*CMR University Journal for Dispute Settlement and Arbitration*
*Vol. 3 (01), June 2024, PP. 128-140*

# Impact of Mediation in India and Its Effectiveness in Resolving Disputes

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## Abstract

In mediation, a neutral third party uses communication and negotiating skills to assist the opposing parties in reaching a mutually agreeable settlement to their issue. In turn, these methods are fashioned in a way that makes mediation and conflict resolution easier. Although mediation is generally thought of as a product of the second half of the 20th century, its origins can be found in ancient Indian legal systems such as the "Gramme Panchayats" and "Nyaya Panchayats," which were widely used in ancient rural India. There should be more push for mediation as an alternative to the court system. Building trust in the Mediation process is vital to increasing its acceptability and popularity as a first option before resorting to litigation or other ADR methods. Mediation as an effective, innovative, affordable, and time-saving tool for all parties involved must go hand in hand with the adoption of court-annexed mediation as a measure of docket management. However, the Panchayat system does still exist in some rural areas of India, and the Indian government is making concerted efforts to reinvigorate these indigenous methods of delivering justice by allocating funds to them. Initial research confirms mediation's promising results in terms of facilitating effective dispute resolution, boosting participant happiness, and keeping interpersonal connections intact. The study finds that mediation is effective, but it also highlights opportunities for development, such as the need for standardised training for mediators, more awareness among legal practitioners, and the creation of a strong enforcement mechanism for mediated settlements. This research contributes to the current conversation on alternative conflict resolution in India, presenting insights that might drive policy choices, legislative changes, and practical measures to further increase the role of mediation in promoting a more accessible and responsive judicial system.

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**Keywords:** mediation, India, effectiveness, dispute resolution, legal system

## Introduction

Mediating conflicts instead of going to court has been increasingly popular over the years. With the help of a mediator, disputing parties may take a fresh look at their rights and interests and craft creative compromises. This contributes to the parties' ability to keep communication open and friendly.

Judiciary and arbitration functions are more formal and adjudicative in character. In contrast, mediators and the mediation process themselves tend to be pragmatic and adaptable in character. Many a time, it can show to be quicker, more successful and inexpensive than the other adjudicative techniques.

There should be more push for mediation as an alternative to the court system. Building trust in the Mediation process is vital to increasing its acceptability and popularity as a first option before resorting to litigation or other ADR methods. Mediation as an effective, innovative, affordable, and time-saving tool for all parties involved must go hand in hand with the adoption of court-annexed mediation as a measure of docket management.

## Evolution of Mediation

Even before it was codified in law, mediation had gained widespread acceptance. Village elders in ancient Greek society mediated disputes amongst villagers. In India, instances of mediation may be seen in the village panchayat system, wherein, the village elders or 'Panchs' resort to processes like mediation to amicably resolve family and land related problems between the residents.

The Indian government recognised the need for a formal mediation mechanism and in 1987 passed the Legal Services Authorities Act,[1]which established the Lok Adalat. The purpose of a Lok Adalat is to facilitate the peaceful resolution of legal problems before they reach the court system.

After that, in 1988, the Justice Malimath Committee Report and the 129th Law Commission Report were released, both focusing on alternatives to traditional adjudication in the form of mediation for urban disputes. Considering the backlog of cases standing before the Indian courts, Justice Malimath Committee Report advised that the parties be encouraged to send their problems to alternate dispute resolution procedures ("ADRs")[2]. Section 89 of the Code of Civil Procedure, 1908 ("CPC") was added as a result of these suggestions, which led to the passage of the Code of Civil Procedure (Amendment) Act, 1999[3]. The courts were given the authority to send potentially amicable cases to alternative dispute resolution (ADR) procedures (such as arbitration, conciliation, mediation, or judicial settlement) under Section 89 of the CPC[4].

The first mediation facility attached to a court was opened in Tamil Nadu on April 9, 2005[5]. In order to provide training in mediation to judges, the then-Chief Justice of India, Justice R.C. Lahoti, established a Mediation and Conciliation Project Committee in August 2005[6]. There are now mediation facilities with their own regulations established by many High Courts.

**History of Mediation in India**

The old Panchayat system predominated in India even before the modern British court system was implemented, with groups of village elders resolving communal matters. Respected businesspeople, known as Mahajans, were sometimes enlisted to mediate conflicts between warring parties in an informal setting.

