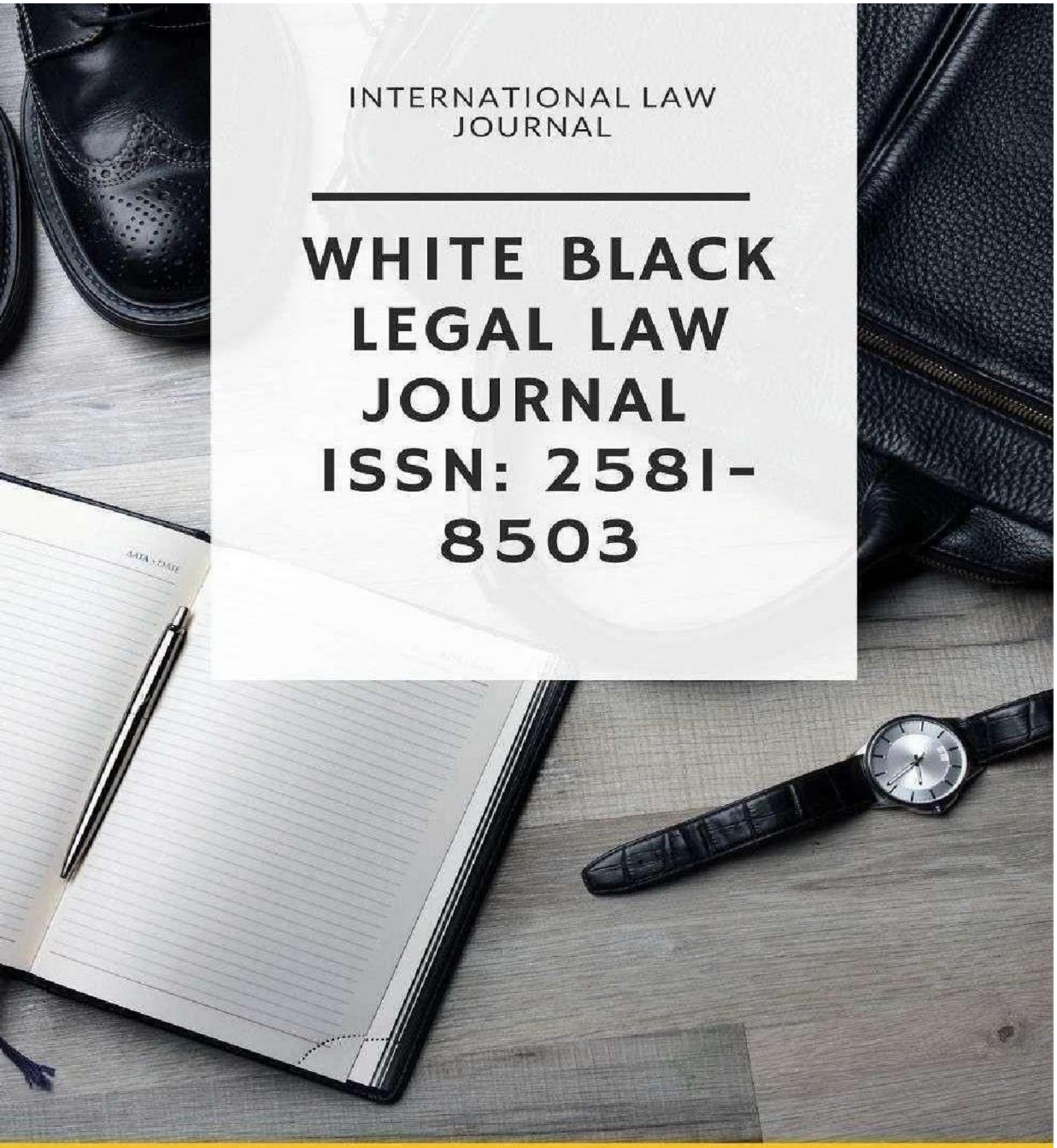

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MEDIATION AS A RESOLUTION MECHANISM IN INDUSTRIAL DISPUTES

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Abstract

Labour conflicts are a necessary feature of relations between workers and their employers in modern economies. Litigation or adjudication is a traditional approach to resolving disputes, which typically results in various problems, including: long timelines, increased costs and low relationships between parties during the process. Mediation is a powerful tool for alternative dispute resolution (ADR) that encourages communication, collaboration and mutually agreeable resolutions between conflicting parties. As far as industrial relations is concerned, mediation makes an important contribution in the wage, working conditions, lay-off, dismissal, collective bargaining and other employment-related conflict resolution aspects. This article looks into the nature of mediation, the legal backdrop of mediation in India, various strengths and weaknesses of mediation, and concludes by discussing its potential as a tool to resolve industrial disputes. It says that mediation helps to ensure industrial harmony, ease the caseload of courts and improves the relationship between employers and employees.

