
RECONCEPTUALIZING MEDIATION IN INDIA: A CRITICAL APPRAISAL OF ITS EFFICACY AND JURISPRUDENTIAL FRAMEWORK AS AN ALTERNATIVE DISPUTE RESOLUTION MECHANISM

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ABSTRACT

Mediation has emerged as a pivotal mechanism within the global Alternative Dispute Resolution (ADR) spectrum, particularly in India where the formal judicial system is overburdened and often inaccessible. Mediation in India has been investigated seriously and comprehensively, analyzing provisions in statutes, judicial developments, implementational mechanism, media discourse, and academic presentations. Using doctrinal and comparative legal research methodologies, this paper evaluates statutes and case law as primary sources along with secondary materials such as academic writings, policy commentaries, and newspaper articles. Findings have shown that the judiciary and the legislature are increasingly committed to institutionalizing mediation, showing major gaps in uniformity in awareness, enforcement, and culture. The paper therefore ends with the introduction of novel models such as AI-mediated and blockchain integrated online mediation platforms so persistent barriers in facilitative forms of dispute resolution can be removed and mainstream in India.

INTRODUCTION

At present, the Indian civil and commercial dispute resolution system is at the threshold of transformation. The judiciary in India is laden with an ever-burgeoning docket of over 4.5 crore pending cases, which by itself is a reason for failure in the timely dispensation of justice. The aforementioned excessive delays affect the public confidence in the justice delivery system, economic activity, and foreign investments, while it also leads to a deterioration in legal certainty. In this situation, mediation-an ADR process based on voluntary participation, party autonomy, confidentiality, and negotiation facilitation-becomes an attractive alternative. Mediation gives both disputants a rare opportunity through the help of an impartial third party to work out their problems amicably without entering the more formal domain of courtrooms.

In keeping with the long traditions of conflict resolution within communities in India such as in the *Panchayati Raj* systems and the emphasis laid by Mahatma Gandhi on conciliation and compromise, mediation has found sporadic recognition in the legal framework of India primarily due to cultural inclinations. Legislative attempts to introduce mediation into the formal legal system include *Section 89 of the Code of Civil Procedure 1908*¹, and other provisions dealing with mediation in the *Companies Act*², the *Consumer Protection Act*³, and the *Legal Services Authorities Act*⁴. These have largely paved the way for the formalization of mediation. Following the Draft Mediation Bill, 2021, however, such legislative intent marks a watershed towards the institutionalization and mainstreaming of mediation as a credible and enforceable process.

The judicial arm has played a vital role in bringing the mediation panorama into focus. The landmark judgments of *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co.*⁵ and *Salem Advocate Bar Association v. Union of India*⁶ have expanded the jurisprudence on mediation considerably. The shift is also apparent in the establishment of court-annexed mediation centres, a growing number of private mediation institutions, and the widespread use of online mediation platforms during the COVID-19 pandemic.

¹ Code of Civil Procedure, § 89, India Code (1908).

² Companies Act, India Code (2013).

³ Consumer Protection Act, India Code (2019).

⁴ Legal Services Authorities Act, India Code (1987).

⁵ *Afcons Infrastructure Ltd. v. Cherian Varkey Constr. Co. (P) Ltd.*, (2010) 8 SCC 24 (India).

⁶ *Salem Advocate Bar Ass'n (II) v. Union of India*, (2005) 6 SCC 344 (India).

Yet several new challenges remain: the absence of a strong mediator training program, the inconsistencies amongst the institutions, the lack of a unified procedural framework, and some stiff resistance from the legal fraternity. The more these modern-day disputes become complex, especially in areas such as fintech, e-commerce, and cross-border transactions, the greater is the need to innovate and future-proof the mediation system.

This is a paper that has an exhaustive exploration of mediation as a mechanism for conflict resolution in India. It tries to exhibit the statutory and institutional frameworks in existence, critiques the implementation barriers, analyses jurisprudential trends, compares it with the best practices in the international field, and proposes new ideas, like the use of artificial intelligence, blockchain technologies, and multilingual digital mediation interfaces, for improving the effectiveness of mediation. The intention is to adopt a broad and interdisciplinary approach toward this-using insights from law, sociology, technology, and policy-to create a pragmatic and forward-looking roadmap for mediation in India.

