

# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed Edition :

[www.ijlra.com](http://www.ijlra.com)

## **DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

## **EDITORIAL TEAM**

### **EDITORS**



### **Megha Middha**

*Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar*

*Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society*

### **Dr. Samrat Datta**

*Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board*



## Dr. Namita Jain



*Head & Associate Professor*

*School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.*

*Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019*

## Mrs.S.Kalpana

*Assistant professor of Law*

*Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.*



## Avinash Kumar



*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and*

*learning.*

## **ABOUT US**

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS

ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

# **MEDIATION AND NEGOTIATION IN INDIA: A COMPREHENSIVE STUDY**

AUTHORED BY - BILAL KHAN

LLM (Criminology)

Galgotias University, Greater Noida

## **ABSTRACT:**

Providing cheap and quick justice to the backward and poorer people engaging in litigation is an ethical responsibility and the easiest way is to mediate it all easily. By which disputes can be resolved outside the court. Reconciliatory disputes can be settled by mutual consent by negotiation and mediation. Both parties also escape the litigation in court. The disputes are quickly concluded by negotiation and mediation. And there is save time and expenditure. It is relieved to go around the court. It was extremely simple and convenient. And it helps to maintain social harmony.

**Keywords:** *Consent, Disputes, Mediation, Negotiation, Settlement.*

*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. As a peacemaker, the lawyer has a superior opportunity of being a good man. There will still be business enough.*

**-Abraham Lincoln**

## **1. INTRODUCTION**

The practice of mediation in India has its historical roots in the ancient periods when the peaceful resolution of conflicts was highly valued in indigenous practices and cultural traditions. These early mediation techniques were ingrained in Indian society's social structure and were crucial to preserving peace and justice. Similarly, mediation existed in many forms throughout ancient India. The foundation for peacefully resolving issues was created by the key Buddhist and Hindu concepts of compassion and non-violence. The idea of "Ahimsa," which means non-violence,

pushed people to look for peace via communication, comprehension, and reconciliation. Texts and scriptures from ancient India, including the Vedas, Upanishads, epics like the Mahabharata and Ramayana, as well as the Arthashastra and Manusmriti, offered mediation advice and illustrated cases in which mediation was used to resolve conflicts.<sup>1</sup> They expressed mediation as a good and honorable deed that encouraged the restoration of justice and harmony.

How can we resolve disputes between two or more people or between two or more parties through mediation and negotiation easily and quickly? In the process of mediation, any one person or a group of persons works as a mediator between the parties who are involved in the disputes.<sup>2</sup> In the first mediator contact with one party and try to know about the disputes and the one's condition with the other party. Afterward, the mediator contacts the second party and tries to his intention about the other party. After that mediator tries to settle between the parties with the help of the negotiation to resolve the disputes outside the courtroom. In the ancient period mediation, negotiation, and arbitration were other or optional ways of the resolution of disputes between the disputants. This way resolution of the disputes is accepted all over the world not only in India. Thereby, settlement of disputes with the help of any way except regular legal system like, mediation, negotiation, etc. so we can say that these are alternative means of settlement of disputes. All the same, in the eye of the law of arbitration the settlement through the process of mediation and negotiation is assumed as the alternative means.<sup>3</sup> India is a country of villages and rural people are resolved to settle disputes by the heads of rural intellectuals and villages.<sup>4</sup> Mediation is essentially a dialogue that involves a third party that is knowledgeable in effective negotiation processes and can help people coordinate their activities in the struggle and become more effective in their bargaining. Arbitration is an extension of the negotiation process in which it is going to expands the bargaining in a new format and uses the arbitrator, which contributes to the new variables and mobility in contact with the controversial. Nowadays the exercise of mediation and negotiation has also become necessary because at this time the number of cases is increasing very fast. And over time, can't resolve the disputes. at all this, it seems that in the

---

<sup>1</sup> Maliora Legal Center, [Historical Background of Mediation in India: A Tapestry of Ancient Wisdom and Modern Progress - Meliora Legal Center \(mplegalfirm.in\)](https://www.mplegalfirm.in) (last visited November 15, 2023).

