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Justice Delivery System and Mediation: An Inseparable Link

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ABSTRACT

The Justice delivery system is the process by which the legal system of government is executed to administer justice. There is a high demand for justice in our country even though we have a hierarchy of courts with each court being unique and different. However, an alternative dispute resolution system is vital for a cheaper and speedier form of justice. Mediation is known for its effectiveness and is highly encouraged by the courts.

One of the parameters to fathom the success of the justice delivery system in our country is to ascertain how quickly and efficiently the dispute can be settled. With the increasing number of pending cases, the mediation process has come in handy by removing the burden on the three-tier justice delivery system. It also has cascading effects of bringing an end to bad blood between the parties and making them useful members of Society.

This paper analyses how mediation can be used as an effective method to resolve disputes and lessen the burden of pending ligation cases on the courts. It also focuses on practical strategies for resolving conflict. My research emphasizes the importance of an unbiased third party as the mediator and the procedure for such an appointment and how it contributes to a successful mediation. Section 89 read with Order X Rule 1A to 1C of the CPC, which has a sound object, would highlight that justice delivery and mediation are inseparably linked.

This paper studies the types of mediation models and the development of an indigenous model that would be suitable for our social and economic conditions. The paper establishes the relevance of mediation and how it can make our justice system more effective and efficient. Recommendations on how mediation can be more effective and serve its purpose to the fullest. A study of various cases of mediation in the past, present and future.

An assessment of the various initiatives taken by the government to promote mediation including the understanding of various mediation bills across the country. How mediation is used as a tool around the world and what we can learn from other countries and how we can implement the best. Mediation is more party friendly and not as time-consuming as the courts, and also a win-win situation. Thus, it is necessarily a process of negotiation by which the participant together with the assistance of a neutral person attempts to resolve the dispute.

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I. INTRODUCTION

What would amount to a successful justice delivery system? One of the parameters is to ascertain how quickly and efficiently the disputes between parties are settled and resolved. Whether it is a divorce matter or a commercial matter, if the justice system takes 15-20 years to provide justice we have failed, as "justice delayed is justice denied" Therefore the concept of alternative dispute resolution which includes mediation plays a vital role in fathoming success for our justice delivery system. The judiciary therefore must be the last resort for justice for the common man. The court judgements may end lawsuits but they do not resolve the disputes and the inherent hurt marked by those decisions. [2]

(A) Definition and meaning of important terms

The Justice delivery system is the process by which the legal system of government is executed to administer justice. The primary goal of the Justice delivery system is to provide justice for all. The concept of justice is as old as the origin and growth of human society. Justice Delivery effectively and efficiently is the basis of rule of law and governance in a society. To combat any crime, especially a crime such as trafficking, which is multifaceted and multidimensional, it is thus, extremely important to understand the justice delivery system. [3]

Alternative dispute resolution (ADR) refers to the different ways people can resolve disputes without a trial. Common ADR processes include mediation, arbitration, and neutral evaluation. These processes are generally confidential, less formal, and less stressful than traditional court proceedings.[4] Arbitration, mediation, conciliation, mediation-arbitration, mini-trial, private judging, final offer arbitration, court-annexed ADR, and summary jury trial are only some of the alternative dispute resolution methods available.

According to Christopher W. Moore, "Mediation is essentially a negotiation that includes a third party who is knowledgeable in effective negotiation procedures and can help people in conflict to coordinate their activities and to be more effective in their bargaining. Mediation is an extension of the negotiation process in that it involves extending the bargaining into a new format and using a mediator who contributes new variables and dynamics to the interaction of the disputants." [5]

A mediator is a person who conducts mediation. A mediator is usually a lawyer, or retired judge,

[2] Mediation in the Singapore Family Court by Adrian Loke, (1999) 11 SAcLJ 189
[3] An overview of Justice delivery system In India - http://www.mcrhrdi.gov.in/splfc/week2/SG-01.pdf
[4] National portal of India – india.gov.in - https://www.india.gov.in/topics/law-justice/alternative-dispute-redressal-adr
[5] The Mediation Process: Practical Strategies for Resolving Conflict, 4th Edition by Christopher W. Moore