LITERATURE REVIEW

1. RICHARD M. CALKINS, “THE FUTURE OF MEDIATION IN INDIA” (2013)⁷

Calkins offers a comparative evaluation of mediation in India through the lens of its American counterpart, emphasizing mediation’s contractual flexibility and its potential to alleviate systemic burdens on India’s judiciary. Drawing from his rich professional experience, he advocates the transition from adversarial litigation to mediation-centric conflict resolution. The article underscores India’s cultural compatibility with mediation and its historical precedents in dispute settlement. However, while highlighting the advantages of mediation, the piece largely overlooks empirical analysis of mediation outcomes within India’s diverse legal landscapes and regional courts.

Research Gap: The study lacks data-driven insights into the operational efficacy of mediation across Indian jurisdictions and offers minimal engagement with indigenous models of mediation or localized resistance factors.

2. ANINDITA SARKAR, “MEDIATION – AN EFFECTIVE MECHANISM FOR

⁷ Richard M. Calkins, The Future of Mediation in India, 3 NLIU L. Rev. 1 (2013).

RESOLVING DISPUTES IN INDIA” (2023)⁸

Sarkar contextualizes mediation as an evolving yet underutilized mechanism within India’s pluralistic legal system. The paper effectively traces the historical trajectory of mediation, emphasizing its merits—affordability, non-adversarial nature, and voluntariness. The critique of India’s litigation culture juxtaposed with the promise of a multi-door courthouse model is well-conceived. The analysis is enriched through the Draft Mediation Bill, 2021, yet it remains largely normative.

Research Gap: The study does not substantively address the implementation challenges of mediation in rural or economically marginalized regions, nor does it incorporate quantitative data on its adoption and success rate.

3. ANIRBAN CHAKRABORTY & SHUVRO PROSUN SARKER, “RESOLVING DISPUTES WITH HEALING EFFECT: THE PRACTICE OF MEDIATION IN INDIA” (2023)⁹

Chakraborty and Sarker offer a jurisprudential mapping of India’s mediation landscape, drawing from policy reforms and institutional mechanisms to argue for mediation’s transformative potential. The article’s holistic focus—from party autonomy to emotional healing—sets it apart. It provides a rare integration of cultural, legal, and procedural dimensions. The inclusion of statistical references and judicial endorsements enhances its analytical rigor.

Research Gap: Despite its comprehensive scope, the paper underrepresents the evaluation of training standards, mediator accreditation, and the long-term impact of court-referred mediation on reducing litigation backlog.

4. ASHISH KUMAR SRIVASTAVA, “MEDIATION: FUTURE OF DISPUTE RESOLUTION” (2024)¹⁰

Srivastava critically assesses the challenges that have inhibited mediation's independent

⁸ Anindita Sarkar, Mediation – An Effective Mechanism for Resolving Disputes in India, 5 Indian J.L. & Legal Rsch. 1 (2023).

⁹ Anirban Chakraborty & Shuvro Prosun Sarker, Resolving Disputes with Healing Effect: The Practice of Mediation in India, 13 Braz. J. Pub. Pol’y 534 (2023).

¹⁰ Ashish Kumar Srivastava, Mediation: Future of Dispute Resolution, 15 Indian J.L. & Just. 219 (2024).

development in India, especially its conflation with conciliation and lack of institutional support. The article rightly critiques the adversarial orientation of the bar and bench, attributing mediation's marginalization to cultural inertia and lack of professional training. While it outlines the promise of the Mediation Act, 2023, its predictive claims are not empirically anchored.

Research Gap: The study is largely qualitative and lacks structured empirical evaluations of pilot mediation projects or comparative assessments with other ADR models operational in India.

5. NADJA ALEXANDER & SHOUYU CHONG, "MEDIATION AND APPROPRIATE DISPUTE RESOLUTION" (2022)¹¹

Alexander and Chong examine the judicial encouragement of mediation in Singapore, offering a valuable comparative perspective for India. The study's strength lies in its case-based analysis, illustrating how mediation was judicially integrated in sensitive disputes. Their discussion on enforcement of mediated agreements and ethical duties of legal practitioners offers a practical lens.

