Mediation as an instrument for Justice of the peace

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This article looks at how the mediation and how it is treated before the society sunk in possessive individualism, facing such a premise is mediation as current social relations element, since these relationships change at a speed considerably faster than the current judiciary. In this way becomes necessary if not essential, new mechanisms to resolve the disputes and discords of contemporary society. Offers mediation as a democratic procedure/emancipating in that it educates, facilitates and helps produce differences and perform decision making without the intervention of third parties. Within this perspective, believes that mediation is a democratic procedure/emancipating because hosts the conflict as positive social change and chance breaks with the benchmarks determined by normative certainty, hierarchical form and post that disregards the complexity of conflicts. Displayed so that over the years they were used, but will not gain success, seen that the national justice Council views the issue as public policy in order to give the real access to justice and ensure more appropriate and less aggressive forms of people resolve their conflicts, seeding social peace and cordiality.

**Key words:** conflict. Mediation and conciliation. Access to justice.
ABSTRACT

This article analyzes such as mediation and how it is treated before the society sunk in possessive individualism, against such a premise mediation is constituted as regards element the current social relationships, these relationships are changed at a considerably faster speed the current judiciary. Thus it is necessary if not essential, new mechanism able to resolve disputes and discords of contemporary society. It offers mediation as a democratic/emancipatory procedure in that it facilitates, educates and helps produce differences and to hold decision-making without the intervention of third parties. From this perspective, we understand that mediation is a democratic/emancipatory procedure because the conflict the welcomes positive possibility of social evolution and breaks with the benchmarks of certainty determined by the set of rules, put in a hierarchical way and that ignores the complexity of conflicts. View is then, that over the years these mechanisms were used, but will not get success, this the National Judicial Council sees the issue as a public policy in order to give the true access to justice and ensure more appropriate forms and less aggressive people solve their conflicts, social sowing peace and warmth.

Keywords: Conflict. Mediation and Conciliation. Access to justice.

INTRODUCTION

One of the consequences of life in society is the proliferation of conflicts, which are part of human nature and are necessary for the improvement of interpersonal relationships. The big challenge is harnessing the educational potential of these situations, from a proper administration, using peaceful dialogue, capable of converting adverse situations in real opportunities for growth, and maturation.

In order to enhance the promotion of Justice, are emerging alternative mechanisms of conflict resolution, which currently represent fundamental piece in the new model of Justice, offering a less formal justice cheaper and effective, especially to poor communities, enabling active participation of citizens in the solution of their conflicts.

The conflict is usually understood as something bad for the person, for the family and for society. A moment of instability, of suffering, of personal angst, which is hardly perceived as a moment of possible transformation.

A legal culture in which the conflict is always seen as something negative and detrimental to society and must be eliminated at all costs. A judicial system that certainly cannot harmonise relations subjective, since in many times the parties can't even expose the reality of the facts and have their wishes plastered on a fitness, so often forced facts to the norm. Where human values and the personal dramas are not valued and not considered to be such as are so complex. Within this context, every day thousands
problems are exposed and experienced in lawsuits. The parties lay in the Judiciary their expectations and desires, aiming to present legal operators can point outputs for the conflicts that they can't solve by themselves. It turns out that the judiciary, immersed in a widespread crisis has not offered appropriate treatment to many problems that are presented.

In this context, with the emergence of new rights became necessary the implementation of the right to access to justice, access to fair legal order, therefore are addressed the barriers encountered by the Justice and society, expense and legal fees, poverty, quantity of processes seen judicialization of conflicts, knowledge, bureaucratization and others. The principle is that the judiciary would even take has much to evolve, but with the development and implementation of the effects that can be achieved by putting into practice the consensus on controversial relations solutions are found easily and quickly.

ACCESS TO JUSTICE AND THE ISSUE OF CONFLICTS

It is an illusion to imagine a society free of conflicts, since they were created by humanity itself and are intrinsic to the nature of man. As society evolves, interpersonal relations also increase, as well as the antagonism of interests which, for the most part, are not adequately addressed.

