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Unveiling Deficiencies in ADR Procedures: A Comprehensive Analysis of Mediation Processes

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Abstract:
It is not conducive for many to walk into the adjudicating Courts to be called as litigants. Such similarity of dejection and distancing is also witnessed among the people while they are required to consult a Doctor or the Police. Litigation is an unwanted event to the overall wellbeing of the community. The sad reality of human existence is that a section of people are involved in creating lawlessness and precipitating disputes willingly towards never ending horizons. This has led to the procrastination and pendency of litigations in our diversified country. Human need and greed to achieve and claim ownership over sizeable things and resources has become the order of human evolution. Lawlessness has dominated the human ways. To curb and mitigate such lawlessness and bring about effective human harmony, we have statutes, Courtrooms and organizational structures of Law.
It is witnessed that disputes renovate with time and changing economy, society, culture and standards of living. Racing in same pace, the process of law is also changing, amended and dynamic ways of dispute resolutions mechanisms are practiced. Mediation is one such mechanism considered to be an effective form of alternative dispute resolution mechanism professed under Section 89 of the Code of Civil Procedure. Worldwide, mediation as a process is gaining popularity as it is simple, highly party centric and confidential all through. Therefore, the impetus given to this form of dispute resolution is gaining momentum to the extent that legislature is in the verge of passing an exclusive enactment on the process of mediation.
The authors herein are evaluating the process of mediation by specifically identifying the loopholes and such other grey areas in the entire process. This paper shall be an effort to identify the existing impediments and limitedly suggest alternatives to enhance the effectivity of the process of the mediation as it intended to be.

Keywords: Mediation, Loopholes in mediation, ADR mechanism, Litigation and Dispute resolution

Introduction:

Alternative Dispute Resolution mechanism (ADR) denotes to the process and procedures applied for the resolution of litigations outside of the court processes and proceedings. ADR schemes affords a diverse stage for the disputing litigants with an alternate to litigation by providing for a more reliable, easy, collective and cost saving ways of resolving their legitimate differences. The major purpose of the ADR is to amicably reach a just and reciprocally adequate solution, typically with the assistance of an external neutral third party or arbitrator.

ADR methods include mediation, arbitration, negotiation, mediation and mediation. This technology gives parties greater control over benefits and allows them to customize solutions to their specific needs and preferences. ADR methods are used in resolving several family disputes, business and trade disputes, matrimonial disputes and intellectual property rights disputes.

Mediation is a the most acclaimed form of ADR and is recognized to be the most effective ways to resolve disputes. It shall include an external mediator who facilitates mutual communication and compromises between the parties to the litigation. Unlike judges or juries, doctors do not decide; instead, they help both parties explore their interests, concerns, and solutions. During mediation, the mediator being a neutral party navigates the discussion, encourages mutual listening and helps the parties to understand each other's perspectives by offering suggestion.

The process allows everyone to express their needs and concerns as they seek a common and mutually agreed solution. Mediation is optional and all agreements are reached by consensus, providing a collaborative and supportive approach to problem solving. Mediation is often appreciated for its many advantages, including privacy, cost-effectiveness, faster resolution times, social care, and time to explore creative solutions beyond legal avenues.

Historical References:

The history of dispute resolution goes back to ancient times when various methods were used to resolve the problem outside of the appropriate court law. ADR has over time been evolving through centuries being prominently influenced by tradition, customs, law and practices.

The references to ADR can be looked back into the ancient civilizations such as Mesopotamia, Greece, Egypt and Rome.[1] In those countries, the community elders, tribal heads or religious leaders would usually take the role of mediators or decision makers to solve the disputing issues between litigating individuals or groups.[2] In the medieval period in England, local laws and customary rules formed the foundation for deciding disputes through informal procedures such as negotiation, arbitration or mediation, with the presence of local leaders and elders acting as mediators or adjudicators in resolving such disputes.[3] Further down in the 16th and 17th centuries, the Courts of justice in England were constituted to hear disputed cases where the use of strict laws would have had unfair significances. These courts used the principles of justice and common sense, and their procedures were highly informal and flexible than civil courts, almost very similar to today's ADRs.[4]

In the early part of 19th and 20th centuries, labor and economic turbulence gave way to the

