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# **MEDIATION – THE MOST ADVANTAGEOUS ADR MECHANISM**

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## **ABSTRACT:**

Mediation is one of the leading types of ADR and is a preferable means of conflict resolution in a wide range of scenarios, including family, workplace, commercial, and interstate conflict. This article is focused on pointing out the advantages of mediation in terms of the flexibility of the mediator's decisions, the reduced costs of the mediation process, the confidentiality of the process, and the preservation of the relationship between the parties involved. Compared to the contrasting system of litigation, which involves hostile methods and severe independence of a judge, mediation provides parties with more flexibility and direct influence over the result and the possibility to engage in creating the solutions and the outcomes, which will be satisfying for all parties involved. Mediation contributes to its popularity and effectiveness by being cheaper and less time-consuming than traditional litigation and at the same time, the confidentiality of this procedure provides a friendly environment in which people can speak freely and withhold the utmost honesty during negotiations. In addition to the conventional dispute resolution technique, mediation has an advantage in that it fosters long-term relations, whereas, in the case of an adversarial process, there is no continuous striving for ways to maintain relations, yet the goal is to gain victory over the other party. Although people may argue that there are limitations to mediation, like power relations and the overreliance on the mediator's skills, the overall efficiency and versatility of mediation surpass any other methods of dispute-solving. In light of the growing appreciation of such conflict management techniques as being non-incensed and having more regard for the actual dispute, mediation stands poised to assume the all-important role of not only encouraging and ensuring the non-violent management of conflicts in various arenas of society.

### Introduction:

Alternative dispute resolution, or alternative means of resolving conflicts other than going to trial, is becoming increasingly known as a leading mechanism in various forms of dialogue ranging from family and commercial disputes to workplace issues and even in the international sphere. This essay submits that mediation remains one of the best dispute resolution processes, considering its flexible nature, cost aspects, confidentiality standards, and the ability to maintain a relationship or silence on personal issues. At the same time, however, mediation is also empowering since it allows the parties to get involved in forming a solution that both sides agree on. This active engagement produces more robust agreements as well as increased satisfaction with the process and its results.

### Flexibility and Control:

The flexibility of mediation is one of the most appealing benefits. While prescribed procedures and a set framework govern litigation, mediation lets the parties mold the process according to their desired specifications and applicable circumstances. It also extends to the timing of sessions, choosing a mediator from anywhere in the world, and the mediation structure. The parties and the mediator decide where, when, and how often they meet. This works well in complicated multi-party disputes because scheduling can be organized as quickly or slowly as is convenient for all involved.

In addition, mediation offers parties greater control over the ultimate result. Unlike a judicial outcome where the judge or jury makes a decision, mediation enables two disputing parties to work together in finding an agreement that is acceptable to all parties involved. Because of this sense of control in the process and result, you are more likely to arrive at a solution that both feels right and prompts commitment to it because it was your decision. Although such resolutions generally are binding and compliance rates are much higher than for court-ordered judgments.

In the case of Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.<sup>1</sup>, the judgment underscored the importance of flexibility in ADR proceedings, allowing parties to choose the method most suitable for their specific case, and recognized mediation and conciliation as effective means to resolve disputes amicably and preserve relationships.

### **COST EFFECTIVENESS:**

Cost-effectiveness is another major advantage of mediation and it distinguishes it from conventional litigation. Court-based legal struggles are expensive, with attorneys providing charges and court fees typically costing a fortune to taxpayers as payouts. Such expenses may add up very fast, especially in the case of extended disputes, and thus turn out to be a major financial expense for all parties.

Mediation provides a more cost-effective means for parties to resolve their disputes. The process involves a mediator who facilitates discussions between the parties to reach a mutually acceptable solution, often avoiding the need for extensive legal representation and procedural expenses. This was emphasized in the Law Commission of India's 129th Report on Urban Litigation – Mediation as an Alternative to Adjudication (1988)<sup>2</sup>.

In contrast, mediation is likely to have much lower costs. are billed by the hour or by the session, it is typically much faster than a litigated divorce so the overall cost ends up being less. In addition, mediation typically involves much less pre-mediation preparation than does a court proceeding, so expenses can be further diminished. Financially, that makes mediation seem like a very attractive option for both individuals and small businesses which could never (or would not want to) afford many months or years of legal struggles.

### **CONFIDENTIALITY:**

Confidentiality is a fundamental aspect of the mediation process and is highly regarded. Confidentiality is a fundamental principle in Indian mediation practice<sup>3</sup>. In contrast, court proceedings are typically open to the public, resulting in the inclusion of sensitive information, personal matters, and even the intricate details of a dispute within the public record. This

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<sup>1</sup> Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd., (2010) 8 SCC 24 (India).

<sup>2</sup> Law Commission of India's 129th Report on Urban Litigation – Mediation as an Alternative to Adjudication (1988).

<sup>3</sup> Arbitration and Conciliation Act, sec 75, 1996.

exposure can have negative consequences for the involved parties, posing risks to their reputations, relationships, and business interests.

Mediation, on the other hand, is a private and confidential process. The discussions and negotiations that occur during mediation sessions are private, and the mediator is obligated to maintain confidentiality. This confidentiality fosters a climate of open and honest communication, allowing parties to freely express their thoughts and concerns without concern that their words will be used against them in a public setting. This environment of trust and openness often facilitates more productive negotiations and enables the resolution of underlying issues that might otherwise go unaddressed in a public court setting.

