

A close-up photograph of two hands shaking in a firm grip. The hand on the left is wearing a dark grey long-sleeved shirt and a black and white striped wristband. The hand on the right is wearing a red long-sleeved shirt and a black wristband with white text. The background is a plain, light grey surface.

Mediation in Civil Proceedings

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Methods of Alternative Dispute Resolution

- Negotiation
- Arbitration
- Mediation



MEDIATION

Mediation is a voluntary, non-binding, private dispute resolution process, in which a neutral person helps the parties to reach their “own negotiated settlement”.



Mediation

- **Mediation is often referred to as being assisted negotiation.**
- **It is a voluntary process in which parties attempt to resolve a dispute with the help of a neutral 3rd party called a mediator.**
- **The mediator is not a judge and does not decide who is right.**



Types of Mediation

- **Facilitative**
- **Evaluative**
- **Transformative**

Types of Mediation

Facilitative

- The most common type of mediation.
- A professional mediator facilitate the negotiation between the parties in conflict.
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- The mediator encourages disputants to reach their own voluntary solution.
- Mediators does not express his own views regarding the conflict



Types of Mediation

Evaluative

- Mediator makes recommendations and suggestions and express opinions.
- Mediator help the parties to assess the legal merits of their arguments and make fairness determinations.
- They maintain most of the control throughout the mediation process.
- Evaluative mediation is most often used in court-mandated mediation
- evaluative mediators are often attorneys who have legal expertise in the area of the dispute.



Types of Mediation

Transformative

- Mediators focus on empowering disputants to resolve their conflict and encouraging them to recognize each other's needs and interests.
- They create the time and space for both sides to express their emotions, find common ground over personal issues, agree with one another, and heal and preserve their relationship.
- This type of mediation works best when both parties are willing to work together to resolve the dispute.