[1] https://kpbl.pl/en/the-history-of-litigation/

[2] supra

[3] https://uk.practicallaw.thomsonreuters.com/4-502-1378?transitionType=Default&contextData=(sc.Default)&firstPage=true

[4] https://hbr.org/1994/05/alternative-dispute-resolution-why-it-doesnt-work-and-why-it-does

expansion of illegal reimbursements, often accompanying with the fact of wealthy people working against the interest of workers and employers.[5] Further, in the mid-20th century, the interest to resolve the disputes through ADR evolved and got to be recognized as an alternate to legal court proceedings.[6] The experts, academicians, courts and policy makers started to identify the benefits of less conflict and more cooperation scheme of things available in ADR.

Modern ADR Development:

In the second half of the 20th century, several noteworthy developments were made in the ADR procedures.[7] A few of those important developments include:

a. **Arbitration:** The extensive business through intercontinental trade and business has directed to the expansion of arbitration as a necessary means to settle and solve local and international cross-border disputes. The organization in the name and style of International Chamber of Commerce (ICC) has worked methodically in creation and promotion of rules for arbitration pertaining to disputes evolved through such international trade and commercial laws.[8]
b. **Mediation:** The process of mediation has become very widespread as an easy way to resolve disputes. As a substitute to lawsuit, it is desirable to emphasis on voluntary involvement, maintaining confidentiality and cost-effective management of disputes.[9]
c. **Court-linked ADR:** Many courts around the world are starting to incorporate ADR techniques into their procedures. This fact has led to the recognition and establishment of court referred mediation process and, in few disputes, the need necessitates the application of obligatory or mandatory mediation.[10]
d. **Laws and regulations:** The Central and State Governments, International organizations and Statutory establishments have established several acts and protocols to enable the use of ADR forms in a diversified situation, such as corporate disputes, domestic and matrimonial disputes, private disputes and environmental litigations.[11]
e. **Expansion and Consolidation:** ADR mechanism endures to develop and diversify in the 21st century. It is extensively used in many areas of litigation today, including matrimonial laws, labor and industrial disputes, business and trade conflicts, construction lapses and title disputes, international trade and commerce, intellectual property right disputes and online dispute resolution (ODR).

The development of ADR in India:

The history of the process and procedures of implementation of ADR in India dates back to several 100 years, where a assorted informal and reasonable methods were applied to solve disputes between societies and people.[12] The process of ADR has grown along with time in India alongside the mushrooming of several varieties of civil disputes including intellectual property rights disputes in recent years.[13] Here are few instances of the growth of ADR in India from historical perspectives:

[5] https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_735630.pdf
[6] https://voelkerrechtsblog.org/de/the-history-and-development-of-a-dr-alternativeappropriate-dispute-resolution/
[7] https://www.lawreform.ie/_fileupload/reports/r98adr.pdf
[8] https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1089&context=njilb
[9] https://badrelaw.com/the-power-of-mediator-law-in-resolving-conflicts/
[10] https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=5181&context=journal_articles
[11] https://unctad.org/system/files/official-document/webdiaeia20108_en.pdf
[12] https://viamediationcentre.org/readnews/MzEx/Evolution-and-Codification-of-ADR-mechanism-in-India
[13] supra

Ancient India: The practice of ADR in ancient India was deeply rooted in the culture and traditions of the country. The societies and communities habitually resolved their litigations through resident and local assemblies or by calling upon village leaders who would act as neutral mediators or adjudicators. The notion of 'resident groups' has played a very vital character in determining problems and resolving them by means of compromise and reconciliation.[14]

Mughal and British Raj: During the Mughal and British Raj, local dispute resolution was combined with statutory courts headed by chief judges. The British colonist courts were founded on the rules of English legal system which later inspired the constitution and construction of Indian legal system.[15]

Post-Independence Era: Post independence in the year 1947, our country India adopted and enacted our Constitution based on the principles and values of justice, equity and opportunity. Alongside, the independent India adopted the Code of Civil Procedure[16] and Code of Criminal Procedure[17] to set the strict guidelines to be followed and implemented in applying the court procedures in the jurisdiction of civil and criminal courts proceedings.

