
ANCHORING PEACE: THE COMPARATIVE ANALYSIS OF MEDIATION IN RESOLVING MARITIME DISPUTES

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Introduction

Mediation

Mediation as a form of Dispute Resolution Method is something which isn't new in the world. Although it has gained its importance and boost in today's time, but has been around since the time of the Mahabharata, where it is believed that Lord Krishna played a vital role as a Mediator in disputes between the parties, although some may consider his role as a facilitator of the war waged between the Pandavas & Kauravas.

While diving into the definition of Mediation, we find that-

- **As per Black's Law Dictionary¹**- 'It 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'
- **As per Cambridge Dictionary²**- 'It is the process of talking to two separate people or groups involved in a disagreement to **try to help them to agree or find a solution to their problems.**'

While further simplifying the definition of the same, Mediation is merely a manner where the parties with **mutual consent** appoint **neutral mediators** who help the parties in **finding solutions to the problems faced by reaching a compromise** and a middle ground as a solution which is amicable to both the parties. The main objective of mediation is to **facilitate dialogue between the parties** in dispute and try and give them a chance to resolve their disputes to reach

¹ Black's Law Dictionary, Eighth Edition, Brayan Garner, South Asian Edition, Thomson Reuters Publication, p.n. 1003

² See <https://dictionary.cambridge.org/dictionary/english/mediation>

a settlement.

Mediation as a tool is highly efficient as a tool of dispute resolution and is popular amongst all parties as it has all important characteristics such as that of being- **affordable, impartial, time saving**³. Some major features of Mediation are-

- **Non-Binding Nature:** The mediator in a mediation process **cannot compel the parties to accept the conclusion**, unlike to the role played by an arbitrator or a judge. A mediator does not make decisions and is only responsible to serve as middle person between the disputing parties.
- **Confidential Procedure:** The disputing parties **cannot be forced to provide any private information during mediation**. However, any confidential material that a party **voluntarily discloses** in order to negotiate a settlement cannot be produced in court or arbitration and cannot be disclosed with third parties.
- **Interest Based Procedure:** The parties in this method, put their interests ahead and accordingly talk and decide on the solutions for their issues put forth by them.

As had also been stated by the Former Chief justice of India, Dr. Dhananjaya Y. Chandrachud- **‘Mediation at one level of perception is a means of avoiding the pitfalls of litigation’**⁴

Literature review

1. Zi Ding⁵

The paper lacks specific case analyses that illustrate how legal instruments like UNCLOS are applied in real-world disputes, making the findings less grounded. Non-state parties that play increasingly important roles in marine conflicts—such as local communities, environmental NGOs, and commercial stakeholders—are not discussed. Additionally, the paper skims the surface of enforcement difficulties without going into detail about procedures or compliance concerns, especially the application of decisions

³ Shray Mehta, 'Mediation for Maritime Disputes in India' (2018) 1 Int'l JL Mgmt & Human 176

⁴ Chandrachud.D. (n.d.).Mediation. Retrieved October 23, 2018, from Law Commission of India: <http://www.sci.gov.in/pdf/mediation/MT%20MANUAL%20OF%20INDIA.pdf>

⁵ Ding Z, 'Maritime Disputes from a Global Perspective and Solutions under International Law' (*Lecture Notes in Education Psychology and Public Media*, 31 August 2024)

made by arbitral tribunals or organizations like ITLOS. Furthermore, despite their increasing importance, new problems like deep-sea mining, cybersecurity concerns, and boundary shifts brought on by climate change are not taken into account.

2. Charles L. Measter, Peter Skoufalos⁶

The article “The Increasing Role of Mediation in Resolving Shipping Disputes” provides a comprehensive exploration of how mediation is emerging as a cost-effective, relationship-preserving alternative to arbitration and litigation in the maritime sector. There are, nevertheless, a number of obvious gaps in the literature. The article lacks solid empirical or statistical analysis, especially about the success rates of mediation in particular kinds of maritime disputes, despite being abundant in anecdotal evidence and industry trends. Additionally, it doesn't sufficiently examine the viewpoints of minor maritime participants.

