



THE EFFECTIVENESS OF MEDIATION AS A DISPUTE RESOLUTION IN INDIA

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Abstract

Mediation is a process or approach used to mediate disputes or conflicts among parties engaged in an issue without resorting to legal action. It's a gadget that's both fast and cheap to use. This diary has been divided into a number of parts. Initially, it was addressed how the mediator, as the most important person in this circumstance, plays an important role in the disagreement. Conflicts between disputing parties may be resolved peacefully with his guidance. Around the year 530 CE, the earliest known occurrence of mediation occurred in ancient Greece. At the time, the village elders were in charge of settling problems amongst other people. Furthermore, the success rate of mediation in recent times is around 74%. Mediation has also been used as a method of dispute resolution in India. Local courts often recommend mediation as a method of resolving legal issues. Mediation may result in a variety of favourable results, including major cost savings, time savings, and convenience for all parties involved, and many more. However, as is well known, everything has benefits and downsides. There are several cases when mediation is not a possibility. This strategy is only applicable to a subset of the present scenarios under investigation. There are four major categories that may be used throughout the whole mediation process. To properly mediate, a number of duties must first be completed. This system has been changed throughout time to make it more beneficial to the parties involved in resolving disputes. According to recent research, the advantages of mediation have earned it a high ranking. This strategy, which is a tool for resolving disputes outside of court and is acceptable to all parties, is gaining popularity.

Keywords: Mediation, ADR, Conciliation, Litigation, Settlement.

Introduction

Mediation is a structured and active process that involves the involvement of an impartial third party (who is not a participant in the conflict) to facilitate discussions between the disputing parties with the aim of achieving a mutually acceptable outcome. The term “party-centred

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process” is employed to characterised mediation as it prioritizes the desires, entitlements, and concerns of the involved disputants.

The individual who facilitates the process of mediation is commonly referred to as the mediator. The practitioner employs a diverse array of methodologies and specialised communicative proficiencies to facilitate the parties involved in the process in a constructive manner, ultimately aiding them in reaching a resolution to their dispute. The mediator assumes the responsibility of overseeing the interactions that occur between the parties involved and promoting transparent communication.²

The utilisation of Alternative Dispute Resolution, which encompasses mediation, is a common practice within the judicial system. In this scenario, a mediator who is not directly involved in the dispute facilitates negotiations between the conflicting parties with the aim of achieving a mutually agreed upon resolution that is independent of the legal system. Mediation is a widely utilised practise across various domains such as commerce, diplomacy, community, and family.

The practise of modern mediation is characterised by a structured framework, a defined timeline, and specific dynamics that are not present in informal bargaining. The aforementioned process is deemed confidential and safeguarded by legal regulations. Mediation is becoming increasingly popular worldwide due to its minimal disruptive nature in resolving conflicts of varying magnitudes. The Indian judiciary is renowned for its protracted process of adjudication, resulting in delayed verdicts. The aforementioned system primarily embodies the adage that proclaims the negative consequences of delayed dispensation of justice, namely, the denial of justice. Hence, in order to alleviate some of the responsibilities of the court, it is resorting to Alternative Dispute Resolution (ADR). The mediation mechanisms bear resemblance to the arbitration process. Section 89 of the Code of Civil Procedure Act, 1999 provides for the referral of pending disputes in diverse courts to the various Alternative Dispute Resolution mechanisms specified therein. The Salem Advocate Bar Association v. Union of India case saw the Supreme Court of India recognise the authentic nature and definition of the concept of ‘mediation.’ The concerned authority has additionally requested the corresponding High Courts to formulate the Model Civil Procedure Mediation Regulations. The Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd. is a well-known legal precedent that clarifies the ambiguity surrounding the law of mediation. ADR

²Mediation. (2023, Aug. 28). Wikipedia, the Free Encyclopedia. Retrieved from <<https://en.wikipedia.org/wiki/Mediation>>.

in the Indian subcontinent denotes a mechanism for resolving disputes without the intervention of courts. Various methods can be utilised to refer to mediation in India, including but not limited to arbitration, negotiation, conciliation, and Lok Adalat.³

What is the current legal framework for mediation in India, and how has it evolved over time?

