

Concept of Mediation

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ABSTRACT: *A world-renowned reality, Indian judiciary is one of the oldest judicial structures, but nowadays it is also well-known that Indian judiciary is becoming inefficient to deal with pending cases, Indian courts are clogged with long unresolved cases. The scenario is that the issue is far from being solved even after creating more than a thousand fast track courts that have now resolved millions of lawsuits, as unresolved cases are still piling up. Alternative Dispute Resolution (ADR) may be a beneficial tool to deal with such a situation, settling disagreement in a peaceful way where all sides accept the result. it settles conflict in cost efficient way, less time intensive and goods wanted result in one of ADR's most significant feature.*

KEYWORDS: *Dispute Resolution; India; Judiciary; Mechanism; Mediation.*

INTRODUCTION

The definition of the process of alternative conflict resolution (ADR) is capable of providing a replacement for traditional dispute resolution approaches. ADR offers to address all sorts of problems, including legal, commercial, agricultural and family matters, etc., where parties are unable to initiate some form of agreement and reach a resolution. In general, ADR employs a neutral third party to consult with the sides, negotiate the disagreements and settle the conflict. It is a strategy that helps persons and organizations to preserve harmony, collective order and create ways to decrease aggression[1].

ADR plays an important role in India by its various methods in coping with the pendency condition of cases in Indian courts. The framework for alternate conflict settlement provides the Indian judiciary with objectively proven methods that help reduce the burden on the courts. ADR proposes multiple settlement modes, including litigation, conciliation, consultation, agreement, and Lok Adalat. Negotiation here involves self-counselling between the parties in order to settle their disagreement, but in India, it has no formal approval[1].

ADR is also based on Articles 14 and 21 of these human rights, which deal with equality before the law and the right to life and personal liberty, respectively. The purpose of ADR is to provide social-economic and political justice and to protect the dignity of the culture enshrined in the preamble. ADR also aims to pursue equal treatment and free legal assistance provided for in Article 39-A pertaining to the State Policy Directive Principle (DPSP)[2].

Mediation is an alternative conflict settlement where two or more disputants are aided in finding consensus by a third neutral party. It is a simple and uncomplicated party-centered negotiation mechanism in which a third party serves as a mediator using effective mediation and negotiation strategies to settle conflicts amicably. The parties are completely in charge of this operation. The role of Mediator is only to allow the parties to resolve their conflict. Mediator should not enforce his ideas and make no judgment as to what should be a fair settlement[2].

The mediator shall, at the outset of the mediation process, ensure that the parties and their lawyers should be present[3].

He initially furnishes all the details about his appointment in the opening statement and announces that he has no relation with either side and has no involvement in the conflict[3].

He collects all the information in the joint session, knows the facts and problems of the conflict by allowing all sides to make their case and to present their views without interference. In this session, the mediator aims to facilitate and encourage contact and to control the parties' interruptions and outbursts[3].

Next is a separate session, where he seeks to explain the conflict at a finer level, gathering relevant facts by independently putting the parties into trust[3].

Mediator often raises questions about evidence and explains the positives and disadvantages of their respective cases to the parties[3].

Since speaking to both parties, the mediator continues to formulate resolution problems and establish settlement options[3].

In the case of inability to achieve any consensus by discussion in mediation, mediator uses various Fact check strategy like:

Best solution to compromise negotiated (BATNA)

It is the best possible consequence that the group comes up with or has in mind. The right condition emerges as each group considers about their most desirable scenario[4].

Alternative to signed deal most likely (MLATNA)

The result for a good agreement is always in the centre, the mediator with the most possible outcome after weighing both sides. The outcome here, depending on the negotiating situation, is not necessarily in the centre, but little left or right of the center[4].

Worst option to compromise negotiated (WATNA)

It is the worst possible outcome of what could happen during talks that a side has in its mind[5].

Examining the solution outside the mediation (specifically litigation) and addressing the implications of failure to achieve agreement such as: effect on the friendship of the parties or effect on the company of the parties could be beneficial to the parties and the mediator. The worse and most possible results are always important to consider and debate, and people do not always get the best result[5].

The Mediator addresses the opinions of the parties on the likely result of the litigation. Acting with stakeholders and their advocates is also beneficial for the mediator to come to a proper view of the positive, worse and most possible result of the case by arbitration, as this will assist the parties to consider the facts and formulate rational, logical and workable solutions[5].

