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Mediation in India: A Journey from Tradition to Transformation

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ABSTRACT

*Mediation, deeply rooted in India's cultural and historical fabric, has evolved from traditional community-based practices to a formalized component of the modern legal system. This research paper, *Mediation in India: A Journey from Tradition to Transformation*, traces mediation's historical trajectory, its integration into the judicial framework, and its role in addressing access to justice. By exploring its socio-cultural foundations, legislative milestones, institutional developments, and technological advancements, the study highlights mediation's potential to reduce judicial backlog, preserve relationships, and foster consensual dispute resolution.*

In ancient India, mediation flourished through panchayats, emphasizing consensus and harmony over adversarial litigation. These practices continued, with variations, under Islamic rule, but British colonial rule marginalized mediation by introducing a formal, adversarial legal system. Post-independence, The need for cost-effective justice and an overworked judiciary led to the resurgence of alternative dispute resolution (ADR), with mediation emerging as a key mechanism. A turning point was the 1999 amendment to the Civil Procedure Code, introducing Section 89, which empowered courts to refer cases to ADR, including mediation. Judicial support, most notably in the 2005 case of Salem Advocate Bar Association v. Union of India catalysed mediation's institutionalization. Court-annexed mediation centres, supported by the Supreme Court's Mediation and Conciliation Project Committee (MCPC), have mainstreamed mediation through mediator training and advocacy for its use in family, commercial, and labor disputes, enhancing its credibility and accessibility.

This research emphasizes the need for sustained policy support, infrastructure development, and public engagement to realize mediation's promise as a cornerstone of an inclusive justice system. As India evolves as a global democracy, mediation's journey reflects a commitment to equitable and harmonious dispute resolution.

KEYWORDS

Mediation, Alternative Dispute Resolution, Panchayats, Mediation Act 2023, Pre-litigation Mediation, Online Dispute Resolution, Indian Judiciary.

INTRODUCTION

“Discourage litigation, persuade your neighbours to compromise, whoever you can. Point out, the normal winner is often a real loser in fees, expenses and waste of time.”

-Abraham Lincoln ¹

India's judicial system, grappling with an overwhelming backlog of over 47 million pending cases as of 2022, stands at a critical juncture. The sheer volume of litigation, coupled with prolonged judicial processes, has strained the judiciary's capacity to deliver timely and accessible justice. Alternative dispute resolution (ADR) procedures are desperately needed considering this crisis, and mediation has shown itself to be a viable option. Mediation, a voluntary and collaborative process facilitated by a neutral third party, enables disputants to reach mutually agreeable solutions, offering a cost-effective, expeditious, and relationship-preserving alternative to adversarial litigation. Rooted in India's ancient traditions of community-based dispute resolution, mediation has undergone a remarkable transformation, evolving from informal, socio-cultural practices to a structured and legally recognized mechanism within the modern judicial framework. This research paper comprehensively examines the historical evolution, legislative milestones, judicial interventions, institutional developments, and contemporary advancements in mediation, critically assessing its growth and transformative potential to alleviate judicial backlog while fostering a culture of consensual dispute resolution in India.

The origins of mediation in India can be traced to ancient times, when community-driven systems like the panchayats served as the cornerstone of dispute resolution. These village councils,

1. New York, 1967, p. 226; Dodd. Near, "Notes for a Law Lecture-Home Book of American Quotations."

prevalent during the Vedic period, emphasized consensus, fairness, and reconciliation, aligning with India's cultural ethos of harmony and collective problem-solving. Disputes, ranging from familial conflicts to property disagreements, were resolved through dialogue facilitated by respected community elders, ensuring outcomes that preserved social cohesion. This tradition of mediation persisted, albeit with adaptations, through various historical epochs. During Islamic rule, conciliatory mechanisms complemented quasi-judicial processes, with mediators or Qazi's facilitating settlements in civil and family disputes. However, the advent of British colonial rule in the 18th century marked a significant disruption. The colonial administration introduced a formal, adversarial legal system rooted in English common law, which prioritized codified procedures and judicial pronouncements over informal, community-based resolutions. As a result, traditional mediation practices were marginalized, relegated to rural and informal settings, while litigation became the dominant mode of dispute resolution.

The post-independence era, beginning in 1947, brought renewed attention to the challenges of India's judicial system, particularly its inability to handle the growing volume of cases. The judiciary, inherited from the colonial framework, was ill-equipped to address the diverse and complex disputes of a rapidly modernizing nation. By the late 20th century, the backlog of cases had reached alarming levels, with delays often spanning decades. This crisis prompted policymakers, jurists, and legal scholars to explore ADR mechanisms as viable alternatives to litigation. Mediation, with its roots in India's cultural heritage, was recognized as a mechanism that could not only reduce judicial burden but also align with the country's socio-cultural values of harmony and compromise. The revival of mediation was further driven by global trends, as countries like the United States and Australia successfully integrated mediation into their legal systems, demonstrating its efficacy in resolving disputes efficiently.

The late 20th and early 21st century judicial and legislative interventions marked a turning point in the modern development of mediation. By creating Lok Adalats and promoting peaceful resolutions of a variety of conflicts, the Legal Services Authorities Act of 1987 set the foundation for alternative dispute resolution (ADR). But the Civil Procedure Code (CPC) amendment in 1999, which added Section 89, was the most important piece of legislation. India's approach to dispute resolution underwent a paradigm shift when this clause gave courts the authority to refer cases to ADR procedures like mediation, arbitration, and conciliation. In order to operationalize this provision, the judiciary was essential. Groundbreaking rulings like Salem Advocate Bar

Association v. Union of India (2005) clarified how Section 89 should be applied and endorsing mediation as a legitimate and effective tool. In addition to these advancements, the Supreme Court's Mediation and Conciliation Project Committee (MCPC) facilitated the creation of court-annexed mediation centers. These centres, operational across various high courts and district courts, have professionalized mediation by training and accrediting mediators and promoting its use in family, commercial, labour, and civil disputes.