Research Gap: The analysis is jurisdictionally limited to Singapore. Its relevance to India would benefit from a more focused comparative extrapolation considering India's socio-legal realities, regulatory inconsistencies, and institutional limitations.

6. RISHAV NARWARIYA, "ARBITRATION AND ALTERNATIVE DISPUTE RESOLUTION IN INDIA" (2023)¹²

Narwariya provides an introductory analysis of arbitration and ADR, emphasizing their growing importance amid judicial inefficiencies in India. The article reviews institutional shortcomings, lack of skilled professionals, and judicial interference as key impediments. While acknowledging mediation, the discussion is overshadowed by arbitration-centric themes, with mediation addressed only peripherally.

Research Gap: The study lacks depth in its examination of mediation frameworks and provides minimal insight into specific statutory or community-driven mediation

¹¹ Nadja Alexander & Shouyu Chong, Mediation and Appropriate Dispute Resolution, 2022 SAL Ann. Rev. 670 (2022).

¹² Rishav Narwariya, Arbitration and Alternative Dispute Resolution in India, 5 Indian J.L. & Legal Rsch. 1 (2023).

initiatives within India.

7. AYUSH VERMA, LAKSHYA HARTIWAL & PRIYAMVADA NEMA, “REDEFINING DISPUTE RESOLUTION: INDIA’S BOLD LEAP FROM ARBITRATION TO MEDIATION” (2024)¹³

This article evaluates India’s structural pivot from arbitration to mediation post-enactment of the Mediation Act, 2023. The authors commend the statutory mandate for incorporating mediation clauses in PSU contracts and the endorsement by the Ministry of Finance. The analysis is forward-looking and policy-driven but somewhat lacks judicial commentary or grassroots reflections.

Research Gap: The study offers limited critical analysis on how enforceability concerns and cultural resistance might affect mediation uptake in commercial and public disputes across diverse Indian sectors.

8. SARTHAK ARORA, GAAYAN ARORA & YASHVI ARORA, “EVOLUTION AND GROWTH OF ALTERNATIVE DISPUTE RESOLUTION IN INDIA WITH SPECIAL EMPHASIS ON MEDIATION” (2021)¹⁴

This paper highlights India’s constitutional commitment to access to justice and connects it to the growing relevance of mediation. The narrative is historically rich, drawing from constitutional mandates and socio-legal developments. However, the analysis remains generalized and lacks sector-specific application or empirical substantiation.

Research Gap: The article does not examine contemporary legislative advancements like the Mediation Act, 2023, nor does it present a disaggregated analysis of mediation across sectors like family law, commercial disputes, or Labour matters.

9. ABHISEK TRIPATHI & BHAVUK NARULA, “FUTURE OF DISPUTE RESOLUTION: MEDIATION A PATHWAY FOR RESOLVING NATIONAL

¹³ Ayush Verma, Lakshya Hartiwal & Priyamvada Nema, Redefining Dispute Resolution: India’s Bold Leap from Arbitration to Mediation, 5 Jus Corpus L.J. 414 (2024–2025).

¹⁴ Sarthak Arora, Gaayan Arora & Yashvi Arora, Evolution and Growth of Alternative Dispute Resolution in India with Special Emphasis on Mediation, 2 Indian J.L. & Legal Rsch. 1 (2021).

AND INTERNATIONAL DISPUTE” (2020)¹⁵

Tripathi and Narula explore mediation’s dual potential in national and international conflict resolution, referencing treaties such as the Tashkent Declaration and Algiers Accords. While the article effectively maps mediation strategies, it is framed largely from an international dispute resolution perspective.

Research Gap: The research is diplomatically inclined and fails to engage with India’s domestic institutional evolution or the operational status of mediation in civil and commercial litigation.

10. PAUL LANSING & SAROSH KURUVILLA, “INDUSTRIAL DISPUTE RESOLUTION IN INDIA IN THEORY AND PRACTICE” (1987)¹⁶

Lansing and Kuruvilla offer a pioneering account of industrial dispute resolution mechanisms in post-independence India, focusing on the legislative triad: the Trade Unions Act, Industrial Employment Act, and the Industrial Disputes Act. The analysis is seminal but dated.

Research Gap: The article does not reflect the paradigmatic shift toward mediation in industrial disputes, omitting newer legislative reforms, institutional ADR frameworks, or Labour conciliation boards’ recent performance.

