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# Dispute Resolution through Mediation: Theory and Cases

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## ABSTRACT

*Dispute resolution is an irreplaceable cycle for making public activity tranquil. Dispute resolution measure attempts to determine and check disputes, which empowers people and gathering to maintain harmony. It can thus be presumed that it is the sine qua non of public activity and security of the social order, without which it might be hard for the people to carry on the coexistence. Alternative Dispute Resolution (ADR) is a term used to depict a few distinct methods of settling legitimate disputes. It is experienced by the business world just as average people that; it is impracticable for some people to document claims and get ideal verdict. Due to the pendency of cases, there is the postponement of year or more for the parties to have their cases heard and finalized. So, in order to lessen the burden on the courts, Mediation, which is a type of ADR, has been a widely opted method for the settlement of disputes. In Mediation, a mediator is a neutral third party who aids the conflicting parties to come to a settlement. This paper deals with the Mediation theoretically and also few cases have been cited to elucidate the concept.*

## I. INTRODUCTION

In India, the Parliament has amended the Civil Procedure Code by adding Section 89 just as Order 10 Rule 1-A to 1-C. Section 89 of the Civil Procedure Code deals with the settlement of disputes outside the Court. From the above, the newly added Section 89 has been embedded in the Code so as to accommodate alternative dispute resolution. Actually, like the various reasons for disputes, the settlement modes are also of many ways. Alternate Dispute Resolution incorporates a wide exhibit of practices, which are coordinated towards a financially savvy and fast resolution of disputes. ADR, as the name recommends, is an option in contrast to the customary procedure of dispute resolution by courts.<sup>3</sup> It comprises of a bunch of practices and strategies to determine disputes outside the courts. Since it effectively includes parties themselves to settle their disputes, it brings about the friendly settlement of

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<sup>3</sup> Concept and Types Of ADR, *available at:* <https://viamediationcentre.org/readnews/MTQ0/Concept-and-Types-of-ADR> (last visited March 18, 2021)

disputes, which is beyond the realm of imagination by and large through courts. Subsequently, these practices are getting away from courses from the tedious adjudication measure. A significant number of such practices have advanced to settle the disputes with least unfriendly effect on the connection between the parties.<sup>4</sup> Mahatma Gandhi has said, "I understood that the main function of an attorney was to unite parties... ". Hence, the job of legal counselors in advancing non-adversarial dispute settlement systems is without a doubt huge.

## II. WHAT IS MEDIATION?

Mediation is a deliberate interaction wherein a prepared and fair-minded third party, the mediator, helps the parties in question to arrive at a genial settlement that is receptive to their requirements and agreeable to all the parties in a dispute. The mediator has the parties up close in a confidential and a private setting. Each party will have the chance of advancing his perspective and tuning in to what the other needs to say. The mediator doesn't force a choice on the parties.<sup>5</sup> The mediator helps the parties in following ways:

- Decide and discuss what are the matters in dispute;
- Explore each party's real interests and needs;
- Extend settlement options and opt for the most suitable one;
- Sum up the settlement agreement in detail, showing how the parties have agreed to resolve each and every matter in dispute.<sup>6</sup>

Other observations about mediation include:

- Mediation is appropriate by and large in spite of the fact that it may not be reasonable for each case. You might be invited to go to a preliminary meeting in which the mediator will evaluate whether mediation is reasonable for your specific case, or your legal counselor might have the option to assist you with choosing.<sup>7</sup>
- The parties may look for legal advice at any phase of the mediation.
- Both parties reserve the privilege to end the mediation process whenever they want to.
- Both parties should value that what the other party says in a mediation meeting is without bias and hence can't be used in any legal proceedings.

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<sup>4</sup> *Ibid.*

<sup>5</sup> What is Mediation, available at: [https://mediation.judiciary.hk/en/doc/What\\_is\\_Mediation-Eng.pdf](https://mediation.judiciary.hk/en/doc/What_is_Mediation-Eng.pdf) (last visited 19 March, 2021)

<sup>6</sup> *Id.* at 2

<sup>7</sup> *Ibid.*

- An agreement drawn up in a mediation meeting and signed by the parties is legally restricting as an issue of contract. The actual agreement isn't enforceable as a verdict by a court, or an arbitration award, however an innocent party may sue upon it if the other party is in violation of its terms.