Contemporary advancements, particularly the rise of Online Dispute Resolution (ODR), have further expanded mediation's reach. The COVID-19 pandemic accelerated the adoption of digital platforms, enabling remote mediation and improving access to justice for low-income litigants and those in remote areas. Government initiatives, such as NITI Aayog's ODR policy framework, reflect a commitment to leveraging technology for judicial reform. The enactment of the Mediation Act, 2023, represents a landmark achievement, providing a comprehensive legal framework for mediation, mandating pre-litigation mediation for certain disputes, and ensuring the enforceability of mediated agreements. This legislation aligns India with global best practices, drawing inspiration from jurisdictions like Singapore and the United States, where mediation is deeply embedded in legal systems.

This paper explores mediation's journey from its traditional roots to its modern transformation, analysing its effectiveness in reducing judicial backlog, enhancing access to justice, and fostering participatory dispute resolution. It critically examines challenges, including limited public awareness, cultural scepticism, and infrastructural gaps, while highlighting opportunities for further growth through policy support and technological innovation. As India navigates its path as a global democracy committed to equitable justice, mediation stands poised to redefine the legal landscape, embodying a shift from adversarial confrontation to collaborative resolution.

RESEARCH OBJECTIVE

This study aims to analyze the evolution of mediation in India, from its origins in traditional practices like Panchayats to its formalization under modern legal frameworks. Specific objectives include:

1. Tracing mediation's historical and legislative development.
2. Evaluating judicial contributions to its growth.

3. Assessing trends like pre-litigation and online mediation.
4. Identifying challenges and proposing solutions to enhance mediation's role in reducing judicial backlog.

METHODOLOGY

The research adopts a qualitative, doctrinal approach with analytical methods, focusing on primary and secondary sources.

Data Collection:

- Primary Sources: Statutes (e.g., Mediation Act, 2023; CPC Section 89), landmark judgments (e.g., *Afcons Infrastructure*, 2010), and NALSA reports.
- Secondary Sources: Scholarly articles, Vidhi Centre studies, and media reports on mediation trends.
- International Context: Singapore Convention, 2019.

HISTORICAL CONTEXT OF MEDIATION IN INDIA

Mediation, as a mechanism for resolving disputes, is deeply embedded in India's historical and cultural fabric, predating modern legal systems by centuries. Its origins can be traced to the Vedic period (circa 1500–500 BCE), when community-based systems, particularly the Panchayat system, served as the cornerstone of dispute resolution in ancient Indian society. The Sanskrit terms *Pancha* (five) and *Ayat* (assembly) were used to create the term "Panchayat," which denoted a council of five esteemed village elders or community members who assisted in the resolution of disputes through dialogue, consensus, and mutual agreement. These councils were not merely judicial bodies but also social institutions that upheld the values of harmony, fairness, and collective well-being, principles that resonate closely with the ethos of modern mediation. The Panchayat system was ubiquitous across rural India, addressing a wide range of disputes, including familial conflicts, property disagreements, and community disputes, with an emphasis on restoring relationships rather than declaring winners or losers².

The philosophical and ethical underpinnings of mediation in ancient India were rooted in the concept of *dharma* (righteousness or duty), which emphasized resolving conflicts in a manner that preserved social order and moral balance. Texts such as the *Dharma shastras* and *Smritis*, which codified social and legal norms, advocated for amicable settlements over adversarial

² *State & Govt. in Ancient India*, Altekar (1958), pp. 245–50.

confrontations. A notable reference to mediation-like practices is found in Kautilya's *Artha shastra* (circa 4th century BCE), a seminal treatise on statecraft and governance. Kautilya emphasized *Shama* (peace) as a primary method for conflict resolution, advocating for negotiated agreements known as *Sandhi*'s (treaties or settlements) to resolve disputes between individuals or states. These agreements were designed to ensure mutual benefit and long-term stability, reflecting a pragmatic approach to conflict management that prioritized dialogue over coercion³. The *Artha shastra* also outlined procedures for mediators to facilitate discussions, ensuring impartiality and fairness, which are hallmarks of contemporary mediation practices.

Beyond the *Artha shastra*, other ancient texts and traditions reinforced the importance of mediation. The *Mahabharata* and *Ramayana*, epic narratives that shaped India's cultural and moral landscape, contain numerous instances of mediation. One instance of the cultural respect for negotiated settlements, even in the face of unsolvable disputes, is Lord Krishna's function as a mediator in the *Mahabharata*, trying to bring the Pandavas and Kauravas together⁴. Similarly, Buddhist and Jain traditions, which flourished in ancient India, promoted non-violence (*ahimsa*) and dialogue as means to resolve disputes, further embedding mediation within the socio-religious fabric of the subcontinent. Monastic communities often relied on mediators to settle internal disputes, ensuring harmony within the *sangha* (community).⁵

The Panchayat system, while predominantly a rural institution, was adaptable to diverse regional and cultural contexts. In southern India, for instance, village assemblies known as *Ur* or *Sabha* performed similar functions, while in eastern India, caste-based councils mediated disputes within specific communities. These systems were characterized by their accessibility, informality, and community-driven nature, making justice both participatory and inclusive. Mediators, often chosen for their wisdom, impartiality, and social standing, facilitated discussions that allowed disputants to voice their concerns and reach mutually acceptable solutions. The outcomes of these mediations were generally binding due to social pressure and the moral authority of the mediators, ensuring compliance without the need

³ Kautilya. *Artha shastra*. Translated by R. Shama Sastry, Penguin Classics, 2007, Book 7, Chapter 1.

