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# STUDY OF MEDIATION AS A LEADING MECHANISM FOR SETTLEMENT OF DISPUTE AND ITS CHALLENGES

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T. Srinithi & X. Subashree, School of Law, Chettinad Academy of Research and Education, Kelambakkam

## ABSTRACT

Mediation has emerged as one of the most effective and preferred mechanisms for the amicable settlement of disputes, offering a viable alternative to the traditional adversarial system of litigation. Rooted in principles of neutrality, confidentiality, and voluntariness, mediation encourages parties to engage in constructive dialogue, enabling mutually beneficial outcomes while preserving relationships. This research examines mediation as a leading mechanism for dispute resolution, with a focus on its evolution, procedural framework, and practical application in various fields such as commercial, family, and civil disputes. It also evaluates the legislative and institutional support for mediation in India, particularly under the Mediation Act, 2023<sup>1</sup>, and its alignment with global best practices.

Despite its growing recognition, the study identifies several challenges that hinder the effective implementation of mediation such as lack of awareness, inadequate infrastructure, resistance from legal practitioners, and limited training of mediators. The research further explores how these obstacles can be addressed through policy reforms, institutional capacity-building, and public sensitization initiatives. Ultimately, the study underscores the potential of mediation to strengthen the justice delivery system by promoting access to justice, reducing judicial backlog, and fostering a culture of collaborative dispute resolution.<sup>2</sup>

**Keywords:** Mediation, Alternative Dispute Resolution (ADR), Dispute Settlement, Mediation Act 2023, Judicial Backlog, Challenges, Access to Justice.

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<sup>1</sup> *Mediation Act, 2023.*

<sup>2</sup> Law Commission of India, *Report No. 222: Need for Justice Dispensation through ADR (2009).*

## INTRODUCTION

Dispute resolution has always been an essential aspect of any justice system, ensuring that conflicts are resolved in a fair, efficient, and accessible manner. In recent years, mediation has gained significant importance as a preferred method of Alternative Dispute Resolution (ADR), offering parties a platform to settle disputes amicably without prolonged litigation. It emphasizes consensus, confidentiality, and cooperation, enabling disputing parties to reach mutually acceptable solutions while preserving relationships.

In India, the introduction of the Mediation Act, 2023 marks a transformative step towards institutionalizing mediation and aligning it with global standards. The Act aims to streamline procedures, ensure enforceability of settlement agreements, and promote professional mediation practices. Despite this progress, mediation continues to face challenges such as lack of awareness, insufficient institutional framework, and limited participation by stakeholders<sup>3</sup>.

This study explores the evolution, effectiveness, and challenges of mediation as a leading mechanism for dispute settlement. It also examines how mediation can contribute to reducing judicial backlog, improving access to justice, and fostering a culture of collaborative conflict resolution in India.

## RESEARCH METHODOLOGY

This research follows a doctrinal methodology, focusing on the analysis of laws, judicial precedents, and scholarly writings related to mediation. It is qualitative and analytical in nature, aiming to examine mediation as an effective dispute resolution mechanism under the Mediation Act, 2023. The study relies on secondary sources, including statutes, Law Commission reports, books, journals, and online legal databases. Comparative references to international mediation practices are included to highlight global standards. The methodology helps identify existing challenges and propose reforms to strengthen mediation as a leading mechanism for dispute settlement in India.

## RESEARCH PROBLEM

Despite the growing recognition of mediation as a vital mechanism for alternative dispute

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<sup>3</sup> N. Dutta, "Challenges in Implementation of Mediation in India," (2022) 64 *Journal of the Indian Law Institute* 145.

resolution, its effective implementation in India remains a challenge. Although the Mediation Act, 2023 provides a comprehensive legal framework, several issues hinder its success such as lack of public awareness, inadequate institutional infrastructure, limited training of mediators, and resistance from legal practitioners accustomed to adversarial litigation. Moreover, the voluntary nature of mediation and absence of uniform enforcement mechanisms often reduce its effectiveness. The existing judicial and administrative systems are still overburdened, highlighting the need for stronger adoption of mediation to reduce backlog and promote access to justice. Hence, the research problem lies in analyzing mediation's effectiveness as a leading mechanism for dispute settlement and identifying the challenges that impede its optimal functioning in India.

