
OBLIGATION OF SETTLEMENT: ADVANTAGES AND PITFALLS OF MANDATORY MEDIATION FROM A GLOBAL NORTH PERSPECTIVE

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Introduction

Most nations consider access to justice a fundamental right, generally enshrined in their respective constitutions. However, defining the terms ‘access’ and ‘justice’ succinctly is an arduous task. Furthermore, legal systems worldwide find it even more difficult to enforce the letter in the spirit, primarily because the term ‘access to justice’ is rooted in contradiction, as access alone does not necessarily ensure justice (Vettori, 2015). At best, access to justice is diminished; at worst, it is denied altogether because legal systems are inherently complex and plagued by issues such as delay, costs, uncertainty, interference, and unethical practices. In the modern era, mediation is generally considered a one-stop solution to all these problems and a means of achieving access to justice.

Black’s Law Dictionary has defined mediation as “*A method of non-binding dispute resolution involving a neutral third party who tries to help the disputing parties to reach a mutually agreeable solution.*” (Garner & Black, 2014). The foundational design of mediation involves voluntariness at its core. A directive of the European Parliament was issued to streamline some aspects of mediation in civil and commercial matters in EU states, which mandated mediation to be a voluntary process, but paragraph 14 of the said directive allowed the states to enact legislation making mediation compulsory, provided that the parties right of access to justice is not hampered (Roşu, 2010). This contradiction is significant because it forms the crux of the argument this paper aims to address – an issue Professor Anderson raised almost two decades ago: whether mandatory mediation is an oxymoron, given its clash with the voluntary nature of the process (Queck Anderson, 2025). Since then, many nations have enacted statutes which incorporate mandatory mediation. As a result, the debate over the necessity of mandatory Alternative Dispute Resolution (ADR) has been reignited. This paper will first discuss the different types of mandatory mediation practices and later trace the origins of mandatory

mediation, and dissect its efficacy and shortcomings by analysing its impact on the legal systems of developed economies across three continents, adopting a bird's-eye view. Because sometimes *distance allows you to see the trees as well as the forest*.

Can compulsion be defined? If not, what are the different forms of compulsion?

The concept of compulsion can be complex to define. Because it is difficult to determine the threshold of compulsion. Can *ex post facto* court-ordered costs for failing to mediate in good faith, or for non-compliance with a judicial order to undergo mediation, be labelled as compulsion? If the latter does amount to compulsion, then at which stage or how are the parties supposed to comply with such directions? (Bartlet, 2019) If costs cannot be imposed, then how can an obligation be imposed on the parties to explore ADR before going to court? All the aforesaid questions have no definitive answers. Some scholars lament that the threshold of compulsion is already crossed by the aforesaid actions (Ahmed, 2012).

In 2017, the Civil Justice Council (CJC) in England published an interim report on the future role of ADR. The said report categorises compulsion into three types broadly: (1) A mandatory requirement on all parties to attempt ADR in all cases or certain types of cases as a prerequisite to approach a court (**Type 1**); (2) A mandatory requirement for the parties to attempt ADR after commencing proceedings like Pre-Trial Conferences (PTCs) (**Type 2**); (3) Powers being conferred upon the court to remand the matter for compulsory ADR at any stage despite the unwillingness of the parties (**Type 3**) (2017, Section 8). There is another type of mandatory mediation that the aforesaid report doesn't discuss: a mandatory mediation clause in a contract (**Type 4**). However, the debate regarding the enforceability of such clauses is another topic which this paper wouldn't delve into. In modern-day legal systems, we see a mixture of all the aforesaid types of mandatory mediation.