Policy Statement: That all along the period between the years 1980s and 1990s, the Indian government identified the need and requirement for more efficient and appropriate problem-solving process. The Law Society of India has published several reports recommending the establishment of ADR mechanisms to reduce the burden on the courts and facilitate dispute resolution.[18]

Arbitration and Conciliation Act, 1996: The Arbitration and Conciliation Act 1996,[19] being enacted and being put into effective operation by the legislation has unified and amended Indian laws regarding domestic and international arbitration and mediation. Further, the UNCITRAL Law,[20] boosts the usage of arbitration and mediation as the favored technique of dispute resolution.

Promoting Justice: Indian courts are actively promoting the ADR process as a dispute resolution method. The Supreme Court of India and several high courts have issued rulings emphasizing the importance of ADR and encouraging its use.[21]

Mediation and Lok Adalat: Mediation is recognized as a popular ADR method in India. The Indian government supports the establishment of courts in conjunction with meeting centers and community dialogue projects. In addition, the People's Court or Lok Adalat was established under the Legal Services Act, 1987[22] for the speedy resolution of disputes where undecided court litigations are referred to Lok Adalat and resolved therein.

ADR: India has established several private arbitration courts and offices and mediation centers

[14] https://www.scconline.com/blog/post/2021/02/07/evolution-of-adr-mechanisms-in-india/
[15] https://www.ijlmh.com/wp-content/uploads/The-Evolution-and-Development-of-ADR-in-India-and-its-Different-Kinds.pdf
[16] The Code Of Civil Procedure, 1908 (Act No. 5 of 1908)
[17] The Code Of Criminal Procedure, 1973, ACT NO. 2 OF 1974 [25th January, 1974.]
[18] https://www.alliance.edu.in/committees/ACADR/assets/publication/Rise-of-Alternative-Dispute-Resolution-Stepping-Towards-Efficient-Justice-System.pdf
[19] The Arbitration and Conciliation Act of 1996, No. 26, Acts of Parliament, 1996, available at: http://indiacode.nic.in/
[20] United Nations Commission on International Trade Law (UNICITRAL), G.A. Res. 31/98 (Dec. 15 1976); http://www.uncitral.org/pdf/english/texts/arbitration/arb-rules/arb-rules.pdf
[21] Food corporation of India Vs. Joginderpal Mohinderpal, 1989 AIR 1263, 1989 SCR (1) 880
[22] Lok Adalat, Government of India, Nalsa, (Dec. 16, 2021, 9:30 PM), https://nalsa.gov.in/lok-adalat

to provide a formal and structured process for dispute resolution. These organizations ensure the effectiveness and efficiency of the ADR process.[23] Some of the noteworthy organizations serving as arbitration courts are as follows:

- Indian Council of Arbitration (ICA) - New Delhi
- Federation of Indian Chamber of Commerce & Industry (FICCI) – New Delhi
- Delhi International Arbitration Centre (DIAC) – New Delhi
- Construction Industry Arbitration Council (CIAC)- New Delhi
- International Centre for Alternative Dispute Resolution (ICDAR) – New Delhi

Online Dispute Resolution (ODR): Presently, our country India has implemented online dispute resolution mechanism using digital technologies, artificial intelligence and virtual platforms to enable dispute resolution.[24]

The history of ADR reflects the ongoing search for more efficient, effective and efficient methods of conflict resolution. It has become an integral part of today's legal process, providing parties with greater flexibility and control over the resolution process, promoting good cooperation and control. In modern days, the process of ADR has developed as an significant part of Indian regulations and several of the ADR techniques are used and applied to resolve litigations in various fields including commercial, household, occupational, personal and environmental concerns. The government of India strives to promote the techniques of ADR as a real and efficient technique to reduce and resolve the huge pendency of litigation and enable time efficient and cost-effective decision making.

The process of Mediation is an unambiguous technique of resolving civil litigations. ADR is a canopy that is inclusive of various procedures used to resolve disputes outside the court.

