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A Comparative Study on Mediation Mechanisms Between Developing & Developed Nations

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Abstract

Social justice holds a prominent place and might be considered equally significant as economic equality in a welfare state like India. A significant portion of the poor and deprived population in developing India does not have the financial means to approach the courts because of the high expense of litigation. Therefore, creative alternative dispute resolution methods can aid in ensuring that the public receives justice. In the current justice delivery system, mediation serves as an affordable means of resolving disputes and administering justice. Mediation results in the peaceful resolution of the conflict and the involvement of an impartial third party in the settlement process based on impartiality, discretion, and adaptability. In terms of the procedure, mediation is distinct from an adversarial system. Due to its increased accessibility, mediation has been promoted both as a means of aiding the spread of justice across society and as a way to reduce the burden on the judiciary. Despite being portrayed as an intriguing instrument, mediation has historical origins in several nations. Furthermore, the present era has seen an increasing application of contemporary mediation approaches. This paper first explores the evolution of the mediation mechanism in India, along with the current legal framework governing mediation under various statutory provisions. This paper then examines the mediation models and regulations of other nations, including Bangladesh, Cuba, USA, UK,

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Brazil, and Singapore. Lastly, this paper offers recommendations for how emerging nations might enhance their mediation frameworks.

Keywords: mediation mechanisms, developing nations, developed nations

Introduction

In India, Section 89 and Order 10, Rule 1A of the Code of Civil Procedure, 1908 ("CPC") brought mediation into the judicial system in 2002.[1] This is quickly helping a lot of plaintiffs. These are places of peaceful settlements and reconciliation of successful resolutions, reunions between families and rivals becoming partners, the restoration of business relationships, and the amicable separation of spouses, where genuine attempts have been made to set up mediation centres. The greatest way to demonstrate the fairness of mediation is through a mediated case. Five brothers were enmeshed in court cases over their business and other possessions starting in 1998. There were cases ongoing in many courts, including the Company Law Board, for more than ten years. They discovered mediation, an alternative to courtroom proceedings, in 2008 to settle their protracted disagreements in front of an unbiased, neutral third party. Dialogue and debate were part of the mediation process. In a forty-hour period, the parties, the mediator, their attorneys, and important managerial and technical staff deliberated, bargained, and resolved eight cases. Much to their relief, the Chairman of the Company Law Board commented that this issue took up the greatest space in his record room when they showed him their memorandum of settlement.[2]

'Mediation' is an organized and dynamic procedure in which a neutral third party assists the conflicting parties in resolving their differences via negotiation. This third party must not be linked to the disputing parties. As a result, mediation is known as a party-centred procedure that prioritizes the requirements, liberties, and interests of the parties concerned. The mediation procedure is carried out by the mediator. He employs a variety of strategies and specialized communication abilities to lead the parties through the process in a productive manner and assist them in resolving their disagreement. The mediator facilitates open conversation and controls the exchanges between the parties. During the mediation process, the mediator evaluates pertinent

[1] CPC 1908, S.89. Order 10, Rule 1A.
[2] Laila T. Ollapally, Integrating Mediation: A Holistic Approach to Administration of Justice in India, IJCLP, Vol 5, (19th April, 2025, 8:57PM), https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1047&context=ijclp.

topics and case facts and provides recommendations to the parties on how to proceed. It follows that this is an evaluation procedure. In the *Salem Advocate Bar Association Tamil Nadu v. Union of India*[3] case, the Supreme Court of India recognized the genuine significance and meaning of the word "mediation." Additionally, it has requested that the relevant High Courts draft the Model Civil Procedure Mediation Rules. The well-known case of *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd*. [4] clarifies more aspects of mediation legislation.

Current Scenario of Mediation in India

The duty to mediate and promote the resolution of industrial disputes, with comprehensive approved processes for mediation proceedings, falls on mediators designated under Section 4 of the Industrial Disputes Act of 1947. When utilized properly, it is a quick and affordable process. Even so, the very idea of having such a provision has angered people, and very few cases have actually been resolved through it. Regretfully, an extensive number of cases that could have been settled with the aid of this clause are still pending in court, and new ones are being filed every day.