The Arbitration and Conciliation Act, which was first passed in 1996, was updated in 2019 to incorporate provisions for mediation. This act serves as the basic legal basis for mediation in India. The parties involved in a dispute may be sent to mediation under the terms of Section 12A of the Act, and an agreement reached via mediation can have its terms enforced under Section 442 of the Act. The Mediation and Conciliation Rules, 2014 were brought into effect by the Ministry of Law and Justice in India with the purpose of establishing a framework for the conduct of mediation processes throughout the country. Rule 3 describes the process that must be followed in order to choose a mediator, Rule 9 details the steps that must be taken throughout the mediation process, and Rule 10 specifies the steps that must be taken in order to create a settlement agreement. Rule 14 ensures that all of the mediation processes are kept in strict confidence.

The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 requires parties to attempt mediation before filing a commercial dispute in court. Section 12A of the Act provides for the referral of a dispute to mediation, and Section 12B⁴ provides for the settlement agreement to be recorded and enforced as a decree of the court. The Code of Civil Procedure, 1908 provides for court-annexed mediation in civil disputes. Section 89⁵ of the Code provides for the referral of a dispute to mediation, and Rule 1A of Order X provides for the conduct of mediation.

The Supreme Court of India established the Mediation and Conciliation Project Committee (MCPC) in 2003 to promote the use of ADR in resolving disputes. The MCPC has developed guidelines and training programs for mediators.⁶ In 2005, the Supreme Court of India issued guidelines for conducting mediation in India in the case of *Salem Advocate Bar Association*,

³ Mediation in India, Lexology (Sep.2, 2023, 5:00 PM), <https://www.lexology.com/library/detail.aspx?g=d45eed57-db32-40b6-a5e6-edad2363de76>.

⁴ The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015: <https://www.indiacode.nic.in/bitstream/123456789/2001/1/201522.pdf>

⁵ The Code of Civil Procedure, 1908: <https://www.indiacode.nic.in/bitstream/123456789/1585/1/THE-CODE-OF-CIVIL-PROCEDURE-1908.pdf>

⁶ The Mediation and Conciliation Project Committee: <http://www.mcpcindia.org/>

Tamil Nadu v. Union of India.⁷ These guidelines were updated in 2017 in the case of *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*⁸ to provide a more comprehensive framework for mediation proceedings.

The Arbitration and Conciliation Act, 1996, was amended in 2015 to allow for the referral of disputes to mediation before the commencement of arbitral proceedings. Section 24⁹ of the Act provides for the stay of arbitral proceedings while mediation is ongoing, and Section 29A provides for the time limit for the completion of mediation. The amended Act also recognizes and enforces mediated settlement agreements as an arbitral award.

How is mediation different from other ADR Methods?¹⁰

Mediation is a type of Alternative Dispute Resolution (ADR) that involves a neutral third party, known as the mediator, who assists parties in reaching a mutually agreeable resolution to their dispute. Here are some ways in which mediation differs from other ADR methods:

1. Mediation is voluntary:¹¹ In contrast to other alternative dispute resolution approaches, such as arbitration or mediation, which are included into the legal process, mediation is an entirely voluntary process. The parties to the dispute are not required to take part in the mediation session, and they are free to withdraw from it whenever they like.
2. Mediation is facilitative:¹² The role of the mediator is to facilitate open channels of communication and to provide assistance to the parties in determining their respective objectives, prerequisites, and concerns. Instead of making decisions or dictating a course of action, the mediator acts as a guide for the parties involved in order to help them reach a mutually agreeable resolution.
3. Mediation is informal: When compared to other forms of alternative dispute resolution, mediation often takes place in a more casual setting. It might take place in a meeting room, at an office, or even over the internet. There are no hard and

⁷ Salem Advocate Bar Association, *Tamil Nadu v. Union of India*: <https://indiankanoon.org/doc/1850272/>

⁸ *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*: <https://indiankanoon.org/doc/78425035/>
⁹ The Arbitration and Conciliation (Amendment) Act, 2015: <https://www.indiacode.nic.in/bitstream/123456789/11251/3/A2of2015.pdf>

¹⁰ Lempert, Lauren B., et al. *Alternative Dispute Resolution: A Conflict Diagnosis Approach*. Wolters Kluwer Law & Business, 2010.

