

MEDIATE

Madhyastham

A fortnightly newsletter

What to expect of mediation?

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Madhyastham, as an expression that is familiar to many Indians, is a formulation different from litigation.

It is a popular expression in Tamil, and it is suggested to persons fatigued in litigation, 'let me try *madhyastham*.' The expression in Sanskrit means 'to arbitrate.' - We have in the States of Madhya Pradesh and Chattisgarh *Madhyastham Adhikaran* that sets rules for arbitral process. Here we are using this platform to promote mediation, a distinct alternative dispute resolution process (ADR) recognised in the

Civil Procedure Code (CPC).

There are so many reasons why litigation is pure pain to so many of its users. One, it seems like a never-ending process. Several factors contribute to this: too many disputes, too little judges, too many appeals, too little confidence in the integrity of the judges, scumbag lawyers who foment litigations and poor expectation in the quality of justice.

The truth is, we are taking too many types of disputes that do not require forensic skills of judges to decide. There ought to be a formal

mechanism that will encourage parties in conflict situations to get an expert mediator who will help them communicate better, will help parties help them recognise the underlying interest that drives the litigation.

Join us here. We will see when we shall opt for litigation; when to embrace mediation; what types of disputes give themselves best for resorting to mediation. There then, there is everything for mediator, litigant, a compulsive surfer and just anyone who wants to see a conflict free, better world.

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Government as a party

To be realistic, government who is a major litigant cannot be easily brought to the mediation table. The nature of dispute involving government is seldom amenable for a negotiated settlement. It is never easy for a person

acting as a representative of the government to give concessions or scale up demands without involving other persons higher up in the administrative hierarchy. The person in top echelon may never have time to

spare at the mediation session. Of the subjects that could still be explored for settlement, determination of compensation for land acquisition could be an ideal subject but it will be better to resort to a more formal court like setting, such as Lok Adalat to make the assessment. This is one of the areas where mediation may not help.

Get your best bargain

Your skills of bargaining at the Sunday market has already given you the best tips. Never begin a bargain without knowing the price range. Don't settle for the price at the first shop itself, unless you are a his regular customer. Just ask for the price, get his response, pose yourself to be not too much interested and move on. At the next shop for the same product, you know already what is the last bargain price from what information that you picked up in the first shop. State an outlandishly low price as if in jest and look for his reaction. As you are moving out of the shop, he may yell out a price. That is perhaps fair. Do not settle down yet. Go to the 3rd shop and look for the same product. You have now a price range in your mind. Phone up

your spouse or friend what he thinks about the price for the product that you have seen. Take his/her input and go for the kill!

Things are not too different if you are hard selling an idea to promote your product; if you are trying to finalise a matrimonial settlement way to meant that heads for division of assets; if you are negotiating for a price that is most beneficial to you, you must have a range to operate within. In a business deal, you cannot be tentative. You need hard data. If you are placing a large order, you should have collected all information about the possible bargain prices and match the quality with price. Make it appear to the other party that if you quit, it is not because you are a hard nut.

Shopping for a bargain price is never a dull moment. Negotiate and unearth the strength in you.

Tell the other party of another person who alone could finalise. In business, if you are a partner, inform that your partner expects the particular price. In a matrimonial settlement, inform that you will confer with your parents and inform. If you are a director of a company, inform the other party that you must have the concurrence of the board. It will allow you time to deliberate. It will give the other party an occasion to exhibit his/her fairness quotient in the bargain just not to you but to your closest confidante.



How to say no

Saying No is a big deal. You are closing an option and taking the discussion to a dead end. But sometimes, it is the only way that you protect your interest. How to say it is then a technique if you want the discussion to go on.

Say it between two yeses! You are assisting a party as a lawyer at the mediation session. The father of the child seeks custody of the child

from the mother whom you represent. The parents have fallen apart and the proceeding for divorce is pending. Your client, the mother of the child would not want to lose custody.

First say, yes and qualify it. Say, yes, you understand that the father has also love for the child. State your position next. No, you will

not just give up the child. The third step is, yes, you will consider his request for something lesser, maybe. He may visit the child on some days.

Here is the tip: Say Yes to express that you understand his interest. Say no to underscore your position. Say yes to move forward with a proposal.

Know your USP

Unique Selling Proposition (USP) is now not necessarily employed as marketing strategy. It indeed measures you; sizes up your personality; it reveals what you are good at.

At a negotiation table, you must be able to offer something that no one else can offer. It ought to reveal something unique about you that the other person is interested in

picking from. Just not physicality, it is about some attribute that the other side must be interested in. To hone your USP, you must

anticipate what the other side actually needs. Make a little research about the opposite party before you arrive at the scene to get a hang of what you could offer by way of response that is unique to the other side's requirements.

