NEGOTIATION: BETTER WAY OF RESOLVING DISPUTES

"Discourage litigation. Persuade your neighbours to compromise whenever you can. As a peacemaker the [lawyer](http://www.legalserviceindia.com/lawyers/lawyers_home.htm) has superior opportunity of being a good man. There will still be business enough”.

 **-Abraham Lincoln**

This quote by one of the wisest man in the history, briefly sums up the need for alternate dispute resolution than an actual litigation. Resolving a dispute has been one of the important objects of the legal processes so far. Dispute resolution processes are broadly divided under two types, adjudicative processes such as litigation and arbitration - where a judge or a jury decides the case in good faith and consensual processes such as mediation or conciliation or negotiation.

Although the terms used in today's era under alternate dispute resolution sound contemporary, the process of resolving the disputes with the help of a mediator or by way of negotiation prevailed in India since ancient era, such as Panchayats in India.

**What is ADR (Alternative Dispute Resolution)?**

Generally speaking, ADR means procedures of settling the disputes by means other than litigation, such as Arbitration, Negotiation or Conciliation. ADR has been accepted widely because it involves process which are expeditious and cost saving.

Although the technicalities of ADR faced some resistance in India earlier, today courts advise parties and companies to seek justice through any such method before approaching the court.

ADR or Alternative Dispute Resolution has four pillars namely ;**Arbitration, Conciliation, Mediation and Negotiation.**

Although this article will broadly deal with Negotiation, we will take a brief look at other three processes of ADR as well.

**Arbitration:** Though Arbitration appears to be a traditional litigation where a neutral third party hears the arguments and passes a final judgement, the difference lies in the way the parties approach the court. In almost all the cases the parties have agreed to the procedure and have mutually chosen the arbitrary authority even before the dispute arose. The procedure is less formal than the actual court of law.

**Conciliation:** Conciliation is a process by which parties approach a conciliator , who meets both the parties independently and asks them to list out their objectives of conciliation so that the parties can arrive at a mutual decision. The conciliator tries to ease out the pressure and he encourages the parties to explore potential solutions.

**Mediation:** Mediation is similar to conciliation except in Mediation, the mediator meets the parties together. Mediator merely suggests the alternatives and parties arrive at a possible solution.

**Negotiation:**

Negotiation has been defined as any form of direct or indirect communication whereby parties who have opposing interests discuss the form of any joint action which they might take to manage and ultimately resolve the dispute between them[[1]](#footnote-2)

Given this definition, one can see negotiation occurring in almost all walks of life, from parenting to the courtroom. In the advocacy approach, a skilled negotiator usually serves as advocate for one party to the negotiation and attempts to obtain the most favourable outcomes possible for that party. In this process the negotiator attempts to determine the minimum outcome(s) the other party is (or parties are) willing to accept, then adjusts the demands accordingly. A "successful" negotiation in the advocacy approach is when the negotiator is able to obtain all or most of the outcomes his party desires, but without driving the other party to permanently break off negotiations.

Negotiation is the process whereby interested parties resolve disputes, agree upon courses of action, bargain for individual or collective advantage, and/or attempt to craft outcomes which serve their mutual interests. It is usually regarded as a form of alternative dispute resolution.

**Object of Negotiation**: Helping two or more parties to arrive at a mutual ground and mutual terms with respect to the existing dispute or while laying the groundwork for future relationship.

**Features of Negotiation:**

**1.** Negotiation is **voluntary** process.

**2. Bilateral/Multilateral:** Negotiations can involve two, three or dozens of parties. They can range from two individuals seeking to agree on the sale of a house to negotiations involving diplomats from dozens of States (e.g., World Trade Organization (WTO)).

**3.** Negotiation is **Informal**, there are no prescribed rules in negotiation**.**

**4.** Negotiation is **Non-adjudicative,** it involves only the parties. The outcome of a negotiation is reached by the parties together without recourse to a third-party neutral.

**5.** Negotiation is **Cost saving**, as it doesn't involve loads of paper work or transportation, as required under litigation.

**6.** Negotiation is **Flexible,** the parties can determine not only the topic or the topics that will be the subject of the negotiations, but also whether they will adopt a positional-based bargaining approach or an interest-based approach.

**Process of Negotiation**:

1. **Willingness**: The first step to Negotiation is either of the party's willingness to bargain upon some of the terms and come to a win-win situation with other party or parties.

2. **Communication**: The party initiating the negotiation must then, communicate its willingness to negotiate on the matter to the other party or parties.

3. **Assessment of interests**: All the parties willing to negotiate should asses the interest that are involved in the manner and should come up with ways , by which most of the interests are archived or fulfilled in the amicable or harmonious manner.

4. **Significant pointers of Negotiation:** The preparation immediately before the actual negotiation will involve the important pointers to be discussed and negotiated and it shall have some rules of conduct listed down in order to conduct the negotiation in a peaceful and fruitful manner.

**Do's and Don'ts of Negotiation :**

1. Parties must concentrate on interests instead of their positions.

2. Parties have to separate people from the problem.

3. Parties have to listen to the other parties carefully and actively.

4. Parties must respect the cultural or linguistic differences of other parties if any.

5. Parties should Create and propose options for mutual benefit (“win-win”)

In India, Negotiation doesn’t have any statutory recognition. Negotiation is self counselling between the parties to resolve their dispute. Negotiation is a process that has no fixed rules but follows a predictable pattern.

1. THE LAW SOCIETY OF UPPER CANADA “SHORT GLOSSARY OF DISPUTE RESOLUTION TERMS” at 6, 1992 [↑](#footnote-ref-2)