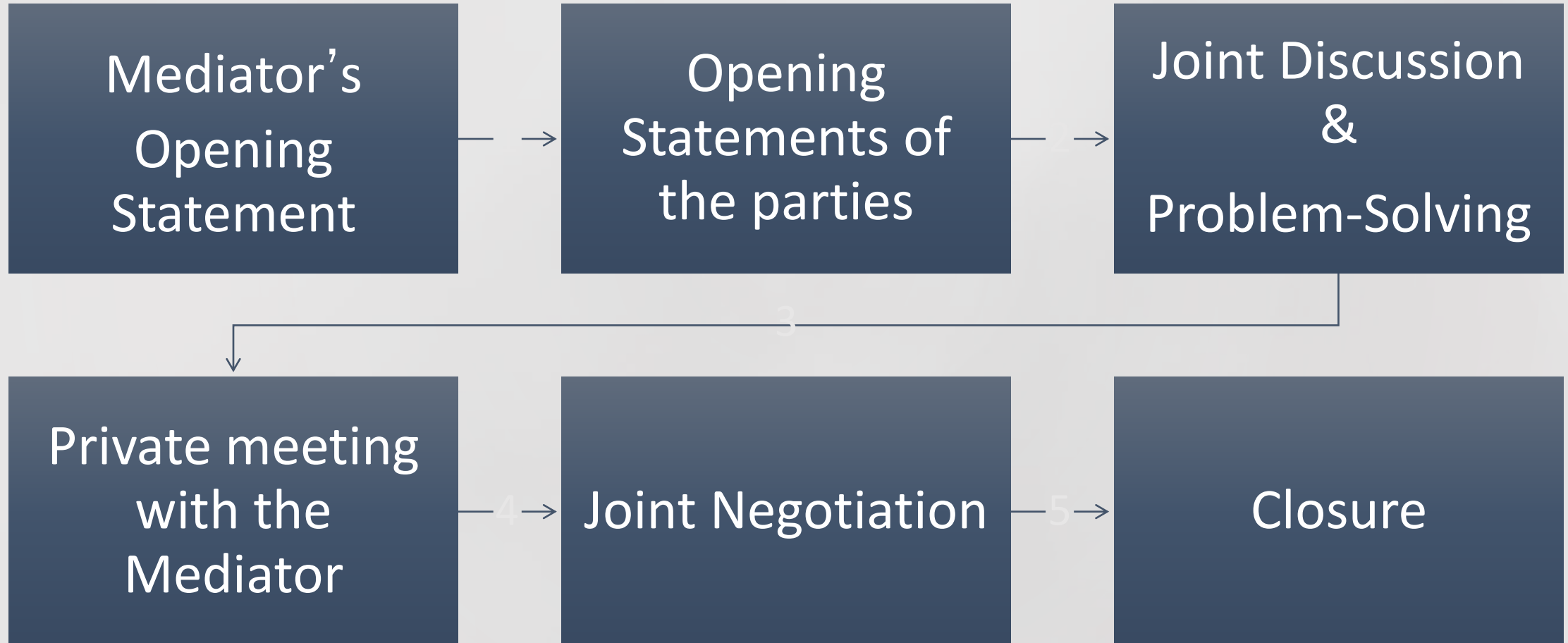


Why Mediation?

- Lower cost
- Rapid Settlements, hence saves time
- Mutually Satisfactory Outcomes
- Voluntary
- Comprehensive and Customized Agreements
- Greater Degree of Control
- Personal Empowerment
- Flexible and informal process
- Workable and Implementable Decisions
- Confidential discussions



The stages of Mediation



Mediation in Civil Proceedings

ADR is a mechanism of settlement of disputes out side the Court. However ,settlement by mediation means the process, by which a mediator is appointed by the parties or by the Court as the case may be.

In Civil Proceedings, the court must refer the parties for mediation on appropriate stage.

Generally. the mediation having better results, once it is introduced in proceedings afterwards the completion of pleadings and before framing of the issues.

However, the court is at discretion to refer the parties to mediation at any stage whenever the court deems fit.

The background of the slide features a photograph of a classical building's exterior, showing several large, fluted columns and a set of wide stone steps leading up to the entrance. The lighting is bright, suggesting a sunny day. The text is overlaid on a white, semi-circular shape on the left side of the image.

Court-mandated Mediation

Mediation is typically defined as a completely voluntary process, however, it can be mandated by a court that is interested in promoting a speedy and cost-efficient settlement.

Court-mandated mediation is a procedure in which a court orders the parties in a legal dispute to undergo mediation before proceeding to trial. This approach aims to urge the parties to achieve an amicable settlement without the need for a protracted and costly trial.

Court-mandated Mediation

Court - mandated Mediation falls within the category of [mandatory mediation](#).

Court-mandated mediation, can save disputants and the courts time and money by giving parties a chance to resolve their conflict quickly and efficiently.

However, mandated mediation tends to have a much lower success rate than voluntary mediation because parties may be reluctant participants in the process, which generally requires a collaborative and creative mindset to succeed.

Legislation in India governing Mediation

- **No codified Act passed by the legislature**
- **Section 89 of the Civil Procedure Code governs the court mandated ADR mechanisms. (Substantive provision)**
- **Order X of CPC enables the provision for referring a dispute to ADR mechanisms.**

Legislation in India governing Mediation

S.89 (1)

Where it appears to the Court that there exist elements of settlement which may be acceptable to the parties, the court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the court may reformulate the terms of a possible settlement and refer the same for;

- a) arbitration
- b) conciliation
- c) judicial settlement
- d) mediation

Legislation in India governing Mediation

S.89 (2)

(a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act.

