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Comprehensive Study on the Evolving Role of Mediation in Resolving Cross Border Commercial Disputes

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ABSTRACT

In an increasingly interconnected global economy, cross-border commercial disputes have become inevitable, necessitating efficient, cost-effective, and culturally sensitive mechanisms for resolution. This comprehensive study explores the evolving role of mediation as a pivotal tool in resolving international commercial disputes, focusing on its adaptability, procedural flexibility, and growing recognition in legal frameworks worldwide. Mediation, distinct from adjudicatory mechanisms like arbitration and litigation, fosters collaborative dialogue and preserves business relationships—an aspect particularly crucial in transnational trade. The study critically examines the transition from traditional adversarial approaches to consensual dispute resolution methods, underpinned by instruments such as the United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention, 2019). By analyzing case laws, institutional frameworks (e.g., ICC, WIPO, UNCITRAL), and country-specific developments, the paper underscores mediation's increasing institutionalization and legitimacy. It also highlights the role of technology in facilitating online cross-border mediation, especially post-COVID-19, and assesses its impact on accessibility and confidentiality. Key challenges such as enforceability of settlement agreements, jurisdictional ambiguities, and the need for harmonization of laws are addressed. Further, the study investigates the roles of mediators, parties, and legal counsel in shaping outcomes, emphasizing the necessity for cultural competence and neutrality.

Through doctrinal and empirical analysis, including interviews with practitioners and review of mediation outcomes in commercial sectors like international construction, intellectual property, and joint ventures, the research offers insights into best practices and policy recommendations. The study concludes that while mediation is not a panacea, its evolving role—facilitated by supportive legislation, institutional collaboration, and global awareness—positions it as a cornerstone in the future architecture of cross-border commercial dispute resolution. The research ultimately advocates for greater international cooperation, capacity-building, and legal innovation to fully harness mediation's potential in promoting global commercial harmony.

KEYWORDS

Cross-Border Mediation, Singapore Convention, Commercial Disputes, Online Dispute Resolution, Indian Mediation Framework.

INTRODUCTION

The international commercial landscape has undergone profound transformation in recent decades. Global trade volumes have reached unprecedented levels. Cross-border business transactions have become increasingly complex and multifaceted in nature.¹ This complexity has naturally led to a corresponding rise in commercial disputes spanning multiple jurisdictions. Traditional litigation mechanisms often struggle to address these disputes effectively. Courts are constrained by territorial limitations, procedural inconsistencies and conflicting substantive laws across jurisdictions. The protracted nature of litigation has significant financial implications for businesses engaged in international commerce.²

Arbitration emerged as the preferred alternative for resolving cross-border disputes. Its advantages include procedural flexibility, confidentiality, and enforceability through the New York Convention. However arbitration has gradually evolved into a quasi-judicial process. It now resembles conventional litigation in terms of costs, complexity and time commitment. This evolution has created space for other forms of alternative dispute resolution to gain prominence. Mediation has emerged as a

¹ World Trade Organization, "World Trade Statistical Review 2024," 12-15 (2024).

² Justice R.F. Nariman, "Cross Border Disputes and Alternative Resolution Mechanisms," (2022) 4 SCC J-1.

particularly viable option for international commercial disputes.³ The United Nations Commission on International Trade Law (UNCITRAL) recognized this shift and initiated efforts to create a uniform legal framework for international mediation. These efforts culminated in the Singapore Convention on Mediation, formally known as the United Nations Convention on International Settlement Agreements Resulting from Mediation, 2019.⁴

India's engagement with international commercial mediation has evolved significantly over the past decade. The country initially maintained a cautious approach towards mediation. This was particularly evident in cross-border commercial contexts. The legislative framework remained largely underdeveloped until recently. There was minimal recognition of mediated settlements in international disputes. The enforceability of such settlements posed considerable challenges. This situation resulted in a preference for arbitration over mediation among businesses operating in or with India.⁵