⁴Ganguli, Kesari Mohan, trans. *The Mahabharata*. Munshi ram Manoharlal Publishers, 2000, Book 5 (Udyog Parva).

⁵ Gombrich, Richard. *A Social History of Theravada Buddhism from Ancient Benares to Contemporary Colombo*. 1988, Routledge, pp. 78–80.

for formal enforcement mechanisms.

DECLINE DURING COLONIAL RULE

The advent of British colonial rule in the 18th century marked a significant disruption in the practice of traditional mediation in India. The British introduced the Anglo-Saxon adversarial legal system, which prioritized formal courts, codified laws, and judicial pronouncements over community-based dispute resolution. This system, rooted in English common law, was designed to consolidate colonial authority and streamline governance, but it fundamentally altered the landscape of dispute resolution in India. The establishment of courts such as the Mayor's Courts, Supreme Courts, and later the High Courts under the British East India Company shifted the focus from consensual resolutions to adversarial litigation, marginalizing traditional systems like the Panchayats⁶.

The colonial legal framework, with its emphasis on written laws, precedent, and formal procedures, was alien to India's indigenous practices. The *Regulating Act of 1773* and subsequent legislation established a hierarchical judicial system that prioritized British legal principles, often disregarding local customs and traditions. The codification of laws, such as the *Cornwallis Code* of 1793, further eroded the authority of Panchayats by vesting judicial powers in formal courts staffed by British judges or their appointees⁷. While Panchayats continued to function in rural areas, their influence was significantly diminished, as colonial authorities viewed them as informal and inconsistent with the standardized legal system they sought to impose.

The marginalization of traditional mediation was also driven by economic and social changes under colonial rule. The introduction of land revenue systems, such as the *Permanent Settlement* of 1793, led to increased land disputes, which were often adjudicated in formal courts rather than through community mediation. The growth of urban centres and the expansion of commercial activities further shifted dispute resolution toward litigation, as colonial courts became the preferred forum for resolving complex commercial and property disputes⁸. Additionally, the British administration's distrust of indigenous institutions led to policies that undermined the authority of village elders and community leaders, further weakening the Panchayat system.

⁶ Kane, *Dharma Shastra*, Vol. III (1974), pp. 412–18.

⁷ Cohn, *Colonialism and Its Forms of Knowledge* (1996), pp. 57–60.

⁸ Misra, B.B. The East India Company's Bengali Judicial Administration, 1765–1782. 320–325 in Motilal Banarsidass, 1961.

Despite this decline, informal mediation persisted in rural and semi-urban areas, particularly for family, land, and minor civil disputes. In regions less directly controlled by the British, such as princely states, traditional dispute resolution mechanisms continued to thrive, albeit with limited formal recognition. Caste-based councils and community mediators remained active in resolving disputes within specific social groups, preserving elements of the mediation tradition⁹. However, the lack of institutional support and the dominance of the adversarial legal system relegated these practices to the periphery, setting the stage for their revival in the post-independence era.

In conclusion, the ancient and traditional practices of mediation in India, exemplified by the Panchayat system and supported by philosophical texts like the *Artha shastra*, embodied a community-driven approach to dispute resolution that prioritized harmony and mutual agreement. The imposition of British colonial rule disrupted these practices by introducing an adversarial legal system that marginalized indigenous mechanisms. While informal mediation persisted in pockets, its influence waned significantly, highlighting the resilience of India's cultural traditions in the face of systemic change.

LEGAL RECOGNITION OF MEDIATION IN INDIA

The integration of mediation into India's formal legal system represents a significant shift from its traditional, community-based origins to a structured, legally recognized mechanism for dispute resolution. This transformation, driven by legislative reforms, judicial interventions, and institutional developments, represents dedication of india to tackling the issues of the backlog of cases in the courts, expanding justice's accessibility, and cultivating a culture of amicable dispute resolution. Over the course of the last seven decades, mediation has transformed from an unofficial practice to a fundamental component of India's alternative dispute resolution (ADR) framework. Important turning points in this process include the Industrial Disputes Act, 1947, the Legal Services Authorities Act, 1987, the Commercial Courts Act, 2015, the Code of Civil Procedure (CPC) amendment of 1999, and the Mediation Act, 2023. This section comprehensively examines these developments, highlighting their impact on institutionalizing mediation and aligning India's legal system with global best practices.

EARLY LEGISLATIVE EFFORTS

⁹ Bayly, C.A. *The Formation of the British Empire and Indian Society*. Pages 136–140, Cambridge University Press, 1988.

The formal recognition of mediation in India's legal framework began in the post-independence era, as the newly sovereign nation grappled with an overburdened judiciary inherited from colonial rule. One of the earliest legislative efforts to institutionalize mediation was the Industrial Disputes Act, 1947, which introduced mechanisms for resolving labor disputes outside the courtroom. The Act prescribed conciliation and mediation as preferred methods for settling industrial disputes, with conciliation officers appointed to facilitate negotiations between employers and employees. These officers, acting as neutral mediators, aimed to broker amicable settlements, thereby reducing the need for protracted litigation or industrial action¹⁰. While the Act primarily focused on labour disputes, it set a precedent for recognizing mediation as a legitimate and effective tool within the legal system, laying the groundwork for broader ADR reforms.