<sup>2</sup> ClearIAS, [Dispute Redressal Mechanisms And Institutions - ClearIAS](https://www.clearias.com) (last visited November 20, 2023).

<sup>3</sup> Katie Shonk, what is Conflict Resolution, and How Does It Work? Program on negotiation, Harvard Law School, ( November 20, 2023, 10:00 am), [What is Conflict Resolution, and How Does It Work? - PON - Program on Negotiation at Harvard Law School](https://www.pon.harvard.edu)

<sup>4</sup> Maliora Legal Center, [Historical Background of Mediation in India: A Tapestry of Ancient Wisdom and Modern Progress - Meliora Legal Center \(mplegalfirm.in\)](https://www.mplegalfirm.in) (last visited November 15, 2023).

future, there will be a distraught problem in front of the country. If this continues, then in the future it will be very difficult to resolve this problem. If we look towards the judiciary, we discover that the court is overburdened with cases that are still pending. That's why the need for mediation and negotiation has increased. The Arbitration and Conciliation Act, of 1996 also helped to develop ADR (Alternative Disputes Resolution) system.

Now the question is why go for these alternative means? There is a lot of strain on India's court system. More than 4.7 crore cases are pending in courts at all levels of the judiciary as of May 2022. Out of them, 12 percent are in High Courts and 87.4% are in subordinate courts; over 1,82,000 of the cases have been pending for more than 30 years<sup>5</sup>. And in future this figure there is the possibility of further increase. One of the main reasons for this is also that every year a new - new law by the government. In the future use of these rules and the possibility of misuse increases. The number of cases is rising every day while the number of judicial corporations is declining. So, the number of judges is less in the judicial corporation of the country. This reduction will down the country's law and order. In the last two decades, crime has increased very fast, so in today's time, this burden may be reduced by using mediation in some of the cases. **Section 89** of the Code (CPC Amendment Act, 1999) of Civil Procedure:<sup>6</sup> as per this section we can settle disputes with the help of the other procedure other than inside the courtroom.<sup>7</sup>

- (1) Where in the Court it appears that there exist elements of a settlement that can be acceptable to the disputants, the Court prepared the settlement conditions and gave their comments to the parties and after observing the parties they gave them to the Court may reformulate the terms of a possible settlement and refer the same for –
- a) Firstly, the court refers to the Arbitration
  - b) Secondly refer to the conciliation
  - c) This sub-section gives the direction to go to Lok Adalat for the settlement of disputes
  - d) It gave the direction for the process of mediation

---

<sup>5</sup> Sumeda, Explained | The clogged state of the Indian judiciary, The Hindu, ( November 16, 2023), [Explained | Over 47 million cases pending in courts: clogged state of Indian judiciary - The Hindu](#)

<sup>6</sup> Salem Advocate's bar Association v. Union of India, AIR 2005, 6 SCC 344 and Afsccon Infrastructure limited v. Cherian Varkey Construction Co. (P) Ltd. AIR 2010, 8 SCC 24

<sup>7</sup> The Code of Civil Procedure, 1908, § 89, No. 05, Acts of Parliament, 1908 (India)

(2) Where a dispute has been referred –

- a) Whenever any disputes have been referred for arbitration or conciliation, then in this matter the provisions of the Arbitration and Conciliation Act, 1996 shall apply as if the proceedings for arbitration or conciliation were referred to the settlement under the provisions of that Act;
- b) Where a dispute has referred to Lok Adalat, the Court will refer to the Lok Adalat as per the provision of sub-section (1) of section 20 of the Legal Services Authority Act, and all the Act shall apply given disputes because referred to the Lok Adalat<sup>8</sup>.
- c) For the judicial disposal, the court will inform a suitable institution or person and such institution or person will be treated as a Lok Adalat, and all the provisions of the Legal Services Authority Act, 1987 will apply. As the dispute was referred to Lok Adalat under the provisions of that Act; (d) For arbitration, the court will affect an agreement between the parties and will follow the prescribed procedure.
- d) D) For arbitration, the court will affect an agreement between the parties and will follow the prescribed procedure.<sup>9</sup>