In order to resolve disputes, the right has structured the Judiciary and asked him to say the law (jurisdiction), superseding conflicting parties of external and impartial way, resolving controversies by cogentes decisions.

However, the current crisis of judicial systems, with scarce resources both human as financial, eventually stimulate considerable growth in importance of the consensual solution mechanisms of conflicts of interest, since the Brazilian legal system can't keep up or resolve all frontbench hell-bent on surface.

Is the search lawmakers ' incessant and Jurists for procedural techniques or methods that ensure a more rapid and satisfactory judicial provision for litigants. Nothing more interesting that the Judiciary itself, adopt measures in themselves interested participate in the outcome of their deal.

It is in this context that the reconciliation, has proved an important instrument in bringing justice to the courts. Through this Institute, provides to the parties the effective access to justice, since they can participate actively in their own conflicts reliever result.

Access to justice is a fundamental right, present in the judiciary to ensure that the problems encountered by any person, may be resolved in a satisfactory way. Is a State instrument, in order to provide the right procedural action, concomitant to a decision that satisfies the parties. Under this point of view, the legislator is forbidden to prevent anyone who has injured his right, or threatened to have it, protection of
the judiciary.

"The principle of access to justice, also called the" guarantee wide access to justice ", was born with the Constitution of 1946, with wording almost identical to that of item XXXV, art. 5, of the current Constitution." (WEISSHEIMER, 2003, p. 193).

The State the duty to submit the dissolution of the deal, according to all, brings controversy and damage the right to judicial protection's breast, intending as such, fulfill its function to settle the deal.

This obligation, the settlement of disputes, it is noteworthy that the same becomes ineffective, given the immense demand found, along with the mechanisms used which are obsolete. The term access to justice can be considered a set of guarantees which enable the parties to effectively support their reasons, the production of evidence, the possibility of influence on the formation of the judge's persuasion. Don't be confused, or runs out of all take their claims to court, but it means the opportunity for effective and concrete judicial protection, in the sense of bringing justice to the citizens. Especially for the peripheral layers of society that ultimately becomes, the most disadvantaged in the provision of judicial protection.

That way the Judiciary can achieve the desired social peace so. According to an equal access to individuals, bypassing, however, constitutional guarantees that effect resource provision.

According to a brief historical analysis, the concept of access to justice, emerged in ancient Greece, in the philosophical debates about law and jus naturalism influenced. Jus naturalism had ideas like equality, which are presented today, when the human rights approach (ABREU, 2004, p. 46; 143).

The Greek philosophers to exemplify the justice issues were, as you can see the allusion of Abreu (2004, p. 46):

The school of Pythagoras represented the justice with the geometrical figure of the square, by the absolute equality of all sides. Aristotle formulated the theory of justice founded on the equality of the reasons influenced by thought pitágorico (about weight, equality measures and proportionality). The rule of Lesbos, enunciated the concept of equity, demonstrating the ability of the judge to adapt the law to the case.

In the Greek cities, to the magistrates belonged to execution of feathers, while the citizens judged in house model that features a direct democracy. The Greek thought influenced the emergence of the legal system in Rome, which in turn, influenced the civil law, especially the Law of Constantine. This law ensured the gratuitousness of those that needed, being inserted also the code of Justinian. (ABREU, 2004, p. 47).
, 18th and 19th centuries, the Liberal bourgeois States presented an individualist philosophy of rights. By the affirmative in comment, the right of action, not always had State protection in its entirety. That's what adds, Cappelletti and Garth (1988, p. 9):

Right to access to judicial protection meant essentially the formal right of the individual to propose or aggravated contest an action. The theory was that, while access to justice could be a "natural law", natural rights required a State action for your protection. These rights were considered prior to the State; their preservation demanded only that the State does not allow them to be infringed upon by others. [...] Justice, like other goods, the laissez-faire system, could only be obtained by those who could face its costs; those who could not do so were considered to be the only ones responsible for their fate. The formal, but not effective access to justice, corresponded to equality, just formal, but not effective.