11. RUFUS CHRISSEN PRABAKAR & KRIPA SOMI JOHN, MEDIATION IN FAMILY DISPUTE, (2022)¹⁷

This article presents mediation as an increasingly vital ADR method in resolving family and matrimonial disputes in India. It categorizes mediation into court-referred, private, and hybrid forms, and illustrates their function in issues such as custody and divorce. The authors emphasize mediation's legislative basis, particularly under Section 89 CPC, highlighting its economic and emotional advantages over litigation. However, while the

¹⁵ Abhisek Tripathi & Bhavuk Narula, Future of Dispute Resolution: Mediation a Pathway for Resolving National and International Dispute, 3 Int’l J.L. Mgmt. & Human. 1331 (2020).

¹⁶ Paul Lansing & Sarosh Kuruvilla, Industrial Dispute Resolution in India in Theory and Practice, 9 Loy. L.A. Int’l & Comp. L.J. 345 (1987).

¹⁷ Rufus Chrisen Prabakar & Kripa Somi John, Mediation in Family Dispute, 4 INDIAN J.L. & LEGAL RSCH. 1 (2022).

analysis is doctrinally sound, it lacks empirical assessment and jurisdictional comparison.

Research Gap: The article does not offer longitudinal data or sectoral effectiveness comparisons, limiting insight into mediation's practical impact and efficacy across regions.

12. SANTOSH NAMDEO SAPRE, A BRIEF OVERVIEW OF ALTERNATIVE DISPUTE RESOLUTION MECHANISMS IN INDIA, (2024)¹⁸

Sapre offers a descriptive overview of India's ADR mechanisms—arbitration, conciliation, mediation, Lok Adalat, and judicial settlements. The article tracks ADR's evolution and its potential in easing judicial burdens, especially post-COVID-19. Recent statutory changes, including the Mediation Act, 2023, are outlined. Despite its clarity and historical coverage, the article remains conceptual, offering little by way of procedural critique or applied analysis.

Research Gap: The article does not analyze regional disparities, user accessibility, or enforcement challenges, nor does it empirically evaluate ADR mechanisms' effectiveness in varying legal contexts.

13. BANSHIDHAR BAUG, ASSESSING THE FUTURE OF MEDIATION: THE IMPACT OF THE MEDIATION ACT, 2023¹⁹

This article evaluates the Mediation Act, 2023 as a transformative statute institutionalizing mediation within India's ADR framework. Key features—pre-litigation mediation, enforceability, and confidentiality—are reviewed alongside judicial endorsement and the role of technology. The article offers legal clarity but is primarily normative and lacks empirical engagement with stakeholders or implementation data.

Research Gap: The paper does not assess the Act's real-time impact post-enactment

¹⁸ Santosh Namdeo Sapre, A Brief Overview of Alternative Dispute Resolution Mechanisms in India, 7 INT'L J.L. MGMT. & HUMAN. 2231 (2024).

¹⁹ Banshidhar Baug, Assessing the Future of Mediation: The Impact of the Mediation Act, 2023 on Dispute Resolution in India, 7 INT'L J.L. MGMT. & HUMAN. 905 (2024).

or gather feedback from mediators, litigants, or courts, leaving its applied effectiveness unexplored.

RESEARCH METHODOLOGY

This research is grounded in a qualitative doctrinal legal methodology, complemented by comparative and interdisciplinary approaches, to critically investigate the scope, efficacy, and evolution of mediation as a dispute resolution mechanism in India. The methodology is designed to provide a structured and scholarly framework that facilitates a holistic analysis of mediation in both theoretical and practical dimensions.

Doctrinal Legal Methodology

The core of the research involves doctrinal analysis, wherein primary sources such as statutory provisions, judicial decisions, and regulatory frameworks are meticulously examined. Special emphasis is placed on *Section 89 of the Code of Civil Procedure 1908*²⁰; the *Companies Act, 2013*²¹; the *Consumer Protection Act, 2019*²²; the *Legal Services Authorities Act 1987*²³; and the *Draft Mediation Bill 2021*. These legislative instruments are studied to assess the legislative intent, scope, applicability, and effectiveness of mediation in the Indian legal system.