Key words: Mediation, Industrial Disputes, Alternative Dispute Resolution, Labour Relations, Industrial Harmony, Collective Bargaining.

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Introduction

In the world of today's employment relations, industrial dispute is a predictable component because of disagreement that may erupt between an employer and employee regarding such issues as wages, working conditions, disciplinary action, retrenchment, promotion, collective bargaining and other employment-related issues. The presence of such conflicts can have a negative impact on productivity, economic development and social security in industry. Hence it has become a vital concern for both the governments and the industries to establish effective mechanism to settle conflicts arose in the workplace. Industrial disputes can be resolved through the traditional processes of conciliation, arbitration and adjudication. But the processes, expense and confrontation of these methods can be criticized and continue to cause strain on the worker-

employer dynamic.[1]

Over the years, Alternative Dispute Resolution (ADR) systems have become emphasizing more and more as quite an efficient and less confrontational alternative to the general traditional procedure of resolution of dispute. Of these, mediation has become a preferred method because it is flexible, confidential, and focuses on working out an agreement that is accepted by both. Mediation is a process whereby a neutral facilitator, called a mediator, guides the parties to communicate and negotiate with each other to find a settlement that both parties agree to (consent to). Unlike adjudication or arbitration, the mediator does not impose a decision, rather he or she lets the parties discover the common interests and create mutually agreeable options.

Mediation is important in industrial relations because it helps to maintain the employment relationship in the long-term, whilst also working to resolve any grievances arising from the workplace. For industrial establishments to function effectively, there should be constant cooperation between management and labour. Adversarial proceedings tend to foster attitude of hostility and mistrust, while mediation fosters attitude of dialogue, understanding and collaboration. This means that mediated settlements tend to be longer lasting and better accepted to both sides of the table as they are based on both parties' opinions.

Internationally, the value of mediation work has been acknowledged by the International Labour Organization (ILO) which asserts the need to encourage industrial peace through voluntary, alternative dispute-resolution processes, in particular the process of mediation. Collectively, labor laws in India have always focussed on trying to settle the disputes amicably through conciliation proceedings in accordance with the Industrial Disputes Act, 1947. In recent times, the enactment of the Mediation Act, 2023, gives an all-encompassing legal structure to mediation and signifies the increasing recognition of consensual dispute resolution mechanisms in the Indian judicial landscape.[2]

Mediation is beneficial in resolving industrial disputes for various reasons. There are many reasons why it is typically faster and less costly than formal litigation, ensures parties have more control over the result and relieves the burden on industrial tribunals and courts. Moreover,

[1] S.C. Srivastava, Industrial Relations and Labour Laws 487–92 (8th ed. 2021).
[2] The Mediation Act, No. 32 of 2023, §§ 3–4, India Code (2023); Industrial Relations Code, No. 35 of 2020, §§ 42–45, India Code (2020); Int'l Labour Org., Social Dialogue Report 2022: Collective Bargaining for an Inclusive, Sustainable and Resilient Recovery 18–21 (2022).

mediation can help with more creative approaches that might not come to light unless parties seek to resolve their dispute in court. However, power relations between employers and employees, awareness and institutional capacities are still challenging the broad use of mediation in labour dispute.[3]

In this context, the present study aims at analysing the mediation as an effective tool for resolving industrial disputes. It explores the conceptual and legal dimension, the benefits, the problems and the prospects of the mediation as a tool to promote the industrial harmony and sustainable employer-employee relations.