The global commercial ecosystem has increasingly advocated for mediation as an effective dispute resolution mechanism. Several factors have contributed to this shift. Business entities seek cost-efficient and expeditious resolution of disputes. There is growing recognition of the value of preserving commercial relationships. The confidential nature of mediation protects sensitive business information. These factors collectively have influenced India's approach towards cross-border commercial mediation. The country has gradually transitioned from skepticism to measured acceptance of mediation as a viable dispute resolution mechanism.⁶

CONCEPTUAL FRAMEWORK OF CROSS BORDER COMMERCIAL MEDIATION

Cross-border commercial mediation represents a consensual dispute resolution process. It involves parties from different jurisdictions seeking resolution through a neutral third party. The mediator facilitates negotiation without imposing any binding decision on the parties.⁷ This process fundamentally differs from

³ Cyril Shroff & Shaneen Parikh, "The Efficacy of Mediation in Cross-Border Commercial Disputes," 37 *Journal of International Arbitration* 345, 348-350 (2020).

⁴ United Nations Convention on International Settlement Agreements Resulting from Mediation, opened for signature Aug. 7, 2019, U.N. Doc. A/73/17 (the "Singapore Convention").

⁵ Sriram Panchu, "Mediation Practice and Law: The Path to Successful Dispute Resolution," 201-210 (LexisNexis, 3d ed. 2023).

⁶ International Chamber of Commerce, "Global Trends in International Commercial Dispute Resolution," ICC Publication No. 895E, 76-82 (2023).

⁷ Nadja Alexander, "International and Comparative Mediation: Legal

adversarial mechanisms like litigation and arbitration. Parties retain complete control over the outcome of their dispute. The mediator merely guides them toward a mutually acceptable solution through structured communication channels. This voluntary, non-adjudicative nature forms the conceptual core of cross-border commercial mediation.⁸

The theoretical underpinnings of cross-border commercial mediation draw from multiple disciplines. Game theory principles inform the cooperative problem-solving approach. Negotiation theory provides the framework for interest-based bargaining in commercial contexts. Cultural dimensions theory addresses cross-cultural communication challenges inherent in international disputes. These theoretical foundations collectively shape the practice of cross-border commercial mediation. They influence mediator strategies, party interactions and settlement outcomes in international commercial settings. In *Salem Advocate Bar Association v. Union of India*, the Supreme Court of India recognized mediation's theoretical foundations. The Court acknowledged its potential for resolving complex commercial disputes in a time-efficient manner.⁹

Cross-border commercial mediation possesses distinctive features that separate it from other dispute resolution mechanisms. Confidentiality stands as a paramount characteristic, protecting sensitive business information. The process offers exceptional flexibility, allowing customization to accommodate diverse legal traditions. Party autonomy remains central, empowering disputants to craft creative solutions beyond conventional legal remedies. These features make it particularly suitable for international business disputes. *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.* highlighted these distinctive characteristics. The Supreme Court noted mediation's appropriateness for commercial matters involving ongoing business relationships.¹⁰

Several key principles govern cross-border commercial mediation in the international commercial context. The principle of party autonomy ensures disputants maintain control throughout the process. The principle of neutrality requires mediators to remain impartial and independent. Confidentiality protects disclosures

Perspectives," 45-48 (Wolters Kluwer, 2021).

⁸ "UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, 2018 (amending the UNCITRAL Model Law on International Commercial Conciliation, 2002)."

⁹ *Salem Advocate Bar Association v. Union of India*, (2005) 6 SCC 344.