## **OBJECTIVES**

1. To examine the evolution, concept, and legal framework of mediation as a leading mechanism for dispute resolution in India, with reference to the Mediation Act, 2023.
2. To analyze the practical challenges and limitations faced in the effective implementation and acceptance of mediation as an alternative to traditional litigation.
3. To suggest suitable measures and policy reforms to strengthen the mediation process, enhance public awareness, and promote its wider adoption within the Indian justice system.

## **HYPOTHESES**

Mediation serves as an effective and efficient mechanism for resolving disputes compared to traditional litigation, promoting faster and amicable settlements.

## **SCHEME OF STUDY**

1. Evolution and Legal Framework of Mediation in India
2. Role of Mediators and Ethical Considerations
3. Comparative Study of Mediation in Other Jurisdictions
4. Role and Effectiveness of Mediation

## 5. Challenges in Implementation of Mediation

### EVOLUTION AND LEGAL FRAMEWORK OF MEDIATION IN INDIA

Mediation as a method of resolving disputes has deep roots in Indian tradition. In ancient times, local councils such as panchayats and community elders played a key role in facilitating amicable settlements between disputing parties<sup>4</sup>. These early forms of mediation reflected the values of consensus, harmony, and reconciliation, which continue to underpin the modern concept of mediation.

The formal recognition of mediation within India's legal system began with the Code of Civil Procedure (Amendment) Act, 1999, which introduced Section 89 of the Code of Civil Procedure, 1908 (CPC)<sup>5</sup>. This provision empowered courts to refer disputes to Alternative Dispute Resolution (ADR) methods, including arbitration, conciliation, mediation, and judicial settlement. The Supreme Court of India, in landmark cases such as *Salem Advocate Bar Association v. Union of India* (2003)<sup>6</sup>, emphasized the need for courts to actively promote mediation to reduce pendency and encourage amicable resolution of disputes.

Further institutional support came through the Legal Services Authorities Act, 1987<sup>7</sup>, which facilitated court-annexed mediation through Legal Services Authorities and mediation centers. Over the years, various High Courts established mediation centers under their jurisdiction, such as the Delhi Mediation Centre, which has successfully resolved thousands of cases.

A major milestone in India's mediation landscape is the enactment of the Mediation Act, 2023, which provides a comprehensive statutory framework for mediation. The Act aims to promote institutional mediation, ensure the enforceability of mediated settlement agreements, and establish the Mediation Council of India for regulating and accrediting mediators. It also introduces the concept of pre-litigation mediation, making it mandatory in certain civil and commercial disputes.

Thus, India's mediation framework has evolved from informal community-based mechanisms to a robust, structured, and legally recognized process, aligning with global standards of

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<sup>4</sup> S.K. Sharma, *Alternative Dispute Resolution: Concepts and Concerns* (Eastern Book Company, 2021).

<sup>5</sup> Section 89 of *Code of Civil Procedure*, 1908.

<sup>6</sup> *Salem Advocate Bar Association v. Union of India*, (2003) 1 SCC 49.

<sup>7</sup> *Legal Services Authorities Act*, 1987.

alternative dispute resolution while preserving the country's long-standing culture of peaceful conflict resolution.

## ROLE OF MEDIATORS AND ETHICAL CONSIDERATIONS

Mediators play an essential role in ensuring that the mediation process is fair, balanced, and effective. They act as neutral facilitators who help disputing parties communicate, identify common interests, and arrive at mutually acceptable solutions without resorting to litigation. Their role is to guide, not to judge, and to create an atmosphere that fosters trust, cooperation, and understanding. A mediator's skill, impartiality, and ethical conduct largely determine the success of mediation proceedings<sup>8</sup>.