DISCUSSION

ADR is a non-adversarial conflict resolution system, that is, working together cooperatively to find the right resolution for all. ADR will be instrumental in reducing the legal pressure on the courts, thus presenting the parties concerned with a well-rounded and rewarding experience. Via imaginative, constructive negotiation, it offers the chance to "expand the pie" and satisfy the desires driving their demands[6].

A neutral entity called a "mediator" supports the parties in mediation to seek to find a mutually satisfactory settlement of the conflict. The mediator does not settle the conflict, but encourages the parties to engage so that they can attempt to address the dispute on their own. Mediation leaves the parties with power of the decision[6].

Mediation can be especially effective when parties have a relationship that they wish to sustain. Mediation can also be the ADR approach to be used when family members, neighbours, or business partners have a disagreement. Where passions are getting in the way of resolution, mediation is also successful. A successful mediator will listen to the parties and assist them in an effective and non-destructive way to communicate with each other[7].

When one of the parties is unable to negotiate or agree, mediation will not be effective. Mediation could also not be effective if one of the parties has a big advantage over the other in control. Therefore, whether the parties have a history of violence or victimization, that might not be a safe choice[7].

Mediation and arbitration are unbelievably similar at first glance. One of the key distinctions is that a mediator, or a neutral third party, is powerless to compel the sides to consent to the result of the conflict and is not empowered to decide. The mediator meets with the sides to arrive at a mutually agreed compromise, and the arrangements are normally non-binding. The mediation may be enforced by the judiciary, but the procedure itself is also optional, enabling the parties to fail to negotiate a compromise[8].

The parties have considerable influence of the mechanism when in mediation. Mediation is fully private and, because it is non-binding, the parties have the right during the mediation period to seek litigation[8].

Mediation is more systematic but also leaves the parties in control of the decision. A neutral mediator lets the sides attempt to find a mutually satisfactory end to the conflict. The substance of the negotiations and any resolution reached is regulated by the parties. With each group sharing their story, a traditional session begins. The mediator listens to them and helps them recognize the concerns in the conflict, presenting them with opportunities for mediation and encouraging them to establish a settlement[9].

Mediation should be considered where the parties have a relationship they wish to maintain. Thus, whether family members, neighbours or company partners have a disagreement, the right ADR technique to use could be mediation. Mediation is also effective where thoughts can get in the way of a cure. A mediator may help the parties connect in a non-threatening and constructive way. At any point in the legal process, or in an appeal, consultation is open to the parties[9].

Mediation, with the aid of a mediator, requires the amicable resolution of conflicts between the parties. The role of the mediator is to get the parties together in an amicable dispute resolution process. In order to find a mutually satisfactory compromise, the mediator must influence the parties to cut back on their demands. Therefore, in ensuring harmony between the sides, the mediator assumes the role of a facilitator. Mediation stresses the responsibilities of the parties to make decisions that affect their life, rather than a third party that decides the fate of the parties to the conflict[10].

Mediation, an alternate conflict resolution (ADR) or 'appropriate dispute resolution' type, is meant to help two (or more) disputants achieve an understanding. Instead of endorsing anything dictated by a third party, the parties themselves decide the terms of all agreements reached. States, organisations, societies, individuals or other members with a vested interest in the result may be involved in the conflicts (as parties). In order to open and/or strengthen dialogue between disputants, mediators use relevant strategies and/or expertise in order to help the parties find an understanding (with particular effects) on the contested issue. Normally, the mediator must be seen by both sides as neutral[10].

In a number of conflicts, such as commercial, civil, diplomatic, workplace, neighbourhood and family problems, disputants can use mediation. A delegate from a third party can contract and mediate between (say) unions and companies. A conflict takes place when an employers' union goes on strike, and the organization hires a third party to participate in an effort to settle a union-corporation deal or agreement[10].

CONCLUSION & IMPLICATION

For many factors, the method of dispensing justice in India has come under considerable stress, largely because of the immense pendency of court cases. In India, there has been a huge increase in the number of lawsuits brought before the courts in recent years, resulting in pending and delayed cases, underlining the need for new mechanisms of dispute settlement. In this background, the Chief Ministers and the Chief Justices of States adopted a resolution at a conference held in New Delhi on 4 December 1993 under the chairmanship of the then Prime Minister and chaired by the Chief Justice of India.

There is no better choice in a developing world like India with significant economic changes under way within the context of the rule of law, techniques for quicker conflict resolution to alleviate the pressure on the courts and to provide means for the expeditious resolution of disputes than to aim to create alternate modes of dispute resolution (ADR) by providing facilities for the provision of themselves.

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