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but can be a non-attorney specialist in the subject matter (like child custody) who tries to bring people and their disputes to early resolution through a conference. The mediator is an active participant in the discussions and attempts to work out a solution, unlike an arbitrator who sits as a judge. [6]

II. UNDERSTANDING MEDIATION

(A) History of mediation

The Concept of Mediation is ancient and deep-rooted in our country. In the olden days' disputes used to be resolved in a Panchayat at the community level. Panches used to be called Panch Parmeshwar. The legislature by the Code of Civil Procedure (Amendment) Act, 1999, amended section 89 of the CPC with effect from 1.7.2002 whereby mediation was envisaged as one of the modes of settlement of disputes. The amendment in Section 89 was made on the recommendation of the Law Commission of India and the Justice Malimath Committee.

It was recommended by the Law Commission that the court may require the attendance of parties to the suit or proceeding to appear in person to arrive at an amicable settlement of the dispute between them and make an attempt to settle the dispute amicably. Hon'ble Mr Justice R.C. Lahoti, the then Chief Justice, Supreme Court of India constituted a Mediation and Conciliation Project Committee (then chaired by Hon'ble Mr Justice N. Santosh Hegde). A Pilot Project on Mediation was initiated in Delhi in August 2005. The first batch of Senior Additional District Judges was imparted Mediation Training of 40 hours duration. The trained mediators started judicial mediation from their chambers at the end of August 2005.[7]

(B) Process and procedure of mediation

Mediator introduces himself to the parties, explains the mediation process and establishes his neutrality. He explains the ground rules and initiates the confidential process of dispute resolution. 2. Joint Session:- Mediator gathers information about the factual background and interests of the parties, establishes interaction between them and creates a suitable environment for an amicable settlement. 3. Individual (Separate) Sessions:- When it becomes necessary, a mediator allows the disputing parties to further explain their grievances, continues to gather information, persuades individual parties to share confidential information and helps them to create options for an amicable settlement. 4. Agreement:- Mediator confirms and clarifies the terms of the settlement and reduces the settlement into a clear, complete, concise and binding

[6] Mediator. (n.d.) *The People's Law Dictionary*. (1981-2005). Retrieved December 3 2022.
[7] Delhi mediation center - https://delhicourts.nic.in/dmc/history.htm

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agreement. [8]

(C) Benefits of mediation

Mediation is an informal process and therefore less time-consuming, there are no specific rules of procedure and the most vital part is that it is a confidential process and enables parties to interact on a one-to-one basis, it is only a voluntary process and no force is given and the settlement is brought only by the parties.[9]The plaintiff is entitled to a refund of full court fees as per Section 16 of the Court Fees Act, 1870 if the dispute is settled through the process of mediation.

(D) Mediator and their appointment

The parties to a suit may agree on the name of a sole mediator for mediating between them. In that event, he shall be appointed as a mediator. If the parties fail to agree on the name of a mediator, then the Court shall appoint one or more mediators out of the panel of mediators referred to in Rule 3. (b) Where the parties are unable to agree on the name of a sole mediator, then each set of parties shall nominate a mediator. (c) Where the parties agree on the name of a sole mediator, he need not necessarily be a person from the panel of mediators referred to in Rule 3, nor bear the qualifications referred to in Rule 4 but should not be a person who suffers from any of the disqualifications referred to in Rule 5. (d) Where there are more than two sets of parties having diverse interests, each set shall nominate a person. On its behalf and the said nominees shall select the sole mediator and failing unanimity on that behalf, the Court shall appoint a sole mediator. [10]

III. Comparative study of Mediation and other Alternative Dispute Resolutions

(A) Arbitration and mediation

In India, arbitration is backed by the Arbitration and Conciliation Act of, 1996 which was amended by the Arbitration and Conciliation (Amendment) Act, of 2015. This Act is based on the UNCITRAL Model Law on International Commercial Arbitration 1985 and the UNCITRAL Arbitration Rules 1976. The Act provides for a fair chance for both parties to be heard and to settle on the procedure that would be followed. When the time to apply to set aside the award has passed or the application has been refused, the award has to be enforced under