¹¹ American Bar Association. "What is Mediation?" 2022, https://www.americanbar.org/groups/dispute_resolution/resources/DisputeResolutionProcesses/mediation/.

¹² "The Mediation Process: Definition and Stages," Harvard Law School Program on Negotiation, 2022, <https://www.pon.harvard.edu/daily/conflict-resolution/mediation-process-definition-stages/>.

fast rules about the procedure or the evidence that the parties involved are required to abide by.

4. Mediation is flexible:¹³ The technique for mediating may be altered to accommodate the specific requirements of each party. The mediator is able to foster good dialogue between the parties by using a variety of tactics. Some of these strategies include caucusing and joint sessions.
5. Mediation is confidential:¹⁴ Contrary to judicial processes, mediation is private. Except as required by law, the parties to the dispute agree not to divulge any material disclosed during the mediation process.

Criticisms of Mediation

In the absence of established protocols or procedures in an informal mediation setting, mediators face limitations in their ability to employ various tools to interrogate parties and elicit evidence, thereby impeding their capacity to uncover the underlying causes of the dispute. Due to the informal nature of mediation, it is not feasible to ensure equitable treatment of all parties involved in the process of resolving a dispute. This could potentially result in inequality. Despite the mediator's diligent efforts, it is possible for a dominant party to impede the negotiations to the advantage of the less influential party.

The efficacy of mediation is not always assured, and there exists no assurance that the involved parties will achieve a mutually acceptable resolution. Hence, attaining victory cannot be assumed. Despite investing a considerable amount of time and effort in the mediation process, the involved parties may still be compelled to allocate additional financial and emotional resources towards engaging in a costly legal system. Disputes may emerge between the parties involved in mediation regarding the provisions of the settlement agreement, as there is no obligation for them to adhere to its terms. This is due to the non-binding nature of the agreement for them. In such circumstances, individuals possess the lawful entitlement to initiate a subsequent legal action in a court of law contesting the validity of the settlement, thereby resulting in an additional dispute.¹⁵

¹³ International Mediation Institute. "What is Mediation?" 2022, <https://imimediation.org/what-is-mediation/>.

¹⁴ National Mediation Board. "The Mediation Process." 2022, <https://www.nmb.gov/who-we-are/our-history/the-mediation-process/>.

¹⁵ Akanksha Mathur, How Does the Mediation Process Work – Steps and Procedure, iPleaders (Sep. 4, 2023, 10:20 AM).

What are the advantages of mediation over litigation in India?

A neutral third party mediates talks and communication between the parties in order to resolve issues. A formal legal proceeding in a court of law is used to settle disagreements through litigation, on the other hand. In India, there are several advantages of mediation over litigation, some of which are:

1. **Time and cost-effective:** In comparison to litigation, mediation is typically characterised by reduced time and cost expenditures. The duration of the mediation process is relatively short, ranging from a few days to a few weeks. Conversely, litigation can be a protracted process, taking several months or even years to reach a resolution. Furthermore, it is worth noting that the expense associated with mediation is considerably less than that of litigation. According to research conducted by the Indian Institute of Arbitration and Mediation (IIAM), the median expense associated with mediation in India ranges from INR 10,000 to 50,000, whereas litigation expenses can exceed INR 2, 00,000.¹⁶
2. **Confidentiality:** As mediation is a confidential process, both the specifics of the matter and the approach taken to address it are not to be disclosed to any party, including those who participated in the procedure. Conversely, litigation is a publicly accessible procedure whereby the populace at large is privy to both the substance of the controversy and the final judgement. The mediation process is attractive to parties who desire to maintain confidentiality regarding the specifics of their disputes. An instance of this notion is the Mediation and Conciliation Project Committee (MCPC) of the Supreme Court of India. The guidelines for the mediation process have been published by the Mediation and Conciliation Procedures Committee (MCPC). The guidelines stipulate that any information generated or revealed during the mediation process must be handled with confidentiality. The mediator is prohibited from divulging any confidential information provided by any party, unless explicitly authorised to do so.¹⁷
3. **Flexibility:** Mediation is a flexible process that allows parties to tailor the process to their specific needs.¹⁸ Parties can choose their mediator, schedule mediation

¹⁶ Report on the Study of Court-Annexed Mediation in India. Indian Institute of Arbitration and Mediation (IIAM). 2014.

