

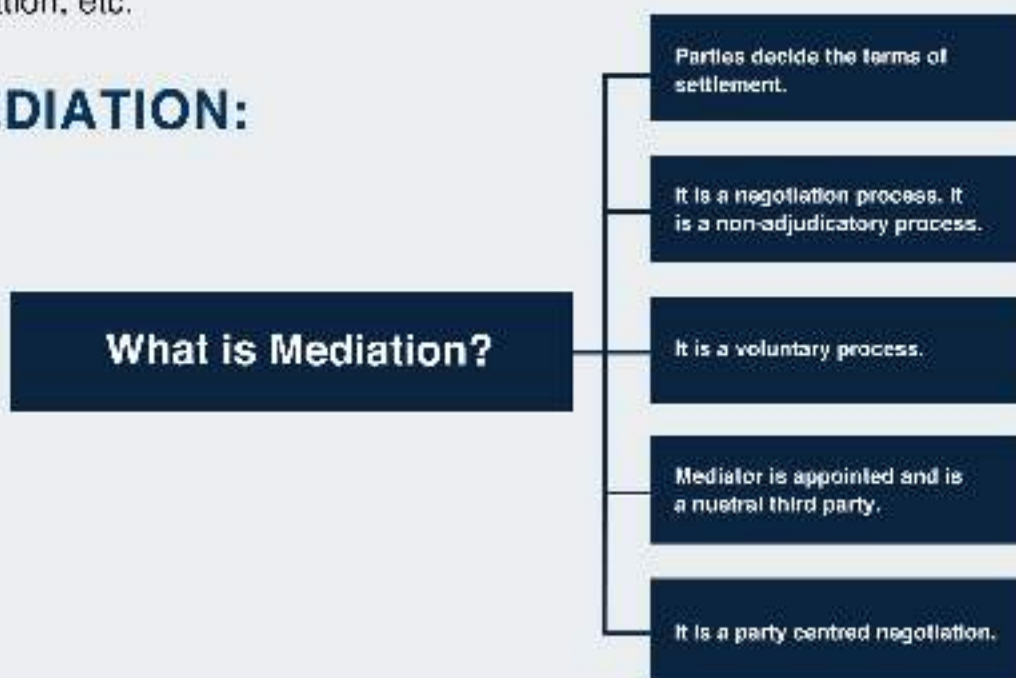
## ■ INTRODUCTION:

Some call it a 'Dispute' while others refer to it as a 'Conflict'!! The use of words has never been an issue, however, the mechanism to which parties refer to resolve the dispute has been one. The disputes, which the lawyers and judges handle, are always adjudicated through a pre-defined mechanism to resolve the conflict between the parties. Their agenda has always been to provide an expedited, constructive, and fruitful remedy that is also cost-effective.

**There are various techniques to resolve a commercial dispute, such as:**

- ✓ Negotiation,
- ✓ Mediation,
- ✓ Conciliation,
- ✓ Arbitration,
- ✓ Litigation, etc.

## ■ MEDIATION:



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It is an Alternative Dispute Resolution (ADR) process by which the parties to the dispute enlist a trained, neutral third party to help them resolve the dispute/conflict. The neutral third party, known by the name of Mediator, tries to resolve the disputes amicably. A mediator will never impose a solution rather he helps the parties to a dispute come to a settlement that is sustainable, voluntary, and non-binding.

Mediation is a party-centered process where parties amicably reach a mutually acceptable solution. A successful mediation basically depends upon two inter-related factors:

- ✓ The willingness of the parties to resolve their dispute; and
- ✓ The skill of the mediator in guiding the parties to the point where agreement is possible.