[8] https://main.sci.gov.in/pdf/mediation/Brochure%20-%20MCPC.pdf
[9] The Benefits of Mediation (Exploring various forms of Conflict Resolution) – by Allen May
[10] Haryana Govt. Gaz. (Extra), SEPT. 15, 2003 (BHDR. 24 1925 SAKA) – Mediation Rules

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the Code of Civil Procedure, 1908, the same as that of a decree of a civil court. [11]

Mediation is another method of resolving business disputes. It is the effort between conflicting parties to reconcile their differences and make compromises[12]. A mediator must understand both parties to the dispute and their rights and interests and thus put forth workable solutions that can be agreeable to both parties. Mediation usually involves the disputing parties, their legal counsel and a neutral third party who facilitates the discussions[13].

(B) Arbitration V. Mediation

Mediation is when a neutral third party aims to assist the parties in arriving at a mutually agreeable solution whereas arbitration is like litigation which is outside the court and which results in an award like an order.

- Mediation is not binding on the parties whereas arbitration is.
- Mediation is more collaborative; arbitration is more adversarial[14].
- The process of mediation is more informal than that of arbitration.
- The outcome in mediation is controlled by the parties whereas in arbitration it is controlled by the arbitrator.
- In mediation, the dispute may or may not be resolved whereas in arbitration it is always settled in either party's favour.

(C) Mediation and conciliation

conciliation is a form of alternative dispute resolution method, it is the process of settlement of a dispute without litigation, and it is an informal process. Both the disputed party appoint a conciliator to resolve their dispute and the conciliator try to settle the dispute. The appointment of a conciliator is given in section 64 of the Arbitration and conciliation act, of 1996. There is nothing like an odd and even number of conciliators. The conciliator is always Independent and impartial, conciliator must follow three principles in the following are: justice, objectivity, and fairness. The procedure of conciliation is given in Section 62 of the Arbitration and conciliation act 1996.

(D) Mediation V. Conciliation

Mediation is the process of resolving issues between parties where a third party assists them in

[11] Section 36, Arbitration and Conciliation Act, 1996
[12] https://www.huntermaclean.com/news-publications/benefits-mediation-business-disputes
[13] Deborah Buyer, Making the Case: Business Dispute Resolution through Mediation.
[14] Surbhi S, Difference between Mediation and Arbitration.

resolving the dispute, while in conciliation, an expert is appointed to settle the dispute between the parties.

- Mediation mainly refers to the Code of civil procedure 1908 while conciliation refers to the Arbitration and conciliation act 1996.
- 3 Confidentiality depends on trust in mediation, while confidentiality is that extent by law.
- Mediator act as a facilitator, while the conciliator act as a facilitator and evaluator
- In mediation there is an agreement between the parties. But in conciliation, there is a settlement agreement between the party.
- Mediation is enforceable by law, while it is executable as a decree of the Civil Court.

IV. ROLE OF MEDIATION IN THE PRESENT JUSTICE DELIVERY SYSTEM

Faster disposal of pending cases - In India, the current population is 1.417 billion people residing in India and according to a study by 2030 the population will rise to 1.515 billion. The need for law and order and justice is vital for a country's growth and to maintain peace and order in the society, a justice delivery system must be easily accessible to all. Now with even a total of 672 district courts in India, magistrate courts, city civil courts, 25 high courts, 678 District Commissions and 35 State Commissions with the National Consumer Disputes Redressal Commission (NCDRC) at the apex and 1 supreme court, As of May 2022, over 4.7 crore cases are pending in courts across different levels of the judiciary. Of them, 87.4% are pending in subordinate courts, 12.4% in High Courts, and nearly 1, 82,000 cases have been pending for over 30 years.

The present judiciary system is under tremendous pressure and therefore this has given light to alternative dispute resolution which should have been implemented earlier and we would have not been in this mess however the future looks promising after the initiative measure taken by the government for alternative dispute resolution in order to minimize the conflicts prevailing in the society.