A more significant step toward institutionalizing mediation came with the Legal Services Authorities Act, 1987, which aimed to provide free legal aid and promote access to justice for marginalized communities. The Act established Lok Adalat's, or "people's courts," as alternative forums for resolving disputes through a combination of mediation and conciliation. Lok Adalat's, presided over by retired judges, judicial officers, or other qualified persons, facilitated voluntary settlements in a range of disputes, including civil, matrimonial, and motor accident claims. The settlements reached in Lok Adalat's were deemed final and binding, with the legal status of a court decree, ensuring enforceability without the need for further litigation¹¹. The success of Lok Adalat's, particularly in disposing of large numbers of cases expeditiously, highlighted the potential of mediation to alleviate judicial backlog and provide cost-effective justice. By 2023, Lok Adalat's had resolved millions of cases, underscoring their role as a cornerstone of India's ADR framework. These early legislative efforts, while limited in scope, demonstrated the viability of mediation as a complement to the formal judicial system, paving the way for more comprehensive reforms.

CODE OF CIVIL PROCEDURE AND SECTION 89

A transformative milestone in the formal integration of mediation was the amendment to the Code of Civil Procedure (CPC), 1908, enacted through the CPC (Amendment) Act, 1999, which came into effect in 2002. This amendment introduced Section 89, a groundbreaking provision that empowered courts to refer cases with potential for amicable settlement to ADR mechanisms,

¹⁰ Industrial Disputes Act, 1947, Section 4, Government of India.

¹¹ LSAA 1987, S. 19, Govt. of India.

including mediation, arbitration, conciliation, and Lok Adalat's. Section 89 marked a paradigm shift in India's approach to dispute resolution, as it formally embedded ADR within the judicial process, encouraging courts to act as gatekeepers in diverting suitable cases away from litigation. The provision required courts to assess whether a dispute could be resolved through ADR and, with the consent of the parties, refer it to the appropriate mechanism. Mediation emerged as a preferred option due to its flexibility, confidentiality, and focus on preserving relationships.

The implementation of Section 89 faced initial challenges, including uncertainty about procedural guidelines and resistance from legal practitioners accustomed to adversarial litigation. These issues were addressed by the Supreme Court of India in its landmark judgment in *Salem Advocate Bar Association v. Union of India* (2003), which provided critical clarity on the operationalization of Section 89. The Court emphasized the importance of ADR in reducing judicial backlog and directed the formation of the Mediation and Conciliation Project Committee (MCPC) under the aegis of the Supreme Court to promote court-annexed mediation. The MCPC was tasked with developing procedural guidelines, training mediators, and establishing mediation centres across high courts and district courts ¹². The Court's endorsement of mediation as a legitimate and effective tool catalysed its institutionalization, transforming it from an ad hoc practice to a structured component of the judicial system.

The MCPC played a pivotal role in mainstreaming mediation by standardizing training programs, accrediting mediators, and raising awareness among judges, lawyers, and litigants. Court-annexed mediation centres, established in various states, provided infrastructure and resources for conducting mediation sessions, ensuring accessibility and professionalism. These centres focused on a wide range of disputes, including family matters, commercial disagreements, and civil disputes, achieving high settlement rates and reducing the burden on courts ¹³. The success of court-annexed mediation underscored the judiciary's proactive role in promoting ADR and highlighted mediation's potential to deliver timely and equitable justice.

COMMERCIAL COURTS ACT, 2015

The Commercial Courts Act, 2015, introduced a significant legislative push to institutionalize mediation in the context of commercial disputes, aligning with India's broader objective of improving the ease of doing business. The Act established

¹² *Salem Bar Assn. v. UOI*, (2003) 1 SCC 49.

¹³ MCPC, *Report 2022*, SC, p. 32.

dedicated commercial courts to expedite the resolution of high-value commercial disputes, recognizing the need for efficient dispute resolution to attract investment and foster economic growth. A key provision of the Act was the introduction of pre-institutional mediation for commercial disputes where no urgent interim relief was sought. This requirement aimed to encourage parties to explore amicable settlements before resorting to litigation, thereby reducing the caseload of commercial courts.

The 2018 amendment to the Commercial Courts Act further strengthened this framework by inserting Section 12A, which made pre-institutional mediation mandatory for commercial disputes, except in cases requiring urgent interim relief. This provision, which came into effect in 2018, required parties to exhaust mediation through designated mediation centres before filing a suit, with non-compliance resulting in the rejection of the plaint¹⁴. The mandatory mediation requirement was a bold step toward embedding mediation within the commercial dispute resolution process, reflecting India's commitment to global best practices in jurisdictions like Singapore and the United Kingdom, where mediation is a standard precursor to litigation. The amendment also incentivized early settlements, as mediated agreements were enforceable as court orders, providing legal certainty to parties.

MEDIATION ACT, 2023

The enactment of the Mediation Act, 2023, represents the culmination of decades of efforts to institutionalize mediation in India. This landmark legislation provides a comprehensive and standalone framework for mediation, replacing the earlier concept of conciliation under the Arbitration and Conciliation Act, 1996. The Act defines mediation as a voluntary process facilitated by a neutral third party to assist disputants in reaching a mutually acceptable settlement, emphasizing its consensual and confidential nature. It mandates pre-litigation mediation for certain civil and commercial disputes, requiring parties to attempt mediation before approaching courts, except in cases involving urgent relief or specified exemptions¹⁵.