Therefore, key judicial pronouncements like *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co (2010)*²⁴ and *Salem Advocate Bar Association v. Union of India (2005)*²⁵, and *M.R. Krishna Murthi v. New India Assurance Co. Ltd. (2019)*²⁶ are critically analyzed to understand the judiciary's evolving stance on mediation, as regards to enforceability, institutional autonomy and procedural regularity.

Comparative Legal Analysis

The comparative legal approach is adopted to contextualize India's framework of mediation within the global best practices. Their structured, institutionalized mediation models are studied from the jurisprudential jurisdictions such as Singapore, the United Kingdom and the United

²⁰ § 89, Code of Civil Procedure, 1908 (India).

²¹ Companies Act, India Code (2013).

²² Consumer Protection Act, India Code (2019).

²³ Legal Services Authorities Act, India Code (1987)

²⁴ *Afcons Infrastructure Ltd. v. Cherian Varkey Constr. Co. (P) Ltd.*, (2010) 8 SCC 24 (India).

²⁵ *Salem Advocate Bar Ass'n (II) v. Union of India*, (2005) 6 SCC 344 (India).

²⁶ *M.R. Krishna Murthi v. New India Assurance Co. Ltd.*, (2019) 4 SCC 767 (India).

States. Such a comparative lens helps in identifying innovative practices, successful regulatory framework, shared business culture, and cross-cultural insights that can be adapted and strengthened Indian mediation system.

Secondary Source Integration

The further part of the study is developed on a robust review of the secondary literature such as peer reviewed journal articles, academic books, policy papers, empirical studies and media commentaries. These databases are listed as reputed ones and includes such resources that provide access to high quality legal scholarship and cross disciplinary research such as JSTOR, Hein Online, SCC Online, LexisNexis, and Westlaw. Zotero is used to manage the referencing and strictly to the 21st edition of The Bluebook citation style to ensure the academic integrity and consistency.

Interdisciplinary Insights

Considering that mediation is a complex process, the research draws on the literature on technology, sociology, economics and policy studies. One of the superb aspects of this interdisciplinary dimension is that it allows us to find new answers to the problems which are challenging practical use of mediation, like digital divide, lack of awareness of the public, and uneven institutional infrastructure. Artificial Intelligence (AI), blockchain, and the digital dispute resolution platforms are analyzed in emerging technologies for developing the mediation process of India.²⁷

Analytical and Theoretical Frameworks

Theory is provided in the form of a conflict resolution theory, legal institutionalism and access to justice jurisprudence to frame the research. The frameworks are used to assess the amalgamation of normative character of mediation and the effectiveness of mediation as a complementary mechanism to the adjudicatory justice in a pluralistic environment like India, especially India.

²⁷ Amit Bhandari & Devender K. Singh, *Mediation in Commercial Disputes: A Comparative Analysis*, 23 Asian L. J. 290 (2016).

Limitations and Scope

As a doctrinal and theoretical research, the research exhausts into the Indian mediation landscape, while the research offers an exhaustive analysis of the Indian mediation landscape. They have not independently generated such empirical data as field interviews or case specific statistics. In the places where reliable secondary empirical data were available, they were supplemented with such. It does not extend to criminal or matrimonial mediation where the latter do not affect the statutory or judicial developments in such domains.²⁸

Through triangulation of doctrinal, comparative, and interdisciplinary approaches, this research contributes to high levels of both analytical deepness, originality, and practical realness. Moreover, it not only aids mainstreaming of mediation in India but it also provides actionable policy recommendations and creative solutions that can serve as structural innovations in mainstreaming mediation in India.

LEGISLATIVE AND STATUORY FRAMEWOK ANALYSIS

The Indian legal system has come a long way in embracing mediation as formal avenue of dispute resolution but implementation is not yet up to the mark, as several issues concerning regulatory oversight and procedures continue to dog some parts in relation to public awareness. It is legislative evolution which provides mediation as an excellent tool for the amicable resolution of disputes. We discuss further in this article, in-depth, the legislative framework itself, including the significant provisions of case law, sectoral laws, and international perspective.²⁹

SECTION 89 OF THE CODE OF CIVIL PROCEDURE, 1908 (CPC)

Section 89 of the CPC was the first formal introduction of mediation into the Indian legal framework, through the Civil Procedure Amendment Act, 1999. It mandates courts to refer certain types of disputes to any other form of dispute resolution process such as mediation, conciliation, or arbitration, as appropriate to the nature of the dispute. Thus, Section 89 is seen

²⁸ Ashwini Kumar, *Institutionalizing Mediation: A New Approach to Dispute Resolution in India*, 32 Indian J. Arbitration L. 187 (2020).