3. Shray Mehta⁷

The article provides a basic summary of the benefits and difficulties of resolving maritime disputes in India through mediation. Nonetheless, the research identifies a number of significant gaps. Most significantly, it does not compare with international mediation frameworks, leaving out the ways in which other maritime countries govern, encourage, and uphold mediation outcomes. This may assist India find best practices. The paper's claims are primarily theoretical because it provides no case study-driven proof or empirical data beyond a few court-referred mediation scenarios.

4. Charvet, Kathleen K.; Waterman, Heather A.⁸

The Article provides a thorough summary of significant federal appellate and U.S. Supreme Court rulings pertaining to admiralty jurisdiction, personal injury, arbitration, marine commercial claims, and vessel operations is provided in this article. Nonetheless, the research identifies a number of gaps. Without doing a comparative analysis of how comparable legal issues are handled worldwide, particularly in civil

⁶ Charles L. Measter & Peter Skoufalos, 'The Increasing Role of Mediation in Resolving Shipping Disputes' (2002) 26 Tul Mar LJ 515

⁷ Shray Mehta, 'Mediation for Maritime Disputes in India' (2018) 1 Int'l JL Mgmt & Human 176

⁸ Kathleen K. Charvet & Heather A. Waterman, 'Recent Developments in Maritime Law' (2004) 28 Tul Mar LJ 375

law marine states or under UNCLOS frameworks, the article is primarily jurisdiction-specific and only discusses the United States. Additionally, it places a strong emphasis on case law developments, but it falls short in discussing the consequences for international treaties, developing maritime technologies, and non-litigation alternatives like mediation. Furthermore, there is no discussion of the implications of private international law in cross-border marine disputes, and the article does not address the growing significance of cybersecurity and environmental issues in maritime law.

5. Manciaux, Sebastien⁹

The article provides a thorough examination of the institutional, procedural, and historical interactions between arbitration and mediation in investment disputes, emphasizing both their complimentary and competitive aspects. Nonetheless, there are still significant gaps in the literature. In order to put its theoretical assertions into practice, the study does not offer empirical data on the results or success rates of mediation in contrast to arbitration in investment conflicts. Furthermore, it doesn't thoroughly examine how new international legal frameworks, such as the Singapore Convention on Mediation, would affect mediation's enforceability and practical appeal. Party-level decision-making dynamics, such as investor or state reasons for selecting one approach over another, are not taken into account in this discussion, which is primarily treaty- and institution-focused.

6. Goldberg, Stephen B.; Green, Eric D.; Sander, Frank E. A.¹⁰

The article provides an engaging and useful examination of the relative benefits of mediation, arbitration, and litigation in business disputes. There are a number of significant gaps in the literature, though. The discussion is anecdotal and takes place in a dramatized legal practice setting; it lacks empirical evidence or a more comprehensive doctrinal analysis to back up its assertions regarding the effectiveness, cost, and success rates of various dispute resolution techniques. It ignores how outcomes are impacted by elements like power disparities, cultural concerns, and party autonomy, especially in cross-border or multi-jurisdictional contexts. Furthermore, there is no mention of

⁹ Sebastien Manciaux, 'Mediation or Arbitration for the Settlement of Investment Disputes: Rivalry and/or Complementarity?' (2019) 2019 Int'l Bus LJ 657

¹⁰ Stephen B. Goldberg, Eric D. Green & Frank E. A. Sander, 'Litigation, Arbitration or Mediation: A Dialogue' (1989) 75 ABA J 70

international agreements in the discussion, which restricts its applicability to complicated or worldwide business conflicts.

7. Jacqueline Nolan Haley¹¹

The article examines how mediation has evolved, often taking on adversarial characteristics more typical of arbitration, particularly as legal professionals increasingly dominate mediation settings. Nevertheless, a number of gaps in the literature are apparent despite its depth. In order to determine if this trend is universal, the essay primarily focuses on the U.S. setting and does not include comparative analysis of how legal mediation functions in other legal cultures or jurisdictions. Additionally, it ignores how community-based or culturally grounded mediation systems are bucking or adjusting to these developments in favor of focusing solely on court-connected and legal mediation. Although it raises ethical concerns about role confusion and lawyer-driven mediation, it does not offer any specific regulatory changes or substitute models for mediators' and attorneys' training.