The Mediation Act, 2023, introduces several innovative features to strengthen the mediation ecosystem. It establishes the Mediation Council of India, a regulatory body responsible for accrediting mediators, certifying training institutes, and promoting ethical standards. The Council aims to professionalize mediation by ensuring that mediators possess the necessary skills

¹⁴ CC(A) Act 2018, S. 12A.

¹⁵ Mediation Act, 2023, Section 6, Government of India.

and adhere to a code of conduct, addressing concerns about inconsistent quality and lack of uniformity across jurisdictions¹⁶. The Act also recognizes mediated settlement agreements (MSAs) as legally binding, with the status of court decrees, thereby enhancing their enforceability and addressing longstanding scepticism about the legal validity of mediated outcomes. MSAs can be challenged only on limited grounds, such as fraud or coercion, ensuring finality and certainty for parties.

Furthermore, the Act promotes institutional mediation by encouraging the establishment of mediation centres and service providers, both public and private, to facilitate access to mediation services. It also incorporates provisions for online mediation, recognizing the growing role of technology in dispute resolution, particularly in the wake of the COVID-19 pandemic. The Act's emphasis on pre-litigation mediation aligns with global trends, drawing inspiration from jurisdictions like the United States and Australia, where mandatory mediation has significantly reduced court dockets. By providing a robust legal framework, the Mediation Act, 2023, positions mediation as a standalone mechanism with transformative

JUDICIAL SUPPORT FOR MEDIATION

The Indian judiciary has been instrumental in advancing mediation as a cornerstone of alternative dispute resolution (ADR), transforming it from an ancillary practice to a robust mechanism within the legal system. Through landmark judgments, procedural clarifications, and the establishment of court-annexed mediation centres, the judiciary has not only promoted mediation but also ensured its effective integration into the justice delivery framework. This proactive judicial support has addressed implementation challenges, clarified the scope of mediation, and fostered a culture of consensual dispute resolution, significantly alleviating the burden on India's overburdened courts, which grapple with over 47 million pending cases as of 2022¹⁷

One of the most significant judicial interventions came in *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. Ltd.* (2010), where the Supreme Court provided critical guidance on the application of Section 89 of the Code of Civil Procedure (CPC), which empowers courts to refer cases to ADR mechanisms, including mediation. The Court delineated categories of disputes suitable and unsuitable for mediation, emphasizing that cases involving mutual consent, such as family, commercial, or civil

¹⁶ Mediation Act, 2023, Section 35, Government of India.

¹⁷ NJDG, *Pendency of Cases* (2022), accessed Apr 16, 2025.

disputes, were ideal candidates, while those involving criminal offenses, serious fraud, or public policy issues were not. This judgment clarified the scope of mediation, enabling courts to make informed referrals and enhancing the mechanism's credibility. The Court also underscored the need for judicial oversight to ensure fairness and voluntariness in mediation processes, reinforcing its alignment with the principles of natural justice ¹⁸.

Another pivotal ruling was *M.R. Krishna Murthi v. New India Assurance Co. Ltd.* (2020), where the Supreme Court explicitly urged the government to enact a standalone mediation law to provide a comprehensive legal framework. The Court highlighted mediation's potential to reduce judicial backlog and expedite justice delivery, particularly in motor accident claims and insurance disputes. This directive catalysed legislative action, culminating in the enactment of the *Mediation Act, 2023*, which institutionalized mediation by mandating pre-litigation mediation for certain disputes and establishing the Mediation Council of India to regulate standards. The judiciary's foresight in advocating for a dedicated law underscored its commitment to mainstreaming mediation as a viable alternative to litigation.

The judiciary has also demonstrated its support for mediation in high-profile cases, most notably the Ayodhya dispute, a decade-long religious and land dispute with significant socio-political implications. In 2019, the Supreme Court constituted a court-monitored mediation panel to explore an amicable resolution between the conflicting parties. Although the mediation process did not result in a settlement, the Court's decision to prioritize dialogue in such a sensitive case highlighted mediation's potential to address complex disputes while preserving social harmony. This high-visibility endorsement elevated public and legal perceptions of mediation, encouraging its use in both high-stake and routine cases.

Complementing these judicial pronouncements, the establishment of court-annexed mediation centres has been a game-changer in operationalizing mediation. Initiated under the guidance of the Supreme Court's Mediation and Conciliation Project Committee (MCPC), formed pursuant to the *Salem Advocate Bar Association v. Union of India* (2003) judgment, these centres have been set up in major cities, including Delhi (2005) and Bengaluru (2007). Staffed by trained mediators and supported by judicial infrastructure, these centres facilitate mediation for a range of disputes, including family, commercial, and civil matters. Their impact is evident in their high success

¹⁸ *Afcons v. Cherian Varkey*, (2010) 8 SCC 24.

rates: for instance, between 2015 and 2021, the Tis Hazari Family Court Mediation Centre in Delhi resolved 86.56% of referred cases, demonstrating mediation's efficacy in achieving amicable settlements¹⁹. Similarly, Bengaluru's mediation centre has been lauded for its role in resolving matrimonial and property disputes, reducing court pendency and fostering relationship preservation.

The judiciary's role extends beyond establishing infrastructure to include capacity-building and awareness initiatives. The MCPC has developed standardized training programs for mediators, ensuring professionalism and adherence to ethical standards. Judicial academies and bar associations have also been roped in to educate lawyers and litigants about mediation's benefits, addressing initial resistance from legal practitioners accustomed to adversarial litigation. By fostering a mediation-friendly ecosystem, the judiciary has ensured that mediation is not only accessible but also perceived as a legitimate and effective alternative to court proceedings.