[1] Legal Services Authorities Act, 1987,
[2]https://delhicourts.nic.in/dmc/history.htm
[3] Code of Civil Procedure (Amendment) Act, 1999
[4] Section 89 CPC
[5] http://www.hcmadras.tn.nic.in/mashist.html
[6]https://delhicourts.nic.in/dmc/history.htm

The Industrial Disputes Act of 1947 is largely responsible for codifying mediation as an official part of India's legal system in the decades following the British colonial era. The notion of mediation was further bolstered by the passage of the Legal Services Authority Act, 1987, which allowed for the creation of Lok Adalats. Further, Section 89 of the Code of Civil Procedure, 1908[7] gave business mediation a formal character.

An additional significant move in support of business mediation was the passage of the Commercial Courts Act, 2015[8], which mandates pre-institutional mediation in certain types of Commercial Suits, when no urgent relief is requested. The Supreme Court of India has ruled that this need is more than just formal, and that it must be met before any remedy can be sought under the Act in question; and that a business litigation may be thrown out for failing to call pre-institutional mediation.[9]

**Mediation Through the Years**

The Indian legal system's first statutory introduction to mediation was the 1996 Arbitration and Conciliation Act. Introduces subsection (1) of section 30 of the Arbitration and Conciliation Act, 1996, which permits the arbitral tribunal to use mediation as a means of dispute resolution and encourages the parties to pursue the option of mediation and conciliation despite the initiation of arbitral proceedings. Nevertheless, due to a lack of appropriate implementation (or even formulation) of any defined norms of mediation, this clause supporting mediation has nearly been made useless. Section 89 of the Code of Civil Procedure, 1908 (formerly Section 30 of the Arbitration and Conciliation Act, 1996) attempted to address this problem by mandating the investigation of alternative conflict settlement strategies. In addition, this provision is where the concept of "judicial mediation" was first established[10].

[7] Inserted by the Code of Civil Procedure (Amendment) Act, 1999 with effect from 1/7/2002.
[8] Section 12A of the Commercial Courts Act, 2015.
[9] M/s Patil Automation Private Limited and Ors. v. Rakheja Engineers Private Ltd. SLP (C) No. 14697 of 2021.
[10] www.indialawjournal.com/volume4/issue_1/article_by_desia_kanuga.html

Only an executed settlement agreement or alternatively a statement that the mediation proceedings were unsuccessful should be provided to the court by the mediator, as the Supreme Court of India declared in 2011[11] that mediation proceedings were confidential in nature. As a result of this ruling, mediation is likely to become more widely used in India to settle legal disputes. The Chief Justice of India has been known to mediate disputes between disputing parties during processes of high-profile cases, such as the one involving the Babri Masjid's destruction[12].

In a similar vein, the Law Commission of India has proposed making it mandatory for the Court to send issues to mediation for settlement[13] in its 129th Report. Afcons Infra Ltd v. M/S Cherian Varkey Constructions (2010)[14] cited this as an example of an important precedent. The Supreme Court of India has ruled that mediation is appropriate in matters involving tort responsibility, consumer protection claims, and contractual disputes.

The Supreme Court reached another landmark decision on February 22nd, 2013, in the case of B.S. Krishnamurthy v. B.S. Nagaraj[15]. The Court ordered the Family Courts to encourage the use of mediation to resolve matrimonial disputes, and to introduce the parties to mediation centres if they so desired. About 30,969 cases have gone through the mediation procedure in the few years since mediation centres in Delhi (in 2005) and Bangalore (in 2007) were established, and about 60% of these cases have been settled ever since[16]. Mediating the purchase of South African telecommunications giant MTN by Reliance Industries' Mukesh and Anil Dhirubhai Ambani is one of the most high-profile incidents in recent years.

In light of this, it is encouraging to see the Supreme Court adopt a more positive stance towards mediation in a number of recent rulings. When it comes to patent dispute resolution, mediation also appears to have been the preferred method. The recent high-profile patent disputes between

[11] Held in the case of, "Moti Ram (D) Tr. LRs and Anr. Vs Ashok Kumar and Anr (Civic Appeal No. 1095 of 2008)"
[12] Dr M. Ismail Frauqui And Ors. vs Union Of India (Uoi) And Ors AIR 1995 SC 605
[13] http://practicalacademic.blogspot.in/2012/08/guest-post-mediation-and-conciliation.html.
[14] 2010 (8) SCC 24
[15] S.L.P. Civil) No(s).2896 OF 2010
[16] Forbes India, Mediation in Indian Courts, http://www.forbes.com/2010/09/28/forbes-india-judiciary-encouraging-mediation-reduce-baclog.html

Hoffman La Roche and Cipla[17] (even though mediation between the two parties failed in facilitating dispute resolution) and Merck and Glenmark[18]have also brought mediation as a method for dispute settlement involving "patents" to the attention of many Indian generic drug manufacturers.