## ■ LAWS GOVERNING MEDIATION:

- ✓ Industrial Dispute Act, 1947 was the first method to legally recognize this method.
- ✓ Code of civil procedure (Amendment) Act, 1999
- ✓ Consumer protection Act, 2019
- ✓ Commercials court Act, 2015
- ✓ Companies Act, 2013



## ■ THE PRISM OF CONFLICT TRIANGLE:

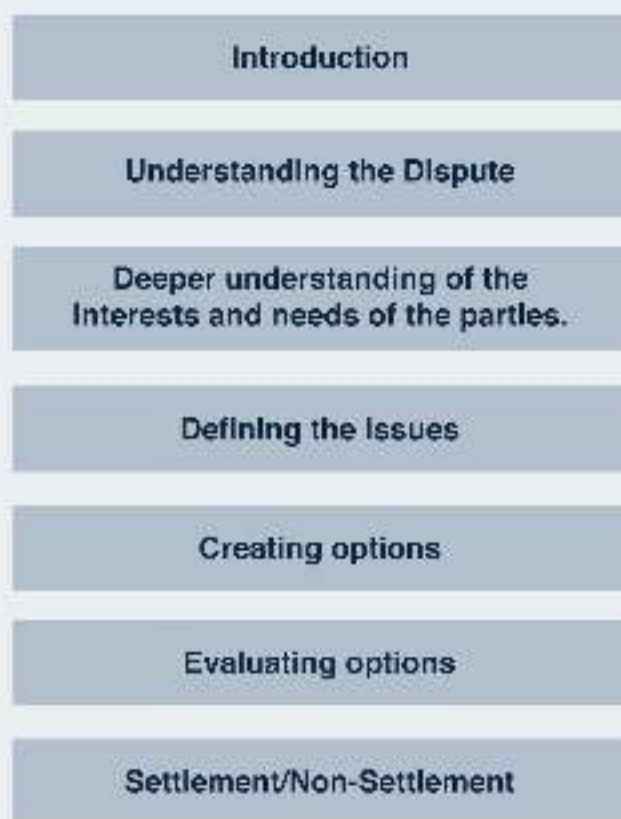


The Conflict Triangle arranges three primary aspects of dispute/conflict namely: the people, the process, and the problem into three sides of a triangle. This Conflict triangle becomes the basic framework for understanding and addressing conflict. Elements of each side of this Conflict Triangle differ from person to person, situation to situation, and problem to problem, requiring different solutions.

## ■ OTHER IMPORTANT FACTS OF MEDIATION:

- ✓ Mediation is also known as 'facilitated negotiation.
- ✓ There is no legislation as of now.
- ✓ Courts/tribunals are required to follow the Principles of Natural justice.
- ✓ It is advised that in mediation, the mediator proposes the procedure to the parties, and then if required, the parties can make suggestions for modification.
- ✓ Whatever is arbitrable can be mediated; what is not arbitrable cannot be mediated.
- ✓ Mediation is a voluntary process so as to say that parties after settlement cannot blame the mediator for their own decisions. Mediators cannot be held liable except for fraud or corruption etc.

## ■ THE WATERFALL - THE MEDIATION STAGES:



- ✓ The Mediator's introduction, along with laying down ground rules as well as explaining the procedures.
- ✓ Statement of the problem by the negotiators and re-statement by the mediator.
- ✓ Collection of additional information (if required).
  1. Private meetings.
  2. Joint Sessions.
- ✓ Mediator keeps encouraging the negotiating parties to come up with amicable solutions.
- ✓ If the negotiation is successful, there is a settlement, else there is no settlement.
- ✓ Summing up the settlement to the parties so that they acknowledge what has been agreed upon.
- ✓ Drafting the settlement and signing.



## ■ TYPES OF MEDIATION:

Listed below are two major types of mediation as imbibed in the mediation manual:

### 1) Court Referred Mediation :

This refers to those pending cases that are pending in court and are referred for mediation by the court under Sec. 89 of the Code of Civil Procedure, 1908.

### 2) Private Mediation:

Private Mediation refers to when qualified mediators offer their services on a private, fee-for-service basis to the Court, to members of the public, to members of the commercial sector, and also to the governmental sector to resolve disputes through mediation. Private mediation can be used when there is a dispute pending in Court and pre-litigation disputes.