¹⁰ *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*, (2010) 8 SCC 24.

made during proceedings from subsequent use. Good faith participation demands honest engagement from all participants. These principles collectively form the ethical and functional framework. They guide the conduct of cross-border commercial mediation across different jurisdictions.¹¹ The Singapore Convention on Mediation explicitly acknowledges these principles. It establishes a uniform legal framework for enforcing settlements arising from international commercial mediation.¹²

LEGISLATIVE FRAMEWORK GOVERNING CROSS BORDER MEDIATION IN INDIA

Constitutional Provisions

The Indian Constitution does not explicitly mention mediation as a dispute resolution mechanism. However, several constitutional provisions implicitly support and provide the foundation for mediation. Article 14 guarantees equality before the law to all persons. This principle extends to equal access to justice through various mechanisms. Mediation embodies this constitutional value by providing accessible dispute resolution options. It particularly benefits those who cannot afford protracted litigation in cross-border commercial matters.¹³

Article 21 of the Constitution guarantees the right to life and personal liberty. The Supreme Court has expansively interpreted this provision over decades. In *Anita Kushwaha v. Pushap Sudan*, the Court recognized that access to justice is an implicit component of Article 21. The Court held that justice delivery must be affordable, accessible and effective. Cross-border commercial mediation aligns perfectly with these constitutional objectives. It offers streamlined processes for resolving complex international business disputes.¹⁴

The Directive Principles of State Policy also provide constitutional backing to mediation. Article 39A directs the State to ensure equal justice and free legal aid. It mandates the state to secure a legal system that promotes justice on the basis of equal opportunity. The promotion of alternative dispute resolution mechanisms like mediation fulfills this constitutional mandate. It provides businesses with equitable options beyond traditional litigation. This is particularly significant in cross-border disputes where

¹¹ International Mediation Institute, “Code of Professional Conduct for International Commercial Mediators,” 2022.

¹² United Nations Convention on International Settlement Agreements Resulting from Mediation, opened for signature Aug. 7, 2019, U.N. Doc. A/73/17 (the “Singapore Convention”).

¹³ Constitution of India, art. 14.

¹⁴ *Anita Kushwaha v. Pushap Sudan*, (2016) 8 SCC 509.

litigation costs are substantially higher.¹⁵

The constitutional vision of cooperative federalism supports the development of mediation frameworks. Commercial disputes often involve parties from different states or nations. Article 245 read with Entry 13 of List III enables both center and states to legislate on civil procedure. This concurrent jurisdiction has allowed for the development of mediation infrastructure at multiple levels. It facilitates the resolution of cross-jurisdictional commercial disputes through collaborative approaches.¹⁶

In the landmark case of *Salem Advocate Bar Association v. Union of India*, the Supreme Court highlighted the constitutional dimensions of mediation. The Court emphasized how mediation upholds constitutional values of access to justice. It noted that Section 89 of the Code of Civil Procedure promotes the constitutional objective of timely justice. The Court directed the establishment of mediation rules aligned with these constitutional principles. These rules now form the backbone of court-annexed mediation in commercial disputes.¹⁷

- ***Statutory Framework: The Commercial Courts Act, 2015***

The Commercial Courts Act, 2015 represents a watershed moment in India's dispute resolution landscape. It established specialized forums for adjudicating commercial disputes exceeding specified value thresholds. Section 2(1)(c) defines “commercial dispute” broadly. It encompasses various business transactions including mercantile contracts and export-import agreements. This expansive definition covers most cross-border commercial disputes that potentially qualify for mediation.¹⁸

Section 12A of the Commercial Courts Act introduced a mandatory pre-litigation mediation requirement. It stipulates that plaintiffs must undertake mediation before instituting commercial suits. This provision does not apply if urgent interim relief is sought. The amendment aims to filter disputes that can be resolved without judicial intervention. It particularly benefits international commercial disputants by providing an opportunity for early resolution. The provision demonstrates legislative intent to mainstream mediation in

¹⁵ Constitution of India, art. 39A.

¹⁶ Sriram Panchu, “Mediation Practice and Law: The Path to Successful Dispute Resolution,” 87-92 (LexisNexis, 3d ed. 2023).

¹⁷ *Salem Advocate Bar Association v. Union of India*, (2005) 6 SCC 344.

