

Mediation is an Alternative Technique to Dispute Resolution

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“The obligation of the legal profession is to serve as healers of human conflict we should provide mechanism that can produce an acceptable result in shortest possible time, with the least possible expense and with a minimum of stress to the participants. This is what justice is all about.”

– Warren Burger

ABSTRACT

The alternative dispute resolution techniques in India have been gaining a greater significance since the Arbitration and Conciliation Act, 1996 and the Commercial Courts Act, 2015. The recent codified law of the Mediation Act, 2013 marks a landmark event in developing the jurisprudence of mediation by codifying the procedure of appointment of mediators, ensuring timely resolution of the disputes, and also details of which disputes are exempted from mediation. The scope and object of the Mediation Act, 2023 is to align the process of Mediation as per the International standards and aligned to the observations in various judgments of the Hon’ble Supreme Court.

On September 15th, 2023, the Central Government notified the Mediation Act, 2023 in India. The Act promotes and facilitates mediation especially institutional mediation for the resolution of commercial or other disputes. The Act aims to encourage community mediation and to make online mediation as acceptable and costeffective process.

Mediation, considered an alternative technique to traditional dispute resolution methods, has gained significant attention in recent years. This method provides a unique approach to resolving conflicts, emphasizing communication and collaboration over adversarial processes.

The effectiveness of mediation lies in its ability to foster open dialogue and facilitate mutual understanding between conflicting parties. By encouraging direct communication, it aims to

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empower disputants to actively participate in crafting solutions tailored to their specific needs.

One notable aspect of mediation is its versatility in addressing a wide range of disputes, including interpersonal conflicts, workplace disagreements, and legal matters. Its adaptability makes it a valuable tool across various domains.

Unlike litigation, where decisions are imposed by third parties, mediation places the disputants in control of the outcome. This empowerment can lead to more durable and satisfactory resolutions, enhancing the overall satisfaction of the parties involved.

In addition to its efficacy, mediation often proves to be a more time-efficient process compared to lengthy legal proceedings. The streamlined nature of mediation contributes to reducing the overall cost and burden associated with dispute resolution.

Research in the field of mediation continually explores innovative techniques and approaches. Scholars and practitioners seek to enhance the understanding of mediation processes, effectiveness, and its potential applications in diverse contexts.

As mediation gains prominence, the need for well-trained and skilled mediators becomes paramount. Education and training programs play a vital role in ensuring that professionals in the field possess the necessary expertise to guide disputants through the mediation process.

Cultural sensitivity is another crucial aspect of mediation research. Exploring how mediation practices can be adapted to various cultural contexts contributes to creating more inclusive and universally applicable dispute resolution methods.

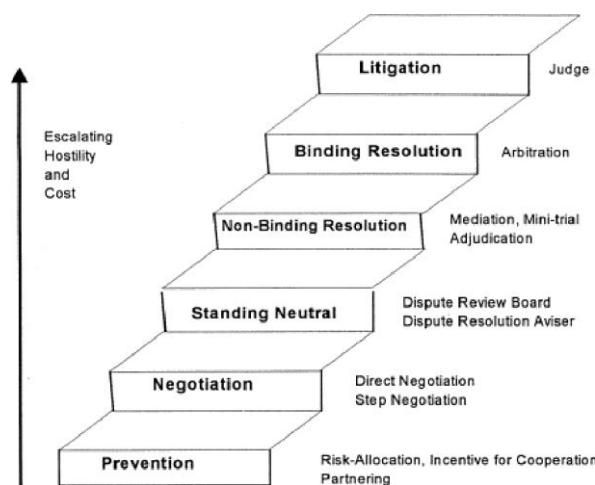


Figure : 1 model

While mediation offers numerous benefits, its limitations and challenges are also subjects of scholarly inquiry. Understanding these limitations provides opportunities for refinement and improvement in the field.

In conclusion, mediation emerges as a dynamic and evolving technique in dispute resolution, offering a promising avenue for fostering collaboration, empowerment, and efficient conflict resolution across diverse settings. As research continues to illuminate its intricacies, mediation stands poised to play an increasingly significant role in shaping the landscape of dispute resolution practices.

Conclusion

In summary, mediation represents a transformative and adaptive approach to dispute resolution, emphasizing communication, empowerment, and collaboration. Its ability to provide disputants with agency over the resolution process, coupled with its versatility and time efficiency, makes it a compelling alternative to traditional methods. Ongoing research endeavors aim to deepen our understanding of mediation's nuances, exploring cultural adaptations, refining training protocols, and addressing inherent challenges. As mediation continues to gain prominence, it holds the potential to revolutionize the landscape of conflict resolution across diverse domains. The evolution of mediation as a dynamic and inclusive process underscores its significance in fostering lasting resolutions and promoting a culture of cooperation and understanding.

References

1. Moore, C. W. (2003). *The Mediation Process: Practical Strategies for Resolving Conflict*. John Wiley & Sons.
2. Menkel-Meadow, C. (2001). Toward another view of legal negotiation: The structure of problem solving. *Ohio State Journal on Dispute Resolution*, 16(1), 111-149.
3. Susskind, L., & Ali, S. H. (2004). Multiparty negotiation. *Negotiation Journal*, 20(1), 87-104.
4. Ury, W. L., Brett, J. M., & Goldberg, S. B. (1988). *Getting Disputes Resolved: Designing Systems to Cut the Costs of Conflict*.
5. Jossey-Bass. Fisher, R., Ury, W., & Patton, B. (2011). *Getting to Yes: Negotiating Agreement Without Giving In*.

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5. Penguin. Noll, J. G. (2014). Does mediation work? A comprehensive empirical analysis of the effectiveness of mediation of child custody and access disputes. *Conflict Resolution Quarterly*, 32(2), 157-176.
6. Riskin, L. L. (2009). Understanding mediation's trajectory: A retrospective. *Nevada Law Journal*, 9, 5.
7. Folberg, J., Milne, A., & Salem, P. (2004). *Divorce and Family Mediation: Models, Techniques, and Applications*.
8. Guilford Press. Gulliver, P. H. (1985). *Disputes and Negotiations: A Cross-Cultural Perspective*.
9. Academic Press. Mnookin, R. H., & Kornhauser, L. (1979). Bargaining in the Shadow of the Law: The Case of Divorce. *The Yale Law Journal*, 88(5), 950-997.