Confidentiality – In the judiciary system, confidentiality is not protected and most of the times the victims suffer because their story is put out in the open for the entire public and society to have an opinion which violates their right to privacy. Most of the time people prefer to avoid lawsuits due to breach of privacy and confidentiality especially when it is a family matter but when it comes to mediation the entire process is completely confidential and the parties' interest will be protected at all costs.

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Parties' interest – When we look into the justice delivery system most of the cases the lawyer's interest will interfere or even the judges interest it is not always for the interest of the parties and most of the time the parties are neglected and their interest are not even a priority and they suffer for years together, however when it comes to mediation only the parties interest matters and they are allowed to express their opinions and tell their story as well.

Win-win situation- The concept of settlement in mediation, the concept of settlement plays a vital role, in a court system, one would lose and the other will win and generally the losing party appeals in a higher court seeking for justice for years together, however in mediation the parties reach a settlement which they have agreed upon and voluntarily close the case.

V. DOMESTIC LAWS DEALING WITH MEDIATION

The settlement of disputes in an amicable way is the hall-mark of civilization. In ancient India, the mediation system has been prevalent in one form or the other. It has continued in our villages and has also been preserved in its customary form in our tribal areas. So far as the formal litigation system is concerned, mediation, along with other methods of Alternative Disputes Resolution, has been statutorily recognized by the Civil Procedure Code (Amendment) Act, 1999 which introduced section 89 thereto.

Industrial Disputes Act, 1947 – Section 4 of the Act assigns conciliators the responsibility to mediate and settle industrial disputes and prescribes the procedure to be followed in great detail.

Code of Civil Procedure, 1908 – The Code was amended in 2002 which provided for the reference of all pending court cases to mediation. The amendment also prescribes mediation for all family and personal matters due to their sensitive nature.

Companies Act, 2013 – Section 4 provides for the referral of disputes to mediation by the National Company Law Tribunal and the Appellate Tribunal.

Micro, Small and Medium Enterprises Development Act, 2006 – The Act mandates mediation and conciliation when disputes arise.

Hindu Marriage Act, 1955 and Special Marriage Act, 1954 – As the courts have states before, disputes relating to marriage and divorce are more likely to be referred to and settled by mediation so the provisions under these Acts are in consonance with the same.

Real Estate (Regulation and Development) Act, 2016 – Section 32(g) provides for the amicable settlement of disputes through an established dispute resolution forum.

Commercial Courts Act, 2015 – The new amendment made to the Act in 2018 provide for mandatory mediation between parties before filing of a suit. The amendment allows litigation

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only if the arties meaningfully engage in mediation proceedings and still fail to resolve the matter.

Consumer Protection Act, 2019 – The new rendition of the Consumer Protection Act dedicates an entire Chapter to the resolution of disputes through mediation first before approaching a consumer redressal agency.

Even with these provisions for mediation, it is still an option not often preferred by parties due to the lack of recognition and the absence of a uniform structure to execute the resolution agreement and make it enforceable by the legislature and the judiciary. [15]

Legislations are also not far behind. Mediation finds mention in the Companies Act[16] which calls for the institution of a mediation panel to whom the parties or the Court may at any time during the proceedings refer the matter with the intention to amicably settle the matter. In 2018, the Commercial Courts Act, 2015 was amended to include Section 12A - this stipulates that a suit which does not contemplate any urgent interim relief shall not be instituted unless the parties exhaust the remedy of pre-institution mediation.[17]

Internationally, India showed its support for mediation when it became a signatory to the UN Convention on International Settlement Agreement.[18] Further, provisions have been specifically included to incentivise litigants to voluntarily choose this path. For instance, Section 16 of the Court Fees Act, 1870[19]provides for the refund of the entire court fees if the matter was finally settled using the alternative dispute redressal mechanism. [20]