The Malimath Committee Report[19] is well-known for its discussion of factors to consider while working to expand access to justice in order to reduce the number of cases affecting ordinary people over time. In addition, the 129th Report of the Law Commission suggests certain novel approaches that might improve the efficiency of case processing in populated regions. These are as follows[20]:

1. The Nagar Nyayalaya would be established in the same way as the Gramme Nyayalaya, with a professional Judge and two lay Judges, and would have the same powers, authority, jurisdiction, and process. However, the Nagar Nyayalaya will try to resolve the issue through mediation before taking any legal action (if necessary),
2. Having a minimum of two judges examine cases in Rent Courts, with only problems of law being able to be appealed to the district court,
3. Community conflict resolution via the establishment of Neighbourhood Justice Centres,
4. Himachal Pradesh has a functioning system of conciliatory courts at present.

## Impact of Mediation

Mediating disputes has increasingly been seen as the quickest approach to settle them. Courts serve in a more formal and adjudicative capacity. In contrast, the mediation procedure is both realistic and adaptable. In many cases, mediation can be a faster, more successful, and less expensive alternative to other forms of adjudication. However, poor levels of understanding about mediation

[17] F.Hoffman La Roche Ltd. and Anr v. Cipla Ltd. 2015 SCC OnLine Del 13619 : (2015) 225 DLT 391 (DB)
[18] Glenmark Pharmaceuticals Limited v. Merck Sharp and Dohme Corporation and Anr 2015 (6) Supreme Court Cases 807:2015 SCC OnLine SC 493
[19] lawcommissionofindia.nic.in/reports/report238.pdf
[20]lawcommissionofindia.nic.in/101-169/report129.pdf

are likely to blame for India's relatively low success rate of mediation. Government officials and lawyers alike appear uninterested in raising public understanding about the benefits of mediation.

Despite courts in India being quick to see how mediation might assist cut down on case backlogs and delays, attorneys in the country have been slower to embrace the practise [21]. The effects can be observed among Indian legal professionals. They worried that the mediation would result in an early resolution of cases, cutting them off from the legal fees they would have collected had the cases gone to trial. As a result, the adversarial system is impacted. However, it would be premature to declare that this system must be scrapped entirely. In cases when an authoritative interpretation or establishment of rights is required, or where there is a significant bargaining imbalance, the adversarial system is the best option. It's necessary as a measure of desperation, too. However, its unbiased and unvarying application throughout a large band of dispute is a primary cause of the various evils affecting the judicial system.

**Measures for Effective Implementation and Growth of Mediation in India**

There is an immediate need for a standardised mediation law in India. Singapore, Malaysia, and Ireland (which acts as a regulator) are just a few of the more than 18 countries with mediation laws. To handle disputes in line with a "Arb-Med-Arb" clause for business contracts, the Singapore International Arbitration Centre (SIAC) and the Singapore International Mediation Centre (SIMC) have drafted the SIAC-SIMC Arb-Med-Arb Protocol (AMA Protocol).

In India, parties often choose court annexed-mediation, which is governed by its own set of Rules established by each High Court. Private mediation is less popular since it is not widely accepted. What we need at the same time as the above-mentioned laws have been or are being enacted in our nation is a rapid evolution of the mediation mechanism. For this, the legislative and judicial branches would need to provide formal legitimacy to the mediation process.