Moreover, the Indian judiciary's unwavering support for mediation, through landmark judgments, high-profile endorsements, and the establishment of court-annexed mediation centres, has been pivotal in its institutionalization. Cases like *Afcons Infrastructure* and *M.R. Krishna Murthi* have clarified mediation's scope and spurred legislative reforms, while initiatives like the Ayodhya mediation panel have showcased its versatility. The success of mediation centres, evidenced by high settlement rates, underscores the judiciary's role in reducing judicial backlog and promoting access to justice. As mediation continues to gain traction, the judiciary's proactive stance ensures its evolution into a transformative tool for equitable and harmonious dispute resolution in India.

RECENT DEVELOPMENTS AND ONLINE DISPUTE RESOLUTION IN INDIA

Online Dispute Resolution (ODR), leveraging digital platforms for mediation and arbitration, has transformed India's dispute resolution landscape, addressing judicial backlog with over 47 million pending cases as of 2022. Catalysed by the COVID-19 pandemic and propelled by NITI Aayog's initiatives, ODR has emerged as an efficient, inclusive tool for justice delivery, aligning with India's goals of enhancing access to justice and easing business operations.

The COVID-19 pandemic was a turning point for ODR. Lockdowns

¹⁹ Delhi Mediation Centre, *Annual Report 2015–2021*, Tis Hazari Courts, 2022, p. 18.

disrupted in-person courts and mediation, prompting a shift to virtual platforms. Courts and Lok Adalat's adopted video conferencing for hearings and mediations, enabling resolution of disputes in sectors like commerce, tenancy, and family law. Platforms like SAMA and Presolv360 saw increased demand, offering low-income and remote litigants' affordable access to justice. ODR's benefits—cost-effectiveness, convenience, and reduced bias—became evident, though challenges like digital literacy and infrastructure gaps highlighted areas for improvement.

NITI Aayog has been pivotal in mainstreaming ODR. In June 2020, it collaborated with Agami and Omidyar Network India to convene stakeholders, including Supreme Court judges, to promote ODR. This led to the *ODR Handbook* (April 2021), developed with ICICI Bank and Tri legal, providing strategies for resolving COVID-related disputes²⁰. In November 2021, NITI Aayog's *ODR Policy Plan*, drafted under Justice A.K. Sikri, outlined a phased approach: addressing pandemic disputes, strengthening ADR frameworks, and building a public-private ODR ecosystem. It recommended legislative reforms, like the mediation law, and a "light-touch" regulatory model to encourage innovation²¹. These efforts spurred ODR startups, growing from three in 2018 to 13 by mid-2020, including CORD and CREK ODR²².

The *Mediation Act, 2023*, reinforced ODR by recognizing online mediation and ensuring enforceable settlement agreements. The Reserve Bank of India's mandate for payment operators to use ODR for transaction disputes further embedded it in the financial sector. However, the digital divide, inconsistent connectivity, and scepticism about enforceability pose challenges, requiring investment in infrastructure and awareness.

In conclusion, the COVID-19 pandemic accelerated ODR's adoption, while NITI Aayog's policy frameworks have solidified its role in India's justice system. ODR's scalability promises reduced court pendency and enhanced access to justice, marking a significant step toward efficient dispute resolution.

GROWTH AND IMPACT OF MEDIATION IN INDIA

Mediation, as a non-adversarial alternative dispute resolution (ADR) mechanism, has gained significant traction in India over the past few decades, driven by the need to address the overwhelming judicial backlog of over 47 million pending cases as of 2022. Rooted in India's ancient traditions of community-based

²⁰ NITI Aayog, *ODR: Shifting to Resolutions*, Apr 2021.

²¹ NITI Aayog, *ODR Policy Plan for India*, Nov 2021.

²² The Leap Blog, "Online Dispute Resolution in India," 2021.

conflict resolution, such as the Panchayat system, mediation has evolved into a structured, legally recognized process, particularly with the enactment of the *Mediation Act, 2023*. This paper explores the growth and impact of mediation in India, delving into statistical insights, the rise of pre-litigation and online mediation, international influences such as the Singapore Convention on Mediation, and the persistent challenges—namely lack of awareness, inconsistent practices, limited institutional infrastructure, and cultural and professional resistance—that hinder its widespread adoption.

STATISTICAL INSIGHTS

Mediation's potential to alleviate India's judicial backlog is evident, yet its adoption remains limited, reflecting both its promise and challenges. Between 2011 and 2015, mediation referrals in India's high courts were notably low. In Karnataka's High Court, only 2.79% to 4.83% of cases were referred to mediation, while Delhi's High Court saw referrals ranging from 2.31% to 2.86% during the same period. These figures indicate a cautious approach by courts and litigants, possibly due to unfamiliarity with mediation or a preference for traditional litigation. However, among cases referred to mediation, settlement rates are impressive, suggesting high efficacy when mediation is utilized. For instance, Bengaluru's mediation centres reported a 66% success rate, reflecting the mechanism's ability to facilitate amicable resolutions. Nationally, from April 2022 to June 2023, approximately 110,000 cases were settled through mediation, according to the National Legal Services Authority (NALSA). While this is a significant achievement, it remains a modest fraction compared to the over 10 million pending civil cases, underscoring the gap between mediation's potential and its current impact.

