



MEDIATION



Dr. Kapil Sharma

Brainstorming

- Adjudication
- Arbitration
- Expert Determination
- Mediation
- Lok Adalat
- Ombudsman
- Early neutral determination
- Judicial settlement
- Fact finding



Drill Down

Pending Dashboard

Disposed Dashboard

Alerts

Information Management

10980286

Civil Cases



33162491

Criminal Cases



44142777

Total Cases



6358437 (57.91%)

Civil Cases More Than 1 Year Old



20287751 (61.18%)

Criminal Cases More Than 1 Year Old



26646188 (60.36%)

Cases More Than 1 Year Old



The above shown figures are upto Current Date





A-

A

A+

A

A



At a Glance

Pending Dashboard

Disposed Dashboard

Pending Civil Cases

62268

Less Than 1 Year Old: 17415



Pending Criminal Cases

17272

Less Than 1 Year Old: 7063



Total Pending Cases

79540

Less than 1 year old: 24478



Instituted in last month

3,195

Civil

1,723

Criminal

4,918

Total

Disposal in last month

2,788

(87.26%)

Civil

1,566

(90.89%)

Criminal

4,354

(88.53%)

Total

Mediation

- **S. 2(h) of Mediation Act, 2023**
 - “mediation” includes a process, whether referred to by the expression mediation, pre-litigation mediation, online mediation, community mediation, conciliation or an expression of similar import, whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person referred to as mediator, who does not have the authority to impose a settlement upon the parties to the dispute.

Definition of Mediation

- Mediation is;
 - A voluntary
 - Party centred
 - Structured
 - Negotiation process
 - Conduct by a neutral third party
 - Who uses specialised communication and negotiation techniques
 - To assist parties in resolving the disputes

Kinds of Mediation

- Court-Annexed Mediation
 - Referral Order
 - Role of Court
 - Afcons infrastructure and Ors. v. Cherian Verkay Construction and Ors.
- Private Mediation (Institutional Mediation)

Hybrid Models of Mediation

Med-Arb

Arb-Med

Arb-
Med-Arb

Stakeholder in Mediation and their Roles

- Parties
- Lawyers:
 - Pre-mediation
 - During mediation
 - Post-mediation
- Mediator

Mediation Agreement (S.4, MA, 2023)

- (1) A mediation agreement shall be in writing, by or between parties and anyone claiming through them, to submit to mediation all or certain disputes which have arisen or which may arise between the parties.
- (2) A mediation agreement may be in the form of a mediation clause in a contract or in the form of a separate agreement.
- (3) A mediation agreement is in writing, if it is contained in or recorded as—
 - (a) any document signed by the parties;
 - (b) an exchange of communications or letters including through electronic form as provided under the Information Technology Act, 2000;
 - (c) any pleadings in a suit or any other proceedings in which existence of mediation agreement is alleged by one party and not denied by the other.
- (4) A reference in any agreement containing a mediation clause shall constitute a mediation agreement if the agreement is in writing and the reference is such as to make the mediation clause as part of the agreement.
- (5) The parties may agree to submit to mediation any dispute arising between them under an agreement, whether entered prior to arising of the dispute or subsequent thereto.

IAMC Model Clauses

Mediation

- In the event of any dispute arising out of or in connection with the present agreement, the parties shall, in the first instance, refer the dispute to Mediation under the IAMC Mediation Rules. Such reference shall be by way of a notice in writing, and will be a notice for the purpose of commencement of conciliation.
- The commencement or pendency of mediation under the IAMC Mediation Rules will not prevent any party from seeking interim relief or reliefs for the purpose of preserving their rights.
- If the dispute has not been settled through mediation under the IAMC Mediation Rules within _____ days following the commencement of mediation or within such other period as the parties may agree in writing, such dispute shall thereafter be finally resolved through _____.

IAMC Model Clauses

Med-Arb

- In the event of any dispute arising out of or in connection with the present contract, the parties shall first refer the dispute to mediation under the IAMC Mediation Rules. Such reference shall be by way of a notice in writing, which shall also be deemed to be a notice for the purpose of commencement of arbitration. If the dispute is not settled pursuant to the said Rules within 45 days following the filing of a Request for Mediation or within such further period as the parties may agree in writing, such dispute shall thereafter be referred to arbitration and finally resolved under the IAMC Arbitration Rules. For the avoidance of doubt, it is clarified that:
 - a) all disputes that fall within the scope of arbitration agreement may be resolved in such arbitration; and
 - b) even during the pendency of mediation, parties may seek interim relief or Emergency Measures under the Emergency Arbitrator Provisions in the IAMC Arbitration Rules

IAMC Model Clauses

Arb-Med-Arb

- In the event of any dispute arising out of or in connection with the present contract, including any question regarding its existence, validity or termination, the parties shall first refer the same for arbitration to be finally resolved under the administration of IAMC in accordance with the Arbitration Rules of IAMC for the time being in force. The seat of Arbitration shall be “___”. The Tribunal shall consist of one or more arbitrators appointed in accordance with the said Rules. The language of the arbitration proceedings shall be English. The law governing the arbitration agreement shall be “___”. The law governing the contract shall be “___”.
- The parties further agree that following the commencement of arbitration, they will attempt in good faith to resolve the Dispute through mediation at IAMC, in accordance with the IAMC Arb-Med-Arb Protocol for the time being in force. Any settlement arrived in respect of some or all their disputes in the course of mediation shall be referred to the arbitral tribunal appointed by IAMC and may be recorded as an arbitration award (interim or final, as the case may be) on agreed terms.

