



# MEDIATION

(an effective alternative dispute resolution mechanism)

## HOW DOES IT WORK

- Let us know -

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## OBJECTS AND REASONS

In its wisdom, Parliament further amended the Code of Civil Procedure, 1908 by an Act called The Code of Civil Procedure (Amendment) Act, 1999. Section-7 of the said Act incorporated Section-89 providing settlements of disputes outside the Court with a view to attempt or to arrive at an amicable settlement of dispute between the parties. The object of newly inserted Section-89 is obviously to promote alternative methods of dispute resolution. "Mediation" is one of the five methods of alternative dispute resolutions referred to under Section 89. It came into effect from 1<sup>st</sup> July, 2002. The other forms of ADR Mechanism are : (i) Arbitration (ii) Conciliation (iii) Lok Adalat, and (iv) Judicial Settlement.

## WHAT IS MEDIATION

Mediation is a process in which a neutral third party assists the disputing parties to creatively resolve their disputes without going to trial. Mediation presents a unique opportunity for dispute resolution with the involvement and participation of all the parties and their advocates. A neutral third party called "Mediator" uses special negotiation skills and communication techniques to help litigants bridge their differences and find a solution to their dispute. Mediation always leaves the decision making power with the parties. A Mediator does not decide what is fair or right or apportion blame.

Rather, a mediator acts as a catalyst to bring the two disputing parties together by defining issues and eliminating obstacles for communication and settlement.

### Mediation is:

- Voluntary.
- Confidential - only you decide what information may be shared with the other party or the court.
- Transparent - there are no surprise in mediation.
- Time and cost efficient.
- Informal - focusing on the parties' interests rather than the rules of procedure and evidence.
- Flexible - enabling the parties to resolve the dispute by themselves.

## WHO CAN MEDIATE

Advocate having a minimum of 15 years standing at the Bar are having been trained to render the services of a mediator.

## WHAT HAPPENS IN A MEDIATION

A mediator meets both parties and their Advocates in a joint mediation sessions. The initial meeting provides for:

- An introduction to the participants.
- Explanation of the mediation process.
- An opportunity to discuss issues affecting settlement or which are important for the mediator to know.
- An opportunity for parties to express their views of the dispute and their terms for settlement.
- If necessary, a mediator may meet each disputing party in private session. Private sessions offer opportunities to :
  - Help the mediator understand the needs of each participant and the obstacles to settlement
  - Explain to the party the strengths and weaknesses of his case.
  - Assist parties to priorities their interests in the dispute.
  - Explore confidentially with each side the possibilities of various settlement options.
  - The mediator will spend as much time as necessary with the participants (jointly and privately) to explore all option of settlement.
- If the parties do reach a settlement, the terms will be written, signed and submitted to the

Court for approval and passing a decree. If not, the case will be returned to the referring judge for adjudication.

## HOW LONG IS A MEDIATION ?

Many cases are resolved in one or two sessions. Some mediation may require more sessions, especially in complex dispute. Most follow-up sessions are scheduled within one week of the previous sessions. The Mediator does not give adjournments easily. If a counsel or party is not present on more than one occasion, the case will be send back to Court for adjudication. **The mediation process can take a maximum of 60 days.**

## PREPARATION FOR MEDIATION

Parties and their counsel should prepare for mediation by reviewing the risks and costs of litigation and considering the long term personal, family and community interests that will be served by resolving the dispute. Possible settlement options should be considered. Counsel and parties should bring all relevant documents to facilitate meaningful discussions and early settlement.

## WHO SHOULD ATTEND MEDIATION ?

Parties/representatives having authority to settle the dispute should participate in the mediation along with their counsel.

## BENEFITS OF MEDIATION

- Produces more satisfying results than litigation.
- Helps settle all or part of the dispute before trial and during and after trial before judgment, which saves time and money.
- Allows the parties and not the judge, to determine the outcome. The parties are fully informed by the mediator and they control the terms of settlement.
- Increases participant satisfaction, with a greater likelihood of a lasting resolution.
- Reduces hostility between parties offering an opportunity to restore and preserve business and personal relationships.
- Saves money – if settlement is reached in mediation, there will not be future litigation costs. Additionally, Court fees are refunded to the parties.
- Eases tension and restores peace of mind.
- Promotes justice.
- Allows flexibility and party participation in the development of solutions.
- Uses procedures tailored to parties needs.
- Develops the interests of the parties.
- Narrows the issues in dispute.
- Identifies areas of agreement and disagreement.
- Fashions creative solutions to protect the interests of the parties.
- Protects confidentiality.
- Eliminates the risks of litigation.
- Allows clients to communicate their views, directly, informally and confidentially without fear of retribution. Nothing said in a mediation can be used against a party if no settlement is reached.
- If a case is settled entire court fee paid will be refunded.

## HOW WILL MEDIATION AFFECT THE CASE

Mediation is an Alternative Dispute Resolution process and an alternative to trial. Reference of a case to mediation does not stay court proceedings or litigation deadlines. If a case is not settled in mediation, it will be returned to the court with no time lost.

## CASES NOT SUITABLE FOR ADR (MEDIATION) PROCESS

- Representative suits under Order I, Rule 8 CPC.

- Dispute relating to election to public office.
- Cases involving grant of authority by the Court after enquiry (Example - Probate / Letters of administration).
- Cases involving serious and specific allegations of fraud, fabrication of documents, forgery, impersonation, coercion etc.
- Cases requiring Protection of Courts (Example- Claims against minors, deities, mentally challenged persons and declaration of title against the Govt.)
- Cases involving Prosecution for criminal offences. (*See (2010) 8 SCC 24 (Afcons vs Cherian)*).

## CASES NORMALLY SUITABLE FOR ADR (MEDIATION) PROCESSES:

- All cases relating to trade, commerce and contracts.
- All cases arising from strained or soured relationships.
- All cases where there is a need for conciliation of the pre-existing relationship in spite of the disputes.
- All cases relating to tortious liability. (*See (2010) 8 SCC 24 (Afcons vs Cherian)*).