I. Concept and Nature of Mediation

An alternative dispute resolution (ADR) method frequently used to try to negotiate and settle disputes amicably is mediation. It is a confidential, nonadversarial process in which the parties to a conflict, with the help of a neutral mediator, find a mutually agreeable solution to their conflict, as opposed to having it imposed on them by a judge. The mediator does not have the power to force-parties to make a legally binding decision as a judge, arbitrator, or a tribunal does. Rather, the mediator acts as a facilitator, facilitating communication, minimizing misunderstandings and assisting the parties in finding common ground and workable solutions.[4]

Mediation is rooted in a number of core principles such as: mediations are voluntary, mediators are impartial, mediations are confidential, mediations are flexible, and parties are autonomous. Voluntariness means that the parties choose to participate in the mediation process and neutrality means that the mediator will be impartial and unbiased throughout the process. During Mediation, confidentiality shields the privacy of discussions and proposals made that it fosters open and honest communications. However, flexibility enables the parties to choose procedures that are appropriate for them; and party autonomy enables them to decide the dispute, not an outside entity.[5]

Mediation has a special significance in industrial relations settings since employment relationships remain on. Most industrial disputes are rarely initiated as a result of things as simple as wages, working conditions, disciplinary, retrenchment, promotion, transfer, collective

[3] Surya Narayan Misra, Labour and Industrial Laws 623–28 (30th ed. 2022).
[4] Christopher W. Moore, The Mediation Process: Practical Strategies for Resolving Conflict 15–20 (4th ed. 2014).
[5] Carrie Menkel-Meadow et al., Dispute Resolution: Beyond the Adversarial Model 247–52 (3d ed. 2020)

bargaining agreements and workplace grievances. As employers and employees have to face each other and cooperate in the workplace after the dispute, maintaining harmonious relationship becomes as important as resolving the dispute. Mediation offers an opportunity for a productive conversation to try to understand one another's perspectives and to come up with solutions that satisfy everyone to the extent possible, which otherwise might escalate into more emotions and cause a long-term problem in the workplace.[6]

Mediation is very different than arbitration and adjudication. The arbitrator is a person that hears the arguments of the parties and make a decision that normally is binding on the parties. Likewise, labour courts and industrial tribunals settle disputes by adjudication based on correct legal principles and powerful verdicts. Mediation, however, keeps the decision as to how to resolve the dispute entirely in the parties' hands. Additionally, mediated settlements tend to be more satisfying to the parties, to last, and to be adhered to voluntarily than those that are adjudicated.

The rise of mediation mirrors a larger trend towards alternative and consensual modes of conflict resolution. The increasing complexity and dynamism of industrial relations make mediation a useful way to accommodate the interests of both employers and employees, retaining the strength to guard against the delays, costs and polemics of litigation. As a result, mediation has become a significant tool for the maintenance of industrial harmony, cooperation between the various actors in the work atmosphere, and sustainable labour-management relationships.[7]

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II. Mediation in Industrial Disputes under Indian Legal System

The genesis of Indian mediation for industrial disputes lies in the Statutory, Judicial and Labor laws ushered in the alternative dispute resolution mechanism. Throughout the development of Indian labour law, amicable settlement and negotiated solutions have always been considered as a vital armour for industrial harmony and to ensure no disruption of economic activities. While in practice conciliation has been preferred to mediation, the aim of achieving voluntary settlement has been a key part of the process of labour dispute resolution.[8]

[6] S.C. Srivastava, Industrial Relations and Labour Laws 485–90 (8th ed. 2021).
[7] Int'l Labour Org., Promoting Social Dialogue and Labour Dispute Prevention 12–18 (2018).
[8] O.P. Malhotra & Indu Malhotra, The Law of Industrial Disputes 37–42 (8th ed. 2021).

For several decades the main law for the period of industrial disputes was the Industrial Disputes Act, 1947. The Act provides a complete machinery in the form of works committees, conciliation officers, boards of conciliation, courts of inquiry, labour courts, industrial tribunals, national tribunals, etc. for preventing and settling industrial disputes. Of these, conciliation holds a key place. Conciliation officers are charged with the duty of investigating the dispute and negotiating settlement between workers and employers by the appropriate government. There are some procedural aspects of conciliation that vary from mediation, but conciliation is primarily different in that both processes seek a voluntary agreement, and that neither is used to force a result on the participants.[9]

An important step in the field of dispute resolution was the introduction of the Mediation Act 2023 which introduced a formal statutory platform for mediation in India. The development of the act is formalization and promotion of mediation as a structured mode of dispute settlement and institutional mediation and pre-litigation mediation. It sets forth standards on how mediation is conducted, mediated settlement agreements are the same as negotiated written agreements, requirements for confidentiality, and role of mediation service providers. While labour disputes remain largely regulated by specialist labour legislation, the legislation of the Mediation Act signals a wider commitment in the lawmaker to the consensual and non-adversarial approach to conflict resolution in selecting processes in different areas.[10]