#### Preserving Relationships:

One of the most advantageous benefits of mediation is its ability to safeguard and even enhance relationships among the parties involved. In contrast, litigation is inherently adversarial, frequently placing parties in opposition to each other in a zero-sum game. This adversarial aspect has the potential to worsen conflicts and foster additional hostility, thereby hindering the ability to uphold or mend relationships once the legal process comes to an end. The relationship-preserving aspect of mediation is often highlighted in Indian contexts, especially in family and matrimonial disputes<sup>4</sup>.

Comparing this to mediation, it promotes cooperation and open communication as mediators help disputing parties work through conflicts all while conserving money and resources without involving the courts. A mediator is someone who allows for healthy, constructive conversation between two parties that may otherwise be too awkward or aggressive towards one another to air their grievances and meet each other's needs in a balanced way. A collaborative approach benefits the company not just in resolving the present disagreement, but also in eliminating the root causes associated with it. As a result, parties are more likely to come out of the mediation process with a better understanding of each other's perspectives and are willing to cooperate in the future. This is especially true for contexts where the parties will need to continue interacting

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<sup>4</sup> A.K. Rajan, "Mediation in India – A Successful ADR Mechanism," *International Journal of Humanities and Social Science Invention* 3, no. 6 (2014): 50-56.

in some form after a formal resolution has been reached. This includes family-law disputes, workplace issues, and business-court cases.

### **EMPOWERMENT AND SATISFACTION:**

Mediation enables parties to take an active role in the resolution process, empowering them throughout. Unlike litigation, where legal representatives primarily advocate on behalf of their clients, mediation places the disputants themselves at the core of the process. This direct involvement empowers parties to express their needs and interests, explore various options, and negotiate mutually agreeable terms. By being actively engaging, parties gain a sense of action and satisfaction, as they become active participants in shaping their resolution, rather than passive recipients of a decision made by a third party.

Research shows that individuals who engage in mediation tend to have greater satisfaction with both the process and the outcome, in comparison to those who undergo litigation<sup>5</sup>. This higher satisfaction can be attributed to the promotion of fairness, control, and mutual respect that mediation fosters. Moreover, since mediated agreements are reached voluntarily, there is a higher likelihood that the parties involved will uphold the agreed-upon terms, leading to more sustainable and long-lasting resolutions.

### **EFFICIENCY:**

Mediation offers a smoother and faster alternative to traditional litigation. Court cases often stretch out over months or even years due to case backlogs, procedural delays, and the time-consuming processes of discovery and trial preparation. This lengthy timeline can create stress, incur high costs, and disrupt the lives of the parties involved.

In contrast to traditional litigation, mediation provides a more expedited resolution as it can be scheduled relatively quickly. The mediation process itself is designed to prioritize the crucial issues at hand. Skilled mediators collaborate with the parties to identify and address the main points of contention, explore potential solutions, and efficiently reach an agreement. This efficiency not only saves valuable time and resources but also enables the parties to move beyond the conflict and refocus on their personal or professional lives<sup>6</sup>.

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<sup>5</sup> P.C. Markanda, "Mediation and Conciliation," *Indian Journal of Arbitration Law* 2, no. 2 (2014): 67-88.

<sup>6</sup> Justice S.B. Sinha, "ADR and Mediation: The Indian Perspective," in *Symposium on ADR in India: Problems and Prospects* (2003), highlights the time-saving benefits of mediation.

### **TAILOR-MADE SOLUTIONS:**

Because mediation provides tailored solutions that are specific to the unique needs and interests of all participants. Since courts are constrained in the types of remedies they may grant, court relief generally is limited to awards of money or equitable. However, legal remedies may not always address the root cause or serve all interests of the disputants.

Mediation, on the other hand, provides a more fluid situation where parties can create solutions on their own that stretch beyond what might be produced by court order. In a business dispute, new terms may be agreed upon for future collaboration or joint ventures and changes to a company's practices. Family mediation can lead to individualized parenting plans or agreements on custody between parents where a neutral third party works to encourage flexibility and understanding. Also Dividing assets such as houses relies upon the values of the property as decided by the parties. The ability to develop customized answers ensures that the resolution is more promising and sustainable<sup>7</sup>.

### **CHALLENGES AND LIMITATIONS:**

Mediation, though it has many benefits to offer, is not easy to use and also has its problems and boundaries. The main disadvantage of mediation is that it may not be appropriate in all circumstances, especially where a power imbalance exists between the parties to the dispute or one of the parties acts unreasonably. Then in such circumstances, one of the weaker parties might feel like accepting conditions that are not fair and reasonable for any party.

Moreover, mediation does not have the formal discovery available in litigation which can be problematic where one party will need access to information from the other party to make an informed decision. If the parties cannot compel the disclosure of information, they will have a less powerful position when it comes to negotiations.

In addition, the outcome of mediation usually is directly related to the capability and expertise of your mediator. Ineffective mediation allows for non-productive conversations or an unresolved issue. This is why it's important to choose a mediator who knows how to handle all of this information efficiently.

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<sup>7</sup> N. R. Madhava Menon, "A Handbook on Mediation for Legal Practitioners," NLSIU Publications (2013).

### CONCLUSION:

Nevertheless, even with all the difficulties faced by mediation processes listed, it is still one of the best ways to resolve certain kinds of disputes because it is relatively cheap compared to other alternatives and preserves one's privacy and relationships. Mediation also ensures satisfaction and agreement; with the help of parties, it gives them an active role to play in resolving issues thereby increasing compliance. Its portability and adaptability make mediation appropriate for most disputes, such as family and workplace conflicts to commercial and international matters. Given the growing acceptance of peaceful and non-adversarial mechanisms in society at large, mediation is likely to assume an even more important position as a key player in reaching a sustainable solution acceptable for all parties.