(A) Absence of legislation on mediation

Despite these developments, India still does not have a law dedicated to mediation. When the pandemic struck in 2020, courts were forced to shut down and shift online. While the mode of dispute resolution may have changed, the burden did not. From 2015-2021, out of the 109,869 cases referred to mediation by the Family Court, Tis Hazari Courts, Delhi, a total number of 95,102 were successfully disposed of, resulting in a disposal rate of 86.56 per cent in that court. [21]

This clearly shows the effectiveness of mediation as a dispute resolution mechanism. The Apex

[15] Manisha Karia, *Effective Implementation of Mediation in India: The way Forward*, Bar&Bench, (Dec 23, 2019, 1:59 PM),
[16] Section 442, The Companies Act, 2013, No.18, Acts of Parliament, (India)
[17] Inserted via The Commercial Court, Commercial Division and Appellant Division Of High Courts (Amendment) Act, 2018, No 28, Acts of Parliament, (India).
[18] The Convention was adopted on 20 December 2018 and India became a signatory on 7 August 2018.
[19] Inserted via Code of Civil Procedure (Amendment) Act, 1999, No 46, Acts of Parliament, (India)
[20] *M Siddiq (D) Thr Lrs v. Mahant Suresh Das & Ors*, Civil Appeal No. 10866-10867/2010, (India)
[21] https://delhicourts.nic.in/dmc/statistical.htm

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Court[22] recently also directed the government to consider the feasibility of enacting an Indian Mediation Act. Formalizing mediation through a legislation will help make the procedure uniform.

(B) Case studies supporting mediation in the past present and future

In *Salem Bar Association v Union of India*[23] the Honourable Supreme Court directed for a committee to be appointed to frame model rules explaining the procedure for mediation. Consequently, the Mediation and Conciliation Project Committee[24] to *inter alia* provide for training programmes, certification to mediators, grant-in-aid, and awareness programmes.

The Law Commission of India, in compliance with the aforesaid judgment, drafted the consultation paper on Alternative Dispute Redressal and Mediation Rules in 2003 which was adopted by several High Courts to formulate their separate Mediation Rules.

the Law Commission of India in its 129th Report recommended that it should be made obligatory for the Court to refer disputes to mediation for settlement[25]. This was referred to in the landmark case of *Afcons Infra Ltd v. M/S Cherian Varkey Constructions* (2010)[26].In this case, the Supreme Court of India further held that all cases relating to trade, commerce and contracts, consumer disputes and even tortious liability could normally be mediated.

Another landmark decision by the Supreme Court was arrived at on 22nd Feb, 2013 in the case of *B.S. Krishnamurthy v. B.S. Nagaraj*[27], wherein it directed the Family Courts to strive to settle matrimonial disputes via mediation and to also introduce parties to mediation centres with the consent of the parties, especially in matters concerning maintenance, child custody, and the lot. In the few years since mediation centres in the cities of Delhi (in the year 2005) and Bangalore (in the year 2007) were set up, around 30,969 cases have been through mediation process, and around 60% of these cases have been settled ever since[28].

Mohd. Mushtaq Ahmad v. State[29], the wife filed a divorce petition alongside an FIR against the husband under Section 498A IPC after disputes arose between the couple subsequent to the birth of a girl child. The Karnataka High Court directed the parties to mediation under Section 89 CPC. The matter was settled amicably through mediation after which the wife decided to

[22] *M R Krishna Murthi v New India Assurance Co Ltd*, (2020) 15 SCC 493, (India).
[23] Salem Bar Association v Union of India (2003) 1 SCC 49; [2005] 6 SCC 344 (India).
[24] The Committee was constituted by the Chief Justice of India, Honourable Mr Justice R C Lahoti by order dt. 9 April 2005.
[25] http://practicalacademic.blogspot.in/2012/08/guest-post-mediation-and-conciliation.html.
[26] 2010 (8) SCC 24
[27] S.L.P. Civil) No(s).2896 OF 2010
[28] Forbes India, *Mediation in Indian Courts*.
[29] (2015) 3 AIR Kant R 363

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quash the FIR. The Court allowed this stating, "The court in the exercise of its inherent powers can quash the criminal proceedings or FIR or complaint in appropriate cases to meet the ends of justice."