¹⁸ Commercial Courts Act, 2015, No. 4, Acts of Parliament, 2015 (India), § 2(1)(c).

commercial dispute resolution.¹⁹

The Commercial Courts Act interfaces with the Code of Civil Procedure through Section 16. This section makes the CPC applicable to proceedings before Commercial Courts and Commercial Divisions. By extension, Section 89 of the CPC empowers Commercial Courts to refer matters to mediation. In *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*, the Supreme Court clarified the scope of Section 89. The Court established that commercial disputes are particularly suitable for mediation when business relationships need preservation.²⁰

The Act establishes a time-bound framework for dispute resolution. Section 13 mandates case management hearings to streamline proceedings. During these hearings, judges often explore the possibility of settlement through mediation. Rule 3 of the Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018 operationalizes the mediation framework. It establishes an authority to conduct mediation under the Act. This structured approach provides clarity for international businesses engaged in cross-border disputes with Indian entities.²¹

• ***Arbitration and Conciliation Act, 1996 (as amended)***

The Arbitration and Conciliation Act, 1996 serves as the primary legislative framework for conciliation in India. Part III of the Act specifically deals with conciliation, which shares substantial similarities with mediation. Section 61 outlines the application of conciliation procedures to disputes arising from contractual or other legal relationships. This provision expressly includes international commercial disputes within its ambit. It provides a statutory foundation for resolving cross-border commercial conflicts through consensual processes.²²

The 1996 Act draws significant inspiration from the UNCITRAL Model Law on International Commercial Conciliation. Section 67 establishes the role of conciliators in assisting parties to reach an amicable settlement. It emphasizes the principles of objectivity, fairness and justice. These principles align with

¹⁹ Commercial Courts Act, 2015, No. 4, Acts of Parliament, 2015 (India), § 12A (inserted by the Commercial Courts (Amendment) Act, 2018).

²⁰ *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*, (2010) 8 SCC 24.

²¹ Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018, Rule 3.

²² Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996 (India), § 61.

international standards for mediation in cross-border disputes. The Act thus provides a framework compatible with global mediation practices. This compatibility facilitates mediation of cross-border commercial disputes involving Indian parties.²³

The Act provides robust confidentiality protections, essential for cross-border commercial mediation. Section 75 prohibits the disclosure of information relating to conciliation proceedings. This confidentiality extends to settlement agreements unless disclosure is necessary for implementation and enforcement. In *Dust Engineers & Consultancy (P) Ltd. v. Delhi Jal Board*, the Delhi High Court upheld this confidentiality protection. The Court emphasized its importance in preserving the integrity of the conciliation process in commercial matters.²⁴

The 2019 amendments to the Arbitration and Conciliation Act strengthened the settlement enforcement mechanism. Section 74 grants a settlement agreement the same status and effect as an arbitral award. This provision enhances the enforceability of mediated settlements in cross-border contexts. It aligns with the objectives of the Singapore Convention on Mediation. The amendment demonstrates India's commitment to creating a robust framework for cross-border commercial mediation.²⁵

The Act addresses the appointment and conduct of conciliators in international commercial disputes. Section 64 allows parties to determine the number of conciliators. It provides default provisions when parties fail to reach an agreement on this aspect. Section 77 deals with resort to arbitral or judicial proceedings during conciliation. These provisions create procedural clarity for cross-border commercial mediations. They establish a predictable framework that international businesses can rely upon when engaging with Indian counterparts.²⁶

A notable limitation of the Act is its treatment of conciliation as distinct from mediation. This conceptual separation has

²³ UNCITRAL Model Law on International Commercial Conciliation with Guide to Enactment and Use, U.N. Sales No. E.05.V.4 (2004).

²⁴ *Dust Engineers & Consultancy (P) Ltd. v. Delhi Jal Board*, 2010 SCC OnLine Del 1302.

²⁵ Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996 (India), § 74 (as amended by the Arbitration and Conciliation (Amendment) Act, 2019).

