

CLASS- B.A.LL.B. IX SEMESTER
SUBJECT- CONSUMER PROTECTION LAWS AND COMPETITION
LAWS
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MEDIATION

Consumer Protection Act, 2019 provided for an alternative which was most needed in the Indian system. The A.D.R mechanism in the 2019 Act provided for mediation as solution to disputes and quick provision of justice. Chapter V of the Consumer Protection Act of 2019 provides for a mediation process for consumers to avail¹.

Mediation is a process wherein the parties meet with a mutually selected impartial and neutral person who assists them in the negotiation of their differences². It can also defined as the process of talking to two separate people or groups involved in a disagreement to try to help them to agree or find a solution to their problems.³

Section 2(25) of the Consumer Protection Act, 2019 define the word "mediation" means the process by which a mediator mediates the consumer disputes;

This Act provides for the establishment of mediation cells at three levels - National, State and District with all three being attached to the respective commissions.

¹ <https://5thvoice.news/legalnews/NzE3NQ==/The-Consumer-Protection-Act-2019-Mediation-in-consumer-issues> visited on 14/10/2020 time- 3:21 pm

² <https://www.jamsadr.com/mediation-defined/> visited on 12/10/2020 time- 3:21 pm

³ <https://dictionary.cambridge.org/dictionary/english/mediation> visited on 12/10/2020 time- 3:24 pm

Establishment of consumer mediation cell

The State Government shall establish a consumer mediation cell to be attached to each of the District Commissions and the State Commissions of that State⁴ and the Central Government shall establish a consumer mediation cell to be attached to the National Commission and each of the regional Benches⁵.

Every consumer mediation cell shall maintain—

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

Every consumer mediation cell shall submit a quarterly report to the District Commission, State Commission or the National Commission to which it is attached, in the manner specified by regulations.

Empanelment of mediators

National Commission or the State Commission or the District Commission, shall prepare a panel of the mediators to be maintained by the consumer mediation cell attached to it, on the recommendation of a selection committee⁶. The panel of mediators shall be valid for a period of five years, and the empanelled mediators shall be eligible to be considered for re-empanelment for another term⁷.

⁴ Section 74(1), Consumer Protection Act, 2019

⁵ Section 74(2), Consumer Protection Act, 2019

⁶ Section 75 (1), Consumer Protection Act, 2019

⁷ Section 75(3), Consumer Protection Act, 2019

The District Commission, the State Commission or the National Commission shall, while nominating any person from the panel of mediators referred to in section 75, consider his suitability for resolving the consumer dispute involved⁸.

Duties of Mediator: Every mediator shall disclose—

- (a) any personal, professional or financial interest in the outcome of the consumer dispute;
- (b) the circumstances which may give rise to a justifiable doubt as to his independence or impartiality; and
- (c) such other facts as may be specified by regulations⁹.

Procedure for mediation

(1) The mediation shall be held in the consumer mediation cell attached to the District Commission, the State Commission or the National Commission, as the case may be.

(2) Where a consumer dispute is referred for mediation by the District Commission or the State Commission or the National Commission, as the case may be, the mediator nominated by such Commission shall have regard to the rights and obligations of the parties, the usages of trade, if any, the circumstances giving rise to the consumer dispute and such other relevant factors, as he may deem necessary and shall be guided by the principles of natural justice while carrying out mediation.

(3) The mediator so nominated shall conduct mediation within such time and in such manner as may be specified by regulations.

⁸ Section 76 , Consumer Protection Act, 2019

⁹ Section 77 , Consumer Protection Act, 2019

Settlement Through mediation

if an agreement is reached between the parties with respect to all of the issues involved in the consumer dispute or with respect to only some of the issues, the terms of such agreement shall be reduced to writing accordingly, and signed by the parties to such dispute or their authorised representatives.

(2) The mediator shall prepare a settlement report of the settlement and forward the signed agreement along with such report to the concerned Commission.

(3) Where no agreement is reached between the parties within the specified time or the mediator is of the opinion that settlement is not possible, he shall prepare his report accordingly and submit the same to the concerned Commission¹⁰.

Consumer Protection Mediation Rules, 2020

The recent development to the consumer mediation under the Act was when the union government notified the Consumer Protection (Mediation) Rules, 2020 on 15th July 2020[3]. The aforesaid mentioned rules provide a list of matters that cannot be submitted or referred to mediation under any circumstances. The list is as follows: –

- The matters relating to medical negligence resulting in grievous injury or death.
- Offenses relating to defaults committed, for which applications of compounding of offenses has been filed by one or more parties.
- Cases involving serious allegations of fraud, fabrication of documents, forgery, impersonation, and coercion.
- Cases relating to criminal prosecution and of non-compoundable offenses.

¹⁰ Section 80 , Consumer Protection Act, 2019

- Cases involving public interest litigation.
- In any case other than those mentioned under this rule, the Commission before which the suit is lis pendens may choose to not refer the dispute for mediation if it appears to the Commission that no scope of a settlement exist which may be acceptable to the parties or else mediation might not be an effective or appropriate tool having regard to the circumstances of each case¹¹.

Refund of fee.

Where the Commission refers the parties to mediation, the complainant shall be entitled to receive full amount of application fee paid in respect of such complaint, if a settlement is reached between such parties¹².

Mediation is the need of the hour for the speedy and efficient disposal of consumer cases and it's commendable looking at the way the government has a clear plan to employ mediators who can solve disputes, thereby, adding less burden on the judiciary¹³.

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¹¹ Section 4, Consumer Protection Mediation Rules, 2020

¹² Section 5, Consumer Protection Mediation Rules, 2020

¹³ <https://blog.ksandk.com/litigation/role-of-mediation-in-consumer-dispute/> visit on 13/10/2020 time: 10:41 pm.

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