### Main Roles of Mediators:

- **Facilitator of Communication:** The mediator promotes open and respectful dialogue between parties, ensuring each side is heard. By managing discussions effectively, the mediator helps reduce tension and keeps the conversation focused on problem-solving<sup>9</sup>.
- **Neutral and Impartial Third Party:** Maintaining neutrality is fundamental. The mediator must not favor any party and should ensure that both sides feel equally respected and understood throughout the process.
- **Clarifier of Issues and Interests:** The mediator helps parties identify the root causes of their dispute and clarifies misunderstandings. This enables the parties to focus on their real interests rather than rigid positions.
- **Promoter of Cooperation and Understanding:** The mediator encourages collaboration and empathy, helping the parties move from confrontation to cooperation and fostering a spirit of compromise<sup>10</sup>.
- **Problem Solver and Negotiation Guide:** Mediators assist parties in exploring various settlement options, evaluating their feasibility, and guiding them toward creative and balanced solutions.
- **Custodian of Confidentiality:** Confidentiality is a key principle of mediation. The mediator ensures that all information shared during the sessions remains private, which promotes honesty and openness in discussions.

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<sup>8</sup> Law Commission of India, *Report No. 222: Need for Justice through Mediation and Conciliation* (2009).

<sup>9</sup> Sriram Panchu, *Mediation: Practice and Law – The Path to Successful Dispute Resolution* (LexisNexis, 2011).

<sup>10</sup> Mediation Council of India, *Draft Code of Ethics for Mediators* (2023).

- **Ethical and Professional Conduct Enforcer:** Mediators must act with integrity, fairness, and professionalism. They should disclose any conflict of interest and withdraw if impartiality cannot be maintained.

### **Ethical Considerations:**

Ethical considerations form the foundation of effective and credible mediation practice. Mediators must uphold the core principles of neutrality, confidentiality, integrity, competence, and voluntary participation<sup>11</sup>. They are expected to remain impartial and avoid any conflict of interest that could influence the outcome of the mediation. Confidentiality must be strictly maintained, as it fosters trust and encourages open dialogue between parties. Mediators should ensure that all parties participate voluntarily, without coercion or undue influence. They must possess adequate training, professionalism, and emotional intelligence to handle sensitive situations fairly. Upholding these ethical values is essential to maintain public confidence in the mediation process<sup>12</sup>. The Mediation Act, 2023 and the guidelines of the Mediation Council of India further reinforce the importance of ethics, mandating accountability and transparency to ensure that mediation serves as a just, balanced, and trustworthy mechanism for dispute resolution.

## **COMPARATIVE STUDY OF MEDIATION IN OTHER JURISDICTIONS**

Comparative analysis of mediation frameworks abroad highlights diverse approaches to institutionalisation, enforceability, accreditation, and court integration offering lessons for strengthening India's mediation ecosystem.

### **India**

In India, mediation has evolved significantly from informal community-based practices to a recognized legal mechanism. Initially promoted under Section 89 of the Code of Civil Procedure, 1908, courts began referring disputes for settlement through mediation. Judicial support, particularly from the Supreme Court of India and High Courts, (*Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co*)<sup>13</sup> led to the establishment of court-annexed mediation centers. The landmark Mediation Act, 2023 institutionalized mediation as a formal and

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<sup>11</sup> The Mediation Act, 2023, Chapter IV – Duties and Responsibilities of Mediators.

<sup>12</sup> Mediation Council of India, *Ethical Standards for Mediators*.

<sup>13</sup> *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*, (2010) 8 SCC 24.

enforceable process, providing for pre-litigation mediation, the establishment of the Mediation Council of India, and the enforceability of mediated settlement agreements<sup>14</sup>. Despite this progress, challenges remain, such as lack of awareness, inconsistent training standards, and limited infrastructure. However, with statutory recognition and judicial encouragement, India's mediation system is now aligned with global practices and has the potential to ease judicial burdens and promote consensual justice.

