

Mediation as a Prominent Dispute Resolution Mechanism

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Abstract

Getting justice from the Indian courts these days is highly costly and time-consuming. There are too many cases in the Indian courts. "Around five major cases are still pending in Indian courts at various levels as of December 31st, 2022" (NDTV, 2023). William Edward Gladstone famously said, "Justice delayed is justice denied." This suggests that justice will not be considered genuine justice if it is not provided on time or if it is offered later. Time is therefore extremely valuable in the judicial delivery system. As a kind of Alternative Dispute Resolution (ADR), mediation has emerged as a key tool for settling conflicts amicably (Nasir, 2020). Through mediation, the parties can reevaluate their rights and shared interests and develop new conflict resolution strategies. In general, the court process is formal, but mediation is more efficient, simpler, more useful, quicker, and less expensive. As a result, among arbitration, conciliation, and negotiation, mediation has emerged as the most often used technique in alternative resolution systems.

Keywords: Justice, Dispute, ADR, Mediation, Conciliation, Efficient.

INTRODUCTION

The idea of mediation isn't new in India; it has a remarkable history dating back to the Vedic era. In the Mahabharata, Lord Krishna served as a mediator in internal conflicts between the Pandavas and Kauravas. In Indian culture, the Panchayat system heavily relies on mediation to resolve a variety of conflicts, including property and marriage problems.

In India, mediation is a voluntary process in which the disputing parties choose to settle their differences with the assistance of an impartial third party (Situmorang, 2022). Parties must designate a mediator and sign a formal agreement for this purpose. The disputing parties have the last say over decisions made during mediation; the mediator's job is just to help the parties find a solution (Melenko, 2020). Facilitating communication between the disputing parties and providing them with an opportunity to reconcile their differences is the goal of mediation (Ojo, 2023). Therefore, the idea of mediation is simply that the parties designate an impartial mediator or a facilitator of communication with their mutual consent. A mediator just assists parties in resolving their issues and coming to a settlement. Anybody can serve as a mediator, and parties can even engage ADR attorneys (Kazmi, 2022).

DEFINITION OF MEDIATION

Mediation is defined as "a non-binding dispute resolution process involving a neutral third party who attempts to assist the disputing parties in reaching a mutually agreeable solution" by the Dictionary of Bla-

ck's Law (Garner, 2024).

"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" is how the Dictionary of Cambridge defines mediation.

CHARACTERISTICS OF MEDIATION

Nowadays, mediation is the primary method of resolving disputes. It has gained popularity for a number of reasons, including the fact that it is less expensive, unbiased, saves parties time and money, prevents litigation, enhances communication between parties, and—above all—provides amicable solutions (Chi, 2023). Therefore, mediation turned out to be the most effective ADR strategy. The following are some of the main attributes:

- **It is non-binding procedure** - The mediator in a mediation process cannot compel the parties to accept the conclusion, as contrast to an arbitrator or a court. A mediator does not make decisions. His only responsibility is to serve as a mediator between the disputing parties (Gmurzyńska, 2021).
- **It is confidential Procedure** - The disputing parties cannot be forced to provide any private information during mediation. However, any secret material that a party voluntarily divulges in order to negotiate a settlement cannot be produced in court or arbitration and cannot be disclosed with others (Afiyati, et al., 2022).
- **An interest-based procedure** - The parties might apply their interests in mediation and communicate as a result. Settlements in mediation frequently provide greater value (Matsui-Santana et al., 2023).

TYPES OF MEDIATION

The two categories into which mediation is often separated are as follows:

1. **Court referred Mediation** - The civil court has the authority to declare unsettled matters for mediation under Section 89 of the Code of Civil Procedure, 1908. The Court typically refers family problems for mediation.
2. **Private Mediation** - Private mediation is available to everyone, including members of the general public, corporations, and even the government. Any competent individual can serve as a mediator in private mediation for a set fee.

PRE-INSTITUTION MEDIATION IN COMMERCIAL MATTERS

Another form of mediation that has emerged recently in business disputes is this one. The plaintiff must first pursue pre-institution mediation as a remedy for any disagreement that qualifies as a "Commercial Dispute" under Section 2(1)(c) of the Commercial Courts Act, 2015 and has a value of at least Rupees 3 lakhs.

Regarding mediation's breadth, a wide range of issues can be resolved through it, including those involving marriage, property, child custody, contracts, business, consumers, and employers and employees (Baimukhametova et al., 2023).

LEGISLATIVE PROVISIONS RELATING TO MEDIATION

- The Conciliators are empowered by Section 4 of the Industrial Disputes Act, 1947, to arbitrate labour disputes and promote their resolution. However, conciliation processes are still ongoing in the majority of instances.