**Hindu Marriage Act 1955 section 23 (2):** Before moving forward for any relief under this Act, in every case in every case, the court shall have the duty of every case so that every effort can be made to do so in every case with the nature and circumstances of the matter:<sup>10</sup>

**Section 23-A. Relief for respondent in divorce and other proceedings.-** In any proceeding to rebuild divorce or judicial separation or marital rights, the defendant cannot resist the relief demanded based on adultery, cruelty, or dependence of the petitioner, But on this ground, they also make a counter-claim for any relief under this Act; And if the petitioner is proved to be adultery, cruelty or immersion, then the court can give a relief to the defendant under this Act If he pleads for the petition to present that petition<sup>11</sup>

Now let us understand where the alternative means could be applied. Some of these are explained here, in family matters or matrimonial disputes, the Supreme Court of India directed the Family

---

<sup>8</sup> The Legal Service Authority Act, 1987, § 20, No. 39, Acts of Parliament, 1987 (India)

<sup>9</sup> Dr. S.C.Tripathi, Arbitration and Conciliation Act,1996, (CENTRAL LAW PUBLICATIONS,107 DARBHANGA CASTLE, ALLAHABAD, 2012)

<sup>10</sup> Hindu Marriage Act 1955, § 23, No. 25, Acts of Parliament 1955(India)

<sup>11</sup> Hindu Marriage Act 1955, § 23A, No. 25, Acts of Parliament, 1955 (India)

Court and the Criminal Court to give reference to the parties to the arbitration centers to settle the disputes through the process of mediation and said that any dispute before the judicial proceedings was settled through negotiation should try. The Supreme Court of India has directed the family courts to make every effort to resolve disputes related to family disputes or marital disputes given section 9 of the Family Court Act.<sup>12</sup> This would be very important when the disputes are related to maintenance, child custody, etc.<sup>13</sup> In this situation, disputes should be settled through the process of mediation and both parties should be referred to the mediation center by the court. The Supreme Court also directed the criminal courts that when a complainant comes to the court and the complaints are under section 498A of the IPC, then the parties show the mediation center before the hearing of the complaints. The court also said that this reference should only be done in cases where the parties are ready to resolve disputes or facts. Which offense falls under section 498A of the IPC<sup>14</sup>, where the agreement can be made, there are non-compoundable offenses, so the court has issued this directive. The Supreme Court also said that to encourage the process of arbitration, all arbitration centers ask for pre-litigation / desk to settle disputes in the pre-litigation phase and to make them very publicized.

## 2. PROCESS OF MEDIATION

The present Indian legal system is borrowed from the British. In ancient times in India 'Nyay Panchayat' was very important and was the basic means for the settlement of disputes. In the period of the king's settlement of disputes, was done through mediation, negotiation, and by 'Panch' which was fast and cheap. However, such settlement of disputes was to be done by senior citizens who were fair and honest. This type of dispute settlement system almost ended after the arrival of the British in India. This method of settlement of disputes went down day by day. The method of the British to resolve the disputes was given more importance, and with this, the judiciary began to be used to resolve the disputes, but this dispute redressal system was also supported by the British judiciary system. The provision was given in the CPC, 1908 for the Arbitration. Such alternative means of disputes were recognized by the Presidency Court *i.e.*, Calcutta, Bombay, and Madras.

---

<sup>12</sup> The Family Court Act, 1984, § 9, No. 66, Acts of Parliament, 1984 (India).

