

Mediation as a means of Alternative Dispute Redressel Mechanism

Mediation has emerged globally as a tool to supplement the traditional court system for the resolution of disputes. It provides justice within reasonable time and without rigour of trial and less expensive.



Mediation is developing as an alternative mode of dispute resolution. The courts are over burdened by too many cases and judicial mediation is one way to reduce the back log of cases and it provides quick and acceptable remedy to the dispute.



what is mediation ?

Mediation is one of the most effective method of ADR mechanism as incorporated in the provision of section 89 CPC.

Mediation is a nonbinding process in which an impartial third party- a mediator- facilitates the resolution of a dispute by promoting amicable agreement between the parties to the dispute.



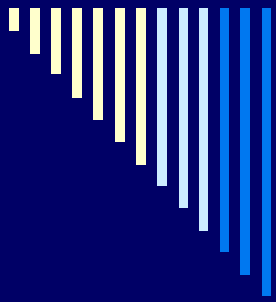


ALTERNATIVE DISPUTE RESOLUTION (ADR)

Alternative Dispute Resolution in its literal meaning is "settlement of disputes outside the court". ADR is not an alternative to the court system but only meant to supplement the same to help in lessening the workload of the courts and provides quick and affordable justice to the litigant.



The primary object of ADR movement is avoidance of vexation ,expense and delay in justice delivery system. It promotes the idea of “ access to justice “ for all .In other words, the ADR system seeks to provide a cheap , simple , quick and accessible justice.




The ADR mechanism covers the following heads.

1. Arbitration
 2. Conciliation
 3. Judicial settlement including settlement through Lok Adalats and
 4. Mediation
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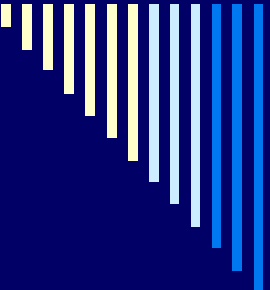


Mediation as a method of dispute resolution.

In the field of resolving legal controversies, mediation offers an informal method of dispute resolution, in which a neutral third party, the mediator, attempts to assist the parties in finding resolution to their problem through the mediation process. Although mediation has no legal standing *per se*, the parties can (usually with assistance from legal counsel) resolve their dispute through an agreement in writing and sign the document at the end of a successful mediation, thus producing a legally binding contract in some jurisdiction specified therein.



Mediation differs from most other conflict resolution processes by virtue of its simplicity, and in the clarity of its rules. It is employed at all scales from petty civil disputes to global peace talks. In a process of mediation, the mediator after introducing himself, go for a joint session and hear the grievances of both the parties. Next phrase is single session in which both the parties are given opportunity to talk and interact with the mediator separately and confidentiality is assured to be maintained. If necessary, further joint session is held and thereafter the mediator draw up an agreement with the free consent of both the parties and take their signature over it which is sent back to the court for final settlement of the dispute.



Unlike a judge or an arbitrator, the mediator does not impose the ultimate and final solution on the parties. A mediator creates a conducive atmosphere under which the parties can reach an acceptable solution by mutual consent.



Components of Mediation

1. **Impartiality:**

Impartiality is one of the important component of mediation process. The mediator must maintain neutrality which is the assets of a mediator.

A Mediator must avoid:

1. Partiality or prejudice; and
2. Conduct that gives appearance of partiality or prejudice.

2. **Competence :**

Mediator should have necessary competence, knowledge of law and experience in the field of legal education with good reputation to do mediation and to satisfy the reasonable expectations of the parties.



3. **Confidentiality**

Confidentiality must be maintained during the mediation proceedings. The parties to the process of mediation must receive the indication that the mediator will maintain total confidentiality of the facts disclosed and will communicate those facts to the other party only after obtaining the consent of the parties.

4. **Quality of Process**

The conduct of the mediator should not be influenced by a desire to achieve a high settlement rate.

A mediator must conduct the mediation proceedings ~~diligently and with understanding that outcome should~~ be due to the free will of the parties.



5. Settlement

If the mediation results in a settlement between the parties, the mediator should encourage the parties to record the exact terms of settlement in writing

6. Self determination

Mediation is based on principle of self- determination by the parties.

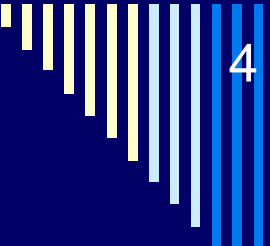
Parties be allowed to reach a voluntary and uncoerced agreement.

Any party may withdraw from mediation at any time.



Benefits Of Mediation.

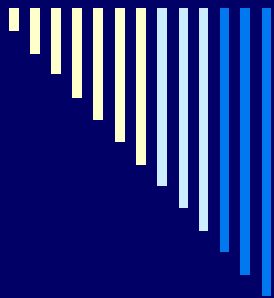
- 1 Private, prompt and affordable.
 - 2 Provides an opportunity to the parties to talk about their case in their own words and to directly participate in negotiation of their claims.
 - 3 A forum for parties to develop creative, non-traditional remedies that promote their underlying business and personal interests.
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- 4 Provides better solution of the disputes more expeditiously and at low cost .
 - 5 It helps in the reduction of the work load of the court.
 - 6 It can be used at any time even when the case is pending before the court of law.
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Disputes where mediation is appropriate

- Parties desire a negotiated outcome
 - To maintain future relationship
 - Avoid unfavourable judgment
 - Litigant does not want to appear as a witness
 - Cost of trial exceeds projected value
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Parties want prompt solution

Parties want control over outcome

Complicated case

Confidentiality desired by parties

Opportunity to develop creative non-traditional remedies

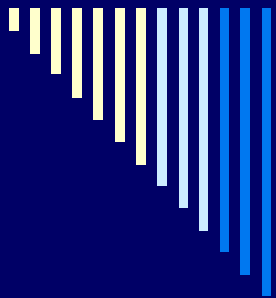




Conclusion

Settlement in mediation, there is no winner or loser. The agreed settlement is sent back to the court for its execution. The entire process of mediation is also time bound process and it saves both time and money of the parties by providing quick and affordable remedy to the parties with their consent and disposed of disputes comfortably.

Thus it appears from the above discussion that mediation is one of the effective, workable, mode of conflict management and resolution system. It provides aid and assistance for quick and early disposal of cases by the court who refers those cases to the mediation center for settlement.



The structural process taken up by the mediators with full consent in which the parties voluntarily take part to give an acceptable solution to the disputes.

In proper sense and meaning when the case goes back to the court again , it carries smile on the face of both the parties.

In the words of Sir Abraham Lincoln

“Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser in fees, expenses and waste of time”