- CPC 1908's Order XXXIIA also suggests mediation for a variety of conflicts, not just those involving individuals, families, marriages, guardianship, custody, and maintenance.
- Section 89 read with Order X Rule 1A of the Code of Civil Procedure, 1908: In accordance with Section 89 read with Order X Rule 1A of the CPC, the Court will instruct the parties to the suit to choose one of the ADR modes of settlement, such as arbitration, conciliation, Lok Adalat, or mediation, following the recording of the admission and denial of documents.
- In the event that there are disagreements over the amount owed to MSMEs, Section 18 of the Micro, Small, and Medium Enterprises (MSME) Development Act, 2006, offers conciliation.
- The Companies (Mediation and Conciliation) Rules, 2016 and Section 442 of the Companies Act, 2013 both expressly refer conflicts to mediation by the National Company Law Tribunal and Appellate Tribunal.
- Section 14(2) of the Hindu Marriage Act of 1955, Section 29(2) of the Special Marriage Act of 1954, and Section 9 of the Family Courts Act of 1984 require the court to attempt mediation as a first resort to resolve disputes between couples.
- Section 32(g) of the Real Estate (Regulation and Development) Act, 2016 stipulates that a dispute resolution forum should be used to amicably resolve disagreements between promoters and allottees.
- Legal Services Authorities Act, 1987: This law establishes legal services authorities at the federal, state, and taluka levels. Its primary goal is to give the less fortunate members of society free legal assistance. For Indian citizens who are unable to access judicial services because of their economic situation or handicap, this authority ensures justice.
- A Board of Mediators or Conciliators is established under Rule 3 of the Companies (Mediation and Conciliation) Rules, 2016. This clause makes it apparent that issues that are ongoing before the National Company Law Tribunal and Appellate Tribunal should be referred to mediation.
- In its 129th Report, the Malimath Committee and the Law Commission of India also suggested that the courts be consulted when resolving conflicts through mediation.
- The Amendment Act of 2018 introduced Section 12A to the Commercial Courts Act of 2015. This Act requires the parties to pursue a pre-institutional mediation process as a remedy for the plaintiff who does not need any immediate interim relief from the commercial court (Unknown, 2020).
- Sections 37–38 of Chapter V of the Consumer Protection Act of 2019: This Act also allows disputes to be referred to mediation. In accordance with Section 37 (1) of the Act, 2019, the District Commission may request written consent from the parties within five days to refer the matter to mediation if, at the initial hearing of the complaint or at any point during the hearing, the commission believes there is a possibility of a settlement through mediation.

CHALLENGES BEFORE MEDIATION

Prior to the mediation process, there are a number of obstacles, some of which are listed below:

1. **Lawyers generally hesitant to suggest mediation to their clients:** In general, attorneys are not very eager to recommend mediation to their clients. It might be because they are more accustomed to adversarial systems or because they are afraid of losing pay for each appearance (Cao et al., 2023).
2. **The Mindset of India People:** Indians dislike mediation attempts and would rather battle in court because they believe it to be a show of weakness to resolve disputes through mediation (Noone and Ojelabi, 2020).

3. ***It may be due to Judges are not actively promoting Mediation:*** Only the Supreme Court and High Courts are taking the initiative to promote mediation; lesser courts play a less active role. It can be because courts don't have the right framework for the mediation procedure (Prince, 2020).
4. ***Lack of awareness of mediation among public:*** Despite the legal inclusion of mediation provisions in many legislation, the general public still knows relatively little about the mediation process (Rule, 2020).
5. ***No legislation on mediation:*** The Arbitration and Conciliation Act governs ADR procedures in India. Regrettably, this Act does not include mediation. Parliament has yet to consider the Special Mediation Bill, 2021. This regulation is crucial for safeguarding the core ideas of self-determination, voluntariness, and secrecy. It will increase people's trust and make a mediated settlement agreement enforceable (Wicaksono, 2021).

CONCLUSION

One of the most amazing forms of alternative dispute resolution is mediation. These days, mediation is a crucial component of the primary dispute resolution process. According to Article 21 of the Indian Constitution, mediation would undoubtedly provide society with prompt justice if people are properly informed about it and encouraged to use it (Shafqat et al., 2022). Since mediation is the finest way to settle disagreements between parties and would be the best addition to the Indian judicial system, the judiciary, particularly the Advocates Bar Association, must work to promote it. It is imperative that the government act quickly to pass the Mediation Bill, 2021, as recommended by the Honourable Supreme Court of India.

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