In 2002, a change was proposed to the Code of Civil Procedure, 1908 (CPC). Rules 1A and Section 89, when read together, provide for the referral of court-pending cases to alternative dispute resolution (ADR). Since the customary, normal judicial course of action is not entirely appropriate for the delicate subject of the personal connection, CPC inclusion order XXXIIA recommends mediation for domestic and personal relationships.

Even though many Indian courts now have mediation centres, there is no concrete data to support the successful use of this provision. While the Companies (Mediation and Conciliation) Rules, 2016, in conjunction with Section 442 of the Companies Act, 2013, establish a framework for referring disputes to conciliation by the National Company Law Tribunal and Appellate Tribunal. When conflicts arise over payments to MSMEs, the Micro, Small and Medium Enterprises (MSME) Development Act, 2006 mandates mediation. More precisely, the court must first establish mediation between the parties in accordance with well-known and private regulations that incorporate the Hindu Marriage Act, 1955, and the Special Marriage Act, 1954. Furthermore, the Real Estate (Regulation and Development) Act, 2016's Section 32(g) provides for the

[3] Salem Advocate Bar Association Tamil Nadu v. Union of India, AIR 2003 SC 189.
[4] Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd (2010) 8 SCC 24.

cooperative settlement of issues between promoters and allottees through meetings for dispute settlement that are organized by the consumer or promoter coalition.[5]

Despite these statutory obligations mentioned above, mediation has never been very successful in India. The Supreme Court established the Mediation and Conciliation Project Committee (MCPC) in April 2005 to oversee the successful implementation of mediation. The MCPC sought to promote mediation as "another effective method of dispute resolution," rather than merely a "substitute resolution apparatus," and to support the growth of court-annexed mediation. The websites of many High Courts reveal that most have their own unique set of rules pertaining to mediation and conciliation. However, except for a few High Courts, little information is accessible on the success or failure of proceedings, the overall success rate of mediation cases, or the reputation of the instances discussed.

Development in Mediation

According to the 129th Law Commission of India study, courts should mandate the referral of conflicts for mediation. The Supreme Court noted in the historic decision of *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.* that all cases pertaining to trade, contracts, consumer disputes, and even tortious liability are often amenable to mediation. After Section 12A of the Commercial Courts Act 2015 was amended in 2018, parties are now required to use the Act's restored pre-institution mediation process before filing a lawsuit. Further, the government has developed the 2018 Commercial Courts (Pre-Institutional Mediation Settlement) Rules. The legislation makes the settlements that arose in this process enforceable. For the purposes of limitation, the duration of the mediation would not be ascertained under the Limitation Act of India.

The Supreme Court, in the matter of *MR Krishna Murthi v. New India Assurance Co. Ltd.*, directed the government to consider the feasibility of implementing an Indian Mediation Act, considering many general aspects of mediation. The government was also instructed by the court to make the necessary changes to the Motor Vehicle Act in order to examine the viability of establishing a Motor Accidents Mediation Authority (MAMA). In the interim, NALSA was instructed to create

[5] Tirthraj Basu Ray, Mediation – The Need of the Hour in India, IJLMH, Vol 3, 309, (20th April, 2025, 3:45PM), https://www.ijlmh.com/wp-content/uploads/MEDIATION-%E2%80%93-The-Need-of-the-Hour-in-India.pdf.

a Motor Accident Mediation Cell. This cell could either be handed over to MCPC or remain individually operational under NALSA's support.

Sections 37–38 and Chapter V of the newly enacted Consumer Protection Act, 2019 mandate that conflicts be brought up for mediation first. and that the process be followed in accordance with Section 74(3) of the Act as well as Sections 101(2)(zf) and 102(2)(p) of the Act. The authority to establish regulations for the persons inside the Consumer Mediation Cell has been granted to the Central Government and the State Government.