Additional changes have been effected by the Industrial Relations Code, 2020 which is an aggregation and rationalisation of laws pertaining to labour issues like industrial establishments, trade unions and dispute resolutions. The Code remains adamant about the need to negotiate and conciliate industrial disputes before resorting to strike or lockout, or bringing the matter before an adjudicatory court. The Code aims to foster industrial peace and alleviate pressure on labour adjudicatory institutions by promoting employer-employee dialogue.[11]

Internationally, the International Labour Organization (ILO) has shown strong approval of voluntary dispute resolution tools, such as mediation and conciliation, as important negotiation devices for fostering social dialogue and industrially stable relations. Across the different ILO conventions and recommendations, the ILO is calling on member states to put in place the

[9] Industrial Disputes Act, No. 14 of 1947, §§ 4–5, India Code (1947).
[10] The Mediation Act, No. 32 of 2023, §§ 3–27, India Code (2023).
[11] Industrial Relations Code, No. 35 of 2020, §§ 42–49, India Code (2020).

bodies that promote peaceful settlement of labour disputes through cooperation and negotiation. These principles are also evident in the labour dispute resolution system adopted in India, which encourages settlement procedures and consensual efforts before it reaches formal adjudication.

Mediation is gradually gaining recognition in the Indian legal sphere, representing a shift toward more collaborative methods in resolving conflicts. Mediation strengthens the existing labour dispute resolution mechanisms, promotes industrial harmony, and allows parties to have a better control over the process towards reaching a mutually agreeable outcome.

III. Importance of Mediation in Industrial Disputes

Mediation plays a key part in the successful management of industrial dispute as it encourages dialogue, collaboration and understanding between employers and employees. Differences in expectation as to employment conditions, communication problems, misunderstandings, or mistrust often lead to industrial conflict. Through Mediation, the parties can explore their issues, their concerns and what underlies their conflict openly with a neutral person in a structured setting - and, importantly, it is all of them working together, rather than any one side being in the wrong. Mediation, unlike an adversarial process, allows for communication in a positive manner and bridges the trust gaps between management and workers. [12]

One of the most important benefits of mediation is that it is cost-efficient. Grinding expenses, formalities and delays are often involved during litigation (or adjudication) process before labour courts and industrial tribunals. This can affect the financial burden on employers and employees, as well as interfere with industrial processes. Mediation, however, is a relatively cheap and efficient process, which can resolve disputes in a shorter time in fewer procedural steps.[13]

Preserving of employment relationships is another important role of mediation. When an employer-employee dispute is over, they are likely to continue working with the same professional association, which makes it very important to prevent conflict in the first place. Mediation is not a confrontational process and helps promote cooperation between parties, thus minimizing hostility and helping to fix productive working relationships with each other. This is a feature which is especially appropriate to mediation in the context of industrial relations

[12] Christopher W. Moore, The Mediation Process: Practical Strategies for Resolving Conflict 33–40 (4th ed. 2014).
[13] Carrie Menkel-Meadow et al., Dispute Resolution: Beyond the Adversarial Model 265–72 (3d ed. 2020).

matters where continued contact between the parties is inevitable.[14]

Another characteristic aspect of mediation is it provides flexibility in creating solutions. Courts and tribunals can generally only order remedies as to which there is currently legislation, and mediation allows the parties to consider innovative, tailored solutions to their needs and interests. This flexibility can lead to solutions that may not be achievable through formal adjudication.[15]

Moreover, mediation encourages labor tranquillity and productivity of the organizations. Mediation leads to quick, amicable settlements that minimise the risk of strikes and lockouts and minimise work stoppages and other events that can have negative production and economic consequences. In this sense, mediation not only accomplishes the interests of the parties in the conflict, but the interests of industry and society.[16]

IV. Mediations are a Facilitative Dispute Resolution Process with a number of benefits.

The mediation has a number of advantages making it an effective mechanism for resolving industrial disputes. Among the best features it has is its speed. A serious industrial dispute is likely to last for a few years as it is taken to litigation or adjudication because of delays in the procedure and a large number of cases before the arbitrator. But mediation makes for a simpler, quicker procedure, where a settlement might be reached in a relatively short time, lessening uncertainties and disrupting less industrial operations.[17]

Another major benefit of mediation is that it is confidential. Typically information, ideas and proposals that are shared in mediation are only released to the public under a specific court order. Such confidentiality will allow parties to discuss the facts freely and without the worry that they could be held liable for said discussions down the road. It also helps safeguard the reputation of both employers and employees.

