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Public Policy | Advocacy | Conflict Management
Capacity Building

Introduction to ADR

APPROACHES, PHILOSOPHY.

STATUS & ETHICS

ADR METHODS

Source: Jeremy Lack free resources (Renowned International ADR Neutral)

How do we decide what ADR Process to use?

**“We have to start by
defining the process as
part of the problem”**

**David Plant
Arbitrator & Mediator**

Constitutional Mandate to ADR

Article 14

Equality before law

Equal protection of laws
within territories of India

Citizens as well as others

Article 21

Right to life and personal
liberty

Anita Kushwaha vs. Pushap Sudan (2016) 8 SCC 509

Bundle of rights makes life
worth living

Denial of access to justice
denies a certain quality of
life

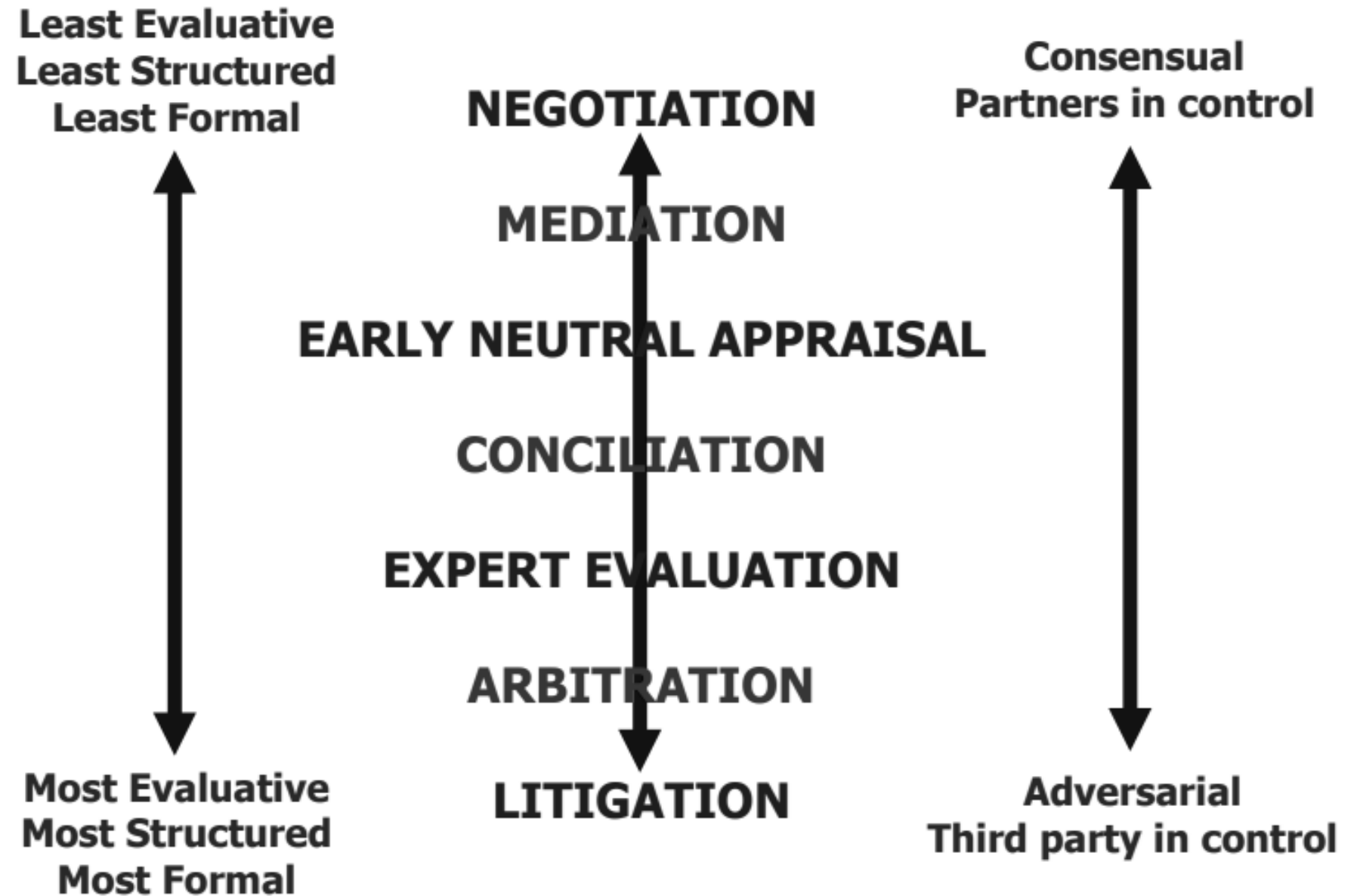
Not just enforcement of
executive action but court
administered justice