India is a party to the United Nations Conventions on Mediation (The Singapore Convention), which grants mediation settlements legal standing in relation to international disputes.[6]

Mediation Mechanisms in Other Countries

Bangladesh – In Bangladesh, there has consistently been an issue with access to justice. They see such alternative conflict resolution mechanisms positively as potential solutions to the nation's many dysfunctions. ADR is "a non-formal settlement of legal and judicial disputes as a means of disposal of cases quickly and inexpensively," stated by Mustafa Kamal, the former chief justice of Bangladesh. Justice Mustafa Kamal took the initiative to make sure that the legal system underwent improvements. The USA's Institute for the Study and Development of Legal Systems (ISDLS) has assisted in these endeavours in order to guarantee that the legal system's reforms ensure the seamless operation of the entire system. Under the direction of Justice Mustafa Kamal and with the assistance of Judge Clifford Wallace, a research group on Bangladeshi law was founded in January 2000. A pilot project on mediation was one of the group's suggestions, and family courts in Bangladesh launched experimental programs based on that suggestion. The Family Courts Ordinance of 1985, Section 10, provides guidelines for mutual conciliation between the parties. However, because Section 13 requires the court to take steps to ensure that the parties do not leave the proceedings acrimoniously, some parts of mediation may be allowed to enter the proceedings. Unfortunately, judges in Bangladesh are not motivated to refer to parties, which is why these provisions are unpopular. Because of the adversarial judicial system, we are not sufficiently aware of these provisions. ADR procedures have resulted in a 60% rise in the

[6] *Supra* note 5 at 318.

resolution of family court cases. A total of 2,418 cases were resolved in 13 districts as part of the pilot initiative between 2000 and 2004. In accordance with CPC Section 89A, a total of 12,402 cases have been disposed of during the period between 2003 and 2006.

Cuba – Cuba, as many people know, is a socialist nation. Since the 1990s, mediation has been a common practice in the nation, but not much research has been done on the subject. However, several studies have led to the conclusion that social responsibility and community interests are more important to Cuban society than individual interests. In 2005, the Ministry of Justice of Cuba enacted a decision authorizing the formation of mediation services in the country. This resolution permitted the establishment of Consultores Abogados Internacionales (CONABI), firms that offer mediation services. Lawyers can represent their clients in administrative forums and serve as mediators. Conciliation became an option for conflict resolution when Cuban Civil Procedure Law 7/77 amended Decree Law No. 241 of 2006. The Cuban Court of International Commercial Arbitration (CCICA) was founded by Decree-Law No. 250. Resolution No. 13 established the CCICA's 2007 Rules of Mediation. Popular courts were founded on the model of Soviet Comrades Courts. Ordinary courts had no authority over them. They were created in response to the serious issues that the revolution had brought about, and their goal was to encourage antisocial conduct while fostering a revolutionary mentality. These courts imposed only light, non-punitive sanctions.[7]

Committees for the Defence of the Revolution now serve as unofficial dispute resolution hubs. When antisocial conduct among young people increased in 1968, the CDRs were called upon to prevent new crimes.. In order to stop more crimes, CDRs are now present in every area. Their primary goal is to deter crime by employing various strategies, including community watch programs, youth education, and reintegrating ex-offenders into society. They remained a powerful group in Cuba even in the 1990s, although their influence diminished during the Great Depression.

UK – The UK has several laws that support mediation. One of the legal frameworks in encouraging domestic mediation in the nation is the Civil Procedure Rules. The laws guarantee the enforcement of mediated settlement agreements and uphold the confidentiality of the mediation process. County

[7]Astitva Kumar, legal basis: Developed v. Developing Countries, ICMCR, (20th April, 2025, 11:05PM), https://icmcrmediation.org/comparison-of-mediation-on-the-legal-basis-developed-v-developing-countries/.

courts provide court-annexed mediation programs for less complex situations. ADR Group, CEDR, and other private organizations are among the private entities that function autonomously in addition to individual mediators. The Council for Civil Mediation is a volunteer organization that oversees mediation in the United Kingdom.

USA – The conflict resolution techniques employed in Native American society can be linked to the mediation paradigm in the United States. Court-backed mediation was first proposed following the English rule. The rise in labour conflicts increased the popularity of mediation, which was seen as a means to prevent strikes and to ensure cooperative resolutions rather than total disintegration of worker-management relations. Legislative attempts to include mediation were made in the 1970s and 1980s. In the American judicial system, mediation has grown in popularity as a means of reducing the workload for judges. The American Bar Association and the American Arbitration Association specify the guidelines for mediation, even though there are no national laws governing it in the country. Separate laws apply to mediation in several states. The Alternative Dispute Resolution Act is one example of an attempt to create a consistent code of conduct for mediation.

