

## **Path To Be Chosen: Mediation/Lok Adalat**

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“One lakh!”

“Two lakhs!”

“1.2 lakhs!”

“Why don’t you compromise a bit and come down in what you are asking?”

“1.9 lakhs is what we will accept! We will not go down further!”

“We cannot accept to pay such a high amount for this man’s injuries. The most we will pay is 1.2 lakhs.”

“Your Honor, my client has lost his livelihood as a result of the motor accident. Surely 1.9 lakhs is a small amount for a state bus service to pay for the injuries caused?”

Exchanges such as this are a common experience when seeking a settlement at Lok Adalat. Settlements are reached based on mutual agreement between the two parties after limited negotiations guided by the conciliators of Lok Adalat.

In the case presented above, the injured man limped to the bench at the behest of his advocate to show the panel his crushed foot. Those present only saw the life-changing injuries caused by the accident.

In a matter of five minutes, a pre-existing formula was used to calculate the compensation based on various factors. Information was gathered and an amount settled by the two member panel.

In mediation, the experience is different. Consider the following example:

A couple living in a gated community lost their only son in an accident resulting from faulty construction of the footpath. The grief-stricken parents sought compensation from the builder to the amount of Rs.50 lakhs. The builder offered only Rs.5 lakhs which the parents took as an insult to the memory of their deceased son. During mediation, both parties had the opportunity to communicate their feelings to each other. As a result of listening to each other and understanding the other’s position, an agreement was reached that went above and beyond any monetary compensation the builder could have offered and the couple could have expected. In addition to a smaller monetary settlement, the builder agreed to construct two rooms

in a school where the mother had devoted her life after her son's death, institute a scholarship for two students in the same school, repair the roads and footpaths in the gated community and rename the street in the son's name.

Mediation is party-centric and addresses emotions, needs and core concerns of the parties. Settlements are reached by negotiation conducted over several days accommodating the complexities of the dispute. Multiple options are generated after a detailed exchange of information and parties ultimately settle on mutually acceptable terms. The mediator's skill of understanding the emotional state of the parties and being able to facilitate communication vastly improves the chances of reaching a lasting and satisfactory settlement. These elements have a holistic impact on the parties' emotions and experiences and are unique to mediation.

#### ***Suitable Cases for Lok Adalat***

Lok Adalat is better suited for disputes where not much time is required to make a determination of liability and an established formula is available to calculate a monetary settlement. Such cases involve a party that is usually represented by authorised personnel who do not have much flexibility and discretion while negotiating. These parties routinely face numerous similar claims and apply the same fixed formula to reach a settlement. One example of such disputes better suited would be motor vehicle accident claims against insurance companies. In such disputes, there may be no scope to reach customised settlements.

#### ***Suitable Cases for Mediation***

Cases where parties have the power to conduct negotiations, alter terms and customise settlements are suitable for mediation. Mediation is appropriate in situations where human stories are relevant, relationships are involved or where channels of communication need to be re-established in order to work towards a resolution. For example, cases including complex commercial disputes, contract disputes, personal injury claims, real estate, property, family disputes or matrimonial cases.

Comparing the two scenarios mentioned previously, mediation offered an opportunity for the parents and builder to reach an understanding of all the circumstances so that various amenable solutions could be reached. If the case of the crushed foot had been referred to mediation and the other party was not a state bus company, it is entirely possible that the injured party could have received more than just monetary compensation. For example,

the other party could have also agreed to re-employ the man in a position where he could utilize other skills after retraining. Or, the parties could have agreed to hire the man's son as the father was no longer in a position to carry out his duties. Such compromises would benefit both parties as mediation is a process where parties are able to express their stories and together reach an agreement that is suitable to all concerned. The outcome is not only the deliverance of a settlement, but enhanced satisfaction of parties and mending and preserving of relationships.

There is no disagreement with the fact that the practice of ADR is crucial to the administration of Justice in India. The litigants repose immense faith and confidence in our Courts. They rush to the Courts with their conflict. Our Courts bear the heavy responsibility to direct and guide the parties to the most suitable and appropriate dispute resolution mechanism, based on the unique characteristics of each case. Only then can it be truly said that Justice has been delivered.

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