



Mediation: A View from Indian Legal Market

Nidhi Modi*

International Arbitrator, Mediator, Director and Counsel, The International Centre For Alternative Dispute Resolution, Telangana, India

Abstract

Mediation is a texture of Alternative Dispute Resolution. Mediation is a very well Structured form of Negotiations. Last decade it picks very fastest growth in the Indian Judicial system and become stressbusters for Judiciary. Mediation is a process where parties can enter into it anytime and participate as a volunteer. Compare to Litigation it become very popular among the people and in the Legal market because it is stressbuster, cost effective, cooperative, time saving process. Mediation has lot of benefits, where a third party observed the process and try to reach out an amicable solution. So, in the last clients feel satisfaction which plays a vital role and attracts more to go with it. After 2018 amendment passed by the Hon'ble Supreme Court of India every District court has Mediation center, where parties can enjoy the benefit of ADR mechanism. Which change the view of Indian Legal market?

Introduction

Since the Vedic period the process of resolving the disputes been invented. By using the different modes of ADR to resolving the disputes becomes new way in India. The process of Mediation benefits both the sides. Indian judicial system matters are being runs by the lawyers more than 15-20 years to get justice, where compare to litigation ADR is absolutely marvelous way to get justice within the time and in India it has been very flexible and friendly way. Mediation is a process where both the parties present their argument before third party and try to reach out very fruitful solutions, and the mediator can be anyone who has well qualification, designation or party can choose by their wish. The mediator's sole Function is to assist the participants to agree on the terms of settlement which may then be ratified by the court. In most of the cases in India people voluntarily approach this option to reach out the solutions by mutually agree upon the given Judgment. In India one of the primary benefits of this process is "Confidentiality".

Indian Legal Market

A legal system is a process of enforcing the Law. As we know that Indian judicial system follows Common law system and most of the Indian laws are adopted from British laws. The structure of Indian Courts is as follow: Supreme Court of India, District Courts and Subordinate Courts. Well India has the oldest judiciary in the world. The one and only judicial system which has glorious and ancient pedigree. Once upon a time in the Indian legal system there were juries who decides and given the order according to the case matters. In the K.M. NANAVATI vs State of Maharashtra the last case where jury given their decision in this case matter [1,2]. Then in the year 1982 in Gujarat, the concept of ADR has been emerged. The mechanism of ADR introduced as a "LOK-ADALAT". The "Lok-Adalat" was governed by the State Legal Service Authorities. The aim is to provide the justice to all and to release the burden of cases. There are several methods of resolving the disputes like mini-trials, summary jury trial and med-arb. Lok-Adalat is still runs by various organization to help the people. Because in the Indian Legal market litigation takes at most 15 years to given amicable solutions to the parties. The one and only major drawback. After the concept of ADR has been picks the fantastic wave in the Legal market. Slowly and gradually, it become more trustful and powerful method among the Indian people and around the Globe. In India is the process of Mediation is completely confidential and any information furnished by any party and a document prepared or submitted is inadmissible and sealed. The mediator cannot be called as a witness to testify in any court case and cannot disclose any information related to the proceedings. Mediation in India is divided into the main 2 categories:

(1) Court Referred Mediation

where pending cases referred by the Hon'ble court to enter into the Mediation process. In India under Section 89 of the Code of Civil Procedure, 1908. Matrimonial disputes, particularly divorce cases are frequently referred by the Courts.

(2) Private Mediation

In this type of mediation process the Institutions, organizations or Public sector announce their Mediators on Fix-fees bases. Private Mediations are more secure and confidential than Court Referred Mediation.

Stages of Mediation in India

There are mainly 6 stages of Mediation process in General:

Mediators Opening Statement

The important step of Mediation Process where Mediator introduce the whole mediation process. Explains the rules, goals try to cooperate with everyone. Also try to facilitate this process for everyone.

Disputants Opening Statement

In this stage both the side present the hint regarding their dispute, general idea about their interest, results and financials. When the first party is introducing themselves, another side is not allowed to interrupt.

Joint discussion

In this stage of mediation parties starts from the opening statement, talk about the issues they face and looking for some fruitful suggestion from the neutral third party.

Private caucuses

In this caucus session mediator try to find out the agendas from the parties, the most important is interest of the parties and what actually

*Corresponding author: Nidhi Modi, International Arbitrator, Mediator, Director and Counsel, The International Centre For Alternative Dispute Resolution, Telangana, India, Tel:+918780124349; E-mail: nidhimodi2605@gmail.com

Received April 16, 2021; Accepted June 18, 2021; Published June 22, 2021

Citation: Modi N (2021) Mediation: A View from Indian Legal Market. J Civil Legal Sci 10: 272.

Copyright: © 2021 Modi N. This is an open-access article distributed under the terms of the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

both the parties want. Mediator also given some amicable solution over the discussion. This stage plays an important part in the whole session.

Joint Negotiation

Negotiation is a real-life bargaining. Where both the parties try to bargain on what is the best out come out their issues. In this process the interesting thing is that both the parties try their best to catch what they wanted to. And the mediators are trying to reach out on settlement.

Closure

If the parties reach an agreement, mediator write about the main provisions then ask parties that are they happy with settlement. If yes, then parties have to sign the document. If the parties don't reach an agreement then again mediator try to settle down the dates and by the help of negotiation again the matter announced for another mediation process.

So, this is how the Mediation takes place in India and around the world.

Influences of Mediation

The Indian courts referred the Matrimonial cases specially divorced cases to the Mediation process because it is time saving, cost effective, and easier process to resolved by the ADR method. In the mediation

process help to keep the matter limited to the parties only it means it saves the confidentiality. Mediation process also maintains the Peace that is why mediators called "Peacemakers".

Conclusion

In a nutshell Mediation is a Conflict prevention and peaceful process. Now a days we can use the Online Dispute Resolution platform to resolve the conflicts between the parties according to their flexibility and availability. Moreover, India is a very emerging economy in the World, where everyone wanted to start their Business. It brings Cultural diversity, where we can introduce this wonderful ADR methods in the legal markets. By knowing this process citizen of India will get quick, easy and effective justice within the Time limit. Which also helps the Judiciary as a stressbuster. Most of the people still confused in India between the concept of "Mediation" or "Mediation". For this confusion we the future of India can organize webinars, Seminars, Trainings and now the Supreme court also encouraged Mediation as a mandatory subject taught in the Indian Law Universities. Come together and let's make India- "Peaceful India".

References

1. <https://blog.iplayers.in/adr-alternative-dispute-resolution/>
2. <https://singhania.in/alternative-dispute-resolution-in-india-a-brief-overview/>