8. Hiram R. Cancio¹²

The article observes mediation's role in labor disputes, particularly in the context of political pressures and government intervention in the United States and Latin America. However, there are a number of gaps in the literature. Due to its historical and regional limitations, the approach provides limited interaction with contemporary mediation theory, changing institutional frameworks, and empirical assessments of mediation results across time. The Singapore Convention on Mediation and other recent international developments and legal instruments are not compared in this article. Furthermore, it ignores the impact of digitalization and online dispute resolution processes, as well as the evolution of mediation in fields other than labor disputes.

9. Mariya Zhomartkyzy¹³

The article provides a broad and well-organized overview of mediation's importance in

¹¹ Stephen B. Goldberg, Eric D. Green & Frank E. A. Sander, 'Litigation, Arbitration or Mediation: A Dialogue' (1989) 75 ABA J 70

¹² Hiram R. Cancio, 'Some Reflections on the Role of Mediation' (1959) 10 Lab LJ 720

¹³ M. Zhomartkyzy, 'The Role of Mediation in International Conflict Resolution' (2023) 2023 Law & Safety 169

resolving international disputes, supported by historical examples and thematic analysis of mediation strategies, challenges, and principles. Nonetheless, there are still a number of significant gaps in the research. Comparative analysis of mediation results across various legal systems and cultural contexts is lacking in the article, which is crucial in global contexts where standards and expectations differ. One of the main drawbacks of mediation covered in the paper is enforceability, which is addressed by new legal instruments like the Singapore Convention on Mediation, however there is little interaction with them. Furthermore, although several mediation techniques are discussed, there isn't much empirical analysis or data-driven understanding of which techniques work best in particular geopolitical or conflict situations.

10. Calkins, Richard M.¹⁴

In order to support the adoption of mediation based on the U.S. experience, the paper offers a thorough comparative examination of the Indian and American legal systems. Nonetheless, a number of gaps in the literature are apparent. First off, although the paper uses primarily anecdotal case studies and personal experiences to support mediation, it does not include actual data unique to India that would measure the effect of mediation on lowering the backlog of cases or enhancing access to justice. Second, there is no formal mechanism for enacting mediation reform in India's heterogeneous legal environment, thus the conversation is still largely theoretical and aspirational. The cultural, institutional, and infrastructure obstacles that India may encounter specifically—such as bar opposition, uneven mediation training, or low public awareness—are not given enough attention.

Methodology

1. Non-doctrinal:

Discussion Method: The researcher will engage with peers, academicians, researchers, practitioners and regulators to pinpoint gaps in current framework and collect suggestions for enhancements.

¹⁴ Calkins RM, 'The Future of Mediation in India' (*Redirecting...*, 2013)
<https://heinonline.org/HOL/Page?public=true&handle=hein.journals%2Fnliu3&div=8&start_page=1&collection=journals&set_as_cursor=0&men_tab=srchresults> accessed 15 April 2025

2. Doctrinal

Secondary Sources: The authors have relied on published scholarly articles, research papers, and books to critically analyze the topic in the contemporary scenario

3. Tools and Techniques:

Interviews and Group Discussions: Semi-structured interviews and focused group discussions will be conducted to obtain qualitative insights into the gaps.

4. Rules of Citation

The research will adopt the 21st edition of the Bluebook: A Uniform System of Citation for referencing all sources.

Maritime & Dispute Resolution

Maritime is one of the most important and busiest means of transportation of goods, resources from one country to another. Transport by **Maritime Routes** are considered to be the **busiest of all, and are of vital importance** to the trade of all nations. The maritime industry of all nations are becoming more and more in need due to increase in trade by the governments and private players as well as several countries like India have allowed up to 100 per cent Foreign Direct Investment under automatic route for port and harbour construction projects, which in turn increase investment opportunities and therefore increasing trade through maritime.