²⁶ Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996 (India), §§ 64, 77.

created some confusion in cross-border contexts. Many international jurisdictions do not maintain this distinction. The Supreme Court addressed this issue in *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.* The Court noted that conciliation under the Act is effectively structured mediation. It clarified that both processes share the same fundamental characteristics despite the terminological difference.²⁷

LEGISLATIVE FRAMEWORK GOVERNING CROSS BORDER MEDIATION IN INDIA

• *Mediation Act, 2023: Key Features and Implications*

The Mediation Act, 2023 represents a watershed moment in India's alternative dispute resolution landscape. It provides a comprehensive statutory framework for mediation proceedings across various domains. The legislation explicitly addresses cross-border commercial disputes in a dedicated chapter. This statutory recognition elevates mediation to a standalone dispute resolution mechanism. It no longer remains merely an appendage to other judicial or arbitral proceedings.²⁸

Section 3 of the Act defines “international mediation” with remarkable precision. It encompasses disputes where at least one party resides or operates outside India. The provision also includes situations where the subject matter is located abroad. Additionally, it covers scenarios where contractual performance occurs in foreign jurisdictions. This expansive definition captures various dimensions of cross-border commercial relationships. It ensures wide applicability of the legislative framework to international business disputes.²⁹

The Act establishes a robust mechanism for enforcement of mediated settlement agreements. Section 28 grants domestic mediated settlements the status of a judgment or decree. Section 32 specifically addresses international mediated settlements. It provides direct enforceability subject to limited grounds for challenge. These provisions align with the Singapore Convention on Mediation. They address a critical aspect that previously hindered the growth of cross-border commercial mediation.³⁰

Confidentiality protections under the Act are particularly valuable for cross-border commercial disputes. Section 19

²⁷ *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*, (2010) 8 SCC 24.

²⁸ Mediation Act, 2023, No. 1, Acts of Parliament, 2023 (India).

²⁹ Mediation Act, 2023, No. 1, Acts of Parliament, 2023 (India), § 3.

³⁰ Mediation Act, 2023, No. 1, Acts of Parliament, 2023 (India), §§ 28, 32.

imposes strict confidentiality obligations on all participants. It prohibits disclosure of mediation communications in subsequent proceedings. The provision includes limited exceptions for implementation of settlements and overriding public interest. This robust confidentiality framework protects sensitive business information. It makes mediation an attractive option for international commercial entities operating in competitive markets.³¹

The Act introduces a novel concept of “online mediation” through Section 30. It recognizes technology-enabled mediation processes conducted wholly or partly through digital means. This provision has significant implications for cross-border disputes. It eliminates geographical barriers that traditionally hindered international mediations. Businesses across jurisdictions can now engage in mediation without incurring substantial travel costs. The Covid-19 pandemic has accelerated this shift towards virtual mediation processes.³²

Section 42 of the Act addresses the interplay between mediation and other dispute resolution methods. It allows parties to include multi-tiered dispute resolution clauses in commercial contracts. Such clauses typically require mediation before resorting to arbitration or litigation. The statutory recognition of such clauses enhances their enforceability in cross-border contexts. It encourages businesses to explore mediation before engaging in more adversarial processes.³³

The legislation creates institutional infrastructure for supporting mediation activities. Section 43 establishes the Mediation Council of India as the regulatory body. The Council is tasked with developing professional standards for mediators. It will also accredit mediation service providers and maintain a register of mediators. This institutional framework lends credibility to the Indian mediation ecosystem. It assures international businesses of quality mediation services when engaging with Indian counterparts.³⁴

• ***Analysis of Judicial Precedents***

Indian courts have incrementally developed jurisprudence on cross-border mediation through various judgments. In *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*, the Supreme Court categorized disputes suitable for

³¹ Mediation Act, 2023, No. 1, Acts of Parliament, 2023 (India), § 19.

³² Mediation Act, 2023, No. 1, Acts of Parliament, 2023 (India), § 30.

³³ Mediation Act, 2023, No. 1, Acts of Parliament, 2023 (India), § 42.