¹⁷ Supreme Court of India, Mediation and Conciliation Project Committee (MCPC), Guidelines for Mediators, 2006

¹⁸ American Bar Association. "What is Mediation?" (accessed August 20, 2023). https://www.americanbar.org/groups/dispute_resolution/resources/DisputeResolutionProcesses/mediation/.

sessions at their convenience, and decide on the outcome of the mediation.¹⁹ In contrast, litigation is a rigid process that follows a set of rules and procedures, and parties have less control over the outcome.

4. **Preserves Relationships:** Mediation is a recommended course of action in circumstances where the involved parties share a longstanding connection, such as business partners or family members, and aim to preserve their relationship following the resolution of the conflict. As opposed to the adversarial nature of litigation, mediation offers a more amicable approach that facilitates the preservation of a positive relationship between the involved parties.
5. **Mediated settlements are more likely to be implemented.** The reason for this is that the concerned parties have willingly consented to the conditions of the settlement. Conversely, enforcing court judgements is a challenging task, especially in cases where the non-prevailing party declines to adhere to the verdict.²⁰

The Indian judiciary has acknowledged the benefits of mediation in comparison to litigation, and has actively promoted the utilisation of mediation as a dispute resolution mechanism. The Supreme Court of India in the matter of *Afcons Infrastructure Limited v. Cherian Varkey Construction Co. (P) Ltd.*,²¹ opined that mediation is a method of amicable resolution of conflicts through dialogue, facilitated by an impartial third party, and is a viable substitute for litigation.

Classification of Mediation

- A. As per legal regulations, specific matters are required to be resolved through the mediation process. Mediation is a crucial component in the resolution of family law and labour law disputes. Section 5(f)(iii) of the Civil Procedure-Mediation Rules of 2003 acknowledges the necessity of mandatory mediation.
- B. In India, when legal cases are initiated, the involved parties are provided with a range of Alternative Dispute Resolution (ADR) mechanisms to choose from. These ADR options can be pursued unless it is deemed imperative to resort to the formal court system. In most Indian jurisdictions, it is highly recommended to pursue

¹⁹ Mediate.com. "Benefits of Mediation." (accessed August 20, 2023). <https://www.mediate.com/articles/benefits.cfm>.

²⁰ Harvard Law School Program on Negotiation. "Advantages of Mediation Over Litigation." (accessed September 20, 2023). <https://www.pon.harvard.edu/daily/conflict-resolution/advantages-of-mediation-over-litigation/>.

²¹ (2010) 8 SCC 24.

alternative dispute resolution (ADR) prior to initiating legal proceedings. This particular type can also be categorised as: In the context of legal proceedings, court-annexed mediation services are offered directly by the court. The mediator is appointed by the court and the expiration date is determined by the same authority.

- C. In the Court-Referred mediation system, the court's involvement is substantial and explicit. The aforementioned statement pertains to the act of directing the case to one of the mediators who are currently at the disposal of the entity in question. This type of mediation involves impartial mediators who are not designated by the court. This suggests that the aforementioned services are rendered on a private basis in exchange for remuneration. These services are provided by mediators who have been certified by the court or by individuals who are not affiliated with the court.
- D. In the context of mediation, the private approach refers to a process in which the mediators operate autonomously, without being designated by the judicial system. This suggests that such services are provided privately in exchange for monetary compensation. These services are offered by mediators who are qualified by the Court or members of the general public, among others.
- E. In civil contracts, it is a common practise to include a clause specifying that in the event of a dispute between the parties, mediation will be utilised as a means of resolution instead of resorting to litigation. The aforementioned stipulation is commonly referred to as the mediation provision. The contract provides a comprehensive specification of all conditions related to mediation.²²

What are the limitations and challenges of mediation in India, and how do they affect its effectiveness?²³

Mediation is a prominent alternative conflict resolution strategy that has garnered significant attention in India in recent times. The reason for this is that mediation has the potential to mitigate the burden on India's legal system, which is currently grappling with a substantial backlog of cases. Mediation is increasingly becoming popular in India due to this particular factor. Notwithstanding its potential benefits, the implementation of mediation in India is impeded by several hindrances and limitations, significantly reducing its efficacy. This is the

²² Akanksha Mathur, How Does The Mediation Process Work – Steps and Procedure, iPleaders (Jul. 5, 2023, 6:15 PM), <https://blog.ipleaders.in/mediation-in-india-process/>.

