

Role of Mediation in Settlement of Disputes in India

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Abstract: *There are several methods of alternative dispute resolution, in which meditation is one of the most famous methods in India. Section 89 of the code of civil procedure talks about mediation. Mediation is a process of alternative dispute resolution in which the mediator who will be an external, neutral person to the dispute, works with the parties to find out a solution which is acceptable to all the parties of the dispute. The basic purpose of mediation is to provide an opportunity to negotiate, converse and explore options added by a neutral third party if a settlement is possible. All parties to the suit must have viewed the mediator as impartial.*

Keywords: Mediator, Agreement, Counter offer, Adjudication, Voluntary, Constitution, Confidential, Facilitate, Tortious, Non - binding

1. Introduction

The parties of the dispute may use mediation in different disputes like commercial, legal, diplomatic, workplace, community and also family matters. Such disputes may involve States, individuals, communities, organisations or other representatives with a vested interest in the outcome. The third neutral party in the mediation process is called mediator, uses appropriate skills and techniques to open an improved dialogue between the parties of the dispute. It is the aim of mediators to help the parties to reach an agreement on the disputed matter. The third party representative may make a contract and mediate between the Union and corporation. when a workers' Union goes on strike, behind this any reason maybe, a dispute takes place, then the corporation hires a third party to intervene in an attempt to settle a contract or agreement between the Union and the corporation.

According to Cambridge dictionary- "the process of talking to two separate people or groups involved in a disagreement to try to help them to agree or find a solution to their problem is called Mediation".

If the mediation process succeeds, both the parties to the court without mentioning were transpired during the mediation processing proceeding. if the mediation process is unsuccessful, then the mediator should only write one sentence in his report and send it to the court stating that the mediation has been unsuccessful. The mediator will not write anything which was discussed, proposed or done during the meditation proceedings. This is because in mediation, very often, offers, counteroffers and proposals are made by the parties but until and unless the parties reach to an agreement signed by them, it will not amount their concluded contract. if the happenings in the mediation proceeding are disclosed by the mediator, than it will destroy the confidentiality of the mediation process. so it is necessary to keep secrets of the matter. [1]

The Supreme Court held that in complex cases, mediation is the better option than lok adalat or judicial settlement. it is clear that Indian judicial approach has been towards promoting as a mode of dispute resolution. On 27 July 2002 the first mediation centre was inaugurated by the Chief justice of India in Ahmedabad, Gujarat. The Chief justice of India called a meeting of the Chief justices of all the high courts of the Indian states in November 2002 at New Delhi

to impress upon them the importance of meditation. The first annexed mediation centre was inaugurated in Chennai on 9th April 2005. The meditation Central was opened on 8th October, 2006 [2]. The mediator has no authority to make any decisions that are binding on the parties of the case, but uses certain procedures, techniques and skills to help the parties of the case to negotiate on agreed resolution of their dispute without adjudication.

The mediation provides a voluntary, non - binding, confidential and interest based procedure. the parties of the dispute may terminate mediation at any time after the first hearing.

Mediation is a party centered process that focuses on the primary rights, needs and interests of the parties. a mediator is also facilitative in that he/she manages the interaction between the parties of the dispute and also facilitates open communication. Mediation has a structure, time table and dynamics that negotiation lacks. The mediation process is private and confidential, possibly enforced by law. The participation in the mediation is voluntary. In mediation, the mediator acts as a neutral third party, the process of mediation is becoming a more peaceful and internationally accepted solution to the end of conflict between the parties of the dispute.

More and more mediation centres should be created for settling disputes outside of court. the mediation process will achieve the object of rendering social justice to the people, which is the goal of a successful judicial system [3].

M. Siddiq (D) Vs Mahant Suresh Das case [4]

A five judge constitution bench of the Supreme Court of India ordered a court - monitored mediation in the Ayodhya dispute.

Afcons infrastructure limited versus cherian varkey construction [5]

In this case the Supreme Court observed that all cases relating to trade, commerce, contacts, consumer disputes and tortious liability could normally be mediated.

2. Stages of Mediation

1) Preliminary Stage: The first step in the mediation is

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planning; the mediator decides where they should meet and who should be presented there.

