

UNIT – 5

Mediation

Meaning • Qualities • Role • Characteristics • Models • Code of Conduct

Alternative Dispute Resolution Systems

Unit Overview

This unit examines mediation as a structured, voluntary and confidential process in which a neutral mediator facilitates communication and negotiation between parties so that they can reach their own mutually acceptable resolution. It covers the qualities and role of the mediator, the essential characteristics of the mediation process, different models of mediation, and the code of conduct for mediators.

What You Will Learn

01 Meaning

Define mediation and its place in the ADR spectrum

02 Qualities

Identify the essential qualities of a mediator

03 Role

Explain what a mediator does and does not do

04 Characteristics

List the essential characteristics of the mediation process

05 Models

Distinguish facilitative, evaluative, transformative and other models

06 Code

Apply the ethical code of conduct for mediators

MEANING

Meaning of Mediation

Mediation is a voluntary process in which a neutral third party (the mediator) facilitates communication and negotiation between the parties to help them reach a mutually acceptable resolution of their dispute. The mediator does not impose a decision.

Facilitative

Mediator manages process; parties control outcome

Voluntary

Parties can leave at any time

Confidential

Discussions are private and generally without prejudice

Informal

Flexible procedure designed by the mediator and parties

Self-determined

Parties themselves decide the terms of any settlement

QUALITIES

Qualities of a Mediator

Neutrality

No bias or conflict of interest

Impartiality

Equal treatment of all parties

Integrity

Honesty and ethical behaviour

Communication

Excellent listening, reframing and questioning skills

Patience

Ability to manage emotion and deadlock

Creativity

Helping parties generate options

Cultural Sensitivity

Awareness of cultural and gender dynamics

ROLE

Role of the Mediator

Process Manager

Designs and guides the process

Facilitator

Improves communication and understanding

Reality Tester

Helps parties assess the strengths and weaknesses of their positions

Option Generator

Assists in brainstorming creative solutions

Not a Judge

Does not decide who is right or wrong

Not an Advisor

Does not give legal advice (unless in a hybrid role and with consent)

CHARACTERISTICS

Essential Characteristics of Mediation

The mediation process is characterised by seven core features that distinguish it from adjudication and from pure negotiation.

Voluntary

Parties enter and stay by choice

Collaborative

Parties work together toward a solution

Controlled

Parties control the outcome; mediator controls the process

Confidential

Private; statements generally cannot be used in later proceedings

Informal

Flexible, less rigid than court or arbitration

MODELS

Different Models of Mediation

Facilitative

Classic model – mediator facilitates; does not evaluate or propose

Evaluative

Mediator may offer views on merits and suggest terms

Transformative

Focus on empowerment and recognition; relationship transformation

Narrative

Re-storying the conflict; popular in family and community mediation

Court-annexed

Mediation attached to court proceedings under Section 89 or rules

Online

ODR – mediation conducted through digital platforms

PROCESS

Typical Stages of a Mediation

Opening	Mediator's introduction, ground rules, confidentiality
Parties' Statements	Each side presents its perspective uninterrupted
Joint Discussion	Clarification, identification of issues and interests
Private Sessions (Caucus)	Separate meetings with each party
Option Generation	Brainstorming possible solutions
Bargaining & Agreement	Negotiation of terms; drafting the settlement
Closure	Signing or termination; next steps

Code of Conduct for Mediators

Competence

Only accept cases within one's competence

Independence

Disclose any conflict; decline if impartiality is compromised

Confidentiality

Maintain confidentiality except where disclosure is required by law

Fairness

Ensure balanced process and informed consent

Self-determination

Respect the parties' right to decide

Advertising

Honest and dignified representation of services

Fees

Mediation

Transparent fee arrangements

Mediation in the Indian Legal System

Section 89 CPC

Court referral to mediation

Mediation Rules

Many High Courts have framed mediation rules

Commercial Courts

Pre-institution mediation for commercial disputes

Family

Strong emphasis on mediation in matrimonial matters

Mediation Act 2023

New comprehensive statute for mediation in India

Institutions

Court-annexed centres and private mediation institutions

LANDMARK

Important Developments and Cases

Afcons

Clarified the procedure for referral under Section 89

K. Srinivas Rao

Mediation in matrimonial disputes

MR Krishna Murthi

Need for a comprehensive mediation law

Mediation Act 2023

Statutory framework for mediation agreements, proceedings and settlement

International

Singapore Convention on Mediation – enforcement of mediated settlements

Salient Features of Mediation

Party Control

Parties decide the outcome

Process Control

Mediator manages the process

Confidential

Encourages candid discussion

Flexible

Can address legal and non-legal interests

Relationship

Particularly valuable where relationship must continue

Enforceability

Settlement can be converted into a decree or award

ESSENTIALS

Core Points

Meaning

Facilitated negotiation by a neutral

Qualities

Neutrality, communication, patience, creativity

Role

Process manager and facilitator – not decision-maker

Characteristics

Voluntary, collaborative, confidential, self-responsible

Models

Facilitative, evaluative, transformative, court-annexed

Code

Ethics of competence, independence, confidentiality, fairness

Why Confidentiality is Central

Confidentiality allows parties to speak frankly, explore options and make concessions without fear that their words will be used against them later in court. Without strong confidentiality protections, the effectiveness of mediation is severely reduced. Most mediation rules and the Mediation Act protect the confidentiality of the process.

HIGHLIGHTS

Key Highlights

Voluntary

Parties control participation and outcome

Neutral

Mediator has no decision-making power

Seven Features

Voluntary, collaborative, controlled, confidential, informal, impartial, self-responsible

Models

Facilitative is the classic; evaluative and transformative are important variants

India

Section 89, court rules, Commercial Courts, Mediation Act 2023

Ethics

Code of conduct is essential for public confidence

When Mediation Works Best

Relationship

Ongoing personal or commercial relationship

Interests

Multiple issues and underlying interests can be addressed

Communication

Parties need help to communicate effectively

Creativity

Solutions beyond legal remedies are possible

Speed & Cost

Parties want a faster and cheaper resolution

Empowerment

Parties wish to retain control over the outcome

SUMMARY POINTS

Must-Remember Points

- Mediation is a voluntary, confidential process in which a neutral facilitator helps parties reach their own agreement.
- The mediator manages the process but does not impose a decision.
- Essential characteristics include voluntariness, collaboration, confidentiality, informality, impartiality and party self-determination.
- Models include facilitative, evaluative, transformative and court-annexed mediation.
- A code of conduct governing competence, independence, confidentiality and fairness is essential.
- India has a growing statutory and institutional framework for mediation, culminating in the Mediation Act 2023.

Key Takeaways

1. Mediation restores decision-making power to the parties.
2. The mediator's skill in process design and communication is decisive.
3. Confidentiality and voluntariness are the pillars of effective mediation.
4. Different models suit different types of disputes and parties.
5. The Mediation Act 2023 and court-annexed systems are expanding the use of mediation in India.

This completes the five units of Alternative Dispute Resolution Systems.