## ■ BENEFITS OF MEDIATION:

The benefits of such processes as mediation are fortified by the fact that imminent legal personalities, ABC, etc., have taken pleasure and pride in continually settling cases out of court, uniting the parties driven by conflict and discouraging litigation:

- 1) Disputes can be dealt with promptly.
- 2) It provides an opportunity to address the situation before the problem accelerates.
- 3) Procedure followed in mediation is very much flexible.
- 4) Parties control the outcome of the dispute. It provides a win-win situation for both parties as they play an important role in formulating the terms of the settlement.
- 5) Improves the relationship between disputing parties.
- 6) Creates a forum where disputes and issues can be heard and addressed by the parties with the help of a neutral third party.
- 7) It saves money as the disputes are promptly settled or are referred back to the court immediately in case of non-settlement.



## ■ SUMMARY:

- ✓ The disputes can be referred by judges who consider that it has potential for mediation. The judge can frame disputes and recommend mediation. These disputes are not binding; however, the core issues must be resolved.
- ✓ When the matter goes for mediation, the Mediation centre appoints a suitable mediator having knowledge in resolving similar disputes.
- ✓ If the parties are not satisfied with the decision of the Mediator, they can proceed with other remedies available under the contract.







- **Indian infrastructure projects hit by cost overruns of Rs 4.55 Lakh Cr**

The Ministry of Statistics and Programme Implementation released a report stating that 354 Indian infrastructure projects worth more than Rs 150 Cr have incurred cost overruns of Rs 4.55 lakh crore and above. These projects are spread across various sectors, such as power, railways, roads, and urban development.

The major reasons reported for such a cost escalation are delays in project implementation (land acquisition, paperwork, lack of infrastructure support and linkages), changes in project scope, tendering, equipment supply, law and order issues, and COVID-19 lockdowns. The report further shows that the "total original cost of implementation of the 1,449 projects was Rs 20,69,658.30 crore, and their anticipated completion cost is likely to be Rs 25,25,348.87 crore, which reflects overall cost overruns of Rs 4,55,690.57 crore (22.02 percent of original cost)".

Another observation highlighted by the ministry is that the revised cost estimates and commissioning schedules for many projects are not being reported by the executing agencies, leaving time/cost figures under-reported.

- **MoRTH reports 10,993 km of national highway construction against the 12,500 km target**

The Indian Ministry of Road Transport and Highways (MoRTH) released a statistical report of India's 2022-23 national highway construction, stating a significant decrease of 13.70 percent as compared to the government's pre-set target of 12,500 km.

Considering the previous financial year's record, the speed of national highway construction touched 37 kilometers per day, resulting in 12,375 km of total construction. The same, however, slowed down to 30.11 kilometers per day in 2022-23.

- **Delays in 407 road transport and highways sector projects: Govt report**

According to a recent government report, the road transport and highways sector in India has the highest number of delayed projects, followed by railways at 114, and the petroleum sector at 86. The stats showed up after the latest flash report on February 2023 infrastructure projects was released.

The report dissected each delayed project along with the number of months to draw a more precise conclusion. According to this report, the Muneerabad-Mahaboobnagar





rail project is the most delayed by 276 by the Udhampur-Srinagar-Baramulla rail project, which is delayed by 247 months, and the third most delayed being the Belapur-Sea-wood-Urban Electrified Double Line, which is 228 months late. Such delays are anticipated to result in cost overruns of as much as 4.3 percent in the road transport and highway sector and 68.1 percent in the rail sector.

### ● **Icra report forecasts robust demand for Indian road logistics industry in FY23**

According to a report by ratings agency Icra, the Indian road logistics industry is likely to experience high single-digit revenue growth in the financial year 2023, driven by robust demand across various sectors, including e-commerce, retail, FMCG, chemicals, pharmaceuticals, and industrial goods.

In addition to this, Suprio Banerjee, Vice President & Sector Head of Corporate ratings at Icra shares that he's expecting 12-14% operating profit margins in FY2024. The report also stated that the operating margins of the logistics industry can remain stable, without being affected by the challenges posed by rising fuel prices. The only challenge will then be to maintain operating margins in this situation.

The growth potential of multimodal offerings, along with government initiatives like

the National Logistics Policy and PM Gatishakti National Master Plan, will also play a part in this thriving journey.