In *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd*.[30] the Supreme Court clarified that "even when a case is referred to a mediator the court retains its control and jurisdiction over the matter and the mediation settlement will have to be placed before the court for recording the settlement and disposal". This shows the Court's efforts in attempting to avoid mediation to be carried out arbitrarily. There should be no strict guidelines for which cases are to be referred to mediation.

(C) Various initiatives are taken by the government

The Mediation Bill, 2021, was introduced in Rajya Sabha on 20th December 2021 and the Hon'ble Chairman, Rajya Sabha referred the said Bill to the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice for examination and report, on 21st December, 2021.[31]

Key features of the bill

Pre-litigation mediation: Parties must attempt to settle civil or commercial disputes by mediation before approaching any court or certain tribunals. Even if they fail to reach a settlement through pre-litigation mediation, the court or tribunal may at any stage refer the parties to mediation if they request for the same.

Disputes not fit for mediation: The Bill contains a list of disputes which are not fit for mediation. These include disputes: (i) relating to claims against minors or persons of unsound mind, (ii) involving criminal prosecution, and (iii) affecting the rights of third parties. The central government may amend this list.

Applicability: The Bill will apply to mediations conducted in India: (i) involving only domestic parties, (ii) involving at least one foreign party and relating to a commercial dispute (i.e., international mediation), and (iii) if the mediation agreement states that mediation will be as per this Bill. If the central or state government is a party, the Bill will apply to: (a) commercial disputes, and (b) other disputes as notified.

Mediation process: Mediation proceedings will be confidential, and must be completed within 180 days (may be extended by 180 days by the parties). A party may withdraw from mediation

[30] (2010) 8 SCC 24.
[31] https://prsindia.org/billtrack/the-mediation-bill-2021 - Mediation Bill

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after two sessions. Court annexed mediation must be conducted as per the rules framed by the Supreme Court or High Courts.

Mediators: Mediators may be appointed by: (i) the parties by agreement, or (ii) a mediation service provider (an institution administering mediation). They must disclose any conflict of interest that may raise doubts on their independence. Parties may then choose to replace the mediator.

Mediation Council of India: The central government will establish the Mediation Council of India. The Council will consist of a chairperson, two full-time members (with experience in mediation or ADR), three ex-officio members (including the Law Secretary, and the Expenditure Secretary), and a part-time member from an industry body. Functions of the Council include: (i) registration of mediators, and (ii) recognising mediation service providers and mediation institutes (which train, educate, and certify mediators).

Mediated settlement agreement: Agreements resulting from mediation (other than community mediation) will be final, binding, and enforceable in the same manner as court judgments. They may be challenged on grounds of: (i) fraud, (ii) corruption, (iii) impersonation, or (iv) relating to disputes not fit for mediation.

Community mediation: Community mediation may be attempted to resolve disputes likely to affect the peace and harmony amongst residents of a locality. It will be conducted by a panel of three mediators (may include persons of standing in the community, and representatives of resident welfare associations).

The Bill provides that the central government will establish the Mediation Council of India. Functions of the Council include: (i) registering mediators, (ii) recognising mediation service providers (institutions administering mediations) and mediation institutes (providing training, education, and certification of mediators), (iii) grading mediation service providers, and (iv) laying down standards for professional conduct of mediators, mediation service providers, and mediation institutes. We discuss two issues with the Council.

VI. MEDIATION AROUND THE WORLD

(A) Lake Michigan – USA Mediation

The dispute -The Federal Government of the US has been in conflict over the use of Lake Michigan's Water since the beginning of the 20th century. Removal of too much water critically affects the lakes in the other states. This dispute led to more than the 4 US Supreme Court cases between 1920 and 1995.

The process - In 1995, when the US Supreme Court litigation on the issue arose, the eight great states and the US government came into the mediation. They decided the cost to split thereof. In less than 1 year, the parties produced a framework to permanently settle the arisen dispute.The result -The agreement was in the form of a memorandum of understanding which was signed by all the eight states and was announced on October 9, 1996.