### III. WHO ARE THE MEDIATORS?

There is however no strict bar on who can be a mediator. Mediators normally come from different expert backgrounds and have gone through preparing in mediation abilities and methods so they realize how to direct the mediation process in opening negotiations that have gotten halted and in keeping everybody zeroed in on finding an answer.<sup>8</sup> As a general guideline, mediators:

- Do not give legal advice. You will be forced to consult your attorney for such advice;
- Do not favor any of the party;
- Do not settle on choices for you, yet assist you with surveying the practicality of the choices you make

### IV. ROLE OF MEDIATION IN RESOLVING DISPUTES

Experience worldwide has shown that mediation encourages a high settlement rate and the vast majority are happy with the result of mediation. The role of mediation is given as:

- A party may maintain a distance from the strain, risk and conflict in the adversarial court system.
- Parties save some money and time in not challenging issues in court.
- Mediation can begin before any litigation or at any stage during the cycle of litigation.
- Mediation is consistently party driven in this manner the parties are permitted to settle on their own choices and agree with which you and the other party might be seriously willing and prepared to go along.<sup>9</sup>
- The settlement terms can be kept hidden and private.
- Mediation can bring about terms of settlement of more noteworthy adaptability and in more viable manners going past the legal cures that the court is enabled to give.
- Mediation helps in keeping a proceeding intact of relationship between the parties associated with the dispute and can improve their relationship.
- The chances of an appeal are reduced to a greater extent, in contrast to litigation.

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<sup>8</sup> *Id.* at 4

<sup>9</sup> What is Mediation, available at: [https://mediation.judiciary.hk/en/doc/What\\_is\\_Mediation-Eng.pdf](https://mediation.judiciary.hk/en/doc/What_is_Mediation-Eng.pdf) (last visited 21 March, 2021)

## V. DISADVANTAGES OF MEDIATION

- **Informality:** There are no formal rules or protocols that must be followed in the informal setting of a mediation. As a result, mediators are constrained in their ability to convince individuals to testify or provide evidence in order to establish the facts of a case.

- **Unfairness:** Furthermore, the lack of formal guidelines makes it impossible to ensure that the parties concerned are treated fairly. Despite the mediator's best efforts, an aggressive party can be able to steamroll a timid one.

- **No guarantee of outcome:** Mediation may also fail and result in no agreement between the parties concerned. After spending a considerable amount of money and resources in mediation, the parties would have to return to the expensive and time-consuming court system.

- **Non-binding:** The agreement reached in a mediation is non-binding. Parties to a settlement may also attempt to dispute the settlement agreement in case the agreement is not made binding on them. They can file another suit in court challenging the legitimacy of the settlement, creating another dispute on top of the underlying one.<sup>10</sup> The only solution to this is to agree to make the settlement agreement binding on both parties before signing it.

### **Few cases that highlight the role of mediation in resolving transnational disputes:**

- **New Zealand Resource Management Act:**

The Dispute:

Climate change in New Zealand has resulted in the increased need and awareness to manage environmental damage and incorporate ways in which current populations can use the environment without hurting future generations needs to use the environment. New Zealand is totally surrounded by an ocean; subsequently, its capital activity is strongly reliant on the environment. The economy relies on overseas exchange and tourism, the two of which represent 33% of New Zealand's GDP. Both are also reliant upon New Zealand's natural resources. Thus, it was significant for New Zealand, and countries around the planet, to track down an effective method to resolve economic disputes.<sup>11</sup>

The Result:

A 2004 assessment of the Environment Court's use of mediation showed that 80% of cases

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<sup>10</sup> How Does the Mediation Process Work – Steps and Procedure, *available at:* <https://blog.ipleaders.in/mediation-in-india-process>

<sup>11</sup> UN Secretary General, *Enhancing mediation and its support activities- Report of the Secretary-General*, United Nations Security Council, Report # S/2009/189 (March 24,2021)

alluded to mediation were successfully resolved. What's more is that the interest for mediation service in the Courts is increasing. The mediation sessions have made the Courts more productive, as the simple matters get resolved through these sessions, while the more perplexing matters are left to the expertise of the Court. Mediation is less expensive and faster than litigation. Thus, the Environment Court's use of mediation displays an expeditious way of preventing, and peacefully settling, environmental disputes.