³⁴ Mediation Act, 2023, No. 1, Acts of Parliament, 2023 (India), § 43.

mediation. The Court specifically included commercial and business disputes within this category. It emphasized that cases involving trade and commerce are particularly amenable to mediation. This judicial endorsement provided legitimacy to mediation in cross-border commercial contexts.³⁵

The enforcement of mediated settlements has received judicial attention in several landmark cases. In *Mysore Cements Ltd. v. Svedala Barmac Ltd.*, the Supreme Court upheld a settlement reached through judicial mediation. The dispute involved an Indian company and a foreign entity. The Court emphasized the need to respect settlements reached through consent. This judgment established a judicial precedent for enforcing cross-border mediated settlements. It predated formal legislative framework for international mediation.³⁶

Courts have addressed jurisdictional aspects of cross-border mediation in several cases. In *Modi Entertainment Network v. WSG Cricket Pte. Ltd.*, the Supreme Court examined anti-suit injunctions in international commercial contexts. The Court established principles applicable to cross-jurisdictional disputes. These principles guide the determination of appropriate forums for mediation. They influence the interplay between mediation and parallel proceedings in international commercial disputes.³⁷

The Delhi High Court in *Shri Ravi Dixit v. Shri Madhav Prasad* made important observations about mediation's suitability. The case involved a complex commercial dispute with international elements. The Court highlighted mediation's efficiency in resolving such disputes. It noted that mediation preserves business relationships unlike adversarial proceedings. This judicial endorsement reinforced mediation's value proposition for cross-border commercial disputes.³⁸

The Supreme Court in *M.R. Krishna Murthi v. New India Assurance Co. Ltd.* emphasized mediation training and standards. The Court directed the establishment of comprehensive training programs for mediators. It specifically addressed specialized training for commercial mediation. These judicial directives have shaped institutional capacity building for cross-border mediation. They ensure quality

³⁵ *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*, (2010) 8 SCC 24.

³⁶ *Mysore Cements Ltd. v. Svedala Barmac Ltd.*, (2003) 10 SCC 375.

³⁷ *Modi Entertainment Network v. WSG Cricket Pte. Ltd.*, (2003) 4 SCC 341.

³⁸ *Shri Ravi Dixit v. Shri Madhav Prasad*, 2020 SCC OnLine Del 350.

mediation services for international commercial disputants.³⁹

INTERNATIONAL LEGAL INSTRUMENTS ON CROSS BORDER MEDIATION

The international legal framework governing cross-border mediation has evolved significantly over recent decades. Various instruments have emerged to address the unique challenges of mediating disputes across jurisdictions. The United Nations Commission on International Trade Law (UNCITRAL) has played a pivotal role in this development. It has crafted several instruments that shape the global mediation landscape. These instruments aim to harmonize approaches across different legal systems and traditions.⁴⁰

In 2018, UNCITRAL revised and expanded the 2002 Model Law. The new instrument was titled the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation. This updated Model Law incorporated significant advancements in mediation practice. It introduced provisions for direct enforcement of settlement agreements. The revision reflected the terminology shift from “conciliation” to “mediation” in international practice. In amending the Model Law, UNCITRAL decided to use the term “mediation” instead “to adapt to the actual and practical use of the terms.” The revised Model Law provides a comprehensive template for national legislation on cross-border mediation.⁴¹

The European Union has developed regional instruments addressing cross-border mediation. The EU Mediation Directive of 2008 established minimum standards for member states. It addressed critical aspects such as quality of mediation and enforcement of agreements. The Directive required member states to ensure enforceability of mediated settlements. Article 1 states that “the objective of this Directive is to facilitate access to alternative dispute resolution and to promote the amicable settlement of disputes.” This regional approach has significantly influenced the development of mediation in Europe. It has created a harmonized framework for cross-border disputes within the EU.⁴²

³⁹ M.R. Krishna Murthi v. New India Assurance Co. Ltd., (2020) 6 SCC 417.

⁴⁰ UNCITRAL, “Guide to Enactment and Use 2002,” United Nations Commission on International Trade Law.

⁴¹ UNCITRAL, “UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, 2018,” United Nations Commission on International Trade Law.

⁴² Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters, 2008 O.J. (L 136) 3.