[21] SSRN, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3494060

Although the judicial system is responsible for adjudicating most cases, there are times when parties might benefit more from mediation. Therefore, identification of such concerns and situations by parties, attorneys and judges becomes incredibly critical and significant in the advancement of mechanism.[22]

**The following steps may be taken:**

1. Grassroots level understanding of public at large (especially parties, attorneys, judges and other stakeholders) and simple access to the Mediation.
2. India has joined the ranks of the numerous nations that have passed laws regulating the use of mediation and is also a party to the United Nations Convention on International Settlement Agreements.
3. The infrastructure and layout of mediation centres should be consistent and welcoming to all participants.
4. Since mediation provides attorneys with a great venue for showcasing their legal, analytical, and professional chops, it is imperative that it grow into a full-time profession (promoting this mechanism will involve the efforts of senior lawyers, members of the court, and all state bar councils).
5. Lawyers should be encouraged and rewarded for helping their clients learn as much as they can about the mediation process before making any decisions.
6. Must adhere to a strict code of ethics and behaviour.
7. All attorneys should take an introductory mediation course, and law schools should incorporate mediation training (both theoretical and practical) into their curricula.
8. Multiple Mediation drives should be performed by courts on multiple levels, be it at the district level or the national level. These campaigns have the potential to be highly effective and contribute significantly to reducing the backlog of cases now being heard in various courts.
9. The selection procedure of mediators and sufficient training criteria for the mediators should be devised. Standardised training programmes for potential mediators are needed,

[22] VIA Mediation Centre, https://viamediationcentre.org/readnews/NjE1/EFFECTIVE-IMPLEMENTATION-OF-MEDIATION-IN-INDIA

as are records of the mediators' professional and academic histories, including the number of mediations they have conducted, the topics they have covered in the past, any other fields in which they may have expertise, etc.

10. In order for mediation to grow into a substantial field of law, mediators should be obliged to affiliate with highly open and esteemed professional groups that are closely monitored by the state and the law enforcement.

**Mandatory Mediation in India**

It is vital to guarantee that mediation in India does not go down the same route as arbitration in its first years. For this, it is necessary to integrate specific elements into any statute on mediation based on the lessons learned from the arbitration experience. The first would be to ensure that mediation agreements are sufficiently protected from being challenged in court for improper reasons.

The entire potential of mediation as a conflict resolution technique depends on making the profession of mediation more profitable. As a result, top students will be drawn to this field, raising the bar for service providers elsewhere. Therefore, any attempts to restrict costs paid for mediation need to be thought out thoroughly. Overregulation, such as price caps, should be avoided if at all possible. If done so, however, it must be tied to the monetary worth of the disagreement and not used for making decisions on their own accord.

Furthermore, in the age of the Fourth Industrial Revolution, it is crucial to include technology into the mediation process. Especially for cross-border and geographically dispersed conflicts, online dispute resolution (ODR) has great potential, and any policy should adequately provision for using this potential. Supporting and encouraging the best possible use of technology to make obligatory mediation practical and accessible for parties is of the utmost importance.

There is also the possibility that the legal profession could view mandated mediation as a danger rather than an opportunity. This occurred in Italy when obligatory mediation was introduced there. Co-opting attorneys as significant stakeholders is crucial to avoiding a similar reaction. Having

attorneys present at mediation sessions and encouraging them to enter the field of mediation are two ways to achieve this goal. In light of the foregoing, the authors propose the following model of compulsory mediation for use in India.[23]

## Statutory Provisions

There are various statutory measures in India that mandate mediation before a lawsuit may be filed, given the already overwhelming caseloads in Indian courts. Here are a few examples of such laws:

1. The Arbitration and Conciliation Act of 1996 in India was the first piece of legislation to recognise mediation as a valid means of resolving disputes; subsection (1) of Section30 of that Act encourages parties to seek mediation and conciliation even when arbitral proceedings have been initiated and gives the tribunal the authority to carry mediation.
2. It is the responsibility of conciliators designated under Section 4 of the Industrial Disputes Act, 1947 to mediate and settle industrial disputes in accordance with the Act's comprehensive mandated processes. In the right hands, it may be an efficient and low-cost method. However, few instances have actually been settled using this clause, and many more are still pending in court.
3. Section 89 along with Order X Rule 1A of the Code of Civil Procedure, 1908 (CPC) was changed in 2002 to provide the referral of all outstanding court matters to mediation. Due to the sensitive nature of familial and personal concerns, the amendment further suggests that they be resolved through mediation rather than the standard court process.
4. The National Company Law Tribunal and the Appellate Tribunal, in accordance with Section 442 of the Companies Act 2013 and the Companies (Mediation and Conciliation) Rules, 2016.
5. The Micro, Small and Medium Enterprises (MSME) Development Act, 2006 provides mediation and conciliation when disagreements arise on payments to MSMEs.