ADR: in relationship with Mediation:

ADR refers to the process or method of resolving disputes without resorting to litigation. Mediation is a specialty of ADR. Mediation involves and includes a neutral external mediator who with his expertise enables mutual communication and compromises between the litigating parties to the litigation.[25] The neutral third party, i.e., the mediator shall help the litigating parties to identify their primary interests, concerns, and solutions, but the mediator does not make decisions. Instead, the parties themselves came to a good solution. While mediation is a popular method of ADR, there are other aspects of ADR: 1. Arbitration, 2. Negotiation, 3. Mediation, 4. Lok Adalat and 5. the mixed process combining elements of Mediation and Arbitration (Med-Arb).[26] The process of 'med-arb' includes mediation and, if mediation fails, arbitration. The primary purpose of ADR including the likes of mediation is to find a solution acceptable to all litigating parties involved. ADR is planned to afford a quicker, more effective and less invasive alternative to court processes. Both ADR and mediation emphasize flexibility and voluntary participation. In either of the cases, both the litigants have greater control over the process and can unite in forming the solution that best suits them. ADR, and mediation in particular, often provides confidentiality. This allows both parties to discuss sensitive issues and explore solutions without fear of public disclosure.

[23] https://singhania.in/blog/arbitration-organisations-in-india
[24] https://www.ijlmh.com/wp-content/uploads/2019/04/Online-Dispute-Resolution-An-Indian-Perspective.pdf
[25] https://www.ciarb.org/news/what-is-meant-by-neutrality-in-mediation/
[26] https://hsfnotes.com/arbitration/2012/02/28/med-arb-an-alternative-dispute-resolution-practice/

Advantages of Mediation over the disadvantages of ADR:

Mediation is often considered one of the best and most preferred dispute resolution methods among other ADR process for a variety of reasons. While it may not look to be the best option in every situation, it still has several advantages that make it useful for conflict resolution:

- Voluntary and collaborative Participation: Mediation is optional and all parties must agree to participate. Consequently, applicants to the process will be more enthusiastic to take part in the process which will result in better relationship and participation. This can encourage open communication and a greater willingness to find ground and work towards a common goal.
- Neutral Third-party - Mediator: In the procedure of mediation, a neutral third party known as mediator is appointed to aid the litigants to arrive at the effective amicable resolution. The mediator does not stop the decision, but guides the parties to discover their interests and needs and helps them find solutions. The impartiality of the intermediary leads to trust and confidence in the process.
- Customized Solutions: The process of mediation can generate easy and inventive resolutions grounded on the precise requirements and preferences of both the litigants. Unlike court decisions (win or lose), which are often bilateral, mediation can bring results that resolve underlying issues and create a win-win situation.
- Cost-effective and time-saving: Mediation often takes less time and effort than a court hearing. The process has been simplified and focused on quick resolution, which is particularly beneficial for both parties looking for a faster solution.
- Confidentiality: The Mediation process is purely private and therefore, whatever transpires during the mediation process is kept confidential. This can encourage both parties to be open and honest without fearing that their words will later be used against them.
- Manage Relationships: Mediation is especially helpful in conflicts where relationships are important, such as family or business disputes. By promoting understanding and cooperation, mediation can help rebuild relationships that might otherwise be damaged by court disputes.
- High Rate of Success: The process of Mediation is highly successful and efficient in arriving at a resolution and consequential agreement as the parties to the dispute desire.[27]

Even though mediation as a process has many rewarding advantages, it may not be adequate and befitting in several circumstances. For example, other types of ADR, such as arbitration or arbitration, may be more appropriate where a party refuses to participate or is in conflict or lacks jurisdiction. Eventually, the finest process in ADR be subject to the nature of the dispute and willingness of the parties involved. It is essential to obtain suitable legitimate opinion and advises before considering any particular or specific circumstances and to rightly evaluate the most suitable and apt means to resolve the dispute. The Supreme Court has reinvigorated and stimulated the use of mediation process for dispute resolution.[28] The Courts at present, see mediation as a tool for an efficient and effective method that supports in reducing the Courts burden to deliver the best justice to both parties in a timely and cost-effective manner. The Supreme Court's stance on mediation has been reflected in many important decisions. The following are some key points regarding the Court's work on reconciliation:

In Afcons Infrastructure Ltd. V. Cherian Varkey Construction Inc., (2010),[29] the Supreme Court emphasized that ADR procedures such as mediation should be used, especially in cases where the judicial process is delayed. The court encourages both parties to go to mediation to resolve the dispute quickly.