The Singapore Convention on Mediation represents the most significant development in this field. Formally known as the United Nations Convention on International Settlement Agreements Resulting from Mediation, it was adopted in 2018. The Convention entered into force on September 12, 2020. It establishes a global framework for direct enforcement of international mediated settlements. This addresses what many considered the “missing piece” in the international mediation landscape. The Convention creates a mechanism similar to the New York Convention for arbitration. It allows parties to directly enforce mediated settlements across jurisdictions.⁴³

Article 3 of the Singapore Convention establishes the general principle of enforcement. It requires each party to enforce settlement agreements in accordance with national rules. Article 5 provides limited grounds for refusing enforcement. These grounds can be grouped into “three main categories, namely in relation to the disputing parties, the settlement agreement and the mediation procedure.” The Convention excludes certain types of settlements from its scope. These include agreements relating to consumer transactions and family or inheritance law. This focused approach ensures the Convention addresses primarily commercial disputes. It provides predictability and certainty in cross-border business relationships.⁴⁴

The Hague Conference on Private International Law has contributed to this framework. The Hague Principles on Choice of Law in International Commercial Contracts indirectly support mediation. They provide guidance on determining applicable law in international agreements. “Party autonomy, which refers to the power of parties to a contract to choose the law that governs that contract, enhances certainty and predictability.” This includes mediated settlements with cross-jurisdictional implications. The principles enhance party autonomy in selecting the governing law. This autonomy extends to settlements reached through mediation processes. The Hague Conference's work complements other international instruments in this field. It addresses private international law aspects of cross-border mediation.⁴⁵

COMPARATIVE ANALYSIS OF MEDIATION FRAMEWORKS

The United States presents a predominantly voluntary approach

⁴³ United Nations Convention on International Settlement Agreements Resulting from Mediation, opened for signature Aug. 7, 2019.

⁴⁴ United Nations Convention on International Settlement Agreements Resulting from Mediation, arts. 3, 5.

⁴⁵ Hague Conference on Private International Law, “Principles on Choice of Law in International Commercial Contracts, 2015.”

to commercial mediation. The framework has evolved from early applications in labor disputes to a comprehensive system. Most states and federal courts actively encourage mediation through their procedural rules. The Alternative Dispute Resolution Act 1998 forms the federal legislative backbone. It requires district courts to implement ADR programs that often include mediation components. Major private institutions like the American Arbitration Association (AAA) and JAMS provide structural support to the mediation ecosystem.⁴⁶

U.S. mediators derive their authority primarily from party appointment rather than statutory mandates. The flexible nature of mediation in the American system is one of its defining characteristics. Parties retain significant control over the process and can customize procedures to suit specific disputes. Notably, mediations remain strictly confidential with communications protected from subsequent disclosure in court proceedings. Settlement agreements typically gain enforceability through contract law principles rather than specialized enforcement mechanisms.⁴⁷

Cost effectiveness stands as a compelling feature of the American mediation landscape. Studies indicate that commercial mediation can generate cost savings of up to 80% compared to traditional litigation. The Singapore Convention on Mediation plays a significant role in the U.S. framework as it “provides a framework for the enforcement of mediated settlements” in cross-border disputes. This alignment with international standards enhances the appeal of U.S.-based mediation for resolving international commercial disputes. Organizations like the Federal Mediation and Conciliation Service provide additional institutional support.⁴⁸

The United Kingdom framework demonstrates a more robust court-driven approach to mediation. English courts wield significant influence through their case management powers. They regularly stay proceedings to facilitate mediation attempts and may impose adverse costs consequences on parties who unreasonably refuse to mediate. This creates a form of “soft compulsion” despite mediation remaining technically voluntary. The Woolf Reforms of 1999 catalyzed this development by introducing the Civil Procedure Rules which emphasize

⁴⁶ American Arbitration Association, “AAA Mediation,” Alternative Dispute Resolution Services.

⁴⁷ U.S. Department of Commerce, “What is Mediation?,” Commerce.gov.