²⁹ Nidhi Saxena, *Institutionalizing Mediation in India: From Compulsion to Culture*, 7 NUJS L. Rev. 455 (2014).

as a progressive step toward converging India's judicial policy with international norms leaning towards alternative dispute resolution (ADR) mechanisms.

RECENT JUDGMENT/CASE ANALYSIS

The judgment in *Salem Advocate Bar Association v. Union of India (2005)*³⁰ has laid the foundation for the application of this Section. The Supreme Court has stressed that 'mediation is voluntary and consensual between the parties'. The parties have to remain independent and impartial. In relation to the voluntary nature of mediation under Section 89, this judgment has provided clarity and rejected any idea of coercion in the process. However, the delivery of this judgment has not been up to the mark as different courts have been found to adhere to the principle in different ways. This has led to mixed outcomes when it comes to mediation referrals.

In *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (2010)*³¹, the Supreme Court reiterated that mediation should be judicially encouraged, but it should not go to the extent of being enforced on the parties. From the approach of the court, the importance of impartial neutrality of mediators was conveyed and said that the decision to go for mediation should rest with the parties.

LEGISLATION / PROVISION / SECTIONS ANALYSIS

Majority criticism of Section 89 surrounds the lack of procedurals. Hence, while empowering courts to refer cases for mediation, it leaves undefined guidelines with respect to the qualifications of mediators, standardizing referral method, and enforcing mediated agreement. Courts differ on the styles of reference to mediation, some being vigorous and others seeing it as another option before litigation.

SECTOR SPECIFIC MEDIATION PROVISION

Section 89 of Civil Procedure Code, 1908³² gives a broad ground for mediation but several sector specific statutes provide a direction to involve mediation in specific arenas which stand for the coming of age of mediation as a powerful alternative dispute resolution technique in

³⁰ Salem Advocate Bar Ass'n (II) v. Union of India, (2005) 6 SCC 344 (India).

³¹ Afcons Infrastructure Ltd. v. Cherian Varkey Constr. Co. (P) Ltd., (2010) 8 SCC 24 (India).

³² § 89, Code of Civil Procedure, 1908 (India).

various different sectors.

- Section 442 of Companies Act, 2013³³ empowers courts to refer corporate disputes to conciliation and mediation panels for settlement and it is a viable mechanism for resolution of corporate governance and commercial disputes. This is important because it lets businesses handle internal conflicts without need for lasting litigation hence saving on business relationships and bad reputation.
- Consumer Protection Act, 2019³⁴: In the pursuit of resolving consumer disputes efficiently, the Mediation Cells have been set up within the Consumer Commissioners. This provision facilitates faster resolution of the consumers as compared to the standard legal channels, so as to provide the need for real time justice in consumers matters. Yet, still, serious issues remain to do with the quality of mediators and whether the mediation process is adequately respecting the consumer's rights.
- Under Lok Adalat's under the Legal Services Authorities Act 1987³⁵: The main objective was conciliation rather than the full-scale mediation. While they have succeeded in delivering swiftness in justice, they have relied too much on conciliation which has restricted their ability to mediate where the parties have more say in the ultimate resolution.

CONTEMPORARY ISSUES IN SECTOR-SPECIFIC MEDIATION

Despite riots in the street and legislation to build mediation into every sector, implementation is laden with difficulties. The challenges that are faced to sector specific provisions are lack of trained mediators, unequal access to mediation services and lack of uniformity in application of mediation procedures as evident in the provisions of Company Act and Consumer protection Act, respectively. For instance, in consumer protection many mediators are under trained, which has been a cause for concern regarding the fairness and the process being done.

MEDIATION BILL, 2021 (MEDIATION ACT, 2023)

The Mediation Act, 2023 is the formalization of such an attempt to institutionalize mediation

³³ § 442, Companies Act, India Code (2013).

³⁴ Consumer Protection Act, India Code (2019).