The high settlement rates in mediated cases highlight mediation's strengths: its voluntary nature, flexibility, and focus on mutual agreement reduce the adversarial tension often associated with litigation. However, the low referral rates point to systemic barriers, including limited judicial encouragement, inadequate awareness, and infrastructural constraints. These statistics provide a dual narrative: mediation is highly effective when applied, but its reach remains constrained, necessitating targeted interventions to scale its adoption.

RISE OF PRE-LITIGATION AND ONLINE MEDIATION

A big step toward institutionalizing mediation was taken in 2015 when the Commercial Courts Act made pre-litigation mediation mandatory. The 2018 amendment added Section 12A, which requires parties to try mediation before bringing a lawsuit in

commercial disputes if no immediate interim relief is sought²³. This clause has accelerated the development of institutional mediation by promoting the opening of mediation centres and cultivating an early dispute resolution culture. By requiring parties to explore mediation at the outset, the Act aims to reduce the influx of commercial cases into an already overburdened judiciary, aligning with India's goal of improving its ease of doing business ranking.

The COVID-19 pandemic further accelerated the adoption of online dispute resolution (ODR), including virtual mediation, as lockdowns and social distancing measures disrupted traditional court operations. Courts, Lok Adalat's, and mediation centres swiftly transitioned to digital platforms, leveraging video conferencing tools to conduct proceedings. Platforms like SAMA and Presolv360 reported a surge in demand for online mediation, particularly for disputes in lending, tenancy, commerce, and family law, which spiked due to economic disruptions caused by the pandemic²⁴. ODR's advantages—cost-effectiveness, accessibility, and reduced logistical barriers—made it particularly appealing for low-income litigants and those in remote areas, who could participate without the need for physical travel. The *Mediation Act, 2023*, explicitly recognizes online mediation, providing a legal framework for its conduct and ensuring the confidentiality and enforceability of virtual mediated settlement agreements (MSAs)²⁵. This legislative endorsement aligns India with global trends, where countries like the United States and Singapore have integrated ODR into their dispute resolution ecosystems, enhancing accessibility and efficiency.

INTERNATIONAL INFLUENCE

India signed the Singapore Convention, also known as the United Nations Convention on International Settlement Agreements Resulting from Mediation, in 2019, demonstrating its dedication to advancing mediation on a global scale. The goal of the Convention is to increase the legitimacy of mediation as a dispute resolution process worldwide by facilitating the cross-border enforcement of mediated settlement agreements. As one of the original signatories, India demonstrated its intention to bring its mediation procedures into compliance with global norms, possibly establishing itself as a center for global commercial mediation²⁶. However, the *Mediation Act, 2023*, has drawn criticism for its limited alignment with the Singapore Convention. Notably, the Act

²³CC Act 2015, S. 12A, GoI..

²⁴ NITI Aayog, *ODR: Shifting to Resolutions* (Apr 2021).

²⁵ Mediation Act, 2023, Section 22, Government of India.

²⁶ UN Convention on Mediation, 2019.

excludes provisions for enforcing international MSAs conducted outside India, restricting its scope to mediations conducted within Indian jurisdiction. This omission limits India's ability to fully leverage the Convention's benefits, such as seamless enforcement of cross-border settlements, which could attract foreign investment and bolster international trade. Experts argue that ratifying the Singapore Convention and amending the Act to include international MSAs would enhance India's global mediation credentials²⁷.

CHALLENGES TO MEDIATION IN INDIA

Despite its growth, mediation in India faces several challenges that hinder its widespread adoption and effectiveness. These include lack of awareness, inconsistent practices, limited institutional infrastructure, and cultural and professional resistance.

1. Lack of Awareness

A primary barrier to mediation's growth is the lack of awareness among litigants, lawyers, and even judges. Many perceive mediation as an informal or secondary process, lacking the authority or finality of court judgments. This misconception is particularly prevalent among litigants who view litigation as the only legitimate avenue for justice, often influenced by cultural preferences for authoritative judicial decisions²⁸. Lawyers, too, may undervalue mediation, fearing it could reduce their income from prolonged litigation. Court-annexed mediation centres have made strides in promoting mediation, but their outreach efforts remain limited, particularly in rural areas. Public awareness campaigns, legal education initiatives, and judicial encouragement are critical to changing perceptions and fostering trust in mediation's efficacy.

2. Inconsistent Practices

Prior to the *Mediation Act, 2023*, the absence of a unified regulatory framework led to inconsistent mediation practices across India. Mediators often lacked standardized training, resulting in variations in quality and approach. A key component of the mediation process, confidentiality, was not always sufficiently maintained, which damaged the parties' trust in one another. The fragmented governance of mediation by various statutes, including the Commercial Courts Act of

²⁷ Mittal & Taneja, *Mediation Act 2023*, 2024.

²⁸ DAKSH, *Mediation Gap*, 2023, p. 43.

2015 and the Arbitration and Conciliation Act of 1996, led to misunderstandings regarding the processes and enforceability of mediation. The *Mediation Act, 2023*, addresses these issues by establishing the Mediation Council of India to regulate mediator training, certification, and ethical standards, and by subsuming conciliation under mediation to align with international practices. However, the transition to standardized practices will require time, resources, and consistent implementation.

3. Limited Institutional Infrastructure

While court-annexed mediation centres, established in cities like Delhi (2005) and Bengaluru (2007), have facilitated thousands of resolutions, private and institutional mediation services remain underdeveloped. The lack of national and international mediation centres offering affordable, high-quality training and services hampers mediation's scalability. Rural areas lack access to mediation facilities, leaving large populations reliant on litigation or informal community mechanisms. The *Mediation Act, 2023*, encourages the establishment of mediation service providers and institutes, but significant investment in infrastructure, technology, and human resources is needed to bridge this gap.