⁴⁸ Linklaters LLP, “Commercial mediation in the U.S.,” Commercial mediation – a global review.

alternative dispute resolution.⁴⁹

The UK framework places particular emphasis on pre-action conduct. Parties must consider mediation before commencing litigation, with multiple procedural checkpoints reinforcing this obligation. Notably, “parties contemplating court litigation are not obliged first to mediate, [but] they are under an obligation to consider whether their dispute could be settled by ADR.” Institutional support comes primarily from organizations like the Centre for Effective Dispute Resolution (CEDR). The court's power to stay proceedings where parties have contractually agreed to mediate remains a powerful enforcement mechanism.⁵⁰

England's mediation framework maintains a careful balance between encouraging mediation and preserving access to courts. Mediations themselves follow a relatively standardized format despite the flexibility of the process. Initial plenary sessions typically give way to separate caucus meetings where mediators shuttle between parties. This approach mimics the U.S. model while incorporating distinctly British procedural influences. Settlement rates range from 50-75% according to available data, demonstrating the framework's efficacy.⁵¹

CONCLUSION

The trajectory of cross-border commercial mediation has undergone remarkable transformation in recent years. Global commercial transactions have accelerated at an unprecedented pace. This interconnectedness has naturally led to complex disputes spanning multiple jurisdictions. Traditional dispute resolution mechanisms often struggle with these complexities. Mediation has emerged as a viable alternative with distinct advantages. Its flexibility, confidentiality and relationship-preserving qualities make it particularly suitable for international business disputes.⁵²

The legislative landscape governing cross-border mediation has evolved significantly. India's statutory framework has progressed from fragmentary provisions to comprehensive legislation. The Mediation Act, 2023 represents a watershed moment in this evolution. It addresses critical aspects including enforceability, confidentiality and mediator qualifications. These legislative developments align with international best practices. They

⁴⁹ Pinsent Masons, “Mediation in England and Wales,” Outlaw.com.

⁵⁰ Linklaters LLP, “Commercial mediation in the UK,” Commercial mediation – a global review.

⁵¹ Ashurst LLP, “Quickguides - Commercial Mediation,” Insights.

⁵² International Chamber of Commerce, “ICC Dispute Resolution Statistics: 2023.”

demonstrate India's commitment to creating a robust framework for cross-border commercial mediation. The statutory recognition elevates mediation from an ancillary process to a standalone mechanism.⁵³

Indian courts have incrementally developed jurisprudence supporting mediation in commercial contexts. Cases like *Afcons Infrastructure and Salem Advocate Bar Association* have established important principles. These judicial pronouncements legitimize mediation as a viable dispute resolution mechanism. They provide guidance on procedural aspects and settlement enforcement. The judiciary has played a crucial role in mainstreaming mediation in commercial disputes.⁵⁴

Technological advancements have transformed mediation practices in cross-border contexts. Online dispute resolution platforms eliminate geographical barriers that traditionally hindered international mediations. Virtual proceedings reduce costs and enhance accessibility for businesses across jurisdictions. The Covid-19 pandemic accelerated adoption of these technological solutions. India's legal framework has adapted to accommodate these developments. The Mediation Act explicitly recognizes online mediation processes. This forward-looking approach prepares the framework for future technological innovations.⁵⁵

Future developments in this field will likely focus on specialization and harmonization. Sector-specific mediation protocols may emerge for industries with unique dispute characteristics. Efforts toward harmonizing procedural standards across jurisdictions will intensify. Technological integration will continue to reshape mediation practices. Artificial intelligence may assume greater roles in administrative aspects of mediation. The interplay between mediation and other dispute resolution mechanisms will evolve. These developments will further enhance mediation's effectiveness in resolving cross-border commercial disputes.⁵⁶

⁵³ Mediation Act, 2023, No. 32 of 2023 (India).

⁵⁴ *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*, (2010) 8 SCC 24.

⁵⁵ Mediation Act, 2023, No. 32 of 2023 (India), § 30.

⁵⁶ ICC, "ICC Dispute Resolution Services in 2024."