[23] https://www.galgotiasuniversity.edu.in/pdfs/Mandatory-Mediation-in-India.pdf

6. The courts have previously said in the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954 that mediation between the parties involved in a marriage or divorce dispute should be used as a first resort.
7. An established dispute settlement forum, set up by consumer or promoter groups, is available for the negotiated resolution of grievances under Section 32(g) of the Real Estate (Regulation and Development) Act, 2016.
8. In circumstances when neither party is seeking urgent interim relief, parties are required to mediate their dispute in accordance with Section 12A of the Commercial Courts, Commercial Division, and Commercial Appellate Division of High Courts Act, 2015.
9. The Consumer Protection Bill, 2018 allows for reference of a dispute to Mediation as an ADR Mechanism and settling up of a consumer redressal agency. If there's a chance the parties might settle their disagreement through mediation, the relevant commission could order them to do so in writing.
10. The lack of recognition and the absence of a consistent framework to implement the settlement agreement and make it enforceable by the organs of Government mean that parties seldom choose mediation despite these provisions[24].

**Case Laws**

1. In the landmark decision Afcons Infrastructure Ltd v. Cherian Varkey Construction Co. (P) Ltd [25], the Supreme Court said that mediation was an appropriate alternative to litigation in all commercial, contractual, consumer, and tort situations.
2. The Supreme Court ordered the government to explore the possibility of implementing an Indian Mediation legislation in the case of MR Krishna Murthi v. New India Assurance Co. Ltd[26]. This legislation will regulate many areas of mediation in India. The Court additionally asked the government to study the viability of establishing up a Motor Accidents Mediation Authority (MAMA) by making necessary adjustments in the Motor Vehicles Act. NALSA was

[24] VIA Mediation Centre, https://viamediationcentre.org/readnews/NTY=/Statutory-Provisions-relating-to-Mediation-in-India
[25] Afcons Infrastructure Ltd v. Cherian Varkey Construction Co. (P) Ltd
[26] MR Krishna Murthi v. New India Assurance Co. Ltd

tasked with establishing Motor Accident Mediation Cells in the interim; these cells can operate autonomously under NALSA's supervision or be transferred to MCPC.

3. In Moti Ram (D) Tr. LRs and Anr. v. Ashok Kumar and Anr[27]. the Supreme Court of India ruled on 7 January 2011 that mediation proceedings were private and that the mediator was only required to provide the court with an executed settlement agreement or a statement that mediation had failed.
4. On the 22nd of February, 2013, the Supreme Court issued a landmark ruling in the case of S. Krishnamurthy v. B.S. Nagaraj[28], in which it instructed the Family Courts to seek to resolve and settle matrimonial disputes by mediation and to also introduce parties to mediation centres with the consent of the parties, particularly in matters involving divorce, maintenance, child custody, etc.
5. In Srinivas Rao v. D.A. Deepa [29], decided by the Supreme Court on February 22, 2013, the court must refer the parties to a mediation centre before hearing a complaint under Section 498-A IPC if the court believes that there are elements of settlement and the parties are willing to resolve the dispute in-between.
6. On July 1, 2015, the Supreme Court ruled in State of Madhya Pradesh v. Madan Lal[30] that the accused and the victim may not participate in mediation.

## Conclusion

The current situation has brought mediation to the attention of the average Indian by making reference to the very sensitive Ayodhya dispute. No matter what happens, it will have a significant impact on how Indians feel about the mediation process and how it is carried out. The Indian citizen is more predisposed to agree to the adversarial process by default due to a lack of public awareness about alternative dispute settlement options. The same may be true for the country as a whole if a mediation-specific legislation is passed.

[27] Moti Ram (D) Tr. LRs and Anr. v. Ashok Kumar and Anr
[28] S. Krishnamurthy v. B.S. Nagaraj
[29] Srinivas Rao v. D.A. Deepa
[30] State of Madhya Pradesh v. Madan Lal

India now has a lack of not just a dedicated mediation legislation, but also mediation oriented institutions with qualified specialists as well as public awareness on the meaning and value of the mediation process. The first update, which included a push from the Supreme Court, and the second, which increased public knowledge of mediation, are both attempts to address this problem.

The lack of national and international mediation institutions offering accessible and high-quality training programmes is a contributing factor to the field's slow development. Since mediations often take place behind closed doors and are confidential, mediators can make false claims about their qualifications and expertise without fear of repercussions. As a result, it can be difficult to assess a mediator's skills. Therefore, there is an urgent need to build a regulatory framework for creating confidence and ensuring that ethical practises are followed for the effective application of mediation.