

PAPER REPORT



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Stop courting trouble, approach a mediator

Legal mediators can help resolve disputes and prevent cases from reaching the courts, saving time and money

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In an age when an email reaches the US in less than 10 seconds, we can't expect people to wait 10 years for a case to be finally decided. — Supreme Court judge Markandey Katju

It is a huge problem and looks set to grow. Three crore cases are pending in Indian courts, with more being added every year. Were the judges even to work 24/7, the procedure of law, which involves reading thick files of court documents and hours of hearing counsel, would mean the backlog could not be cleared in the foreseeable future.

One solution could be more courts and more judges. But legal experts believe that a more viable way forward would be mediation to end disputes, wherever possible. This could prevent a number of cases from reaching the courts.

A range of disputes — matrimonial, labour, accident claims, eviction matters between landlords and tenants etc — could go to mediation, instead of the courts. "Around 60% of these cases are of such nature that they can be resolved through mediation. In matrimonial cases, property and commercial disputes, it's very effective to let both parties discuss, shout and reach a decision," says senior Supreme Court lawyer Praveen Agarwal, who recently attended a mediation workshop in Delhi by the London-based Centre for Effective Dispute Resolution.

A dispute could be referred to mediation even if one party requests it, with the other signaling they are not averse. Delhi-based lawyer Vikas Pahwa, who handles constitutional, corporate and criminal cases, says, "Mediation has been a part of the Indian legal system for a long time, but unfortunately, it's not a popular practice. If mediation becomes as prevalent in India as it is in the West, a majority of cases can be dispensed with in a few days."

THE GO-BETWEEN



Who can mediate

- Retired judges or higher judicial service officers;
- Legal practitioners with at least 10 years experience
- Experts in mediation

What sort of cases

- Loan recovery
- Labour disputes
- Motor accident claims
- Matrimonial disputes
- Dowry cases

Time & cost

Matters are generally resolved with two sittings lasting 2-3 hours each
It could cost roughly Rs 1,500 per sitting

Pahwa says that lawyers could help speed up the mediation process because "it has been found that wherever the parties are assisted by their advocates, a settlement is arrived at a bit earlier: The lawyers can explain the weaknesses and strengths of their respective cases and the time and cost that it might take in litigation."

But the courts would need to take the lead. Lawyer Praveen Agarwal says that the history of mediation in India shows it "is generally court-annexed — it is the court that marks a case for mediation."

The Madras High Court was the first to establish a mediation centre on its campus, followed by Delhi and Allahabad. Now, most major states — like Gujarat, Karnataka and Madhya Pradesh — have mediation centres.

Some NGOs and independent practitioners act as mediators but Anil Xavier, president of the Indian Institute of Arbitration and Mediation (IIAM) and himself an internationally-accredited negotiator and mediator, says the "practice needs to be made more popular". He says the advantages of mediation need to be

talked up, not least the relative absence of acrimony because both parties are involved in suggesting possible solutions to the conflict. The IIAM, he says, sets "a maximum limit of three months for mediation".

The downside is that even a speedy and relatively good-tempered mediation process may not succeed in keeping the case out of the overburdened Indian courts. Xavier says that because mediators are generally trained, retired judges, "there is a mindset of forcing an agreement, which needs to be ratified by the court. That way, the case remains within the legal system and may be time-consuming. But if the cases come directly to independent mediators who may or may not be judges or lawyers, it's quicker and easier for both parties."

A major advantage of mediation over straightforward litigation is the price tag. The cost of mediation is peanuts, perhaps even as low as Rs 1,500 for a two-hour sitting. A long drawn-out legal fight-to-the-finish means huge bills, with just the court fees often adding up to 40% of the amount demanded in, say, an accident compensation claim. Xavier says mediation costs generally don't "go beyond 5-10% of the entire claim".

Senior advocate Mandira Mitra says, "Mediation offers an opportunity for re-establishing communication between the disputing parties, which often helps in finding a mutually acceptable settlement."

The gains — speed and savings — of mediated settlement make it the common sense way to resolve disputes and lighten the load of India's overstretched courts.

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