Brief history and framework of mandatory Mediation in the United States, United Kingdom and Singapore

Scholars suggest that the concept of using ADR as a method to overcome the crisis faced by civil justice systems originated in the Western world in the 1970s, particularly from the third wave of the access-to-justice movement (Queck Anderson, 2025). In the United States, the Pound Conference held in 1976 ushered in a spate of judicial reforms and is considered to be the genesis of court-connected mediation. Apart from Chief Justice Burger, who was one of

the leading advocates of ADR at that point in time, Professor Frank Sander of Harvard Law School stood out for his keynote address in which he proposed the classification of disputes in different categories, based on which the appropriate forum should be decided (Farcas & Traum, 2017). The story of modern ADR is grounded in Sander's assertion, as courthouses in developed jurisdictions are no longer centres for litigation but multi-door institutions where parties can find different resources to effectively resolve their disputes. Pursuant to the Pound Conference, courts began actively directing parties to participate in settlement conferences to resolve civil disputes at the pre-litigation stage (Streefer-Schaefer, 2001). In 1989, the Court of Appeals (CA) of the Seventh Circuit, in a landmark decision, upheld the authority of the courts to mandate pre-trial settlement conferences and to compel party representatives to attend them (*G. Hellman Brewing v. Joseph Oat Corp.*, 1989). A decade later, the Alternative Dispute Resolution Act of 1998 was enacted by Congress to regulate court-mandated mediation in all civil disputes, interestingly including bankruptcy proceedings. This act allows district courts flexibility in using ADR mechanisms to resolve disputes, and specifically grants them the power to refer parties to mandatory mediation (Swanson, 2021). Since then, various states have enacted statutes that confer similar powers on courts, depending on the nature of the disputes.

In the UK, though, mediation has long existed in commercial, community, and family disputes; however, the practice of mandatory mediation remains comparatively restricted and underdeveloped. The Report of Lord Woolf (Wolf Reforms) in 1996 pushed the idea of using ADR as an antidote to the toxins of the judicial process, and ultimately paved the way for the enactment of the new Civil Procedure Rules in 1998 (Clark, 2022). The new rules did encourage greater use of mediation and other ADR practices, but remained silent on mandatory mediation. In fact, Lord Woolf, in his report, himself suggested that ADR should be promoted but not mandated (Clark, 2022). Mandatory mediation has also faced judicial obstructions in the UK, despite the courts initially flirting with the idea at the turn of the century. In *Shokusan v. Danovo*, Justice Blackburne, after laying emphasis on three prior judgments, including one delivered by the CA (*Guinle v Kirreh*, 2000; *Muman v Nagasena*, 2000; *Cable & Wireless Plc v IBM U.K.*, 2002), held that even if one party is unwilling to mediate a dispute, the court can order it to do so. In the Dunnett case (*Dunnett v Railtrack PLC*, 2002), it was held that if parties participate in mediation without good faith, costs could be imposed. But the effect of all the aforesaid judgments was reversed in 2004 by the CA, when Lord Dyson obiter held that “to oblige truly unwilling parties to refer their disputes to mediation would be to impose an unacceptable obstruction on their right of access to court” (*Halsey v. Milton Keynes*, 2004).

Halsey was widely criticised and, since then, overturned by the CA in a recent judgment wherein it was held that the courts can mandatorily direct parties to engage in ADR, including mediation, before continuing with litigation (*Churchill v Merthyr Tydfil County Borough Council*, 2023). Many developments had taken place after *Halsey*, and repeated judgments by the CA in the last decade were knocking on the door of mandatory mediation, by holding and reaffirming that refusal to engage in good-faith mediation could invite costs (*PGF v. OMFS Company*, 2013; *Gore v. Naheed*, 2017). It is imperative to note that multiple reports of CJC in a span of four years (2017-2021) have taken contrary positions, initially resisting the idea of mandatory mediation to ultimately proposing it. The contradiction reflects the UK's foundational confusion regarding the concept of mandatory mediation. Finally, the floodgates have opened, and the Ministry of Justice's 2022 proposal to have automatic mediation for small-cause claims has also now come into effect (Colston, 2024). Nonetheless, unlike many states in the USA, the prevailing legislation and case law do not mandate compulsory pre-litigation mediation in the UK.