At this time, to defend the individual against despotic governments, the "so-called first-generation human rights, representing, in essence, limits on State intervention in the individual sphere. Such rights require the public authorities a duty of abstention [...]

Yet on this, clarifies Cappelletti and Garth (1998, p. 10-11):

As societies of laissez-faire have grown in size and complexity, the concept of human rights has begun to undergo a radical transformation. From the moment in which the actions and relationships assumed increasingly more collective character that individual, modern societies necessarily left behind the individualist vision of rights, reflected in the "Declaration of rights", typical of the eighteen and nineteen centuries. The move was made to recognize the rights and social duties of Governments, communities, associations and individuals.

The right suffered strong influences of religion. Guess power of a religious leader and after this power extended to the legislature. All the facts that happened, were in some ways, explained by divine precepts. "Only with the development of societies, understood a minimum of organizational structure, cleared-if the separation between the religious phenomena of those socio-political" (CICHOCKI GRANDSON, 2002, p. 51).

Access to justice gained greater prominence in the 20th century, Abreu (2004, p. 47-48), explains that this arises because,

[...] the new social rights and the emergence of the constitutions, with leaders repeated reports of unsatisfactory functioning of Justice in Germany and in Austria, by the inability of the lawsuit, and several attempts to minimize the problem, led both by State and by organized sectors of the weakest social classes.
In this tuning fork, Sérgio Ricardo de Souza (2009, p. 62) exposes:

With the advent of the Constitution of 1988, the brazilian society saw new rights arise mainly from the internationally designed World War II and which go beyond the conceptual limits of the traditional demands of individual stamp, traditionally resolved in accordance with the guidelines of the formal logic typical of Cartesian and model of positivism, with predominance of the idea that the Judiciary fits apply the law to the case, formally the deal without questioning or intends to analyze aspects fit sociological linked to the effectiveness of judicial intervention, with regard to social peace.

With the emergence of the changes, for the new social rights and to the emergence of the constitutions was necessary to modify the rules. That way, State power can have the capacity that is required, to resolve new conflicts and meet the increasing demand of disputes.

**ALTERNATIVE METHODS OF CONFLICT RESOLUTION**

Contemporary brazilian society, for about a century until today, has shown an uninterrupted demand for economic growth as a way to find a social development. What are you seeking to achieve means that allow the progress in the economic field and get improvements in the social sector. Thus, as a consequence comes passing by strong transformations, reflecting the great diversity in social relations, in order to bring about an increase of relational conflicts, that are interpersonal conflicts, that is, between two or more individuals. Therefore, the company began to experience new conflicts, which have reached a high degree of complexity, demanding, so the effective understanding of social reality to its proper solution (CASTALDI SA; BRAGA NETO, 2007, p. 30).

The Brazilian Government, as well as other developing countries, always seeks to show the world the capacity growth and economic stability in order to attract foreign investments that have not been sufficient for the solidification of social peace, because several structural conflicts show unsolved. Thus, it becomes increasingly clear the urgent need for effective measures that generate social improvements.

The social, political and economic transformations only intensified the scene of great social inequality that makes many people feel excluded from society. Conflicts occur all the time, but the vast majority is the result of the most central issues and deep of the sad reality of our country.

However, gradually, has taken place the process of democratization of public activities accompanied by a growth of the fundamental rights of the individual and the establishment of procedural safeguards to defend them manifest in our country through the 1988 Federal Constitution, since several of his articles have about protections or rights before implicit or not applied to the daily life of citizens.
On this legal modification, there has been an increase in demand by the judiciary, making it appear indispensable fundamental rights. Despite the fact that the mechanisms of the judiciary are time consuming and have very high values which ultimately intimidate the litigator in searches for their rights. Nevertheless, the search for the Judiciary continues growing, because people believe that the judges may, by means of judicial verdicts, solve all your problems. It just shows the dependence that the Brazilians have in relation to the authorities. To demand that a third come bring the solutions to their problems, people are pulling out of responsibility for building their life trajectories. In addition, several times it competes for the failure to comply with the judgment, since the decision, not being drafted with the participation of the parties to the dispute, dislike, usually, at least one of the parties involved in the deal (SALES, 2004).