²³ Singh, S.P. "Mediation in India: A Critical Analysis." *International Journal of Humanities and Social Science Invention*, vol. 4, issue 4, 2015, pp. 1-4.

case notwithstanding its potential utility. India presents a range of constraints and challenges that could potentially impede the efficacy of mediation. Some of the significant limitations and challenges of mediation in India are:

- a) Lack of awareness and acceptance:²⁴ This ignorance leads people to approach courts for dispute resolution rather than choosing mediation. As a result, there is a scarcity of demand for mediation services in the country, making it difficult for mediators to sustain their practice²⁵. Furthermore, the current legal framework lacks incentives to promote the selection of mediation by parties involved. Although the Civil Procedure Code (Amendment) Act of 2002 has implemented court-annexed mediation in India, the concept of mediation remains unfamiliar to a significant portion of the population. A significant number of individuals continue to exhibit a preference for the conventional legal system as opposed to considering the possibility of engaging in mediation. The deficiency in cognizance and acknowledgement of mediation can have an impact on its efficacy.²⁶
- b) Limited participation: In India, mediation is frequently limited to specific categories of cases, including but not limited to familial, commercial, and labour disputes. The extent of parties' involvement in mediation is constrained due to the reluctance of numerous parties to participate in the procedure.
- c) Lack of trained mediators:²⁷ Currently, India is facing a significant dearth of proficient and seasoned mediators. The level of proficiency and hands-on knowledge possessed by a mediator plays a crucial role in determining the overall quality of the mediation services rendered. Nonetheless, India is facing a dearth of proficient mediators, and the criteria for training and certification are not uniform. The amalgamation of these factors results in the provision of mediation services that exhibit a substandard quality compared to their potential. The comprehension of intricate legal considerations associated with a conflict may pose a challenge for the majority of mediators in India who lack a legal background.

²⁴ Goyal, Sumit. "Mediation in India: Opportunities and Challenges." *South Asian Journal of Management*, vol. 18, no. 1, 2011, pp. 141-150.

²⁵ Singh, Ruchi. "Mediation in India: Challenges and Opportunities." *Journal of Alternative Dispute Resolution in India*, vol. 2, no. 1, 2010, pp. 23-30.

²⁶ Basu, Pratyush. "The Indian Mediation Story: Challenges and Opportunities." *IndiaCorpLaw Blog*, 16 June 2021, <https://indiacorplaw.in/2021/06/the-indian-mediation-story-challenges-and-opportunities.html>.

²⁷ Kulkarni, Satyajee. "Mediation in India: Scope, Benefits and Challenges." *International Journal of Research and Analysis*, vol. 2, issue 2, 2014, pp. 136-140.

- d) Lack of confidentiality: The mediation process in India lacks strict adherence to confidentiality protocols. Although the mediation sessions are confidential, the resolution that is achieved during these sessions is not privileged and can be presented as proof in a legal proceeding.
- e) Inadequate legal framework: The regulatory framework for mediation in India is characterised by a lack of uniformity or a singular governing statute, with the legal landscape undergoing a constant state of development. The absence of a uniform legal structure may result in perplexity and ambiguity during the mediation procedure.
- f) The enforceability of mediated settlements: This issue presents a significant challenge that requires India's intervention through mediation. The consequences derived from mediation are not inherently enforceable, unlike those attained through the legal system. It is plausible that the mediated settlement may necessitate the parties to pursue judicial enforcement, a process that can be financially and temporally burdensome. Moreover, India lacks a consolidated legal structure for the recognition and implementation of mediated settlements, resulting in a state of unpredictability and vagueness regarding the nation's stance on this issue.²⁸
- g) The cultural and social factors: Furthermore, India poses challenges to the mediation process. The diverse cultural and social landscape of India, characterised by a multitude of languages, religious traditions, and cultural practises, poses a challenge for mediators seeking to comprehend and resolve disputes while taking into account the cultural and social nuances involved. Moreover, owing to the hierarchical social stratification prevalent in India, the mediators may encounter a situation where the participants feel at ease and are able to express themselves freely, thereby potentially compromising the efficacy of the mediation process.²⁹

²⁸ Gaur, Kirti. "Mediation in India: Issues and Challenges." *Asian Journal of Research in Social Sciences and Humanities*, vol. 5, issue 11, 2015, pp. 136-144.