With the continuous evolvement and upgradation of the maritime industry, there is also a certain high risk that is related to the industry in relations to solving of disputes which are tried to be solved through various methods. Maritime Mediation is one of the most popular and in demand ways to **resolve all such disputes as the Admiralty industry** is subject to complicated laws that frequently create a great deal of confusion. This is due to the fact that **different laws may apply to the ships as they go through international waterways and ports worldwide.**

Maritime conflicts have long been a major problem for parties participating in international trade and commerce, stemming from a wide range of intricate difficulties in the shipping and maritime sector. A strong and efficient settlement process is required because disputes involving cargo damage, charter party violations, environmental concerns, and crashes have

grown more frequent and complex as trade volumes continue to soar across the oceans. Like mentioned above, **Maritime cases are a perfect fit for Mediation as a method to resolve disputes**, because of the benefits provided are more than can be attained through other modes.

Mediation as a Method of Dispute Resolution¹⁵

In all the years till date, there have been instances wherein, **Arbitration as a means of Dispute resolution has been prevalent in solving maritime disputes**, and provides for certainty and finality in the entire process¹⁶. **The New York Convention of 1958** and other laws support this legally binding process, which has gained the confidence of majority of the players in the market and served as the preferred means of resolving maritime disputes.¹⁷

Despite, of **Arbitration being heavily relied upon**, mediation has emerged as a method that **is being actively used** in areas of maritime disputes with the principal aim of not only solving the issues set by the parties but more importantly **preserving the relationships that have been built upon** and thus reducing time and cost burdens.¹⁸

Advantages of Mediation in Maritime

The authors of this paper, after presenting the idea, **importance of Mediation** in Maritime activities, have set forth to present various Advantages of Mediation that make it an **effective tool to solve disputes-**

1. Maritime Mediation¹⁹ and its major work rely not only in **resolving disputes** and finding solutions for the problems that have been presented before the parties but also to **ensure that the relationships that are established and preserved by the parties** before the dispute continue to do so, unlike in the case of Arbitration. What needs to be understood is that, the Maritime industry deeply **relies on the commercial interactions, relationships and collaborations with parties**, and other forms of solving the disputes would jeopardize the work that has been put in by the parties by

¹⁵ Lawrence G. Cohen, 'Maritime Arbitration in Asia' (1998) 29 J Mar L & Com 117

¹⁶ P D Craig, *Maritime Law: Texts and Materials* (5th edn, Routledge 2019)

¹⁷ R. Glenn Bauer, 'Maritime Arbitration in New York' (1980) 8 Int'l Bus Law 306

¹⁸ GR Siedel, *Negotiating Success: Tips and Tools for Building Rapport and Dissolving Conflict While Still Getting What You Want* (St Martin's Press 2020)

¹⁹ Charles L. Measter & Peter Skoufalos, 'The Increasing Role of Mediation in Resolving Shipping Disputes' (2002) 26 Tul Mar LJ 515

hampering relationships. Mediation opens the door to solutions that both parties can agree upon by giving them a **chance to express their worries and complaints**.

2. Another prominent advantage of the entire process of mediation is **Cost-effectiveness of the entire process**. In order to minimize operating disruptions, the marine industry, which is renowned for its complexity and volatility, **requires prompt conflict settlement**. Mediation is a shining example of **efficiency** because of its **simplified procedures and decreased procedural complexities**.
3. Mediation also ensures that there is a **certain level of empowerment and power that the parties** hold while they opt for this kind of dispute resolution. Maritime disputes are often stuck in specialized technicalities and intricate industry practices. To combat such problems, stakeholders have a favourable platform to exert control over the resolution process through mediation. The **parties are still able to work together to come up with creative solutions** that specifically address the subtleties of their disagreement. This empowerment promotes a feeling of control over the result, which helps the resolution remain viable.²⁰
4. While in a Mediation session, any technicalities and legal challenges that arise can be tackled by **adapting to the situations and providing a platform** for focused discussions, open exchanges and allows the parties to dive into intricate issues and redesign resolutions that are tailored to the peculiarities of the conflict.