<sup>13</sup> Santhini vs Vijaya Venketesh, (2016), SC 1278

<sup>14</sup> The Indian Penal Code, 1860, § 498A, No. 45, Acts of Parliament, 1860(India)

Mediation is an informal process for settlement of the disputes between the disputants. In the process of mediation firstly appoint the mediator with the agreement of both parties.<sup>15</sup> The role of the mediator is to direct the parties for the resolution of the disputes through joint sessions and different caucuses (members) with parties, the mediator helps both sides to define the issues clearly; and understand the position of both parties.<sup>16</sup> Most often mediation starts with joint sessions and different caucuses to set rules and order papers. The joint session also helps to define the figure and the expression of both parties. Generally, more than parties choose the different caucuses (separate members) in the procedure of mediation. The mediator will take the message from one party to the second party i.e. offer, counteroffer, proposal, acceptance, etc. It helps to create good communication to resolve the disputes between the parties. Because mediation is not a formal process to resolve disputes between the parties, mediators have no right to force the parties for the resolution of the disputes. They can only talk with the parties. And they can say that about loss/harm outcome from the disputes if they are not to resolve themselves. Mediation is not binding until parties agree on a resolution.

**2.1** The mediator will routinely provide each side with an opportunity to present their case and concerns after the mediation has begun. Usually, the person who made the mediation request will speak first. While it does not need to discuss specifics, it does entail allowing the parties to brainstorm and provide additional details regarding each other's emotional states.

**2.2** The mediator will ask the question to the parties about his will.

**2.3** Before the mediation process begins, the mediator can assist the parties in determining the meeting's agenda and who should attend or not. Both parties may have a worker, coworker, family member, and lawyer on their side, and they may even employ a judge and anyone with 10 years of mediation expertise.

**2.4** Any type of forum can comprehend mediation. However, in my opinion, disputes are simpler to resolve if both sides have the same goal at the same time, which is to resolve the

---

<sup>15</sup> Hg org., Settlement of Disputes Through Mediation in India: When Parties Can Turn To This Option? (last visited November 23, 2023)

<sup>16</sup> iPleader, [How Does The Mediation Process Work - Steps and Procedure - iPleaders](#), (last visited November 21, 2023)

more intricate disputes.

**2.5** At its core, mediation is the communication process that a third party initiates to settle disagreements. Only individuals who wish to set up a secure communication channel must do this. To establish a communication channel for the settlement of disputes, the parties may initiate communication directly with one another and with the assistance of mediators.

**2.6** Using mediation to settle disputes has several benefits. First of all, it's a quick, flexible, and affordable method of resolving conflicts. This procedure is only carried out between the parties entangled in the disagreements, not between other individuals.

**2.7** In this process both parties must agree on the all points that are given to the mediators. In this case, even a settlement for mediation has to be applied in the past and for this settlement, both parties must agree with his consent which is given in section 13 of the Indian Contract Act 1872; Two or more parties agree upon the same thing in the same sense and they give their consent on agreement. Finally, we can say that the consent of both parties is on same thing. And the consent should be fully free from pressure, undue influence, cheating, disfiguration, and fault. If consent is made by anyone the above-discussed fact in that condition, it is said that this happens because consent is not granted by free will, but for the existence of such pressure, undue influence, cheating, misrepresentation, and mistake.

**2.8** This process is flexible but needs some preparation. And the possibility of some week to hearing the mediation proceeding. The boundary of the flexibility of this process has been declared by both parties before the start of the mediation (or given by the mediators to both parties at the time of the first agreement). The limit of flexibility can be increased if it is needed in the process of mediation only in the way of settlement of disputes not to pressure any party from them.

**2.9** This flexibility also affects on speed of the settlement of disputes. That's why flexibility should be with things that can be fixed for the settlement of disputes.

**2.10** Both parties should be completely free to tell the cause (reason) of the disputes and the

possible solution for it. When both parties openly talk and resolve the disputes, then the disputes can easily be suggested by mediation.

**2.11** These procedures are made at the consent of the parties; and can be broken at any time with the help of the mediator, but before suggestion.