²⁹ Kulkarni, Satyajeet. "Mediation in India: Scope, Benefits and Challenges." *International Journal of Research and Analysis*, vol. 2, issue 2, 2014, pp. 136-140.

What is the cost difference between mediation and litigation in India?³⁰

Mediation:³¹

- Typically, the expenses associated with litigation exceed those associated with mediation. In the process of mediation, the disputing parties collaborate with an unbiased mediator to reach a mutually agreeable resolution that can be executed. In contrast to litigation, alternative dispute resolution methods are frequently characterised by greater efficiency and reduced formality, leading to decreased expenses for the involved parties
- The parties can avoid the costs associated with a protracted legal dispute by electing to engage in the voluntary mediation process. As the participation in mediation is discretionary, any party holds the right to discontinue the procedure at their discretion. This provides corporations with the chance to reduce expenses that would have been allocated towards protracted legal proceedings, which frequently surpass the expenses of mediation.
- Due to the informal nature of the process, the legal system is expected to incur fewer costs. Due to its informal nature, mediation typically leads to reduced legal expenses for the concerned parties when compared to litigation. Parties may opt to participate in mediation as an alternative to litigation, wherein a neutral third party assists them in reaching a mutually agreeable resolution that is advantageous to all parties, instead of retaining legal counsel to advocate for their respective positions in a court of law.
- Typically, the costs of employing a mediator are comparatively lower than those of engaging solicitors. The costs linked with mediators are frequently considerably more economical than those linked with legal practitioners. The reason for this is that mediators are commonly compensated for their time rather than the resolution of the conflict.

Litigation:³²

- The cost of litigation can be significant due to the protracted legal procedures and the substantial fees charged by solicitors and courts. The process of litigation can be protracted and time-consuming, as it necessitates multiple court appearances and the

³⁰LawSikho, “Mediation vs Litigation: Cost and Time Comparison,” 8 June 2020, <https://blog.ipleaders.in/mediation-vs-litigation-cost-and-time-comparison/>

³¹ Sriram, S. (2019). Mediation: A Cost-Effective Alternative to Litigation. Indian Journal of Law and Public Policy, 6(2), 38-47.

³² LawSikho, “Mediation vs Litigation: Cost and Time Comparison,” 8 June 2023

production of a considerable volume of documentation. As a consequence of this, opting for this alternative entails higher expenses due to the accumulation of court fees and legal representation charges.

- The expenses associated with litigation may reach a level that renders it impractical, particularly in cases where it necessitates multiple court appearances, the deposition of expert witnesses, and the extensive preparation of legal documents. The process of litigation may entail the engagement of expert witnesses and the creation of voluminous documentation, which could potentially result in an escalation of the overall expenses, contingent upon the particulars of the case.
- Extended duration of the legal proceedings may lead to higher costs for the parties involved, as they may be obligated to compensate their legal representatives for an extended period of time. The duration of a legal proceeding can significantly fluctuate, resulting in extended remuneration of legal counsel by the parties involved, thereby augmenting the overall expenses of the case.
- The imposition of legal fees on the losing party in a court case may lead to a rise in the overall expenses of the litigation process. In situations where the prevailing party is entitled to recover legal fees from the losing party, the total expenses associated with the dispute may significantly escalate.

What are the benefits of choosing mediation over litigation in India?

The utilisation of mediation as an alternative to litigation in India offers several benefits, which shall be discussed in a general manner as follows:

- In terms of cost-effectiveness, mediation is often a more viable option than litigation as it entails a shorter time commitment and fewer formal process compliance requirements, resulting in lower costs. Apart from the cost savings on expensive court fees and other expenses related to litigation, mediation fees are typically more economical compared to the fees charged by legal practitioners.
- In the context of dispute resolution, mediation offers a comparatively expeditious means of reaching a settlement between the parties involved, often taking only a matter of hours or days, in contrast to the protracted timeline of weeks, months, or even years that may be required in the course of litigation. This leads to noteworthy time efficiency. The possibility exists for expediting the resolution of conflicts and reducing the duration and emotional strain associated with protracted legal disputes.