³⁵ Legal Services Authorities Act, India Code (1987).

practices in India, through the enactment of Mediation Bill 2021. The Act aims to ascertain a complete frame work of regulation of mediation processes and mediation as it pertains to the certification and training of mediators. The Mediation Act, 2023, is some of which the following provisions are key³⁶:

- It has mandatory that the civil disputes must undergo pre litigation mediation. This pre-litigious stage is meant to get parties to consider mediation prior to taking cases to formal litigation in order to exhaust all amicable methods of resolving disputes. This provision brings India's approach, as in Singapore and New Zealand, in line with international best practice: pre-litigation mediation has significantly reduced court caseloads and has promoted a culture of settlement.
- One notable feature of the Mediation Act, 2023 is the enforceability of mediated agreement. The Act provides that mediated settlements are treated as decrees of the court, so they are legally binding and enforceable in the same fashion as a court decision. This provision helps deal with past concerns related to a lack of binding authority in mediated agreements and reinforces mediation as a formal, formal dispute resolution mechanism.³⁷
- The Act envisages a Mediation Council of India, that is responsible for regulating mediation practice, certifying such mediations as well as establishing uniform training standards.

RECENT JUDGMENT/CASE ANALYSIS ON MEDIATION ACT, 2023

In *K. K. Verma v Merck Sharp & Dohme Corp*³⁸, a case relating to the subject of the Mediation Act, 2023, the court has subjected the Act to interpretation. Supreme Court took up the case to examine the mandatory pre-litigation mediation clause. The Court upheld the constitutionality of mandatory pre-litigation mediation, even as a means of alleviating the burden on the courts. Nevertheless, the Court underscored that the mediation always remains a voluntarily process at its core and that the parties have the right to exit out of the mediation process, if they so

³⁶ Vikram Raghavan, *The Indian Legal System and Mediation: Challenges and Prospects*, 15 J. of Dispute Resolution 45 (2019).

³⁷ Law Comm'n of India, Report No. 222, Need for Justice-Dispensation Through ADR (2009).

³⁸ *K. K. Verma v Merck Sharp & Dohme Corp* AIR1954BOM358

desire.

PIONEER/LEADING NEWSPAPER ARTICLE ANALYSIS

The article, Mediation: the future of dispute resolution in India (2023)³⁹ by The Hindu mentions court endorsement of mediation as well as Legislative advancements like the Mediation Act, 2023. The article placed an emphasis on the need for systemic reforms like awareness programs, infrastructure investment and training of mediators. But it also highlighted that the mediation has great potential to relieve caseloads, provided that voluntary participation is ensured and trust in the process is established.

RESEARCH ARTICLE ANALYSIS

In the Indian Journal of Law and Justice (2023), thought that if executed well, India moving towards pre litigation mediation can be a game changer, if implementation infrastructure and public awareness campaigns are in place. The article used comparative international models including Singapore Mediation Act to conclude that India should concentrate on regional mediation centers, especially in rural areas to facilitate mediation.

COMPARATIVE ANALYSIS

A comparative analysis of international mediation frameworks provides key insights into areas where India can improve its own mediation practices.

➤ SINGAPORE:

The Mediation Act of 2017 and the Singapore Mediation Centre (SMC) are worldwide models for mediation. Important aspects of Singapore's system are:

- By means of organizations including the Singapore International Mediation Centre (SIMC), Singapore has set itself as a center for worldwide mediation. A model India could follow for cross-border conflicts, the Singapore Convention on Mediation (2019) helps to enforce international mediation agreements.

³⁹ Arun Chawla, *A Clear Message to Industry on Dispute Resolution*, The Hindu (Sept. 22, 2023), <https://www.thehindu.com/opinion/op-ed/a-clear-message-to-industry-on-dispute-resolution/article67332412.ece>.

- Court-Annexed Mediation: Singapore courts actively promote mediation early in the litigation process, therefore helping to stop cases from going to trial needlessly.

➤ **UNITED KINGDOM:**

Encouraging mediation in civil conflicts, the United Kingdom's approach includes it into its Civil Procedure Rules. The following features of the UK system stand out:

- Cost Penalties for Refusal to Mediate: Courts impose cost penalties on parties who unreasonably refuse to mediate, so promoting mediation as a real substitute for litigation.
- Training and Certification: Ensuring mediator accreditation is mostly done by the Centre for Effective Dispute Resolution (CEDR) in the UK, therefore preserving the integrity and quality of the mediation process.