The various social problems, the profound inequalities and discrimination in our society, recurring trigger an escalation of violence in all social segments. This problem is accentuated by the increase in disbelief at the authorities which were seen as people gabaritadas to at least contain this escalation. It turns out to make people see in violence a justifiable way to solve many of their problems (SHINE, 2002).

Is the feature in all layers of the brazilian society in meeting the judiciary to seek a solution to their conflicts. There is a binary concept contained in the idea of win or lose, the fight between one party and another, is characteristic of an adversarial mentality, which is culturally rooted in our society, and can be seen in how people deal with the dilemmas of everyday life in all its aspects.

Occurs in judicial disputes all come out losing. Even those who win no longer leave so happy by the emotional wear and tear that generate and subject. Initially, it is very interesting the possibility of letting a third party can resolve that conflict in the place of the parties, however, over time, ends up generating discomfort to individuals the fact in all the issues that arise have to be submitted to a third world vision and its decisions.

This adversarial mentality, in which there are only victims or villains, which is prevalent in our society, only fosters the emergence of more conflicts and consequently more violence. The idea of winning processes and not the aid in dispute settlement only reinforces this mistaken notion and the inefficacy of the litigation (ANDRADE, 2006).

The essential function of the judiciary is the pursuit of the realization of Justice. Applying the law to the specific case, the Judiciary becomes the main guarantor of effective individual and collective rights and, consequently, guardian of the freedoms and citizenship. However, our Legal system is going through a terrible crisis.

The litigious culture of our society and the partial democratisation of access to the Judiciary will
eventually generate an excessive number of demands and, therefore, three immediate consequences: procedural delays, loss of quality of decisions and loss of belief of the population in the judicial authorities.

In addition to the exposed situation, is visible a total mismatch between the procedural formalism and the need of informality in different circumstances. Formality that generates unease in the presentation of a claim to the Judiciary, undoing any kind of relationship exists between the parties.

The Judiciary which should seek to achieve justice in this case end up moving away from those most in need of their protection. It can be observed that hardly gets satisfactorily the pacification of social relations which ultimately generate new disputes.

In this context of a lengthy, expensive Legal tangle, bureaucratized and virtually inaccessible to the majority of the population, adds up to a lack of procedural response to conflicts of a mass society, the collective.

Therefore, public and notorious the crisis through which passes this system that seems to be a crisis not only in the judiciary but the own legal education that the servers or jurists.

Currently, in Brazil, the legal education adopts the system of dialectic which wouldn't be a problem if academics were not trained for war, the combat, the battle. Are ready for a deal where conflicting and opposite forces are present, where only one can come out a winner at the end as if they were in a contest. That is, if one of the parties gain necessarily has to be defeat.

Once erroneously left encouraged the adversarial Prism, where the conflict becomes simply a battlefield of opposing sides where each party will do anything to succeed at the end of the process that would be precisely the preponderance of their interests over those of the opposing party.

Some procedural innovations, in order to seek to ease the problems of the judiciary, were inserted in the legislation country. Among them can be mentioned: the creation of the Special Civil and Criminal Courts (Law 9,099/95); the Special Federal Courts (Law 10,259/01); the instruments and guarantees under the Federal Constitution of 1988; the consumer defense code (Law 8,078/90); including the profound changes of the code of Civil procedure of 1973, minirreformas that began in 1994, including in these, the institution of the conciliation hearing.

However, despite the importance of these changes, not managed to generate results that could somehow stop the crisis in the Judiciary which causes keep on searching for new solutions that may rescue the belief in that power so important for the maintenance of social peace. As well as some form of mediation,
using alternative means which provide numerous advantages both to the legal system and society.

NEGOTIATION

Trading on a regulated market begins in the appearance of divergence between the parties and can only occur when the same purport to achieve an agreement. Must seek to satisfy both components of the deal.