- 2) Mediator's introduction: When the parties of the dispute gather at the same place, then the mediator introduces the participants and also introduces the procedure of mediation and lays out ground rules.
- 3) Opening remarks: After the introduction of mediators and participants of the dispute, each side has the opportunity to present its view on the dispute without interruption. In addition they may also take time to vent their feelings.
- 4) Joint discussion: After the presentation of opening remarks from each side, the participants and mediator may ask questions relating to the dispute with goal of reaching a better understanding of each party's needs and concerns. The mediator acts as a translator, repeating back what they have heard and asking for clarification, when necessary. The mediator diagnoses the problems in the path of the parties.
- 5) Causes: The mediator may meet separately with both the parties of the dispute for private meetings and causes. The mediator tells the parties that the information they have shared in caucus will remain confidential.
- 6) Negotiation: It is time to formulate ideas and proposals of the parties. The negotiation can be led by a mediator with all the parties in the same room and the parties of the dispute may ask the advice of the mediator, when the settlement of the proposal is put together.

3. Mediation Centres

Mediation centres all over the country have opened up for fast and effective resolution of disputes. Delhi is one of the cities whose mediation centre has seen a lot of success stories in the last decade. The mediation centres in Delhi's 6 district courts have settled over one lakh cases in the past ten years. It is a boon to the judicial system. It is expected that in the near future mediation and other alternative resolution centers will play a big role in fixing the justice delivery system in the context of the country. We can recover the pendency of cases through a lot of mediation centres. The parties can tailor their settlement in a particular situation and attend to the fine details of implementation.

4. Role of mediator in settlement of disputes

- a) Facilitating communication - the mediator's main role is to facilitate communication between both the parties of the case with a view to helping them to reach a voluntarily resolution to their dispute that is timely, fair and cost effective.
- b) Fixing a date for meeting—
After the appointment of the mediator, the mediator will contact the parties or their representatives, or their agents to fix a date for the holding of the first meeting. The mediator and party may also take help of an advocate, legal prosecutor, or any other individual appointed by them at any time whether before or during the mediation proceedings.
- c) Review of mediation - the mediation parties shall sign the centre's model mediation agreement that set out the terms and Framework for the conduct of the mediation

process at the request of the mediator. The mediator will explain the process with particular reference to the statutory provisions regulating confidentially, and also give a brief description of his role.

- d) Consent in writing: The mediator will take consent of all the parties in writing whether they agree to give their consent to him, and hold separate meetings with each of them on an individual basis. The mediation parties will give a brief account of facts of the dispute on his/her behalf. The mediator will ask questions to the parties to clarify certain matters for the purpose of assisting the parties overcome any obstacle and explore options for settlement. The mediator will discuss about the issue in hand and tries to find out a solution which is viable to both the parties of the dispute.
- e) Communication Facilitator: The mediator will ensure that each and every party will be fully heard in the mediation process.
- f) Process Advisor: The mediator comes to be trusted to suggest procedures for making progress in mediation discussions which may include caucus meetings, consultation with outside legal counsel and consultation with substantive experts.
- g) Responsible person: The mediator will keep and manage track of all necessary information, write up the parties agreement and may assist the parties to implement their agreement.
- h) Translator: The mediator will help by rephrasing or reframing communications so that they receive and understand better.
- i) Educator: The educator educates the parties of the dispute about the mediation process, other conflicts alternatives, issues that are typically addressed, options and principles that may be considered, research, court standards etc.

5. Ethics of the mediator

- a) The mediators should not carry on any activity or conductor which could be considered as a non mediator.
- b) Mediators should uphold fairness and integrity of the mediation process.
- c) The mediator shall maintain the reasonable expectations of the parties as to confidentiality.
- d) The mediator shall refrain from promises or guarantees of results.
- e) The Mediator ensures that the parties involved in the mediation are fairly informed and have an adequate understanding of the procedural aspects of the process.
- f) The Mediation mediators shall also recognise that mediation is based on the principle of self-determination by the parties and that the mediation process relies upon the ability of parties to reach a voluntary and undisclosed agreement.
- g) The Mediators shall be faithful to the relationship of trust and confidentiality imposed in the office of the mediator.
- h) The Mediator shall follow and observe the rules of mediation strictly and with due diligence.
- i) The mediator shall satisfy himself that he is qualified to undertake and complete the assignment in a professional manner.

- j) The Mediator shall disclose any interest or relationship likely to affect impartiality or which might seek an appearance of partiality or bias.
- k) The Mediator shall avoid any irrelevant thing to the dispute while communicating with the parties.
- l) The mediator shall conduct all proceedings related to the resolution of a dispute in accordance with the applicable law.

References

- [1] Moti ram (D) Tr. Lrs and And vs. Ashok Kumar and And in December, 2010.
- [2] The Hindustan Times on 8 October 2006.
- [3] The government of India, Law Commission of India, 222nd report, "need for justice".
- [4] Civil appeal number 10866 - 10867 of 2010.
- [5] Civil appeal number 6000 SLP (c) number 760 of 2007.