## United Kingdom

The United Kingdom has established a robust and well-structured framework for mediation as part of its Alternative Dispute Resolution (ADR) system. The Civil Procedure Rules (CPR), Part 31<sup>15</sup>, emphasize that parties must consider ADR before approaching the courts. Courts can impose cost sanctions on parties who unreasonably refuse mediation, thereby incentivizing early settlement. Mediation in the UK operates both in court-annexed and private formats, and settlements reached can be enforced as consent orders or contractual agreements. Professional bodies such as the Centre for Effective Dispute Resolution (CEDR) and the Chartered Institute of Arbitrators (CI Arb) maintain mediator accreditation, ethical standards, and training<sup>16</sup>. This model effectively integrates judicial support with professional self-regulation, ensuring accessibility, cost-efficiency, and party autonomy in dispute resolution.

## United States

The United States pioneered the institutionalization of mediation as an integral part of its justice system. Under the Alternative Dispute Resolution Act of 1998<sup>17</sup>, all federal district courts must provide ADR programs, including mediation. Both court-annexed and private mediation systems operate across states, with common principles of voluntariness, neutrality, and confidentiality. The Uniform Mediation Act (2001)<sup>18</sup> harmonizes state laws by protecting the confidentiality of mediation communications. The American Bar Association (ABA) has issued Model Standards of Conduct for Mediators (2005)<sup>19</sup>, outlining ethical duties of impartiality, competence, and fairness. The U.S. experience reflects the benefits of a pluralistic,

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<sup>14</sup> *The Mediation Act, 2023* (No. 28 of 2023), Ministry of Law and Justice, Government of India.

<sup>15</sup> Civil Procedure Rules (UK), Part 31, Ministry of Justice, United Kingdom.

<sup>16</sup> Centre for Effective Dispute Resolution (CEDR), *Annual Report on Mediation Practice, 2022*.

<sup>17</sup> *Alternative Dispute Resolution Act of 1998*, 28 U.S.C. §§ 651–658.

<sup>18</sup> *Uniform Mediation Act (2001)*, National Conference of Commissioners on Uniform State Laws, USA.

<sup>19</sup> American Bar Association, *Model Standards of Conduct for Mediators (2005)*.

decentralized approach that balances legal structure with flexibility, encouraging innovation and efficiency in dispute resolution.

## **ROLE AND EFFECTIVENESS OF MEDIATION**

Mediation serves as a cornerstone of modern dispute resolution, offering an alternative to lengthy and adversarial court proceedings. Its primary role is to facilitate communication between disputing parties through the guidance of a neutral mediator who assists them in reaching a voluntary, mutually acceptable settlement. The mediator does not impose a decision but enables constructive dialogue, helping parties identify their interests, clarify misunderstandings, and generate creative solutions.

The process emphasizes confidentiality, flexibility, and party autonomy, ensuring that participants maintain control over both the process and the outcome. Mediation is particularly effective in preserving relationships such as in family, business, or community disputes where continued interaction between the parties is necessary. Courts in many jurisdictions increasingly refer cases to mediation to reduce backlog and promote speedy justice, recognizing its potential to ease judicial congestion.

Empirical studies indicate that mediation achieves high success rates, with parties more likely to comply voluntarily with mediated agreements than with court judgments. Its cost-effectiveness, efficiency, and ability to address emotional as well as legal dimensions of disputes contribute to its growing acceptance globally. In India, the Mediation Act, 2023 has reinforced mediation's institutional role by mandating pre-litigation mediation and recognizing settlement agreements as legally enforceable. Thus, mediation stands as a bridge between formal adjudication and informal negotiation, embodying the principles of restorative and consensual justice.

## **CHALLENGES IN IMPLEMENTATION OF MEDIATION**

Although mediation has emerged as a vital alternative to traditional litigation, its effective implementation continues to face several obstacles in India and other jurisdictions. Despite legislative support through the Mediation Act, 2023, the system still struggles with issues related to awareness, professional standards, cultural perceptions, and institutional infrastructure. These challenges hinder the growth of mediation as a trusted and accessible mechanism for dispute resolution. Addressing these barriers requires not only legal reform but



also societal acceptance, capacity building, and sustained government and judicial initiatives to strengthen mediation's credibility and accessibility.

- **Lack of Public Awareness**

Most people are unaware of mediation's benefits and continue to perceive courts as the only legitimate forum for justice.

- **Inadequate Training and Accreditation**

Absence of uniform standards for mediator education and accreditation affects the quality and consistency of mediation services.