Drawbacks & Challenges of Mediation in Maritime

While we look at the positive side of things when it comes to Mediation, we also need to focus on the **drawbacks of this method**, to make sure that such drawbacks can be **corrected upon and worked upon** by the parties while making their decisions.²¹

1. Most of the maritime disputes are international in nature, which includes several jurisdictions and players in play. E.g- Ship owner, cargo owner, dock owner, country through which they were passing through, etc. At times, there might occur scenarios

²⁰ David G. Pierce, 'Termination of Arbitration by Mediation: Domestic and Foreign-Related Mediation Agreements' (1988) 18(Part 3) *Hong Kong Law Journal* 467

²¹ Kimberlee Kovach, Jeffrey Kravis, Judith Meyer & Larry Watson, 'A Conversation on the Challenges of Mediation Practice' (2016) 22 *Disp Resol Mag* 22

where **one party wields more power than the other party, and the dominant party might overpower the smaller party by showcasing their undue influence** during the mediation process. This may undermine the balance required for discussions and prevent the development of well-rounded solutions.

2. The **biggest challenge** of the mediation process along with its most **important strength** is the **voluntary nature of this process**. The parties deeming this method to be voluntary in nature along with an award which is **not binding**, might not opt for such a method where through compromises and discussions, solutions are solved and would **rather focus and aim at instances to get full benefit of the award** while not caring for personal relations (during intricate and complex proceedings).
3. There are certain instances, that require **quick, fast and urgent relief** such as those of cargo seizure, vessel arrests and it all trickles down to how much time is spent to resolve the issue. At times, the authorities seizing the vessel or goods, might not agree to resolve the issue through mediation, which would lead to other remedies to be looked out for in such disputes.
4. The **cooperative setting of mediation may find it difficult to overcome long-standing hostilities** between parties especially when there are substantial linguistic or cultural hurdles. It may be **difficult to build the collaboration and trust required for successful mediation in circumstances** where there have been historical conflicts or where successful communication becomes a hurdle

Arbitration as a Method of Dispute Resolution

Arbitration being one of the prominent steps to solve disputes has been practiced for a long time and due to its success, holds a **prominent position for redressing maritime conflicts**²². This method serves as an **alternative to the long and lengthy procedure of litigation**, while offering fast paced results and a confidential and private environment for the parties to actively participate in along with their counsels. Maritime arbitration is frequently distinguished by its own rules and processes that are intended to take into account the unique characteristics of marine conflicts. In order to avoid the difficulties of navigating several legal systems, parties

²² Ljerka Mintas-Hodak, 'Lisbon Rules, 1987' (1987)
115 Uporedno Pomorsko Pravo i Pomorska Kupoprodaja 378

usually choose arbitration in their contracts. This ensures a neutral and predictable framework that promotes unbiased adjudication.

The Main Characteristics of Maritime Arbitration is:

- This form of Dispute Resolution lies upon the two most important pillars of **enforceability and impartiality**.
- Parties involved in dispute resolution via this method, are satisfied with **the binding nature of this method** as a recourse of getting it enforced in the jurisdictions as the award by the Arbitrator is enforceable, but **can still be appealed to by either of the parties**.
- The procedures gain legitimacy and specialized knowledge when arbitrators who are well-known for their proficiency in maritime law or industrial practices are appointed. These arbitrators help to **settle conflicts fairly and increase parties'** trust in the process because their impartiality is an unassailable principle.

