

“Mediation: Need of the Hour”

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1. INTRODUCTION

The Indian judicial system has become the bedrock of India's democratic system and has contributed to the country's economic stability by providing justice to the general public. There have been many cases that chose for informal conflict settlement before India's legal system came into existence, even though our country's courts have been around for quite some time. The modern concept of "Mediation" shares many similarities with these more casual approaches. An alternative to going to court is this method of settling conflicts. In mediation, a neutral third party helps parties overcome their differences by facilitating the use of appropriate techniques to resolve the conflict. The parties cannot be forced to follow the mediator's conclusion since the mediator is not a decision maker in and of himself. Therefore, the State's coercive authority should be used to drive litigants who are unwilling to negotiate to the bargaining table, so that weaker parties can still protect their legal and contractual rights without being negatively impacted by authoritative court decisions.¹

2. ANALYSIS

Mediation is the most preferred form of alternative conflict resolution since it is the most adaptable as it does not include predetermined procedures. It is an impartial process that focuses on the parties. The parties are free to end the mediation process at any point without providing a reason. Parties not involved in the mediation process do not have access to any of the information or evidence given during the mediation since it is a confidential process. Information provided to the mediator will only be utilized for the purpose of assisting the mediator in reaching a suitable resolution.

The Industrial Disputes Act, 1947 was the first piece of Indian legislation to explicitly acknowledge mediation as a legitimate dispute resolution process. "Charged with the duty of mediating in and promoting the settlement of Industrial disputes" are the conciliators chosen under Section 4 of the Act. The Act outlined specific processes that were to be followed during the conciliation process. The 1996 Arbitration and Conciliation Act was another piece of legislation that formalized mediation in India's legal system. Referring issues now before the courts to Alternative Dispute Resolution, which include mediation, was made possible by Section 89 of the Code of Civil Procedure 1908, which was approved by the Indian Parliament in 1999 by the CPC Amendment Act of 1999.

The decision to resolve a disagreement and the conditions of that settlement are ultimately up to the parties involved in a mediation, as it is a voluntary procedure. Regardless of whether the court has ordered mediation or if it is mandated by a legislation or a contract, the parties always have the last say in deciding to settle and the details of any solution. The right to decide one's

¹ STEPHEN B. GOLDBERG, HOW MEDIATION WORKS 106-115 (Emerald Publishing Limited 2017).

own fate is central to the mediation process. It is a mutually agreed upon plan to resolve the dispute that the parties themselves caused. The parties to the mediation have influence over the procedure. Because it is completely open-ended, any participant can withdraw from it at any moment without having to provide a reason.

When compared to the costs of going to court, the mediation process is surprisingly inexpensive. Appointing legal counsel is not required in mediation, which results in a significant savings. You can save money on procedural costs because there are no mandatory processes as in a traditional courtroom. Fewer procedural and legal formalities mean a faster resolution to disputes. Mediators often skip ingesting evidence in favor of focusing on problems that they believe will bring the parties to an agreement, which saves both parties' time and energy.²

Since there is no established protocol for mediation, the parties are free to choose from a variety of possible solutions. Mediators typically adjust their approaches based on the needs of individual cases. Sometimes, arbitration or court procedures just can't provide the same results as mediation. In a collaborative effort, the disputing parties hash out their differences and are allowed to come up with their own unique solutions.

Parties not involved in the mediation process do not have access to any of the information or evidence given during the mediation since it is a confidential process. Information provided to the mediator will only be utilized for the purpose of assisting the mediator in reaching a suitable resolution. A special level of secrecy exists between the mediator and one party; that is, under certain circumstances, the other party will not be able to learn anything that the first party confides in the mediator. One major perk of mediation in India is that it stays out of the public eye, which is great for the parties' reputations. It is a private and intimate process because no one other than the parties to the dispute and the mediator is present.

Traditional legal processes sometimes include assigning responsibility to one party, which can strain relationships between them. Both sides must accept the court's final ruling, which isn't always fair because one side always comes out on the losing end. The opposite is true in mediation, where each party acts independently and has the option to reject the final settlement reached via the process. By protecting the interests of all parties involved, mediation facilitates a calm and amicable resolution, which can repair damaged relationships caused by preexisting problems.

As a result, the parties have a great deal of say over the procedures, including when they take place and for how long. Because everyone has to follow the court's timetable, it's inconvenient. Mediation differs from the court system in that the parties involved are not adversaries but rather allies in the pursuit of a mutually agreeable conclusion. An important benefit of mediation is that it preserves the interests of both parties while ensuring that no side loses out.

² Tirtharaj Basu Ray, *Mediation – The Need of the Hour in India*, 3(4) INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES 88 (2020).

Each side has the option to stop the mediation at any time without providing a reason, and the outcome is ultimately up to the parties.³

3. CONCLUSION

Mediation should not be seen as the final resort in the pursuit of justice in the event of a conflict; this must be clearly understood. Rather, it's a platform that lets the involved parties consider things from a new angle. It is recommended that parties seek a "mid way" through mediation when dealing with non-malicious behavior. Many individuals in India have profited from mediation, yet it is still an unripe fruit. From a legislative standpoint, we must endeavor to enhance Mediation. In contrast to the Legal Service Authority Act of 1987 and the Arbitration and Conciliation Act of 1996, no legislation has been passed that addresses mediation alone. In order to bring mediation to the attention of the general public, legislation is required to legitimize provisions dealing with pre-litigation mediation, the parties' roles and responsibilities, and the appointment process.

Due to its neutrality, cheap cost, and emphasis on the parties involved, mediation is rapidly growing in popularity in India. To make mediation more official, a statute must be passed specifically for this purpose. The parties can retain the services of attorneys who have received specialized training in alternative dispute resolution (ADR) to advocate on their behalf and provide the mediator with an objective explanation of the issues at hand. Mediation will soon surpass all other methods of dispute resolution, particularly in business and personal matters, due to its many advantages.

³ NADJA MARIE ALEXANDER, GLOBAL TRENDS IN MEDIATION 215-226 (Kluwer Law International 2006).