In North, the author, moral Sales (2007, p. 41, 42), conceptualizes the trading as:

[...] the middle of conflict solution in which people talk and find a deal without the participation of a third party as in mediation. Negotiation is a very common procedure in the life of the human being, because it covers from simple discussion on where do a birthday party up in that type of investment the shareholders of a company will apply your money (SALES, 2007, p. 41).

Thus, through affirmative author referred to above, one can see that this mode of dispute resolution, is intrinsic in the daily people's private and professional. And has as purpose, constitute a relationship of understanding and comprehension.

Under that light, Tavares (2002, p. 42), talks about this technique of conflict resolution that is to be:

The basic form of dispute resolution is negotiation. In it, the parties are directly and, according to their own strategies and styles, seeking to resolve a dispute or planning a transaction through discussions that include argumentation and arrazoamento. Without intervention of third parties, the Parties shall seek to resolve the issues, resolving disputes through discussions that can be conducted by the parties themselves, or by representatives. Some authors do not consider it a form of conflict resolution. The negotiation is used for any kind of dispute and is part of the day-to-day transactional. Is a constant activity between the lawyers. Is an appropriate method to be used when the parties continue to have trade relations, everyday, or when it is possible creative solution, and such link is characterized by mutual trust and credibility between the parties.

For the author, Vezzulla (2001, p. 15) the negotiation should be the first alternative chosen by the parties to the solution of the dispute, because it is a quick method.

Once it works with direct dialogue between those involved and has the intention of compromise for both a beneficial agreement.

It can be concluded, therefore, that this legal instrument is scoped to solve possible disputes between litigants, in such a way that they negotiate directly with their own arguments, without the intervention of
an impartial third party.

**CONFLICT MEDIATION**

The mediation is an alternative means of resolving controversies, Pacific, in which the parties themselves, through dialogue, supported by an impartial third party, seek a solution to their conflict.

Lilia Maia de Morais Sales, when conceptualizing mediation, says:

Is a procedure in which and through which a third person acts to encourage and facilitate the resolution of a dispute, preventing antagonism, but not prescribe the solution. The parties are responsible for taking the decision that will give end to conflict (SALES, 2004, p. 23/24).

In mediation, the conflict is transformed, seeks to change the understanding of the parties regarding their disputes, causing them to view the conflict as something positive, think of it as a necessary step to the growth of people, which must be solved in the best way for both parties. Get away from the idea that the conflicting parties wishing even more antagonistic to come out victorious, the defeat of the other person.

The ties between the parties seeking mediation, stimulates, through dialogue, the rescue of the common goals that can exist between the conflicting. In addition to showing the conflict in a positive way, the mediation exalts the fact of being normal, natural event, due to all the relationships between human beings and of extreme importance for the progress of social relations.

Is a procedure extremely human, in order to stimulate dialogue and allow the parties themselves to resolve their conflicts, seeking for solutions that result in gains for both. When encouraged to solve their problems together, each person learns to pay attention to what the other has to say, to communicate peacefully, and can understand what the real existing conflict finally to be able to address it effectively.

Being the solution of the conflict reached by the parties themselves, with the aid of a mediator who facilitates the dialogue between them, nothing being imposed and Yes solved by the people involved, is far more likely to be fulfilled the decision, since it's not a human being acting contrary to what he himself chose. It is not normal that someone will oppose their own decisions, their own thoughts. In addition, through dialogue, people can rediscover strong ties and good feelings, fruits of any relationship that lived, having been forgotten on the situation of anger, grudge.

According to Ana Celia Roland Guedes Pinto, mediation:

... is a process of construction and of maturity and is not immediate. (...) And presented as basic objective
that individuals develop a new relationship model that enables them to resolve or discuss any situation where there is the possibility of conflict (PINTO, 2010, p. 69).