- The mediation process is characterised by its informal nature and flexibility, as it is not legally binding and can be customised to suit the needs of the parties involved. Arbitration offers greater flexibility compared to litigation as it allows the disputing parties to work together towards a mutually agreeable solution, rather than relying on a court-imposed settlement.
- The mediation process empowers the parties involved to actively participate in the decision-making process and exert a significant level of influence over the outcome of the resolution. Agreements of this nature have the potential to result in settlements that are both more enduring and financially advantageous compared to those that are authorised by a court during a legal process.
- Mediation can prove to be beneficial in situations where the concerned parties are required to maintain ongoing relationships or connections, such as in cases of commercial or personal disputes, with the aim of enhancing the quality of their relationships. This may encompass situations where the involved parties are required to maintain persistent interactions. The mediation process facilitates the cultivation of collaborative conduct and civility, while concurrently enhancing communication and comprehension.

Cases Suited For ADR

The Supreme Court has recognised the significance of mediation and provided a list of instances where ADR can be utilised. *Afcons Infrastructure Ltd. and Anr. v. Cherian Varkey Construction Co. Pvt. Ltd. and Ors.*

Following is a list of instances where ADR is applicable:

1. Instances pertaining to trade, commerce, and contractual agreements-
 - Contractual disputes are conflicts that arise from agreements between parties.
 - The conflicts pertaining to the enforcement of a contractual obligation to perform a specific act or deliver a particular item.
 - The disputes that arise between landlords and tenants, as well as licensor and licensees.
 - The conflicts pertaining to the contractual agreement between the insurance provider and the policyholder.
 - The ongoing conflicts between financial institutions and their clientele.
 - All instances of disputes between suppliers and customers.

- The legal disputes that arise between developers/builders and customers.
2. Cases as a result of strained or soured relationships-
- The disputes relating to matrimonial causes, maintenance as well as the custody of children;
 - The conflicts that arise due to partition among family members or co-parceners or co- owners a disputes arising out of a partnership, among partners.
3. Instances where the preservation of an ongoing relationship is crucial despite the presence of conflicts. Instances of disputes among neighbouring parties, such as disturbances and infringements.
- The issue of conflicts arising between employers and employees.
 - Interpersonal conflicts within a given society, association, or community of flat owners.
4. The legal cases pertaining to tort liability, encompassing demands for damages in incidents involving motor vehicles and other types of accidents.
5. Consumer disputes encompass a wide range of conflicts, including those in which a trader, supplier, manufacturer, or service provider seeks to uphold their business or professional reputation, credibility, or product popularity. Enumerated herewith are the categories of conflicts wherein the utilisation of Alternative Dispute Resolution mechanisms may not be optimally appropriate.
- All lawsuits that fall under Order 1 Rule 8 of the CPC pertain to representative suits that involve matters of public interest or the interests of a large number of individuals.
 - Any disagreement pertaining to elections or public offices.
 - Legal proceedings pertaining to the issuance of probate or letters of administration in matters of inheritance.
 - Controversies pertaining to significant and precise accusations of deceit, production of falsified records, counterfeiting, assuming another's identity, and exerting pressure.
 - Legal cases that necessitate safeguarding by the court, such as litigation involving minors, divine entities, and individuals with mental disabilities.

- Contentious matters pertaining to the assertion of ownership rights vis-à-vis the state.
- Issues pertaining to the prosecution of criminal offences.³³

Conclusion

In recent years, the popularity of mediation as a productive and efficacious alternative conflict resolution method has increased in India. The process of mediation presents a range of benefits to all parties involved in a given conflict. Mediation is becoming increasingly popular in India due to its cost-effectiveness, expeditious resolution time, adaptability, informal nature, and collaborative problem-solving approach. This can be attributed to the fact that India has a significant number of legal disputes. The objective of this research project is to examine the effectiveness of mediation as a means of resolving conflicts in India. One of the key advantages of utilising mediation as a method of resolving disputes is its affordability. In India, where legal disputes can result in substantial expenses, mediation presents a financially feasible alternative to litigation. Mediation can be a more cost-effective alternative to litigation due to its less formal procedural requirements and lower mediator fees compared to attorney fees.

