

Role of the Mediation in Attaining Sustainable Development Goal No.16: An Analysis

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Abstract: Conflicts are universal and thus there is an immense need to develop processes to minimise, manage and resolve them. For effective dispute resolution, access to justice delivery mechanisms are paramount. In common parlance, access to justice means access to the courts of respective jurisdictions, and it goes to the roots of the very existence of every human being. The Sustainable Development Goals aim to secure everyone a better and sustainable future by addressing various global concerns. SDG 16.2 enunciates the aim of ensuring ‘access to justice’. Mediation is a process through which the parties attempt to resolve their disputes with the help of a third person, i.e., a mediator. The control over the process is with the mediator, and the outcome is with the parties. This paper analyses the concept of Mediation and its role in attaining SDG 16.

Keywords: Mediation, Sustainable Development Goals, Access to Justice, Mediator, Parties, Rule of Law.

I. Introduction

Conflict is “a struggle between at least two interdependent parties who perceive incompatible goals, scarce resources, and interference from the other party in achieving their goals”

Hocker and Wilmot³

The above quote signifies the nature of conflict, i.e. a constant struggle between two or more interdependent persons or groups. Disagreements are part of human existence and are bound to arise in every aspect of life. When not addressed, disagreements transform into disputes, which, if not addressed, take the shape of conflicts, necessitating the requirement for a dispute resolution mechanism, besides traditional dispute resolution mechanisms, i.e., the judiciary, tribunals, and other adversarial bodies. Different alternative modes of resolving disputes exist, like mediation, negotiation, conciliation, and arbitration. This paper examines the role of mediation in attaining the aim behind Sustainable Development Goal No. 16.3, which seeks to promote the rule of law and access to justice.

II. Understanding the Concept of the ‘Mediation’

Mediation involves a process where parties try to reach an amicable resolution of their dispute with the help of a third person called a mediator, who does not have the authority to impose a settlement on the parties. ⁴“It denotes a process whereby parties attempt to reach an amicable settlement of their disagreement with the assistance of a third person or persons lacking the authority to impose a solution upon the parties to the dispute. ⁵ It is a conflict resolution process in which two or more parties involved in a dispute meet with a neutral third-party mediator to

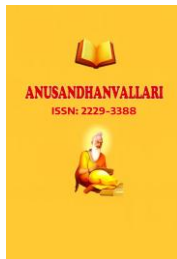
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³Available at: <https://www.beyondintractability.org/bksum/hocker-interpersonal>.

⁴ Section 3 (h) of the Mediation Act, 2023.

⁵The United Nations Convention on International Settlement Agreements resulting from Mediation, 2018, art.2 Para 3.



discuss the issues and attempt to reach a voluntary agreement. The process is non-adversarial, informal, but structured.⁶

In mediation, the parties request a third person or persons to assist them in reaching an amicable settlement of their dispute arising out of or relating to a contractual or other legal relationship. The person so requested does not have the authority to impose a solution to the conflict upon the parties.⁷ Such a third person is referred to as a mediator. He has no authority to impose a settlement upon the parties to the dispute. The term 'mediation' embodies various forms of mediation, such as court-annexed, pre-litigation, online mediation, community mediation, conciliation, etc.⁸

Attributes of the Process of Mediation

It is a voluntary process, and the parties have the right to self-determination. It is a confidential process, meaning whatever is discussed between the parties remains within the room's four walls. It cannot be used against either of the parties in any court or arbitration proceedings. Control over the process lies with the Mediator, and the outcome rests with the parties. An integral part of the process signifies an 'Access to Justice Approach' and complements the existing judicial system rather than replacing it. It is party-centric- the parties are the decision makers. It harmonises their relations. The focus is on the problem, not on the individuals. It is a flexible and cost-effective process, free from formal procedures, emphasising a Win-Win solution.

Confidential: Mediation is a private and confidential process that is not open to the public. This means that statements made during mediation cannot be disclosed in civil proceedings or elsewhere without the written consent of all parties. Any statement or information provided by either party and any document created or used during mediation are inadmissible and non-discoverable in any legal proceeding.

Participative: Parties can present their case in their own words and directly participate in the negotiation.

Non-adjudicatory: It is non-adjudicatory, meaning that the third party does not decide the case but facilitates dispute resolution. Ultimately, the parties are the decision makers, and not the mediator.

Voluntary: Mediation allows any party to withdraw at any point if they feel it is not beneficial. Its self-determining nature promotes adherence to the agreed settlement.

Party-centric: This means that the parties are the prime focus of the process. They have the liberty to decide the procedure and mediator, and the power to make the final decision.