Brazil – The 2015 Brazilian Mediation Law improved the process of enforcing contracts. Where a contract includes a mediation clause, both parties must show up for the initial mediation session. Court costs are waived if a disagreement is resolved through mediation before the defendant is summoned. This statute allows for the settlement of conflicts involving public and governmental institutions, as well as judicial mediation and out-of-court mediation. In Brazil, there are private organizations like JAMS, CPR, and others. The National Civil Procedure Code (NCPC) urges public defenders, judges, attorneys, and public prosecutor staff members to use alternative dispute resolution techniques, including mediation and conciliation.[8]

Singapore – The Community Mediation Centres Act (CMCA), 1997, the Mediation Act of 2016, and the Rules of Court (Amendment) Rules, 2017 govern mediation in Singapore. Court-annexed programs (Primary Dispute Resolution Centres) were founded and are overseen by the CMCA. Private mediation receives support through the following measures[9]:

i. Forming formal organizations such as the Singapore Mediation Centre.

[8] *Supra* note 2 at 40.
[9] Ibid, 40.

ii. Supporting independent organizations such as Harmony Mediation Group LLP, Singapore International Mediation Centre, and others.
iii. Charging parties that do not try hard enough to resolve disputes through ADR.
iv. Giving non-resident mediators exemptions from taxes and visa requirements.

Way Forward

1. To avoid conflict, use mediation as an upstream action. By using specialized tools like conflict analysis and multi-track process design, mediation as a conflict prevention strategy prioritizes win-win outcomes. Financial institutions and businesses should utilize conflict mapping and analysis equally to evaluate the likelihood of conflict resulting from development projects and to determine the most effective approaches to manage it.

2. Encourage cooperation between the Bench and the Bar to establish premier mediation organizations. Because judges are the only ones in charge of the court-annexed mediation programs, the mediation programs will naturally and intuitively model themselves along adjudicatory lines. It is critical that managers at mediation centres include mediators who are not judges in order to experimentally differentiate the procedures of mediation from adjudication. The power of such non-judge administrators would not fade over time if there were statutory measures to put them on the administrative panels of mediation centres attached to courts.

3. Make an actual space that is dedicated to the practice. During mediation, mindsets are being transformed. The area ought to be suitable for exchanging private information, actively listening, and peacefully and comfortably making judgments. In the eyes of the litigant, appropriate infrastructure gives the process legitimacy, particularly if the court has put pressure on them to participate.

4. It is admirable that the 13th Finance Planning Commission generously allocated funds for mediation. However, the Central Government's allocation fell under the category of "mediation awareness." This avoided spending for other crucial purposes. The allocation did not correspond with the true need. Unfortunately, since 2015, mediation services have been

severely underfunded due to the State Government's inability to deliver adequate funding.[10] Money is desperately required for improved mediation spaces, and compensation for mediators who have long provided pro bono services, ongoing mediation training, instruction for staff to send appropriate instances to mediation, and instruction for judges to uphold the mediation's and others' spirit.

5. An eye must be kept on the implementation. An agreement struck does not mean that mediation is over. Mediators can interact with the parties on a regular basis to address concerns regarding good faith and the execution of agreements. They can also handle issues that come up during the implementation phase, either directly or indirectly, by promoting contact between the parties.

Conclusion

It is evident that parties would considerably benefit from mediation in a more relaxed setting in nations like Bangladesh, Cuba, and India, where there are numerous pending cases and litigants are often afraid to approach the courts. Following the establishment of a mediation culture by judges and other legal players, the government may begin requiring parties to seek mediation and enforcing it by threatening to impose fines. It is important to consider the cultural and legal variations in the nation while applying the Western mediation model to prevent model failure. For instance, America does not have harsh penalties for mediation failure because of its greater litigation culture. Currently, more than three crore cases are either pending or being tried before the Apex Court, various High Courts, District Courts, CAT, NGT, tribunals, consumer forums, and other judicial bodies in India. Therefore, in the interest of the public, all State and Central governments should encourage the courts to refer cases to mediation or other models of alternative dispute resolution. The primary goal of our Constitution is to deliver justice to the oppressed citizen within a reasonable time and at an affordable cost. Otherwise, it is well-known that delayed justice means denied justice.

[10] Giedre Jokubauskaite and Catherine Turner, Mediation and development-related conflict, iied, (22nd April, 2025, 10:42PM), https://www.iied.org/sites/default/files/pdfs/2022-03/20741IIED.pdf.