The parties may potentially reduce the expenses associated with attending court and other legal fees. Mediation is a more time-efficient process compared to litigation, as it enables parties to reach a resolution in a shorter period. Litigation, on the other hand, may extend for several weeks, months, or even years. In the majority of instances, mediation can facilitate the parties' consensus at a faster pace compared to litigation.

Two further advantages of the mediation process are its adaptability and lack of formality. In comparison to litigation, which follows rigorous protocols and guidelines, mediation offers a less formal and more flexible setting where disputing parties can openly discuss and explore various potential solutions. Through the facilitation of constructive discourse, promotion of dialogue, and provision of support to the involved parties in identifying novel concepts that may not have been feasible within the confines of the legal proceedings, the mediator is capable of assisting the parties in uncovering inventive resolutions that would have been unattainable during the litigation process.

³³ Akanksha Mathur, How Does The Mediation Process Work – Steps and Procedure, iPleaders (Jul. 6, 2023, 11:25 PM), <https://blog.ipleaders.in/mediation-in-india-process/>.

Furthermore, mediation exhibits flexibility as the involved parties have the opportunity to engage in negotiations towards a settlement, as opposed to relying on a court judgement to resolve the conflict.

Furthermore, mediation affords the parties increased agency and participation in the proceedings. In the course of mediation, the involved parties are afforded greater agency in determining the outcome and are actively engaged in the decision-making process. In contrast, the outcome of a legal dispute is determined by the judge's decision, with minimal to no input from the involved parties regarding the course of the proceedings. The mediator facilitates a dialogue between the parties involved, encouraging them to express their respective desires, apprehensions, and objectives, with the ultimate goal of collaboratively devising mutually acceptable resolutions. This may result in agreements that are comparatively more gratifying and enduring than those that are enforced by a judicial authority in a legal process.

The mediation process further strengthens pre-existing relationships, thereby constituting another noteworthy benefit. The mediation process is characterised by a greater degree of consideration and collaboration, which serves to improve communication and foster greater understanding. The disputants possess the capacity to collaborate in order to arrive at a resolution to the dispute that satisfies their respective requirements, preferences, and apprehensions. This could prove advantageous in upholding connections amongst the individuals implicated, particularly in scenarios where the concerned parties are required to sustain cooperation or uphold ongoing associations, such as in a commercial conflict or a dispute involving a relative.

Although mediation offers numerous advantages, it also presents certain limitations. A potential obstacle that could arise during the process of mediation in India pertains to a deficiency in comprehension and reliance regarding the protocol. Many individuals lack knowledge regarding the benefits of mediation, while some may harbour doubts regarding the mediator's neutrality or the effectiveness of the method in expeditiously resolving disputes. Moreover, notwithstanding the commonly held notion that involvement in the mediation procedure is completely discretionary, it is plausible that certain parties may decline to participate, electing instead to present their conflict before a judge for the purpose of obtaining a verdict. An additional limitation of the mediation process pertains to the absence of an established legal framework for the management of agreements that are reached during the process. The Mediation and Conciliation Rules of 2004 provide a structure for mediation. However, the parties involved are not obligated to abide by the terms agreed upon during the mediation proceedings.

In the event that the parties opt to violate the agreements that were previously established through mediation, it is probable that this will lead to disputes and potentially, legal proceedings.

Despite the obstacles, mediation has emerged as a feasible alternative for resolving conflicts in India and has gained significant traction in recent times. The advantages of mediation have been recognised by both the executive branch and the judicial system, and they are currently making efforts to augment the quantity of cases that are settled through this mechanism. The inclusion of pre-institution mediation provision in the Business Courts Act of 2015 has resulted in a significant increase in the resolution of business conflicts through mediation. Furthermore, the significance of mediation has been emphasised by the Supreme Court of India, which has advocated for its implementation in numerous prominent cases. The court has endorsed and promoted the utilisation of mediation.