Mediation is an alternative means of resolving disputes, disputes and stalemates, where a third, impartial, reliable, freely and voluntarily chosen by them, including acting as a "Facilitator", a catalyst that using of skill and art, leads the parties to find a solution to their disputes. Therefore, the Mediator does not decide; who decides are the parties. The Mediator using skill and techniques of the art of mediating", leads the parties to decide.

The Bill 517/2011 recently approved sets the mediation as technical activity exerted by impartial person without power of Attorney, which helps the parties involved to find consensual solutions. Voted in emergency regime, the text provides that any dispute can be mediated, including in the sphere of Public Administration. Get out cases that take care of filiation, adoption, family power, nullity of marriage, interdiction, bankruptcy or bankruptcy. The parties have the right to be accompanied by a lawyer or public defender (Available in http://www.conjur.com.br/2015-jun-02/Senate-approved law-mediacao-try-unburden-pilot. In Jul of 2015).

In the process of mediation of conflicts, in addition to the presence of conflicting parties, is necessary for a third party, unbiased, which performs the task of facilitating the dialogue between the mediated, transforming the conflict, giving it a positive Outlook, reducing hostility between the people involved and making it possible to find a satisfactory solution. This person is called a mediator (SALES; ANDRADE, 2011).

The mediator has adequate knowledge and training to conduct mediation, being for that essential common sense. Does not impose decisions, is professionally trained to assist people, negotiate their own resolutions to their conflicts. The professionals who have the human being and the human relationship your subject may have greater identification with this procedure.

The parties are responsible also for the choice of the mediator. The third impartial help in the discussion, noting the convergences and divergences, assisting the parties to find common interests. He does not take a decision, do not have and not want to have any power in relation to the parties. The mediator is only a driver, the will that should prevail is the will of the parties, even if contrary to the mediator (GRANDSON, 2013).

According to Lilia Maia de Morais Sales (2004) "the role of the mediator is continuous and dialectic". It should always be careful to understand the real problems, which often are not clear. It's not up to him to determine a winner and a loser, by contrast, must undo this view that the conflicting parties that must fight until opposing party get out defeated. It is for the mediator to look closer the parties for themselves
find ways out of the controversy in a way that both parties stay satisfied.

The mediator should be someone who inspires confidence of the parties, making it feel free to talk about their problems, about their difficulties. The third impartial mediation activity should be guided by certain principles, such as impartiality, confidentiality, competence and prudence.

The mediator must treat the parties equally, giving them the same opportunities and devoting attention to each of them the same way. Must be impartial, looking for help both parties without giving any preference of them.

Mediation is a confidential process and the mediator to keep confidential the facts, situations and proposals made during the session. It must be clear to the parties that everything that will be said will remain in secret, making it easier, so that individuals in conflict talk exactly what they think without fear of being exposed or berated.

The mediation is not about formal procedure, there are no rules determining how one should proceed to mediation, however, for the guarantee of their effectiveness requires the observance of certain principles that define it.

The first principle to be exposed is the freedom of the parties. Mediation is voluntary and the parties are being threatened or coerced. To choose mediation as a means to resolve their conflict, the parties must do so of their own accord, conscious and free. This freedom is not limited to the choice of mediation as a means of resolving their controversy, is mainly present in the conflict itself in the process of mediation.

The parties should be aware of this procedure.

The principle of non-Competitiveness determines that there is no competition between the parties to the mediation. Interest, in fact, is to harmonise the parties, make them cooperate to both quedem satisfied. There must be a winner and a loser, right and wrong, since they are not antagonistic parties. The parties do not define themselves as author and defendant but as people interested in solving cooperatively, peaceful and friendly.

In accordance with the principle of the power of decision of the parties, that only the parties to fit the resolution of the conflict. Mediation is not a prescriptive process and the mediator has no decision-making power. The ideal solution to the conflict is decided jointly by the parties. Cannot be in any way forced or coerced to choose a particular solution, or the mediator may suggest any resolution to the conflict. Individuals, on equal terms, using the dialog, find the solution to understand better.