### **3. NEGOTIATION AND ITS PROCESS**

Not only do businesses need to be skilled negotiators. Both at business and at home, negotiation training is useful in a range of real-world scenarios. Through negotiation, two or more individuals (or organizations) can resolve issues or reach a better solution. Reaching a mutually agreeable agreement through negotiation helps to prevent disputes.<sup>17</sup>

In General, Negotiation means transacting their views and expressing their ideas or any other issue which are the reason for disputes between the parties. The process of negotiation can be managed by the participation of disputants or their representatives while protecting the relationship between the parties. Negotiation is a solution to disagreement by giving and concerning a specific relationship. Negotiation is a process of trying to make an agreement or compromise by discussion between the parties by the parties and by representatives of the parties.<sup>18</sup> This process is not a regular procedure in which the full control of the result is in the hands of the parties, who can choose the process by which they will make a deal. Because most of the parties have set limits on the procedure of negotiation, it gives for a huge number of presumable settlements for the potentiality of maximum gain for both parties. Negotiation is fully based on commercial process or dispute resolution and also the part of its. Negotiation is the way through which people settle the disputes. It is a process that helps make a compromise or an agreement easily by avoiding arguments and disputes. If any misunderstanding or disagreement between the parties then they can communicate together directly or with the help of their representatives to achieve the best possible result from the discussion. I would recommend that conversation is a resource for learning ourselves, interacting with new people, and knowing about others' expectation and values of our own, by allowing to others for the talking with us which

---

<sup>17</sup> Masterclass, [How to Negotiate: The 5 Stages of the Negotiation Process - 2023 - MasterClass](#), (last visited November 23, 2023).

<sup>18</sup> Project management institute, [ProjectManagement.com - Negotiation Process - Basic Skills](#), (last visited November 21, 2023).

affect the effective communication between the parties.<sup>19</sup> Within the process of ADR (Alternative Dispute Resolution) negotiation is a form of communication and behind it, the objective is to resolve the disputes between the parties. From the above discussion, we can observe some main points of negotiation;

**3.1** Negotiation is a communication process.

**3.2** Voluntary

**3.3** Control over the procedure and outcome of the result

**3.4** Wide range of possible solutions and maximize joint gain.

**3.5** Quick, inexpensive, less complicated.

**3.1 Negotiation is a communication process:** The procedure of negotiation is fully based on the communication process. In this procedure both the parties can be directly communicate together or by the help of their representative in favor of the resolution of disputes.

**3.2 Voluntary:** In this procedure both the parties are fully free to choose this process or communicate together for the resolution of the disputes. In this process, any person cannot be forced to any party for choosing this procedure to resolve the disputes. This fully depends on the parties if they do not want to choose this process for the resolution of disputes then they are free.

**3.3 Control over the procedure and outcome of the result:** Those parties who are involved in the disputes have control over the procedure of negotiation and also control over the outcome of the result. They can get the result they want if both parties agree on the result they want.

**3.4 Wide range of possible solutions and maximize joint gain:** In this procedure is a very wide chance of the resolution of the disputes cheaply and quickly. Because when the parties talk about the resolution of disputes together directly or indirectly. When the disputes are settled quickly then both parties benefit from the resolution of the disputes. They survive to the extent of the lawsuits because disputes are settled before the procedure of the litigation.

**3.5 Quick, inexpensive, less complicated:** This procedure is quick, inexpensive, and less

---

<sup>19</sup> Daniel Druckman and Lynn M. Wagner, Justice and negotiation, Annual Reviews ( Aug 13, 2015), [Justice and Negotiation | Annual Review of Psychology \(annualreviews.org\)](https://www.annualreviews.org/journals/Justice-and-Negotiation)

complicated compared with the other procedures.

#### **4. By Using Some Techniques Can Make a Successful Negotiation**

**4.1:** By developing their working condition with their relatives and determination to justly disrespect disputes.

**4.2:** Perceive your best alternative to the negotiated agreement to obtain a superior understanding of your imagination and selection.

**4.3:** By the justification of your intention in the mirror of conflict and try to know about how can be good bargaining with your stability and infirmity.