4. Cultural and Professional Resistance

Cultural and professional resistance poses a significant challenge to mediation's growth. India's legal culture, shaped by centuries of adversarial litigation, favours authoritative judicial pronouncements over negotiated settlements. Many litigants perceive mediation as a sign of weakness or compromise, preferring the perceived legitimacy of court rulings²⁹. Lawyers, accustomed to litigation, often resist mediation, viewing it as a threat to their professional identity or income. Judges, too, may hesitate to refer cases to mediation, fearing it could undermine their authority or prolong disputes if mediation fails. Overcoming these barriers requires a cultural shift, supported by incentives for lawyers, judicial training, and public campaigns highlighting mediation's benefits, such as cost savings, speed, and relationship preservation.

RECOMMENDATIONS FOR STRENGTHENING MEDIATION IN INDIA

²⁹ PMFIAS, *Institutionalisation of Mediation: Legal Framework, Benefits & Progress*, 2025.

Despite advancements through the *Mediation Act, 2023*, and Online Dispute Resolution (ODR), mediation in India faces hurdles like insufficient awareness, variable practices, and limited facilities. To tackle the judicial backlog exceeding 47 million cases and promote equitable justice, these recommendations focus on boosting awareness, enhancing training, expanding infrastructure, advancing technology, aligning with global standards, and offering incentives.

1. Boost Public Awareness

Limited understanding restricts mediation's use. The government and Mediation Council should initiate countrywide campaigns using TV, social media, and local outreach to highlight mediation's affordability and efficiency. Showcasing achievements, such as the 86.56% settlement rate at Delhi's Tis Hazari Family Court (2015–2021), can foster confidence³⁰. Workshops for lawyers and promotions targeting businesses under the *Commercial Courts Act, 2015*, will encourage adoption.

2. Improve Mediator Training

The Mediation Council must establish uniform training programs, emphasizing mediation skills, ethics, and digital tools, with strict certification standards. Collaborations with global entities like the International Mediation Institute can ensure international parity. Equipping judges to spot mediation-appropriate cases, as guided by *Afcons Infrastructure* (2010), will increase referrals. Affordable training in underserved regions will address the scarcity of qualified mediators.

3. Develop Mediation Infrastructure

While court-annexed centres thrive, broader access is needed. Private mediation hubs, inspired by Singapore's Maxwell Chambers, should provide cost-effective services³¹. Embedding mediation in legal aid systems and creating rural centres with NGO support will improve reach. The *Mediation Act, 2023*, endorses this, but funding is vital.

4. Advance Digital Platforms

ODR, propelled by the COVID-19 crisis, needs secure, accessible platforms for virtual mediation.³² NITI Aayog's 2021

³⁰ Delhi Mediation Centre, *Annual Report 2015–2021*, 2022, p. 18.

³¹ Maxwell Chambers, *About Us*, 2023.

³² NITI Aayog, *Online Dispute Resolution*, April 2021. [^10]: NITI Aayog, ODR

ODR plan supports public-private partnerships. Scaling platforms like SAMA and enhancing rural connectivity will close gaps. The *Mediation Act, 2023*, validates online mediation, requiring stronger data security.

5. Offer Incentives

Increase court fee refunds under the *Court Fees Act, 1870* and provide tax relief for mediation costs. Fast-tracked MSA enforcement and mediator recognition will reshape attitudes.

These measures will position mediation as a key pillar of India's justice system, easing court congestion and promoting harmonious resolutions.

CONCLUSION

The evolution of mediation in India signifies a compelling blend of historical continuity and modern legal reform. From its origins in ancient community-led consensus-building practices to its status as a structured and legally recognized mechanism, mediation reflects India's capacity to integrate tradition with innovation. Legislative enactments, judicial endorsement, and recent technological advancements have steadily shaped mediation into a credible and efficient alternative to conventional litigation.

The enactment of the *Mediation Act, 2023*, represents a pivotal step in the formalization of mediation and signals a commitment to systemic change. It brings clarity, enforceability, and institutional support to mediation processes, strengthening the framework required to scale it nationally. Simultaneously, the emergence of online mediation platforms and policy support from key institutions underscore India's willingness to embrace technology in democratizing access to justice. Nevertheless, significant barriers persist. Public awareness remains limited, many practitioners and litigants are unfamiliar with mediation's value, and infrastructural gaps, especially in rural areas, hinder widespread adoption. Moreover, the ingrained preference for adversarial resolution methods and inconsistent implementation practices dilute the transformative potential of mediation. To truly harness mediation's capacity, India must embark on a multi-pronged reform strategy. This includes increasing public outreach through educational campaigns, ensuring uniform mediator training and accreditation, expanding access through regional centres, and addressing digital divides to support online mediation. Policy adjustments, particularly those aligning with global standards for cross-border dispute resolution, are also

Policy Plan, November 2021.

crucial for elevating India's role on the international stage. In essence, mediation is more than just a tool for dispute resolution—it reflects a broader societal shift toward inclusive, participatory, and relationship-centric justice. As India continues to reimagine its legal landscape, mediation stands at the forefront, offering a pragmatic, empathetic, and future-ready approach to resolving disputes. With focused implementation and sustained institutional support, mediation can redefine access to justice and affirm India's leadership in global dispute resolution.