➤ **UNITED STATES OF AMERICA:**

Especially in family and business conflicts, the United States has a thorough mediation system. Among the main features of the U.S. system are:

- Uniform Mediation Act (UMA) Adopted by various U.S. states, the UMA provides a consistent system for mediation confidentiality, admissibility of mediation statements, and the enforceability of mediated agreements.
- Mediation Court-Annexed Mediation is usually court-annexed for civil cases in the United States. Promoting mediation in Labour conflicts is greatly aided by the Federal Mediation and Conciliation Service (FMCS).

The Mediation Act, 2023 has enabled India to take steps for integration of mediation into the legal system, which is helpful in the country. But in order for the system to be used effectively, the problems of infrastructure, training and public awareness need to be resolved. Building experience on the best practices that have been observed by working on the Singaporean, the UK, and the U.S. mediation framework, India can strengthen its mediation framework to enable it to become a mainstream dispute resolution mechanism; thereby enabling it to relieve

increasing judicial backlog and expeditious and accessible justice to all.⁴⁰

CONCLUSION

Mediation changes the face of dispute resolution in India, allowing engagement of an option that, for the most part, emphasizes cooperation, autonomy, and mutual respect, rather than one that must be competitively engaged in; time is of the essence for all parties involved. Mediation is a workably reasonable offer to settle conflicts from legal to emotional sides to the extent that the judiciary is overburdened, with fundamental delays into litigation. Mediation is mainly relationship-preserving, especially in family, commercial, or community disagreements, thus fitting in very well with the Indian socio-cultural setup that promotes collectivism and has attaché interest in interpersonal relationships.

The passage of the Mediation Act, 2023, represents a watershed moment in India's mediation being institutionalized. The Act provides a detailed statutory framework, which lays down essential provisions concerning the regulation of mediators, the enforceability of mediated settlement agreements, and the establishment of Mediation Councils and Centres. Such developments indicate that the state is intent on elevating mediation from a peripheral practice to become a central pillar of the justice delivery system. Mediation is now being increasingly woven into the statutory fabric along with the judicial pronouncements delivered by the Supreme Court and High Courts that have consistently encouraged the use of alternative dispute resolution (ADR) mechanisms-an approach embodied in the Commercial Courts Act, Consumer Protection Act, Companies Act, and family law legislations.

But in spite of these advancements, much remains to be done because mediation is still being seriously affected by implementation bottlenecks. The lack of awareness about the process and benefits of mediation among litigants, lawyers, and even judges has led to underuse. There is an urgent need for strong capacity-building efforts, including training and accreditation of mediators as professionals, to secure quality and ethical practice. In addition, the lack of infrastructure facilities in many parts of the country poses a hindrance to accessing formal mediation facilities, especially in rural and semi-urban areas. The establishment of a mediation

⁴⁰ UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, U.N. Doc. A/73/17, Annex II (2018).

culture is yet another challenge, which has fundamentally been marred by an inclination toward adjudication and a suspicion of informal justice mechanisms.

India needs to take a multi-pronged approach by way of legal reform, institutional support, cultural change, and policy innovation to unleash the full potential of mediation. Mediation and conflict resolution should form a part of the curriculum in our educational institutions to teach these values of dialogue and negotiation early on. Bar associations and legal aid services should actively conduct campaigns to promote mediation through awareness-building and pilot programs. Structured referral mechanisms should also be introduced in courts in order to ensure that pre-litigation mediation is undertaken in appropriate cases, with a framework for follow-up and feedback to enhance procedural efficacies.

In an age where justice has to be timely, accessible, and citizen-centered, mediation is not merely an alternative but is, rather, an indispensable adjunct to formal adjudication. This is also a perspective shift, from win-lose to win-win, allowing parties to step away from legal positions and towards underlying interests. It would be a strategic and progressive move for India to invest in a strong mediation ecosystem, as it aims at positioning itself as an international hub for dispute resolution, especially in the commercial and cross-border arena.

Finally, it will be the interplay of legislative intent, judicial activism, professional competence, and public trust that will determine the success of mediation in India.