"By failing to prepare, you are preparing to fail." – Benjamin Franklin (1704-1790)

What are the cases fit for mediation?

What types of cases are suitable for mediation?

- ❖ Family disputes including issues relating to matrimonial relationships and partition;
- ❖ Partnership disputes regarding dissolution and accounting;
- ❖ Intellectual property disputes including patent infringements
- ❖ Industrial disputes
- ❖ Insurance claims

❖ Product defects and

❖ Literally every claim through which you sound your entitlements

What are not fit for mediation?

- ❖ Criminal offences involving women and children that are both not amenable for plea bargaining or for being compounded;
- ❖ Heinous crimes that are offences against the State, such as murder, dacoity, etc

❖ Cases of complaints of forgeries and impersonation.

Heinous crimes apart, there is nothing literally that cannot be settled.

Ayodhya Tangle – Scope of Court verdict

Normally, settlement talks and arguments in courts do not go together. It is a hands off approach when the parties inform the court that they want to explore possibilities of settlement or when the court itself directs parties to resort to settlement talks.

In the recently concluded case before the Supreme Court in appeals against the judgment of the Allahabad High Court relating to the mosque that was demolished in 1992 in the place believed to be the birth place of Sri

Ram, the court had earlier appointed a mediation panel consisting of a former SC judge, Janab Ibrahim Khalifullah, Sri Sri



Ravi Shakar, a spiritual Guru and eminent senior advocate and mediator Mr.Sriram Panchu and directed parties to participate in conciliatory talks before the Panel. A mediated settlement in writing has been filed into court by the panel. The lawyers have also concluded their arguments. The Supreme Court has reserved the case for orders. It is truly a test of character for the whole of Indians about how we receive the verdict and begin a fresh era of amity and understanding between Muslims and Hindus.

Preparedness of insurance industry to mediation

In a significant judgment of the Supreme Court of India delivered on 5th March 2019, a parting gift as it were, of Justice A.K.Sikri's last day in the court was directing the insurance industry to approach motor accident claims through mediation. The judgment consisted of two portions: one, setting up mediation authority at a national level that will take up the victim's

claims and ensure that the insurance companies pay the compensation. Two, the compensation payable shall be staggered through a length of period, such as through an annuity scheme, operated by banks and moneys released to ensure that the compensation amount if paid in lump sum could be frittered or exploited by middlemen.

The community of lawyers is up in arms against the annuity scheme and the directions in the judgment has been stayed in yet another case by the Supreme Court. Now is the time for the insurance industry to prepare itself for bracing claims by voluntarily offering settlements and get trained in the art of negotiation. In presenting a friendly countenance lies the relevance and strength of the industry.

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End litigation Embrace mediation

We're on the Web!

www.madhyastham.com

Madhyastham is an organisation offering to people an alternative mechanism to resolve conflicts between individuals, companies or societies.

The services offered are essentially the ADR formulations through mediation, arbitration, Lok Adalat and judicial settlements, as delineated in CPC. Community mediation is another area where people interested in intercommunity harmony could volunteer to work with Madhyastham which will be a sanctuary for peoples in conflicts to come ashore, air their problems and settle quietly through village elders' passive intercessions that could result in enduring solutions and amity.

The other services are: Get trained as a mediator, negotiator and in mediation advocacy. Early neutral evaluation (ENE) will help you decide through a domain expert to assess strength and weakness of your case and help you decide on the choice of formulations for addressing the conflicts to secure enduring solutions.

What lies in store for you...

Till the British arrived in India, we did not have a formal system of courts with judges sitting to resolve litigations. The King as an arbiter dispensing justice has been the popular theme but the jurisprudential developments have been to disintegrate the law maker and the justice dispenser.

The old panchayat system of involving village elders convening meetings when parties bring their disputes for resolution had been in vogue for long but they have slowly got entrapped in vortex of arm twisting and strong vested interests driving the outcomes

that abnegated the very idea of even handed justice.

All the world over, there is increasing realisation that adversarial methods employed in court do not merely deliver quick justice but never leave both parties satisfied. In countries like USA, litigation is costly business and lawyers make their kill. European Union Member States have been slowly shifting from courts as arenas of disputes resolution bodies to mandatory mediations. When the world is looking to mediation as an ideal tool for dispute resolution, we cannot be left behind. 30 million cases and above in various courts are not

small numbers. The new mantra that resonates with peoples from diverse walks of life is mediation and through this newsletter, we will look to empower ourselves to know more about mediation. Let us walk hand in hand. We shall emerge as torch bearers of change in the art of dispute resolution.