(b) to Lok Adalat, the court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (1) of section 20 of the Legal Services Authority Act, 1987 and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;

Legislation in India governing Mediation

S.89 (2)

(c) for judicial settlement, the court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;

(d) for mediation, the court shall effect a compromise between the parties and shall follow such procedure as may be prescribed

Legislation in India governing Mediation

Order X

Rule 1A

Direction of the court to opt for any one mode of alternative dispute resolution. - After recording the admissions and denials, the Court shall direct the parties to the suit to opt either mode of the settlement outside the court as specified in sub-section (1) of section 89. On the option of the parties, the court shall fix the date of appearance before such forum or authority as may be opted by the parties

Legislation in India governing Mediation

Order X

Rule 1B

Appearance before the conciliatory forum or authority.- Where a suit is referred under rule 1A, the parties shall appear before such forum or authority for conciliation of the suit

Legislation in India governing Mediation

Order X

Rule 1C

Appearance before the Court consequent to the failure of efforts of conciliation.- Where a suit is referred under rule 1A and the presiding officer of conciliation forum or authority is satisfied that it would not be proper in the interest of justice to proceed with the matter further, then, it shall refer the matter again to the court and direct the parties to appear before the court on the date fixed by it.

Court-mandated Mediation

Mediation is often ordered in the following situations;

- Cases related to trade, commerce and contracts;
- Disputes relating to specific performance;
- Disputes related to matrimonial causes, maintenance and custody of children;
- Employment conflicts;
- Disputes between neighbours (relating to easementary rights, encroachments and nuisances
- Personal injury matters

Court-mandated Mediation

Categories of cases not suitable for mediation

- Matters involve public interest
- Testamentary matters
- Disputes relating to election to public offices
- Matters of serious and specific allegation of fraud, fabrication documents, forgery
- Claims against minors and mentally challenged persons
- Suits for declaration of title against the government
- Cases involving prosecution for criminal offences.

Mediation Board Act No 15 of 1997

Section 8

Where an action is filed in any civil court having jurisdiction over a Mediation Board area, in respect of any dispute, the court may, with the written consent of the parties, refer the dispute to the Chairman of the Panel appointed for that area, for settlement by mediation.

Mediation Board Act No 15 of 1997

Section 7

Where a Panel has been appointed for a Mediation Board area, subject to the provisions of subsection (2), no proceeding in respect of any dispute arising wholly or partly within that area or an offence alleged to have been committed within that area shall be instituted in, or be entertained by any court of first instance if

- (a) the dispute is in relation to movable or immovable property or a debt, damage or demand, which does not exceed five hundred thousand rupees in value; or
- (b) the dispute gives rise to a cause of action in a court not being an action specified in the Third Schedule to this Act; or
- (c) the offence is an offence specified in the Second Schedule to this Act; or, unless the person instituting such action produces a certificate of non-settlement referred to in section 14A :
- (d) the offence under section 367 or 368B of the Penal Code is committed by a person below the age of eighteen years, in respect of any property, the value of which does not exceed rupees five thousand,

Mediation Board Act No 15 of 1997

Acts specified in 3rd schedule of the Act

- Actions relating to matrimonial disputes.
- Action relating to the persona and estates of persons of unsound mind, minors and wards.
- Actions relating to guardians, curators and receivers.
- Actions relating to trusts.
- Actions relating to applications for adoption made under the Adoption of Children Ordinance.
- Actions relating to applications made under the Registration of Births and Deaths Ordinance.
- Partition actions.
- Testamentary actions.

Mediation Board Act No 15 of 1997

Acts specified in 3rd schedule of the Act

- Actions under the Insolvency Ordinance.
- Admiralty actions.
- Actions relating to Election Petitions
- Actions relating to applications under Article 126 of the Constitution.
- Actions relating to applications which were pending before the Debt Conciliation board on the date of commencement of this Act or which have finally been dealt with by the Debt Conciliation Board by settlement or dismissal of the application.
- Actions under the Mortgage Act.
- Actions relating to breaches of the privileges of Parliament.

A professional office setting where a group of business people are gathered. In the foreground, a woman with curly hair and glasses is shaking hands with a man in a dark suit. Other people are visible in the background, some looking towards the camera and others looking at each other. A large, semi-transparent white box with a thin black border is centered over the image, containing the text 'THANK YOU!' in a bold, black, sans-serif font.

THANK YOU!