the Consumer Protection Act, 2019

<sup>15</sup> Dr. Justice Dhananjaya Y. Chandrachud, Mediation – Realizing the potential and designing implementation strategies, page No.6-7 sourced from the website of the Law Commission of India.

held at New Delhi on 8th July, 2012, Hon'ble Mr. Justice Siri Jagan, Judge, supreme court of Kerala has expressed his concern regarding lack of trained mediators<sup>16</sup>. The numbers of persons who are expertized in providing trainings of mediation are not enough in number.

This successively hampers the training programme of mediation and ultimately creates obstacles within the implementation of the mediation. Hon'ble Mr. Justice Sunil Ambawani<sup>17</sup>, has acknowledged certain challenges in implementation of mediation. one among which is regarding non availability of adequate numbers of trainers.

### **LESS REFERRALS:**

Section 89 of the Code of Civil Procedure provides for reference of cases to at least one of the modes of other dispute resolution. It is obligatory on the part of the Judge to refer the case to anybody mode of other dispute resolution. However, experiences show that the Judges aren't referring cases to the techniques of other dispute resolution.

### **POOR INFRASTRUCTURE:**

Mediation may be a process where there's need of focused attention for resolution of disputes. it's being so there's need of an area required to run the mediation centre. It also requires sufficient space for accommodating mediators and therefore the space for separate also as joint meetings of the parties. Further, space for lounge, and other infrastructure facilities like staff, computers, facilities for water, toilet facilities. The atmosphere of the mediation centre must be informal and it should be situated within or near the Court premises.

### **NO SUITABLE LEGISLATION:**

Presently the legal provisions for referring the case for mediation is under Section 89 of the Code of Civil Procedure. As far because the Lok Adalats are concerned, there's legal provision available within the Legal Services Authorities Act, 1987. The Arbitration and

---

<sup>16</sup> Report on Third National Conference on Mediation held at New Delhi on 8th July, 2012 page 26.

<sup>17</sup> Judge, High Court of Allahabad, report of the Third National Conference on Mediation held at New Delhi on 8th July, 2012 page 9.

Conciliation Act, 1986 deals with the Arbitration and Conciliation. But, for mediation no separate legislation is there alive. In our country the method of mediation is being conducted through the Mediation and Conciliation Project Committee constituted by the Supreme Court of India. albeit it's appointed by the Supreme Court of India its directions are being followed within the country, but, for the aim of proper implementation of the mediation process at every level, it's necessary that some legislation on mediation is required.

**RESISTANCE IN PARTIES INVOLVED:**

Judges may feel that mediation is undermining their authority to make public judgments and normative pronouncements. Other cause can be professional incentives which may discourage judicial support for mediation. Lawyers on the other hand may be concerned that mediation threatens their livelihood by reducing the number of matters they handle or fees they charge. Additionally, they may wonder about the value of their own role in a mediation and how they will act as zealous advocates when their parties do not want to settle and engage in a process that calls for cooperation<sup>18</sup>. It is also seen that litigants feel anxious about mediation as an alternative to the court system. It is because they feel fearful or comforted by the familiarity of the court system, insecure about making decisions of their own interests<sup>19</sup>.

**LACK OF MANAGEMENT:**

In India the entire mediation activities are being controlled by the Mediation and Conciliation Project Committee, Supreme Court of India. In most of the High Courts organizing committee of the sitting Judges of the Hon'ble High Court is constituted so also at the District places District Judges and other Judicial Officers are looking after the mediation activities. In lieu of their duty to perform judicial duties, they are unable to devote enough time and this results in no proper management thereof.

**LACK OF ADEQUATE FUNDS:**

There is need of suitable space for mediation centre also as sufficient numbers of devoted staff members and proper infrastructure and management thereof. Further, some sort of fees

---

<sup>18</sup> Hiram E. Chodosh, Mediating Mediation in India sourced from the website of the Law Commission of India.

<sup>19</sup> Mediation News Letter published by the Gujarat State Legal Services Authority, Volume I Issue 5, Page 8.

or honorarium is required to be paid to the mediators who are engaged in a mediation process. For all these purposes, there is need of funds available for every mediation centre.

**MEDIATION PROCESS ITSELF:**

One of the challenges and obstacles in the mediation implementation is mediation process itself. There are special points relating to this mediation process which creates hurdles in the mediation process implementation. They can be referred to as follows: -

- Selection of an appropriate mediator is additionally a necessary step for successful mediation. A mediator's knowledge, experience, skill and approach features a significant impact on the result of the mediation. If, proper mediator isn't selected for the given problem then it'd hamper the whole mediation process and should end in unsuccessful mediation.

- Parties involved tend to misunderstand each other and make negative assumptions about each other.

- Mediators instinct may lead to entrapment words or behaviour's, which can be as many obstacles to the success of a mediation process. If mediators are not aware of how misleading some intuitions can be, then there is risk of losing their efficiency in the process.

- Neutrality and impartiality are essential elements of the mediation process and these terms are often used in mediation agreements. The Mediators are expected to be completely neutral despite of the attribute being inherently judgmental. It is sometimes observed that Mediators fail to maintain a neutral stand or to even create a perception of neutrality which may lead to loss of trust by the parties or ultimately in the failure of the mediation process.

**LACK OF AWARENESS:**

Lack of awareness about mediation amongst the rural people, who mistook mediation as another form of Lok Adalat, thinking that the mediation process involved more participation

of the litigants and empowered them to find their own solutions<sup>20</sup>. There is also lack of awareness amongst judges, advocates and litigants regarding the effectiveness and usefulness of the process of mediation.

### **CONCLUSION: NEED FOR SETTING MEDIATION STANDARDS**

Standards are meant to be state of the art specifications for products, services and good practice, helping to make a person or an entity more efficient and effective. Mediation emerging as a preferred mode of dispute resolution, especially in India It is essential that each one of the partners in the Mediation process revisits various aspects of Mediation capabilities, skill and process with an aim to set higher standards. The skill of the mediator helps the parties to think and to think along as well as to consider the various possibilities of resolving a dispute. The mediator's skill converts a position-based bargaining into an interest-based bargaining. It is this skill which helps the parties to look at their future interests and concerns rather than complaints about injuries and damages suffered in the past<sup>21</sup>. The Judges are also required to be trained in the technique of mediation, he/she would handle things in a manner in which each diagnose the true ailment and offer appropriate remedies. The mediator is specially trained to not only allow the parties to speak but to extract as much information as possible from each party. The mediator has to have control over the process. The mediator has to know how to handle emotional outbursts including anger and grief. In fact, different emotions are at times constitute an important factor of the grievance. If a good training is provided to any good lawyer he can transform into a good mediator.

---

<sup>20</sup> Address of Hon'ble Mr. Justice Siri Jagan, High Court of Kerala in the Third National Conference on Mediation held at New Delhi. Report on the Third National Conference on Mediation held at New Delhi on 8th July, 2012, page 26.

<sup>21</sup> Why Training in Mediation – Ms. Manju Geol. Just. (Retd.) – SAMADHAN – Reflections