In Singapore, as in the UK, the foundation for developing a comprehensive ADR framework was laid in the mid-1990s by the then Law Minister S Jayakumar, who established an ADR Committee to review the prevailing system and recommend reforms to promote the use of ADR in Singapore (Jha & Lim, 2023). Interestingly, even before the aforesaid committee was established, the Singaporean judiciary, headed by the visionary Chief Justice Yong, had already started promoting ADR by introducing Subordinate Courts (which were not courts but fully functional ADR centres) and PTCs in which the registrar evaluated the dispute and, if appropriate, encouraged the parties to negotiate (Queck Anderson & Shiraz, 2018). The High Court and State Courts later formalised PTCs in 1996 by introducing a new provision, Order 34A, into the Rules of Court (Pinsler, 1996). This can be unofficially termed as the origin of mandatory mediation in Singapore, though PTCs are distinct from mediation. After the ADR Committee presented its report, many changes took place in the late 90s, such as the establishment of Community Mediation Centres. Since then, Singapore has not looked back. In the year 2007, new protocols were enacted by the Subordinate Courts for malpractice cases, making pre-action negotiation 'almost' compulsory for doctors and patients (KB Tan, 2007). In 2010, mediation was made compulsory in all civil disputes until the parties opt out; however, such refusal can result in costs, as in the UK and United States. The Supreme Court also took similar steps in 2013 and introduced a system known as the 'ADR offer', under which costs can be imposed if the offer is declined by the parties. In matrimonial disputes as well, a couple

filing for divorce with a child under 21 years of age must mandatorily undergo mediation and counselling (Queck Anderson & Shiraz, 2018). The Mediation Act, introduced in 2017, like the American ADR Act, allows courts to stay proceedings and direct parties to resolve disputes by mediation. The Community Dispute Settlement Act was recently amended to make mediation mandatory in neighbourhood disputes.

Pros and cons of mandatory mediation from a comparative perspective

In the UK, the interim report of the CJC on ADR also analysed the pros and cons of mediation in detail (2007, Section 8). The advantages of mandatory mediation, as per the said report, were as follows:

- Mandatory mediation is “*capable of conferring huge benefits*” on both the disputing parties and the civil justice system.
- Voluntary mediation is “*disappointingly slow and small*”, and the message of mediation can only be spread widely by acting on it rather than just learning it.
- Even though a settlement is not guaranteed, there is a high likelihood of success unless one party is obsessive about not settling.
- If the parties are given an option to decide on mediation, they will focus more on the tactical and positional aspects of using/abusing mediation to their advantage.
- The parties are not under an obligation to settle, but to participate in good faith. Parties always have the option of returning to court if they are not satisfied, by paying costs or incurring some delay.
- There is no evidence that shows a decreasing settlement rate due to mediation being compulsory.
- Sometimes, parties are relieved when mediation is compulsory, because if they propose it otherwise, the opposing party might construe it as a sign of weakness.

The arguments against mandatory mediation were as follows:

- It is against the voluntary nature of mediation.

- Unwilling parties have to undergo unfamiliar processes, which reduces the chances of successfully resolving disputes.
- The costs of mediation will be borne by the parties or the state, and there is a high chance of it being wasted.
- The costs will be disproportionate, given that the mediation is being made mandatory to reduce caseload and target low and middle-value disputes. Charging a small amount for small disputes can also be considered very high.
- Privilege issues can lead to a lack of good faith participation, ultimately resulting in failure.
- Mandatory mediation does not help in cases that have non-participating respondents.

The interim report broadly captures the pros and cons of mandatory mediation, but the applicability and impact of the aforementioned advantages and disadvantages may vary across jurisdictions. In the USA, a 2018 study analysed the efficacy of court-annexed mandatory mediation across 12 courts in different jurisdictions, and the results demonstrated a very high pre-trial settlement rate (Shaffer, 2018). The 2017 statistics from the California Central District Court show that 58% of cases were resolved on the first day; this number jumps to 63.7% within 60 days of the mediation. The numbers for 2016 are even better, reflecting an impressive 82.6% settlement rate. Colorado State Courts show similar statistics. Approximately 98% of total cases registered were sent to mandatory mediation from 2016 to 2019, and the success rate has remained between 55% and 60%. The settlement rate of mandatory mediation cases in the New York Southern District Court rose from 52% in 2017 to 61% in 2019 despite the number of cases being referred to mediation increasing (Noakes, 2019). The main problem with the system of mandatory mediation in the USA is non-uniformity; not all states have mandatory court-attached mediation. In fact, in some states, mediation is entirely voluntary. Also, most state statutes have not defined the threshold for participation in mandatory mediation, and courts construe 'good faith' differently across jurisdictions. Studies also suggest that the delays in court proceedings have not significantly reduced after the introduction of mandatory mediation (Streeter Schaefer, 2001).