**4.4:** Declare the most common manipulative negotiation device applied by people- and how to foil their effects.

**4.5:** We should win, but not by defeating others, by winning themselves.

#### **5. HOW IT WILL APPLY?**

From the above discussion, it is declared that parties have different sensibilities regarding preferred alternative dispute resolution methods and there can be different opinions and choices among the parties. It depends on their opinion that they can choose either mediation or negotiation to resolve the disputes. Negotiation should be the first step to resolving the disputes because the procedure of negotiation is based on communication and we know that when the parties start talking together to resolve the disputes, they find any way to resolve the disputes.<sup>20</sup> This procedure is very important in personal disputes because many personal disputes are due to small disagreements between the parties on any topic or for any reason. This procedure seems to help us resolve disputes in a quick, inexpensive way. Many personal disputes can be settled through this procedure. However, this does not work always but this would happen when both parties agree not to listen to each other. So, the first duty of the negotiators arises to agree to the parties to communicate together by forming a meeting between the parties. In other words, we can say that the reason behind not listening to each other there could be previous animosity or any other bad feeling between them. If so, it stops the speed of the conversation in the way of resolution of the disputes and makes it difficult to resolve the disputes through negotiations. However, it is

---

<sup>20</sup> Project management institute, [ProjectManagement.com - Negotiation Process - Basic Skills](https://www.projectmanagement.com), (last visited November 21, 2023).

difficult but can be resolved through this mechanism. A good negotiator becomes important, who successfully removes the communication gap. To achieve good negotiators, they should be trained. When they are trained well, then they can be easily able to resolve disputes through negotiations.

Despite all this, even if the disputes cannot be resolved through negotiation, disputes can be resolved through mediation. It can prove to be a successful way to resolve personal disputes. Through intermediaries, both parties can agree to talk to each other again for the settlement of disputes, because both parties are still in the majority and they can help each other by adopting this procedure to resolving the disputes.

In the modern era, many such institutions have also been opened which work to resolve disputes through arbitration. These institutions generally want to develop the practice of arbitration through the development of ethical standards. To properly develop this procedure, the mediators should be neutral and fair. People need to be quick and well-satisfied. When people start believing in the mediator that the mediators are acting neutrally and fairly, then their faith can be won. And then people will start mediating to resolve their disputes quickly. As far as I know, people in rural areas or backward areas are not yet well aware of it. Before promoting mediation, it must inform to the people about this procedure before it can be used properly. When people start to know about it, then it will be easy to promote the procedure of mediation. To tell people about it where camps can be organized so that people can know about it quickly and easily. By doing so, the burden of lawsuits can be reduced from above the judiciary. And when the burden of lawsuits has decreased from the judiciary, people will get justice quickly. It will promote the rule of law in the society. And when the law will be well in society, then people will begin to respect it with their honesty. It will promote people's participation in the rule of law and it will help people's involvement in helping the rule of law in society. It will also encourage people to gain legal awareness and respect for the rights of others.

## 6. CONCLUSION

This paper has explored two ways to resolve conflict and disagreement between disputants: mediation and negotiation. There are other ways to resolve conflict as well, like family group conferences, ombudsmen, traditional Indian arbitration processes, etc. The goal of any conflict

resolution process is to make sure that the underlying causes of the conflict are identified, acknowledged, and resolved sincerely. If this isn't done then the situation is win-lose, conflict may still arise, escalate, and turn violent, causing disruptions, dislocations, and preventable crises. Using these methods as alternative dispute resolution (ADR) instead of litigation would increase the likelihood of de-escalation and resolution of disputes.

Both negotiation and mediation are effective and flexible methods for resolving conflicts. These approaches, which prioritize open communication, group problem-solving, and a focus on common interests, promote the upholding of relationships, the autonomy of individuals, and the effective settlement of disputes. In a modern globalized society, the mediation and negotiation processes promote peace, harmony, and mutual respect.