The participation of impartial third party is another essential ingredient in mediation. The mediator has
the role of facilitating the dialogue between the parties, to conduct the procedure. Impartiality is required for abuses and arbitrariness are away. The mediator should treat equally people who participate in the mediation, without any form of privilege. It is up to the parties to decide what the mediator should participate in the mediation and case has already been chosen by mediation, the parties have the right to not accept it.

The mediator must be diligent, careful and prudent, take account of the principle of the competence of the Mediator. Must have the ability to mediate the conversation, ensuring the quality of the process and the result. Should the mediator be in constant improvement, needs to be qualified and trained to use their own techniques of mediation. The mediator can never let the parties fight taken by anger, hatred, should be able to calm the parties to use the right, the good feelings. In most of the times the greater role of the mediator is to listen to the parties and interpreting them, help them on the way to be for them.

There are no formal rules that link the mediation process is permeated by the principle of Informality. There is no unique way, predetermined. There must be simplicity in acts. Normally mediation processes, their agreements, are reduced to term and can be stored in order to be subject to approval and transformed into legal titles. This, just for the purpose of organization, not being required to do so. The informal sector provides greater tranquility to the parties, promotes communication between them and the mediator.

The principle of Confidentiality in the mediation process reaffirms the need to respect the process and the parties. People participating in the mediation need certainty that that was what you said will be confidential and will not be used against them later. It is necessary to trust in the confidentiality of the process to keep a sincere dialogue and harmonious. The mediator must be a kind of protector of the mediation process. Are confidential and privileged information from the mediation.

The mediation is an alternative means of dispute resolution. Stands out, however, that their goals are much more extensive than the simple conflict resolution. The communication between the parties and they are given the opportunity and responsibility to manage its own conflicts, mediation takes place the goal of conflict prevention. Social inclusion, another goal of mediation, is achieved through the awareness of rights and access to justice. Achieved all these, it is possible to achieving the goal of social peace.

The solution the Mediation conflicts through dialogue. Although, at times, appear to be the solution to the conflict its main goal, not exactly. What is sought is an agreement between the parties, a fair deal, the result of good management of the conflict, in which both parties stay satisfied. According to Lilia over Mathew Sales "communication and the consequent participation of individuals in the solution of the controversy are indispensable for the appropriate agreement. "In order to reach this solution, you must understand the conflict in a positive way, there must be cooperation between the parties and the
mediator's participation as a facilitator of the dialogue, in search of the best resolution for the controversy and not a solution.

To achieve the goal of conflict resolution through mediation, the parties should be aware of their principles and clarified that the people involved in the deadlock that have the power of decision. Such individuals must engage in the search for solution to the win/win, in the pursuit of common goals, despite the conflict, to achieve the solution that satisfies both parties.

The second purpose of mediation is conflict prevention, in case there is awareness of the rights and duties of each, showing them, still, its responsibility for the full implementation of the solution of the conflict. It is, therefore, also, a process of transformation, from which the parties begin to realize that they are able to resolve their own disputes, passing the handle the conflict already, from the beginning, differently.

During the mediation process, the third impartial encourages the parties to find the real solution to the conflict, is not simply the choice of party as winner, is get to the root of the problem in order to solve it. In this quest for the solution, the mediator helps the parties to create links between themselves. Once you have participated in a mediation process, the parties have the possibility to maintain communication to prevent new controversies or preventing other conflicts can take the dimension once solved. Under the preventive aspect of mediation, according to Lilia Maia de Morais Sales (2004), (...) the awareness of rights and duties and the responsibility of each individual to the realization of these rights, the transformation of the negative Outlook for the positive view of the conflict and the incentive to dialogue, enabling peaceful communication between the parties, facilitating the attainment and fulfilment of the agreement.

The objective of the mediation it is also social inclusion. To participate in the mediation, the parties, by means of dialogue, find solution to your problem, which enables a reflection regarding the rights and duties of the individual, when then are aware of its capacity to transform reality. According to Lilia Maia de Morais Sales "(...) Mediation presents itself, because, with the objective of offering citizens active participation in conflict resolution, resulting in the growth of a sense of civic responsibility and control over the problems experienced."