The statistics of Small Claims in the UK in the period between 2019 to 2025 show that a total of 2,50,890 small claims were referred to mediation, out of which mediation took place in 1,25,316 cases, and settlement was reached in 64000 cases at an average settlement rate of 47.88%. The numbers demonstrate a worrying trend, as the settlement rate has fallen from 62% in 2019 to 40% in 2025. Since the introduction of mandatory mediation for small claims in 2024, the settlement rate has been 40% (HMCTS, 2025). These statistics clearly show that the settlement rate was higher in the UK when mediation in small claims was voluntary. Further, the data suggest that of the 47,809 claims referred to mediation from April 2024 to January 2025, only 29,551 have been mediated, resulting in a referral rate of 61.81%. This is amplified by the fact that data also signifies that the average time to refer a matter to mediation is increasing (HMCTS, 2025). Based on these statistics, it can be argued that the UK has not developed the requisite infrastructure to handle so many mandatory mediation cases. It may be due to a lack of mediators or proper facilities for conducting mediations. In such a scenario, UK would face challenges in reversing the trend amid growing small-cause claims. Although it is too early to draw conclusions, as mediation was only made mandatory for small claims three years ago.

In 2011, Singapore established the Child Focused Resolution Centre (CFRC) to reduce the burden on the Family Justice Courts (FJC), which hear the largest volume of cases in Singapore, by making mediation and counselling mandatory for couples filing for divorce who have at least one child under 21 years of age (initially 8 years, then 14 years and now 21 years). Statistics point towards a reduction in delays in disposing of divorce cases. In 2012, 42% of divorce cases were disposed of within the same year; the disposal rate increased to 74% in 2016. Additionally, in 2016, 80% of the cases referred to CFRC were either partially or completely settled (Chai Chin, 2017). In 2017, the settlement rate at FJC jumped to 86%. State Courts in Singapore have the power to refer small claims for mediation. From 2014 to 2017, approximately 10,700 small claims cases were filed, of which half were mediated, with a settlement rate over 75% (Ang Saw Ean, 2018). Mediation is also compulsory in employment disputes since 2017, and as a prerequisite for filing claims before the Employment Claims Tribunal (ECT), disputes are sent to the Tripartite Alliance for Dispute Management (TADM) for mediation. Statistics are beyond impressive. In 2024, 80% of claims were resolved by TADM and didn't proceed to ETC. Furthermore, 90% of salary claims and 86% of wrongful dismissal claims were resolved (Ministry of Manpower, 2025). Even though Singapore's shift towards ADR was late compared to the Western world, it is by far the most advanced

jurisdiction in terms of its ADR framework, particularly from the perspective of mandatory mediation. The UK and Singapore have had similar journeys in making mandatory mediation part of their legal systems, but there is a significant distinction: Singapore has a robust framework of laws and rules governing mandatory mediation, whereas the UK still largely follows guidelines laid down in case law, making the process unsystematic.

Conclusion

The statistics across three jurisdictions clearly establish that mandatory mediation is more beneficial than detrimental for legal systems, and *compulsion for mediation is distinct from compulsion in mediation*. However, efficacy depends directly on the manner of administration. Singapore is the leading jurisdiction because, apart from a robust framework, it has a pool of quality mediators, uniform laws, and high-quality private institutions used by courts for mediation. Lastly, more creative solutions shall be devised and incorporated into statutes to make mandatory mediation seem attractive rather than coercive, such as removing the negative cost obligation and imposing a positive obligation by significantly reducing the court filing fee if parties choose pre-litigation mediation.

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