[27] https://mediate.com/measuring-success-in-mediation-an-outline/

[28] https://consumeraffairs.nic.in/sites/default/files/file-uploads/latestnews/ConsumerHandbook_Mediation.pdf

[29] [2010 (8) SCC 24]

In Salem Bar Association v. Union of India (2005),[30] the High Court has emphasized the importance of ADR, including mediation, in reducing the number of pending cases before the courts. The court encouraged the integration of ADR into the court and recommended the establishment of medical centers in the court area.

The Apex Court in B.S. Krishnan v. M/s. Vijay Nirman Company Pvt. Ltd., (2018)[31] reiterated that parties should explore mediation before approaching the court for resolution of disputes as mediation is an efficient method for resolving disputes amicably.
In M/s. S.B.V. Patel Engineering Ltd. at P. & Co. (2005)[32], the Supreme Court said that the court should not automatically decide the decision as the matter is pending in the arbitrator. The ruling shows that the court supports the use of arbitration and mediation.

It is pertinent to state that even Lok Adalat's try to resolve disputes between the parties through mediation and conciliation. It is noteworthy to state with hope that our Apex Court's approach towards the process of mediation and ADR techniques and observations made on its good consequences, will help develop and establish the processes as there would be many new opportunities and issues before its disposal for such important guidelines and roadmap to be laid for the future. The Supreme Court[33] and other High Courts[34] assistance and belief in the process and application of mediation translates the Court's consciousness and need of the importance of necessitating mediation as the most effective method to solve litigations and enable justice to every litigating citizen in our Country.

Potential Deficiencies in the process of ADR:

Alternative dispute resolution processes are used together with mediation for the resolution of disputes outside the court process. ADR is not immune to challenges and has the potential to cause disruptions that can affect its effectiveness and integrity. In such cases, it is important to check for potential pitfalls to ensure that the ADR process maintains fairness and delivers fair results. This discussion highlights some of the potential pitfalls in the ADR process that deserve close attention from practitioners, policy makers and actors. These disadvantages include a number of issues that may affect the fairness, control and general acceptance of the ADR process. Looking and scrutinizing such limitations and issues is very important and vital for facilitating and propagating the values of fairmindedness and impartiality that motivate the perception of ADR. As ADR methods are continuing to progress and acclimatize to the varying ways and means of dispute resolutions, the acknowledgement and application of such interferences of change is very important and necessary to ensure appropriate ends of justice being served with fairness, effectiveness and impartialness which is the core essence of this methods. Through careful observation, ongoing research, and thoughtful implementation, ADR can continue to provide an important tool for achieving equitable solutions while minimizing impacts that may reduce capacity. The following review focuses on power conflict between parties, transparency and accountability, access to legal representation, cultural and language barriers, voluntary participation, impartial or unbiased arbitrators, and not binding precedent. Well with the thoughtful understanding and redressals tailored to cater to the impending concerns, the parties to this scheme or method shall collaborate with one another to make the scheme of ADR to become more effective and ensure that the parties are in the correct process

[30] (2005) 6 SCC 344
[31] Civil Appeal No. 21824 of 2017
[32] AIR 2006 SC 450
[33] Patil Automation Private Limited v. Raheja Engineers Private Limited (17 August 2022)
[34] RELEVANCE OF MEDIATION TO JUSTICE DELIVERY IN INDIA: A paper presented by Justice M.M. Kumar, Judge, P&H High Court, in the National Conference on Mediation, organised by the Mediation & Conciliation Project Committee, Supreme Court of India, h on July 10, 2010

of resolving their differences and litigations permanently.

While ADR process is an effective means to resolve disputes, it also has deficiencies. Some of them are:

Lack of Jurisdiction: A major problem with ADR is that agreements reached through mediation or arbitration may not be legal. Unlike a court decision backed by law, the results may not have any weight. In the event where one litigating party refutes to comply by the settlement agreement, the other opponent will experience hardships in ensuring that such agreement sees the better light of the day.