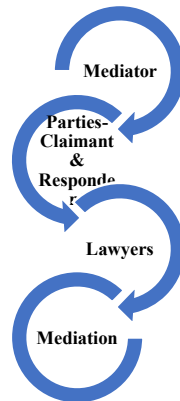
Components of Mediation

The Parties: The disputants, i.e., the entities between whom the dispute has arisen. The party that invites mediation is called the requesting party, and the party to whom it is sent is called the responding party. The mediator is the third independent and impartial person who facilitates the parties in amicably settling their disputes. He shall not act as an arbitrator or judge. The Counsel/Advocates represent the parties.

⁶ Available at: <https://mcpc.nic.in/?100023>.

⁷ UNCITRAL Model on International Commercial Mediation & International Settlement Agreement Resulting from Mediation, 2018, art.1 para 3.

⁸ The Mediation Act, 2023 (Act 32 of 2023), s. 3(h).



The United Nations Convention on International Settlement Agreements resulting from Mediation, 2018, the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, 2018, and the UNCITRAL Mediation Rules, 2021 lay down the foundation for regulating mediation at the international level. The Singapore Convention envisages the procedure for enforcing the settlement agreements resulting from cross-border mediation. The Model Law is an updated version of the UNCITRAL Model on conciliation, which gives a blueprint for nations to draft their national legislation on Mediation. The mediation rules define the procedure for conducting the mediation. They provide a framework for regulating the process of mediation that the institutions conducting mediation can rely upon.

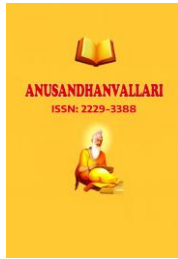
III Examining the SDG No. 16

Sustainable development relies on peace and security. It emphasises the need for creating peaceful, just, and inclusive societies that ensure equal access to justice, uphold human rights, and operate under the rule of law, good governance, and transparent institutions. SDG no. 16 aims to promote peaceful, inclusive societies, guarantee justice for everyone, and build effective, accountable institutions - a crucial goal and a major driver of sustainable development. It is closely linked with other SDGs; for example, without peace, justice, and inclusion, efforts to eradicate poverty, improve education, and foster economic growth face significant obstacles. SDG No. 16.3 advocates for the rule of law at national and international levels, ensuring equal access to justice. SDG No. 16.6 highlights the importance of creating effective, accountable, and transparent institutions to secure access to justice. Meanwhile, SDG No. 16.7 stresses that decision-making should be responsive, inclusive, participatory, and representative across all levels.⁹

IV. Interconnection between SDG No. 16 and Mediation

This section examines the link between SDG No. 16.3 and mediation. Mediation is essential for achieving the Sustainable Development Goals by 2030 and promoting a culture of peace. It will also offer certainty and stability. The concept of mediation can act as a tool to ensure access to justice for all, support participatory decision-making, and uphold the rule of law. It can be used to promote sustainability, which is essential since “access to justice affects many aspects of life, including physical and mental health, employment, productivity, and family

⁹Peace, justice and strong institutions - United Nations Sustainable Development, *available at*: <https://www.un.org/sustainabledevelopment/peace-justice/>.



stability.”¹⁰ It can resolve civil, commercial, family, contractual, and public disputes. Therefore, it is relevant and lays the foundation for establishing accessible, accountable, and effective dispute resolution methods.

In accordance with Goal 16, mediation emphasises inclusiveness and diversity. It unites people from various backgrounds, fostering dialogue, empathy, and cooperation. It provides a space where differences are recognised, respected, and integrated into constructive solutions. It enables the parties to disputes to seek a viable resolution and foster relationships. Pre-mediation should be made a norm for settling disputes, as it will help in achieving the aim of Goal 16.

VI. Conclusion

Conflict is universal, requiring processes to minimise, manage, and resolve it. Access to justice mechanisms is vital for effective dispute resolution. The SDGs address global issues; SDG 16.2 focuses on 'access to justice.' Mediation, involving a third party, helps resolve disputes and is key to achieving SDG 16. It is voluntary and confidential, promoting self-determination and problem-solving, complementing the judicial system and encouraging win-win outcomes. SDG 16 aims to foster peaceful, inclusive societies, ensure justice, and strengthen institutions, aligning with mediation principles. It supports participatory decision-making, upholds the rule of law, and helps resolve disputes, laying the groundwork for accessible, effective resolution methods.

Nations should enact separate legislation to regulate mediation, aligning with the core principles of Sustainable Development Goal 16. They should also establish provisions for technology-assisted and online mediation, which supports the goal of building inclusive societies. Mediation should be mandatory in civil cases, ensuring confidentiality, voluntariness, party autonomy, and procedural fairness are upheld. The mediators appointed must be impartial and should not have any conflict of interest. This way, mediation can catalyse the development of effective, impartial authorities, which will deliver access to justice.

¹⁰ Available at: https://www.oecd.org/en/publications/equal-access-to-justice-for-inclusive-growth_597f5b7f-en.html.