Realizing the objectives of conflict prevention and social inclusion, is easily reached the goal of social peace. Mediation encourages the cooperation and solidarity between the parties, encourages the resolution of conflicts through conversation and mutual understanding, peacefully. Prevents violence and aware individuals of their duties.

To propose to the parties the date for the solution of conflicts, closely a self-knowledge, in which are several distorted viewpoints, feelings that need processing. When the parties are willing to transform
itself in search of a balance, a solution, the society also turns in that direction, of social pacification. Social peace is only achieved when individuals seek inner peace, modifying your thoughts and actions. In mediation, the relationship between citizens is riddled with solidarity, in pursuit of common interest, effecting social peace.

**JUDICIAL POLICY FRONT THE LITIGATION CULTURE**

The initiatives and projects that involve the mediation and conciliation, the majority are from the Government, its institutions and organizations with the goal end trying to solve and resolve conflicts of external or internal forms to the judiciary (judicial and extrajudicial conciliation and mediation), making the parties, where possible, to resolve their disagreements in a way alternative and advantageous and may the discord talk, argue and require separate mechanisms and medium casting and bureaucratization that conventional legal brings in order to gain voice in solving their own problems, allowing major advantages as I checked earlier.

Although the Government is the biggest legitimizer of these guarantees, civil society should continue seeking these alternatives having finally awareness of society itself, to know, duty and empower these methods. "The coparticipation generates co-responsibility in the results and sustainability of the solutions chosen, in any field of coexistence". (ALMEIDA et al., 2011).

As discussed in the first chapter, the speed of personal relationships, social, cultural, technological, communication, value among many others that can be cited, the producers went on to be the consumer society, seen the behavior change front to ease and negativity in giving up goals and try to achieve, achieve new goals to an extreme speed, as mentions Bauman (2008 , p. 53), "the economy based on excessive and wasteful, in front of impulses, compulsions and addictions of individuals", the current Judiciary cannot, does not have the capacity to deal with so many interests, growth and emergence of individual or collective rights and guarantees, because at the same time create new procedural mechanisms to be used during the litigation process, these are already late.

Therefore, as a result of globalization and the speed of personal relationships connected these to the technological advances required of today's world, it was noticed that they were indispensable mechanisms and alternative forms for the negotiation and resolution of social conflicts inherent in current societies. Checking the necessary beacons for new mechanisms needed for appeasement, and conflict resolution, became insurmountable, indisputable and advantage in legislating on the matter.

So the Government with their public policies, in the face of the constant changes of the globalized world, since the Government has bigger conditions and facilities in effect and ensure rights through their policies, legislation and institutional and economic attributes of knowledge on the subject, his own
condition, location and job.

CONCLUSION

Compared to traditional legal model failure to provide satisfactory answers to growing social demands and difficulties of the judiciary to act as conflict management, the need to think of alternative ways for the resolution of conflicts, such as mediation.

Tracing some guidelines about the conflict, the crisis of the State, the Court, as well as provision of the precariousness of the procedural relationship to realize effectively the conflict that you are, and to contribute to the emergence of a decision that could re-establish the social harmony. This study argues that the experiences of mediation may contribute in some measure to the achievement of a human relationship and close to the social reality of the involved.

It was found that mediation is a worldview, an ecological paradigm based on a criterion of epistemic sense, and which can be seen as a structural component of the political and legal paradigm of trasmodernidade. The crisis of State/Judiciary that is faced on account of costs, possibility of parts, knowledge about the right and reasonable demand, judicialization of conflicts arising from the emergence of new rights and guarantees among so many other problems that face justice for the effectuation of the rights and guarantees, it is shown that the consensual dispute resolution methods can support the judiciary once that can remediate many conflicts by the parties themselves.

In this obliquity, is explicit that it is plausible the access to equitable legal order, the judiciary will be able to pay attention and decide issues that truly cannot be resolved by agreement between the parties, giving helpful and important to the courts, working as a cone filter, for the few demands not fixable through mediation and conciliation.

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