Agreement to Mediate

- http://www.arbitrationindia.com/pdf/form_om2.pdf
- <https://adrchambers.com/wp-content/uploads/2017/06/2017-02-24-Sample-Agreement-to-Mediate.pdf>

Phases of Mediation v. Stages of Mediation

Phases of Mediation	Stages of Mediation
Opening statement	Introduction
Joint session	Gathering information
Private session (caucus)	Problem identification
Wrap up of a session	Generation and evaluation of options
Wrap up of the Mediation Wrap up in case of non-settlement Wrap up in case of settlement	Selection of options
The settlement agreement	Agreement

Key Elements of Settlement Agreement

- A. Essence of a dispute
- B. The delineation of procedure and sessions
 - Appointment of a mediator; number of sessions; and what makes them come to the resolution
- C. Settlement: in-all or portion
- D. The descriptive role
 - What is to be done?; when is to be done?; by whom it has to be done?; and how it has to be done?
- E. Compliance and non-compliance
- F. Penalty for delay
- G. Withdrawal of legal proceedings
- H. Other terms and conditions

Steps of Writing Settlement Agreement

- Recognisable parties
- Well defined terms
- Comprehensive language
- Set consequences
- Reasonable undertakings
- Undertaking ways to settle disputes occurring in future
- Revisions
- Read the agreement aloud
- Sign the agreement

Enforcement of Mediation Settlement Agreements

- Private mediation
- Mediation u/s of the Arbitration and Conciliation Act, 1996
- Conciliation u/s 30, 73 and 74 of the Arbitration and Conciliation Act, 1996
- Court ordered mediation
- S.19, 20, 27 of the Mediation Act, 2023

Confidentiality

- Extent of confidentiality in mediation
- Agreement to confidentiality
 - E.g. https://www.alberta.ca/system/files/custom_downloaded_images/jsg-mediation-confidentiality-agreement.pdf
- Confidentiality of Documents
- Confidentiality in virtual hearing

Provisions Supporting Confidentiality

- Arbitration and Conciliation Act, 1996 (before enactment of Mediation Act, 2023)
 - S. 70, 75, 80, 81
- Court Referred Mediation
 - Rules framed by courts under the CPC
- Mediation Act, 2023
 - S.22

- **The Companies (Mediation and Conciliation) Rules, 2016**
- **21. Confidentiality, disclosure and inadmissibility of information**
- (1) When a mediator or conciliator receives factual information concerning the dispute from any party, he shall disclose the substance of that information to the other party, so that the other party may have an opportunity to present such explanation as it may consider appropriate:
- Provided that when a party gives information to the mediator or conciliator subject to a specific condition that the information may be kept confidential, the mediator or conciliator shall not disclose that information to the other party.
- (2) The receipt or perusal, or preparation of records, reports or other documents by the mediator or conciliator, while serving in that capacity shall be confidential and the mediator or conciliator shall not be compelled to divulge information regarding those documents nor as to what transpired during the mediation or conciliation before the Central Government or the Tribunal or the Appellate tribunal or as the case may be, or any other authority or any person or group of persons.
- (3) The parties shall maintain confidentiality in respect of events that transpired during the mediation and conciliation and shall not rely on or introduce the said information in other proceedings as to-
 - (i) views expressed by a party in the course of the mediation or conciliation proceedings;
 - (ii) documents obtained during the mediation or conciliation which were expressly required to be treated as confidential or other notes, drafts or information given by the parties or the mediator or conciliator.
 - (iii) proposals made or views expressed by the mediator or conciliator;
 - (iv) admission made by a party in the course of mediation or conciliation proceedings.
- (4) There shall be no audio or video recording of the mediation or conciliation proceedings.
- (5) No statement of parties or the witnesses shall be recorded by the mediator or conciliator.

Cases on Confidentiality

- **Moti Ram (D) Thr. L.Rs. and Anr. vs. Ashok Kumar and Anr. (2011) 1 SCC 466**
 - The court observed that mediation proceedings are confidential, and if the mediation has not resulted in agreement the report should simply state that mediation has been unsuccessful” and nothing more.
- **Perry Kansagra v. Smriti Madan Kansagra (2019) 20 SCC 753**
 - The court held that the departure from the confidentiality requirement is consistent with underlying theme of the Act in general and section 12 in particular.