Power Conflict: The ADR process may not always address the power conflict between the parties. If either of the parties is more powerful, there is chance of one such party influencing and manipulating the outcome in his favor through an unfair compromise.

No Deal: Unlike court proceedings, ADR proceedings are often conducted behind closed doors. This lack of transparency can raise concerns about accountability and unfair decisions.

Legal Representation: ADR processes are often less formal than court processes and parties may not need legal representation. Thus, without a qualified attorney, the parties may not fully understand their rights and may agree on a less than optimal recourse.

No proper participation: ADR is based on the voluntary collaboration of all the participants. The defiance of one or more litigating parties to join or contribute in the process may hamper the underlying concerns of the ADR, and the same may set to fail and would not lead to any sorts of dispute resolution.

Mediator/Arbitrator: The process of ADR relies on the expertise and impartiality of a professional or arbitrator. However, these third-party arbitrators can cause confusion, distress their decision-making and benefit any one party.

Stressful resolution: ADR processes are often about reaching an agreement, and parties can be forced to agree on terms they don't really like. This solution can lead to optimal solutions and result in bad solutions.

No Discovery: Unlike court proceedings, the ADR process may not involve extensive discovery (evidence gathering process). These limitations may avert the litigants from accessing significant evidence, which might lead to an imperfect understanding of the dispute.

Stress or Anxiety: Severe stress or personal conflict between parties can interfere with effective communication and decision-making during ADR, leading to incomplete resolution of the problem.

No Right of Appeal: In most of the cases, ADR decisions shall not be allowed to be appealed. There is very meager chance of an appeal if the party believes the outcome was unfair or wrong.[35] For instance, if there is a single arbitrator and he does wrong, the ability to fix the wrong would become scarce. Likewise, while not reaching a conclusive end towards making a binding agreement, a bad mediator can mean a wasted day or two.

Non-binding aspects in mediation: The whole process of mediation is commonly non-binding. This shall mean that any dispute being resolved by the parties through a mediator remains to be ineffective and non-performing until the disputing parties have a true will to

[35] https://legal.thomsonreuters.com/en/insights/articles/problems-and-benefits-using-alternative-dispute-resolution

agree and perform. At any time or event of the process of mediation, if any of the disputing parties resolve to be defiant on the terms agreed or mediated, the dispute remains unresolved and kept open for adjudication.

Insufficient skills of the person acting as a judge: The success of ADR depends on the skill and training of the person acting as a neutral judge. The presence of inexperienced or unqualified persons to adjudicate may have trouble of handling the process efficiently.

Malpractice or mismanagement: Even if the parties agree to ADR, its success will depend on proper implementation and management. If the disputing parties violate the process or employ their high handedness to comply with the agreed terms of the mediation, the said resolution reached or the decision so passed shall remain inconsequential and invalid.[36]

External Stress: External influences such as public opinion, media attention, or pressure from outside can affect the ADR process and prevent problems from being resolved.

In alternative dispute resolution, a legal hazard may be a strategy by one or both parties to gain advantage over others or to aggravate the conflict. Although, the process of ADR is habitually intended to be with reduced amount of hostility, higher accommodating way to resolution of litigation, the truth is that the litigating participants may apply and implement several tools and strategies, inclusive of legal threats and pressures to safeguard their legitimate interests.

Here are some illustrations of legal threats that may occur in the ADR process:

Illustration 1 - Threat of litigation: A party may threaten to bring a dispute to court if the other party does not agree to certain terms or agreements during the ADR process. The costly and time-consuming threat of litigation can be used to force another party to settle or compromise.

Illustration 2 - Claiming legal rights: A party may use legal threats to assert its rights in rem or gain an advantage in negotiations. This may include mentioning certain terms, contracts or agreements to promote one project and try to harm the other.

Illustration 3 - Threats of Counter Action: Against a claim made by one party, the other party may threaten to file a counterclaim by seeking compensation or remedy, even if not informed beforehand for enactment.

Illustration 4 - About the Attorney: If the dispute is not resolved to their satisfaction, a party may seek the cooperation of its lawyer to demonstrate its readiness to take legal action. This creates a feeling of heaviness and creates pressure for other people to follow.