Article 39A

Promote justice through
equal opportunity

Free legal aid

The Options





Confidentiality

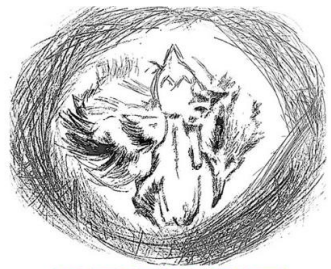
Neutrality

Party
Autonomy

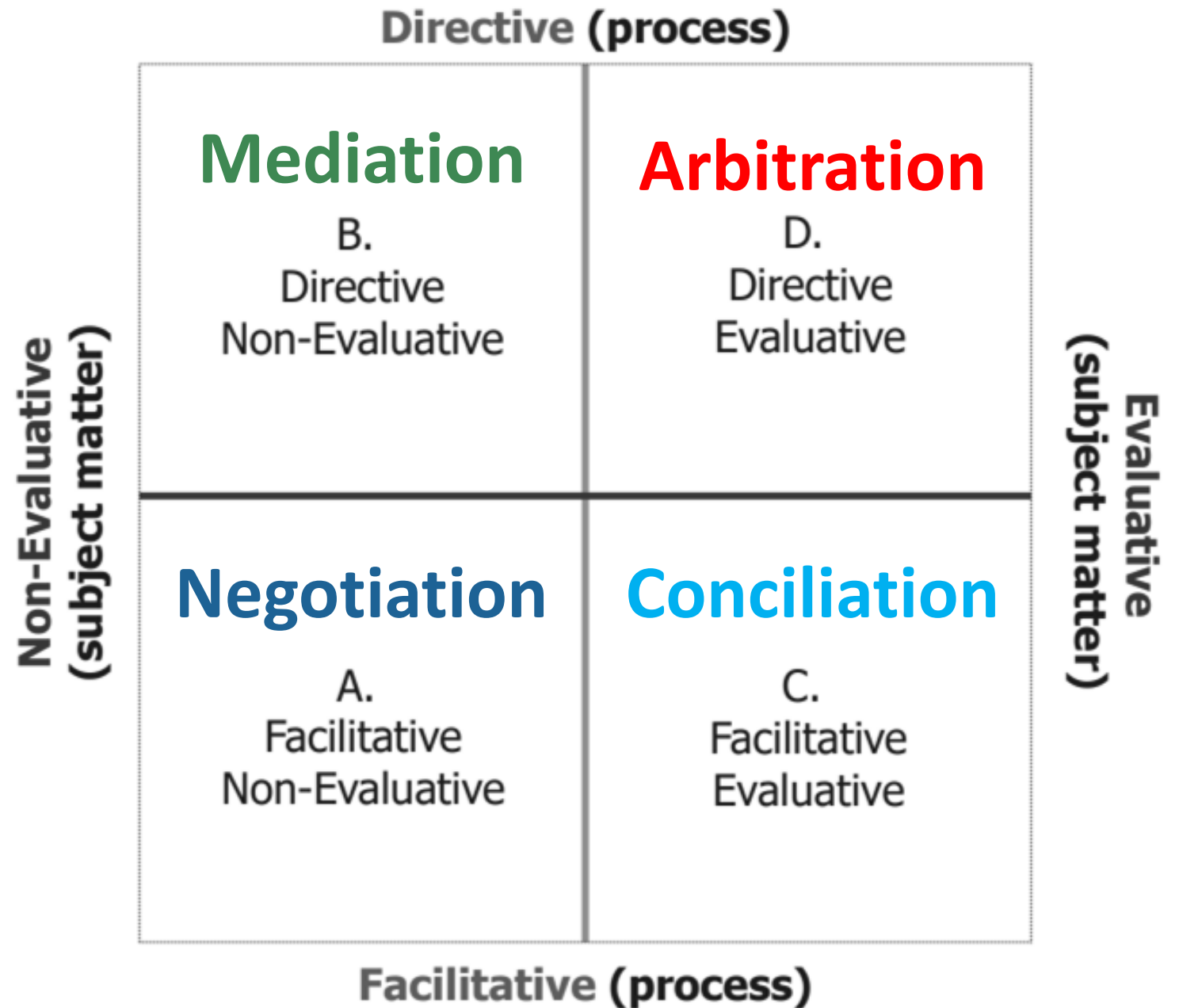
Means to End

ADR Ethics

4 Different types of ADR



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Cases not suitable for ADR



Representative Suits/
Public Interest



Public Offices



Grant of Authority-
Probate/ Letter of
Administration



Fraud, Fabrication of
Documents, Forgery,
Impersonation, Coercion



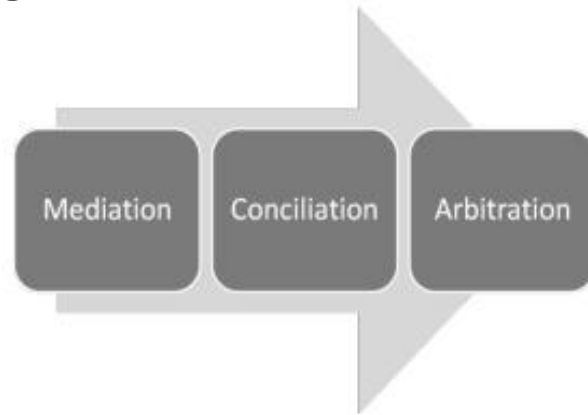
Protection of Court



Criminal Offences

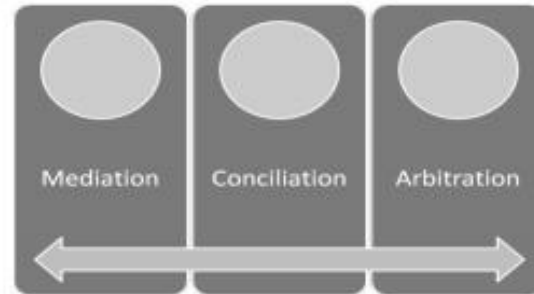
Source: Afcons Infrastructure Ltd. v. Cherian Varkey Construction Company Pvt. Ltd. (2010) 8 SCC 24

Process Design and Combining processes



Sequential

- Med-Arb
- Arb-Med
- Windows
- Arb-Med-Con-Med-Arb
- Consent awards



Parallel

- Med//Arb
- Carve-outs
- Shadow mediation
- Partnering

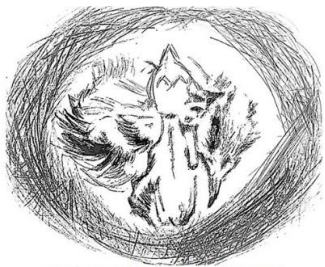


Integrated

- MEDALOA
- Dispute Boards
- Combined Neutrals
- ??? (3 question marks)

Factors

- Parties
- Certainty of outcome
- Costs
- Time & deadlines
- Applicable law(s)
- Languages
- Skill sets
- Venue & distances
- Institutional rules
- Nationalities/cultures
- Counsel
- Neutrals (roles & no.)
- Availabilities
- Advisors & Experts
- Confidentiality
- Discovery
- Implementation
- Enforcement



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Can the same neutral switch hats?

PROS

- Neutral sees the whole picture
- More flexible
- Less time
- Less money
- Better outcomes?
- Greater freedom to innovate
- Greater control over process by users



CONS

- Confusion of roles
- Can I trust the neutrals not to use certain information in case of arbitration?
- Can this slip off -track?
- Less certainty of enforceability?
- Do we all know what we're doing?

"The truth begins in pairs" (Michael Lukas Moeller)
Is combining 2 neutrals possibly a better solution?





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