In Lagos, Nigeria, CEDR has worked with the courts and a team of local people who wish to improve on current dispute resolution methods by speeding up and reducing the cost of the delivery of justice. In 2004 and 2005, a team of trainers has visited Lagos and Abuja to train mediators, train trainers locally and help to establish the Lagos-based mediation service. So effective has been the work done there that the Chief Justice of Nigeria has appointed a designated mediation High Court Judge (himself, now an accredited mediator) as well as agreeing to open up in each of the 33 national Court Centres the same Multi Door Courthouse system which is now operating in Lagos.

Bulgaria, the government took a lead by putting before Parliament a draft bill on mediation. It generated significant interest and debate, resulting in a number of amendments, all of which in the writer's view helped to produce a short, effective and user-friendly Mediation Act.

The EU has adopted a Code of Conduct for Mediators and this is a very effective way forward but it does not provide the whole answer. A draft Directive on mediation was published in 2004, but as is the way in major organisations such as the EU, issues take time to germinate. There are many national attitudes which need to be taken into account. At a recent major conference in Luxembourg, the writer and other delegates were given some insight into the current thinking on the Directive after the debate in the EU Parliament but only time will tell the way forward in the EU.[32]

VII. PRACTICAL STRATEGIES FOR AN EFFECTIVE MEDIATION

1. The decision-makers must participate.

When a party in a lawsuit is an individual person, then that person is the decision maker. But when a party is a business or other entity, the answer is less clear. When it comes to businesses and other entities involved in a mediation, the person who needs to participate is someone who has the power to accept any offer of resolution made by the other party. [33]

[32] Corporate counsel Business Journal : Mediation Around The World In The 21st Century A Personal Journey
[33] https://www.nolo.com/legal-encyclopedia/mediation-ten-rules-success-34184.html

2. Be persuasive -In a successful mediation, you must be persuasive about the merits of your position on the substance of the dispute, and also be persuasive about the mutual benefits of any potential deal.

3. Familiarize yourself with The Mediator And Their Style And Usual Practices.

No two mediators are alike. Each has their own style and conducts the mediation differently. If the negotiations involved in a mediation can be considered a dance, the mediator is the orchestra leader. Some mediators have more of an evaluative style and will, rightly or wrongly, express their opinions about the case early and often. Other mediators are more facilitative, more concerned with sculpting and directing a process of mediation that fosters resolution

4. Make realistic demands and offers consistent with the facts and law in your case.

At times a party, or their representative, follows up an overly aggressive opening statement with an unrealistic or arguably insulting opening offer or opening demand, landing a one-two punch that may be satisfying to them but may in fact seriously impair the prospects of collaborative settlement discussions at the session.

5. Effective mediators – Training of mediators

The government must take steps to promote mediation and help the present mediators with training and essential resources for effective mediation. Even in mediation centres the cases take a lot of time and thereby destroy the entire purpose of mediation. The client must be present along with counsel for all the required consent and documents must be present.

VIII. CONCLUSION

In conclusion, Mediation is inseparable from the present justice delivery system as they go hand in hand, the justice delivery system may not function efficiently without effective mediation in the country and around the world. Mediation compared to other alternative dispute resolution is fast picking up pace and has a bright future for the world.

This paper expounds on the meaning and concept of mediation including its history, benefits and appointment of a mediator. This paper highlights a comparative study on mediation and other alternative dispute resolution with cases. The role of mediation in the present justice delivery system has been emphasized even though the present judiciary system is under tremendous pressure and therefore this has given light to alternative dispute resolution, the future is promising.

The paper also brings to light all the domestic legislative framework with mediation which includes, the Industrial Disputes Act, 1947, Micro, Small and Medium Enterprises

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Development Act, 2006 and etc. The paper also highlights the missing legislation on mediation which is vital for the growth of mediation in the country. Landmark cases on mediation have been explained and analysed. The paper further highlights the various initiatives by the government including the Mediation Bill, 2021, which was introduced in Rajya Sabha on 20th December 2021.

The paper further elucidates how mediation takes place all over the world and finally practical strategies for effective mediation and solutions to increase and enhance the growth of mediation in our country.

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