Comparative Analysis between Mediation & Arbitration as Methods of Dispute Resolution

A careful comparative study is required to fully examine the effectiveness and viability of mediation and arbitration in the complex world of maritime conflicts. This analysis provides a comprehensive view of the advantages and disadvantages of each approach by thoroughly evaluating each one's efficacy, efficiency, and the enforceability of results.²³

Particulars	Mediation	Arbitration
Effectiveness & Efficiency	• Consensual resolution is the foundation of mediation, which uses cooperation and open communication to find solutions that both parties can agree on. • In context of Maritime this is a very useful trait as it not only focuses on	• The strength of Arbitration is kept in the adjudicatory nature it has while giving decisions that are binding as court judgements. • Arbitration provides a formal legal framework that allows parties to argue their issues before unbiased arbiters

²³ Cyril Nourissat, 'Mediation and Arbitration: What Legal Effectiveness?' (2019) 2019 Int'l Bus LJ 679

	solving disputes but also preserves relationships .	who, like judges, render decisions based on the law .
Enforceability of Outcomes	- Mediated settlements are unfortunately not enforceable due to lack of such provisions for enforceability. - Because the enforcement of mediated agreements depends on the parties' future compliance and possible legal actions, this adds a degree of uncertainty. Although mediation's adaptability and cooperative spirit allow for customized solutions, its enforceability may be seen as a possible weakness.	- The awards under Arbitration are benefited by the backing of the New York Convention which backs it up and facilitates the enforceability of the award as well. - Parties are more confident in the binding nature of arbitration results because to this convention, which makes it easier for arbitral awards to be recognized and carried out in a variety of countries.
Nature of Dispute	- Situations where, preservation of business relationships is of utmost importance, mediation serves as the best recourse in such situations. - Through mediation, maritime organizations can resolve tense situations while keeping lines of communication open, preventing the potentially hostile outcomes of adversarial processes.	- Arbitration on the other hand, takes precedence when the disputes are stuck on complex interpretations and it is of utmost need to solve the issues and the problem faced and get an award for the same, regardless of the relation with the other party. - Arbitration being binding in nature is an attractive option for parties to choose it along with enforceability mechanisms.
Cost Consideration	Mediation with it's streamlined and informal sessions, often does give a cost-effective method to the parties, while benefitting from relationship building, confidential matter, comfortable and private enclosures. This is especially true in the maritime industry, where minimizing operating disruptions requires prompt resolution.	Arbitration on the other hand, entails expenses from arbitrators fees, formal hearings and at times does outweigh the cost related benefits that one would get in Mediation. However the plus point of having an enforceable arbitral award, balances the situation out.

Party Preference	• Mediation may be chosen by maritime parties who have a stake in maintaining connections because of its capacity to promote fruitful discussions. This is particularly true when disagreements arise between companies that expect to work together in the future or repeat business partners. • The flexibility that this method provides along with the collaborative nature to resolve disputes allows creative solutions, and opens new areas to think about rather than being restricted with the limited few.	• Parties eager towards a resolution that bears legal power may draw towards arbitration. The binding nature of arbitral rulings aligns with the preferences of parties wanting decisive conclusions and enforced solutions. • Here, while parties interests in their own matters are kept important rather than caring much for the other party, it has a bit more formal procedure guided by an Arbitrator, compared to a Mediator in a mediation session.
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Conclusion

The demand for effective and flexible dispute resolution procedures has never been greater in a time when the world's marine traffic is growing at a never-before-seen rate. In the marine industry, mediation has become a useful instrument due to its capacity to maintain business relationships and promote cooperative problem-solving, in addition to its cost- and time-effectiveness. Mediation provides a degree of flexibility and party autonomy that is ideally suited to the dynamic and frequently international nature of maritime disputes, as this study has emphasized. It does have several drawbacks, though, mainly with regard to enforcement and power disparities that may occur in multi-party or cross-border conflicts. In contrast, arbitration offers a more organized, legally binding, and enforceable framework that is nonetheless essential in situations requiring immediate interim relief or intricate legal interpretations. According to a comparative research, mediation is superior at maintaining the interpersonal ties that underpin marine commerce, whereas arbitration guarantees legal finality. Stakeholders should therefore think about implementing a hybrid or sequential strategy, where mediation acts as a first resort for settling issues amicably, followed by arbitration if necessary, rather than seeing these two methods as mutually exclusive. The legal and procedural frameworks supporting international marine commerce must also change as it does, and accepting mediation in addition to arbitration provides a forward-thinking approach that strikes a compromise between legal certainty and business practicality.

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