



# **The Indian Journal for Research in Law and Management**

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Editor-in-Chief – Prof. (Dr.) Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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## **From Litigation to Collaboration: The Rise of Mediation in India**

### **Introduction**

The disputes, especially the commercial ones, are an inevitable part of today's world. The normal way of settling disputes in court is often very slow, expensive, and antagonistic instead. In the present time, India is experiencing a major change into alternative means of settling disputes, especially mediation and conciliation. These processes allow a cordial model of the resolution of the conflict and will try to act fast and soon put the two parties that were involved together. We will now turn our attention to the mediation and conciliation methods in India for resolving disagreements between commercial entities, which prove to be effective in defining a threshold of peace that both players mutually accept.

### **Understanding Mediation and Conciliation**

In the mediation and conciliation process, which are voluntary, a third party which is impartial (neutral) collaborates with engaging parties in dialog and settlement so as the parties can eventually come to an agreement. If contrasted with litigation, as a judicial decision that is imposed on the parties, mediation and conciliation offer the participants a platform to actively participate in generating a way that can cater to their needs. The mediator enables the parties to speak with one another and work out the deeper issues, identify areas of common ground, and come up with alternatives that will make it possible for them to end the conflict. Immediately put into effect the mediator without bias will respond to the problems and a nonviolent negotiation for the purpose of having a common solution.

Conciliation has many points in common with mediation but tends to have a more active task for the conciliator, who is in this case expected to help the parties figure out possible solutions and

achieve a compromise. On the other hand, mediation usually aims to identify the basis of communication and negotiation between the parties, while conciliation presents a higher level of putting forward by the conciliator the terms for realizing the dispute. Yet, like mediating conciliation also gives emphasis to the involvement of parties on a voluntary basis. Parties should also be given freewill for the solution to be of their own decisions. The very notable case where the NHAI, which is the National Highways Authority of India, applied mediation in resolving an impasse between GMR Group and the authority regarding the termination of the contract for making a highway project was a milestone. Instead of the parties engaging in what would otherwise have been a protracted litigation process, during which courses and resource would have been exhausted, they opted for mediation and reached a settlement, thus saving time and resources. In the described case the way of mediation stands clearly and in this way it can help to reach win-win situation for both parties.<sup>1</sup>

### **Advantages of Mediation and Conciliation**

The number of benefits stemmed from mediation and conciliation in settlement of commercial disputes is evident, and the role they play in fostering an ideal context for conflict settlement cannot be overlooked. Firstly, they will provide you with unmatched time and budget save which is incomparable even to the ordinary litigation. Courts' proceedings can sometimes last for years while mediation mostly consists of several sessions held over short time, allowing all parties to save importantly their time and resources. The Indian Institute of Arbitration and Mediation has revealed, in its strictures that commercial disputes resolved through mediation had an average resolution period of 60 days. It shows that mediation is such a quick approach. The speed at which ADR cases are resolved means saved funds that could have otherwise been spent on a slow and expensive legal hostility plus freed time and resources for refocusing around the core objectives of business.

Besides, reconciliation and negotiation also emerge the winners here and a lot of attention is put on preserving relationships which is a very important aspect, but we do oversee it in times of

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<sup>1</sup> Centre, V.M. (no date b) Latest news, NATIONAL HIGHWAYS AUTHORITY OF INDIA V/S SAYEDABAD TEA COMPANY LTD. AND ORS. | VIA Mediation Centre. Available at: <https://viamediationcentre.org/readnews/NjYz/NATIONAL-HIGHWAYS-AUTHORITY-OF-INDIA-VS-SAYEDABAD-TEA-COMPANY-LTD-AND-ORS> (Accessed: 22 March 2024).

conflict. Business disputes are often centred on parties who hold ongoing commercial dealings. As litigation is adversarial and involves contentiousness, this can cause the tying of old wounds and sow distrust or antipathy for the other party in the long term. Nevertheless, mediation promotes free and harmonious communication where participants can identify the core problems and reach a solution collaboratively without hurting their working relationships. For example, the *Larsen & Toubro Ltd. v. Siemens Ltd.*<sup>2</sup> Litigation serves as an evidence that mediation procedure saves relationship of partnership, allowing to continue with the future cooperative ventures that would have failed due to a protracted lawsuit.

## **Challenges and Future Outlook**

Despite the efficient and convenient processes mediation and conciliation helps to apply, there are still some drawbacks in this field. One of the biggest problems is the insufficient enlightening of businesses concerning the mediational-arbitral way of settling disputes as an alternative to the traditional court proceedings. Many companies are still stuck in the conviction that an action of litigations is a better assurance of the side being done right in case of disputes. This problem can be dealt with the implementation of campaign and education process, and improve the parties as to mediation benefits as well as inducing more companies to use mediation. Additionally, there is need to have better structures and means to promote mediation and conciliation as cost effective alternatives to litigation process. This implies the designing of programs for mediators' training, the adoption of the unified practices and the foundation of the mediation centers in the whole country. Indian government and judicial system have made such progressive measures like for enabling us mediation that encapsulates in our legislation and judicial directions. Nevertheless, Mediation is among the main form of the dispute resolution and therefore it need long term efforts in order to attain full integration in the mainstream areas.

## **Conclusion**

Finally, mediation and conciliation has some compelling advantages if it is used instead of the traditional litigation way to handle the commercial disputes in India.

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<sup>2</sup> The Dispute Resolution Review: India (2022) azb. Available at: <https://www.azbpartners.com/bank/the-dispute-resolution-review-india/> (Accessed: 23 March 2024).

Through open communication, proper documentation and defining the adversaries, this process may empower and give vent to the businesses that do not lose focus on achieving their core objectives. By means of the factual evidences, situations and cases, mediation have revealed that there are many well-presented possibilities to shorten the commercial dispute resolutions process and to ensure a more harmonious business overall. The future seems prosperous for India as the country is inclined towards the Alternative dispute resolution mechanisms. It is believed that CDR (Commercial dispute resolution) will be faster and is a fair method to commercial conflict.