

UNIT – 4

Negotiation

Meaning • Types • Approaches • Phases • Qualities • Power

Alternative Dispute Resolution Systems

Unit Overview

This unit examines negotiation as the most fundamental ADR process – its meaning, different types and approaches, the phases of a negotiation, the qualities of an effective negotiator, and the concept of power in negotiation.

What You Will Learn

01 Meaning

Define negotiation and its place in the ADR spectrum

02 Types

Distinguish different types of negotiation

03 Approaches

Explain positional, interest-based and other approaches

04 Phases

Describe the typical phases of a negotiation

05 Qualities

Identify the qualities of a skilled negotiator

06 Power

Analyse the role of power in negotiation outcomes

MEANING

Meaning of Negotiation

Negotiation is a process in which two or more parties communicate and bargain with the aim of reaching an agreement on matters of mutual interest or resolving a dispute.

Direct

No third-party neutral is required

Voluntary

Parties choose to negotiate and can walk away

Flexible

No fixed procedure; parties design the process

Ubiquitous

Used in daily life, business, diplomacy and dispute resolution

Foundation

Often the first step before mediation, conciliation or litigation

TYPES

Different Types of Negotiation

Distributive	Win-lose; fixed pie; competitive bargaining
Integrative	Win-win; expand the pie; interest-based
Intra-group	Negotiation within a team or organisation
Multi-party	More than two parties; complex coalitions
International	Cross-cultural and diplomatic negotiation
Crisis	High-stakes, time-pressured negotiation

APPROACHES

Different Approaches to Negotiation

Positional

Parties take positions and concede gradually

Interest-based

Focus on underlying interests, not stated positions (Fisher & Ury)

Principled

Separate people from problem; invent options; use objective criteria

Competitive

Maximise own gain; often distributive

Collaborative

Seek mutual gain; build relationship

Mixed

Most real negotiations combine elements

PHASES

Phases of Negotiation

Preparation	Research, goals, BATNA, strategy
Opening	Setting the tone, agenda, ground rules
Exploration	Information exchange; understanding interests
Bargaining	Making and responding to offers; creating and claiming value
Closing	Finalising terms; documenting the agreement
Implementation	Carrying out the agreement; monitoring

BATNA

BATNA and Reservation Point

BATNA

Best Alternative To a Negotiated Agreement – the course of action if no deal is reached

Importance

Gives bargaining power and a benchmark for evaluating offers

Reservation Point

The least favourable point at which a party will accept a deal

ZOPA

Zone of Possible Agreement – the overlap between the parties' reservation points

Strategy

Improve your BATNA; understand the other side's BATNA

QUALITIES

Qualities of a Negotiator

Preparation

Thorough research and clear objectives

Communication

Active listening and clear expression

Emotional Intelligence

Managing own and others' emotions

Creativity

Generating options and packaging deals

Patience

Willingness to take time to reach a good outcome

Integrity

Building trust; ethical conduct

POWER

Power to Negotiate

Sources	BATNA, information, expertise, authority, relationships, time pressure
Asymmetry	Power imbalances affect process and outcome
Ethics	Use of power should not cross into coercion or misrepresentation
Empowerment	Weaker parties can improve power through preparation, coalitions and process design
Third Parties	Mediators and lawyers can help balance power

Common Negotiation Strategies

Anchoring

Making the first offer to set the reference point

Logrolling

Trading issues of different value to each party

Packaging

Combining multiple issues into a single proposal

Silence

Using silence as a tool after an offer

Deadline

Creating or responding to time pressure

Good Cop / Bad Cop

Role-playing within a team (use with caution)

Key Ideas from Negotiation Theory

Getting to Yes

Fisher, Ury & Patton – principled negotiation

BATNA

Central concept for evaluating any proposed agreement

Psychological Biases

Anchoring, reactive devaluation, overconfidence

Indian Context

Negotiation is deeply embedded in commercial and social practice

Legal Practice

Lawyers negotiate settlements in the vast majority of civil cases

Salient Features of Negotiation

No Neutral

Parties control the process and outcome

Flexible

Can be formal or informal, short or prolonged

Skill-based

Success depends heavily on preparation and skill

Relationship

Can build or damage ongoing relationships

Foundation

Often precedes or runs parallel to other ADR processes

Ubiquitous

Essential skill for every lawyer and professional

Core Points

Meaning

Direct bargaining to reach agreement

Types

Distributive vs integrative; multi-party; international

Approaches

Positional, interest-based, principled

Phases

Preparation → opening → exploration → bargaining → closing

BATNA

Critical concept for power and evaluation

Qualities

Preparation, listening, creativity, integrity

Why Interest-Based Negotiation Matters

Positional bargaining often leads to suboptimal outcomes and damaged relationships. Interest-based (principled) negotiation seeks to understand why a party wants something and then invent options that satisfy those underlying interests. This approach expands the pie and is particularly valuable in long-term commercial and family relationships.

HIGHLIGHTS

Key Highlights

Direct

No third party required

BATNA

Best alternative if talks fail

ZOPA

Zone of possible agreement

Principled

People, interests, options, criteria

Power

Derived from alternatives, information and relationships

Skill

Preparation and emotional intelligence are decisive

Practical Tips for Effective Negotiation

Prepare	Know your interests, BATNA and the other side's likely interests
Listen	Ask open questions; summarise what you hear
Separate	Attack the problem, not the person
Options	Invent multiple options before deciding
Criteria	Insist on objective standards where possible
Document	Record the agreement clearly to avoid later disputes

Must-Remember Points

- Negotiation is the most basic and ubiquitous form of dispute resolution.
- It can be distributive (win-lose) or integrative (win-win / interest-based).
- Effective negotiation follows phases from preparation to implementation.
- BATNA and the zone of possible agreement are central analytical tools.
- Power in negotiation comes from alternatives, information, expertise and relationships.
- Principled, interest-based negotiation produces better and more sustainable outcomes.

SUMMARY

Key Takeaways

1. Negotiation is a core professional skill for every lawyer.
2. Preparation and BATNA analysis determine bargaining power.
3. Interest-based approaches generally outperform pure positional bargaining.
4. Emotional intelligence and communication skills are as important as legal knowledge.
5. Negotiation often runs parallel to, or is a prelude to, mediation and arbitration.

Next Unit: Mediation.