- **Cultural and Attitudinal Resistance**

Social beliefs that compromise equals weakness discourage parties from opting for mediation.

- **Limited Institutional Infrastructure**

Insufficient mediation centers and lack of government funding restrict accessibility, especially in rural areas<sup>20</sup>.

- **Ethical and Professional Concerns**

Mediators often face challenges in maintaining neutrality, confidentiality, and party autonomy.

- **Enforceability of Settlement Agreements**

Despite the Mediation Act, 2023, practical difficulties remain in enforcing mediated settlements and ensuring compliance.

- **Judicial and Lawyer Reluctance**

Some judges and lawyers prefer litigation due to conventional practices or professional

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<sup>20</sup> National Legal Services Authority (NALSA), *Mediation Awareness and Training Report, Government of India (2022)*.

interests, slowing mediation's adoption.<sup>21</sup>

## SUGGESTIONS AND RECOMMENDATIONS

To strengthen mediation as an effective and reliable mechanism for dispute resolution in India, a comprehensive and multi-dimensional approach is essential. While the Mediation Act, 2023 provides a strong legislative foundation, several practical and institutional measures are needed to enhance its implementation, public acceptance, and long-term sustainability.

### Key Suggestions and Recommendations:

- **Enhancing Public Awareness:**

Widespread awareness campaigns through educational institutions, legal aid programs, and media initiatives should be undertaken to familiarize citizens with the advantages of mediation.

- **Professional Training and Accreditation:**

Establishing standardized training programs and accreditation systems for mediators under the Mediation Council of India will ensure professional competence, neutrality, and ethical conduct.

- **Integration with the Judicial System:**

Courts should encourage pre-litigation mediation and refer appropriate cases to mediation cells to reduce judicial backlog and promote early settlement.

- **Strengthening Institutional Framework:**

Government and private sectors should collaborate to create well-equipped mediation centers across urban and rural areas, ensuring accessibility and affordability for all.

- **Ensuring Enforceability of Settlement Agreements:**

Clear procedural guidelines must be framed to ensure that mediated settlements are

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<sup>21</sup> Goldberg, Stephen B., *Dispute Resolution: Negotiation, Mediation, Arbitration, and Other Processes*, 6th ed. (Aspen Publishers, 2020).

binding, enforceable, and recognized across jurisdictions.

- **Encouraging Cultural Acceptance:**

Efforts should be made to change societal attitudes toward compromise and dialogue through community-based programs and inclusion of mediation concepts in educational curricula.

- **Ethical and Professional Oversight:**

The Mediation Council of India should monitor ethical compliance, maintain a code of conduct for mediators, and address complaints of misconduct or bias.

- **Use of Technology:**

Online dispute resolution (ODR) platforms can be promoted to make mediation accessible, especially in remote areas, ensuring cost-effective and time-efficient outcomes.

By implementing these recommendations, India can move toward establishing a robust, trustworthy, and accessible mediation ecosystem that complements the formal judicial process and strengthens the culture of peaceful dispute resolution.

## **CONCLUSION**

Mediation has emerged as a cornerstone of modern dispute resolution, offering a constructive, cost-effective, and time-efficient alternative to conventional litigation. It promotes dialogue, cooperation, and mutual understanding values that are often lost in adversarial court proceedings. The enactment of the Mediation Act, 2023 marks a significant milestone in institutionalizing mediation in India by providing a clear legal framework, ensuring enforceability of settlement agreements, and enhancing public trust in the process. However, the successful realization of mediation's potential depends on overcoming challenges such as lack of awareness, limited training of mediators, and cultural resistance to non-adversarial resolution.

To achieve this, continuous efforts must be made to integrate mediation into the justice delivery system, expand its accessibility through online and community mediation, and promote ethical and professional standards. Building a culture of consensus and collaboration will not only

reduce judicial burden but also strengthen social harmony and confidence in justice. In essence, mediation represents not merely a procedural reform but a shift toward a more humane and participatory justice system one that values dialogue over discord, understanding over victory, and resolution over confrontation.

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