Illustration 5 - General threats: Sometimes a party may threaten to publicize the conflict or actions of others in a way that damages its reputation. This can be especially helpful if other people are worried about negative publicity.

Illustration 6 - Disclaimer of Trust: ADR is based on the trust and willingness of all parties to participate in an open and cooperative manner. Voicing legal threats can undermine the trust between the parties and the outsider (mediator or arbitrator), making it difficult for the negotiations to proceed.

Illustration 7 - Hostile thinking: Legal threats will bring back feelings of dissent leading to more lawsuits. This change in behavior can hinder creative problem solving and prevent both parties from exploring new solutions to conflicts.

Illustration 8 - Protection of Communication: Fear of legal intervention may cause parties to

[36] https://hbr.org/1994/05/alternative-dispute-resolution-why-it-doesnt-work-and-why-it-does

withhold relevant information or positions in the ADR process. Open communication is critical to successful ADR, and legal threats can create barriers to effective communication.

Illustration 9 - Conflict escalating: Legal coercions can surge the strains between the litigants, making it difficult for them to find mutual ground to derive at a resolution. The activities of the two parties may be more destructive, resulting in further disputes and the possibility of re-running the dispute to the courts.

Illustration 10 - Dissatisfaction with a Dissatisfied Party: If a party uses legal threats to gain an advantage or control the process, the agent or judge will be affected. This perception may make other parties reluctant or unwilling to participate in the ADR process.

Illustration 11 - Delays and increased costs: The introduction of legal threats can lead to delays and additional costs, discouraging one of the main objectives of ADR to resolve disputes quickly and effectively.

The deficiencies in the process of Mediation:

Conflict, like all solutions, may not be fully resolved. While mediation is often successful in most cases, there are several reasons why mediation does not lead to a positive outcome:

Lack of Interest in Mediation by Reconciliation: The process of reconciliation heavily depends on the involvement of both the litigating parties to participate and exhibit their desire to discover a compromising resolution by understanding their corresponding ranks and priorities. If any or either of the parties to the mediation table refuse to reach and travel towards a workable resolution and agreement, the very purpose of the process of mediation shall halt and it is unlikely from thereon to envisage any mutual resolution to materialize.

Imbalance of Power: When there is substantial disproportion and disparity of authority between the litigating parties to the dispute, the most vulnerable litigant may yield to succumb to the pressure or might of the opponent to accept an unwarranted and unfair compromise which by any means translates to result in a dead compromise obtained out of undue authority.

Lack of Goodwill among the parties: The process of mediation to be fruitful and effective, the entire team of litigating parties must act and accept the consequences in bonafide conviction, which is aimed towards the permanent resolution of the dispute on a win-win basis. If a party participates in mediation only to delay or disrupt the process, or if he has no intention of reaching an agreement, mediation fails.

Emotional or mental disorders: Negative emotions, vague thoughts, or mental disorders can interfere with effective communication during a conversation. To search for a mutual platform for resolution may be tough when the parties to the dispute are incapable to be clear and correct in identifying their disputing requirements and apprehensions.

Difficult issues or settlements: Some disputes involve legal, financial, or emotional issues that may be difficult to resolve through mediation alone. In such cases, additional support or expertise is required.

No Legal Authority: At times in several such disputes, a particular litigant may have no legitimate authority to necessitate or enter into a dispute resolving agreement with the other party. For instance, in one such commercial dispute, a representative of the party having no authority may appear and participate in the process of mediation, making the whole efforts of reaching an agreement as non-binding.

Insufficient skills of mediators: The effectiveness of mediation depends on the skills and

conflicts of the mediators. Inexperienced or impartial mediators may have difficulty facilitating effective communication and guiding parties towards a solution.

External influences: External pressures, such as the influence of third parties or changes in circumstances, may hinder the mediation process and impair its prosperous course.

Timing: The timing of conducting mediation either early or late can affect the accomplishment of mediation. For instance, mediation may fail if parties are not adequately prepared, and paucity of time may also bring in adverse effects.