Mediation encourages parties to comply, of their own free will, to a settlement agreement. The

[14] S.C. Srivastava, Industrial Relations and Labour Laws 488–92 (8th ed. 2021).
[15] Surya Narayan Misra, Labour and Industrial Laws 624–27 (30th ed. 2022).
[16] Int'l Labour Org., Promoting Social Dialogue and Labour Dispute Prevention 21–25 (2018).
[17] The Mediation Act, No. 32 of 2023, §§ 22–25, India Code (2023).

parties are actively involved in negotiating the terms of the settlement, which increases their chances of seeing the results as being fair and acceptable. Interpersonal aspects can also make mediated agreements more likely to be followed, thereby avoiding the need to enforce them through the court system or the arbitral system.[18]

Flexibility is another important benefit of mediation. Parties should be free to agree on the rules of procedure, the timetable and the conditions of settlement in their specific cases. This flexibility is particularly important during industrial relations conflicts where interpersonal issues, business considerations, and organizational interest would need to be taken into account that would not be properly dealt with by simply following legal protocol.[19]

In addition, mediation also serves to ensure efficiency of the judges as it takes the load off labour courts, industrial tribunals and other adjudicatory machinery. Mediation allows mediators to help resolve conflicts prior to court, allowing litigation to go forward to settle only the more complex, important or high-stakes matters, while affording industrial parties more timely and more satisfying conflict resolution.

V. Recommendations for Improving Mediation in Industrial Disputes

This increasing importance of mediation calls for enhancements of mediation and an increase in its availability. An important step was the formation of specialised labour mediation centres, composed of professionals who have specialized expertise in labour law, industrial relations and the mediation of conflicts. These institutions can offer a structured and efficient mediation process specifically adapted to the needs of industrial conflicts.

There should also be comprehensive training for creating a cadre of skilled mediators that are available to handle complicated workplace disputes. While mediation is a key element of training, training should also cover labour law, collective bargaining procedures and the dynamics of industrial relations as well.

Awareness-building is also crucial to the campaign for mediation acceptance on the part of employers, employees and trade unions. Raising awareness through educational programmes

[18] Christopher W. Moore, The Mediation Process: Practical Strategies for Resolving Conflict 420–24 (4th ed. 2014).
[19] S.C. Srivastava, Industrial Relations and Labour Laws 491–95 (8th ed. 2021).

can make stakeholders at all levels appreciate the benefits of mediation and promote its adoption as an out-of-court method of dispute resolution.

Further enhancing mediation through legislative measures could be the consideration of compulsory pre-litigation mediation in certain types of industrial disputes. Disputes can be avoided and the burden on labour courts and tribunals can be lightened by mechanisms of early intervention.

Digital mediation platforms also offer great opportunities for enhancing accessibility and efficiency. Online mediation can be helpful in resolving a dispute in a geographically dispersed workplace, and it also helps save on time and expenses. India can achieve a better and more efficient mediation system for industrial relations, which is accessible to both parties and backed by technology and institutions.

Conclusion

Mediation, which has come up as an efficient, economical and relationship-oriented method of dispute resolution, is proven to be an effective step for solving the industrial disputes. Mediation can encourage the negotiation of mutually agreeable resolutions and prevent gridlock, promoting long-term stability in the industry, harmony between workers and management, and cooperation on the job. Mediation is a flexible, consensus-creating method that affords the parties a forum for actively working to resolving their disagreements.

The growing awareness of mediation within the judicial system of India, including the adoption of Mediation Act, 2023, underscores a larger trend towards consensual mechanisms of dispute resolution. However, unequal bargaining power, low awareness, lacking institutional structures and the lack of mediators with expertise are still hindering its potential. Legal changes, training programs and institutional development are necessary to alleviate these concerns and reinforce the status of mediation in the arena of industrial relations.

With ongoing change in industries in response to economic globalization, technological change, and changing patterns of employment, mediation is likely to grow in importance as a tool for resolving workplace conflicts. An effective mediation scheme is a key component in helping to effectively reduce the amount of litigation, boost productivity and bring about fair and sustainable industrial relations for the future.

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