- **Washington Navy Yard Stormwater Permit Mediation:**

The Dispute:

A National Pollutant Discharge Elimination System storm water permit for the Washington D.C. USA Navy Yard was issued by the Environmental Protection Agency. As one of two parties, the U.S. Navy did not agree with the process and appealed the permit. A four-year long dispute arose.

The Result:

The settlement through mediation ended a four-year long dispute. As a result, an environmentally protective permit was agreed upon that related to the interests of both sides

- **Agacher Strip Mediation between Burkina Faso and Mali:**

The Dispute:

Burkina Faso and Mali both sought to control the 100-mile long Agacher Strip, and with it the considerable amounts of natural gas and mineral resources it contained. Where the border between the two countries should be drawn was the source of ample tension and two eruptions of armed conflict, first in 1974 and again in 1985. The second conflict, dubbed the Agacher "Christmas" War, lasted five days and cost dozens of lives.<sup>12</sup>

The Result:

The ICJ came to a final decision by December 22, 1986. After extensive investigation, the ICJ decided to only make minor corrections to the border, and gave ANAD the authority to control the withdrawal of troops. Key to the mediation was the nearly equal division of the Agacher Strip, with Burkina Faso receiving the east portion and Mali the west. The decision was enthusiastically accepted by both sides, both of which praised the ICJ for their evenhanded efforts.

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<sup>12</sup> *Ibid.*

- **Mediating Water Quality Standards in Oklahoma:**

The Dispute:

In early 2006, the State of Oklahoma, USA, the Quapaw Tribe, and the U.S. Environmental Protection Agency (EPA) Region sought to develop a Cooperative Agreement addressing water quality issues in Oklahoma, with assistance from the U.S. Institute for Environmental Conflict Resolution and Mr. J. Michael Harty of Harty Conflict Consulting & Mediation. The parties requested an assessment of their joint ability to come to a resolution through assisted negotiations, noting a low level of mutual trust and differing interests as potential obstacles to resolution.

The Result:

In 2007 and 2008, the parties, with Mr. Harty's assistance, developed a set of factors that were likely to impact negotiations, and a process by which the EPA would effectively coordinate construction of the Cooperative Agreement. Mr. Harty determined that due to the Tribe and State leaders' commitment, subject area knowledge, and determination to reach a resolution, the parties could effectively manage their low level of mutual trust in order to align their core interests in a Cooperative Agreement. Moreover, the assessment process proved that all parties had an interest in continuing negotiations, and could accomplish their mutual goals without third party assistance.<sup>13</sup>

## VI. CONCLUSION

Mediation is a party centric mode of alternate dispute resolution. The role of mediator is not so strict as is of the arbitrator. So, it is somewhat more informal mode than that of arbitration. Thus, the parties to a dispute feel no compulsion while putting forward their claims or their statements. Also, because of the various advantages and the cases which involved mediation cited above, it is clear that mediation is an apt mode of alternate dispute resolution to resolve a conflict between the parties. The main advantage of mediation is that it can be started before the dispute has come into existence. So, parties who opt for mediation get a prior view of their case. Most importantly, trust in the mediation interaction will be encouraged if the third party fairly looks and discharges his service with neutrality during the process which is the core principle of mediation i.e., neutrality. Otherwise, the whole process gets hampered.

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<sup>13</sup> UN Secretary General, *Enhancing mediation and its support activities- Report of the Secretary-General*, United Nations Security Council, Report # S/2009/189 (March 26,2021)