Deadlock: In some cases, the parties may get stuck in the negotiation process and cannot find a solution despite all their efforts. It is to be noted here by acceptance of the fact that the mere failure of the process of mediation in resolving the conflict of the parties shall never mean to be that such a conflict cannot be resolved through the process of mediation. Failure once does not mean failure all through. In several complex conflicts with complicated facts, the process of mediation may not see the light at the end of the tunnel by paving way for a blockade to stand as an impasse to for resolving the disputes between the parties. However, a failed effort of mediation is always a hope for looking into the insights of parties' views and expectations, the deadlock where they are struck and their reservations to resolve. Such a finding shall definitely be a hope for better chance of resolution of disputes through mediation in subsequent efforts to get resolved.

Need for a strong Mediation Culture:

Mediation refers to the widespread acceptance, adoption and promotion of mediation as a method of conflict resolution. It includes attitudes, beliefs and practices regarding mediation as an effective tool for conflict resolution. Mediation has the following concerns to be enabled for a better mediation culture to prevail:

Knowledge and Education: There is need for widespread knowledge of the benefits of mediation and a broad understanding of the mediation process. Education initiatives, public events and workshops help people and organizations learn about the process of mediation.

Institutional Support: The Courts, government agencies, etc., should actively promote and supports mediation as an alternative to litigation.

Mediation Services: Mediating experts should be provided with special authority to help resolve any dispute. The additional mediation facilities shall be provided by the government, private establishments and the public enterprises.

Voluntary participation: Cultural cohesion emphasizes the voluntary nature of the process. All the contesting parties should be motivated to voluntarily and confidently participate with a composed control over the consequence.

Confidentiality: Mediation culture values confidentiality, ensuring that discussions and information shared during mediation to remain confidential.

Collaborative approach: The mediation encourages cooperation to resolve conflicts, encouraging the parties to work together to find a good solution rather than using the opposing position.

The solution of order: Cultural harmony is more important than the solution of order. All the litigating parties to the dispute are stimulated to propose their innovative ideas and inventive resolutions that could meet their personal requirements and benefits more than a possibility of the winner alone taking away all the possible outcome.

Different applications: Mediation is suitable for the resolution of many disputes such as family disputes, commercial disputes, labor disputes, environmental problems and social disputes.

The Mediator: Mediation culture emphasizes the importance of the mediator. The said mediator must remain neutral all through and conduct the whole proceedings impartially what come may even in the private caucus by not opting any sides or spelling out his pronouncements on behalf of all or any party.

Achievements: Effective conflict resolution through mediation fosters strong reconciliation. Positive experiences and testimonials encourage others to consider mediation as a viable option.

Strong mediation can promote consistent and positive social outcomes; by reducing the existing burden on the Courts in providing for justice. To create and develop such a positive mediating philosophy, it requires active involvement and backing of Advocates, Law-makers, People representatives, Courts and the public at large, to identify the worth and core value of the process of mediation and to integrate it into the core process of dispute resolution.

Conclusion:

It is worth noting that the legal threats in the ADR process may not be necessary to make it effective. For the process of ADR to work efficiently, the litigants must necessarily repose good conviction in the procedure and a readiness to collaborate in determining the problem and resolving it. In the ADR process, the parties should focus on constructive dialogue and cooperation rather than using legal threats. If legal issues persist and become significant, parties should consult their Advocates to seek outside the court process to seek legal remedies. The ADR mechanism itself should remain a forum for effective dispute resolution.

In conclusion, the inconsistency in mediation demonstrates the need for prudence and continuous improvement to ensure its effectiveness. Although mediation is an important method of dispute resolution, its disinterest can undermine the desired results if not resolved. Identified gaps such as lack of control, incomplete explanation and inconsistent processes highlight the importance of general training, clear instructions and standard procedures for mediators. That for solving these disputes, it shall need the support of all the direct and indirect participants which includes the mediator, parties to the dispute, law makers and the experts who can evaluate. The implementation of stricter ethical standards, greater transparency, and mechanisms to enforce consensus agreements can help mitigate the impact of this negative trend. In addition, ongoing research, ongoing review of the mediation process, and continuing education can help identify and remediate existing vulnerabilities. Finally, while mediation is flexible to enable resolution, the presence of disadvantages should not preclude its use. Instead, it should be responsible for improving and empowering the process, making it credible, and ensuring that it remains an effective tool for resolving envisioned conflicts with fairness.