

UNLEASHING THE POTENTIAL OF MEDIATION IN INDIA: STRENGTHENING THE SYSTEM WITH INTERNATIONAL INSIGHTS

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ABSTRACT

In recent years, Mediation, as an Alternative Dispute Resolution (ADR) mechanism, has gained significant recognition in India. To decrease the workload on the courts and encourage effective conflict settlement outside of them, the Indian judiciary has been actively encouraging mediation. However, to implement mediation efficiently, there are a number of deficiencies in India's present law that must be addressed. This article analyses the current state of mediation in India, along with the need to adopt mediation methods in other nations—for purposes of this article, the US, China, and Italy—in order for its development. It builds on comparative analysis, providing pertinent elements that may be applied in the Indian context and emphasises the salient characteristics and success factors of mediation models in various nations. Lastly, based on these observations, the article suggests a course of action for mediation in India, including the adoption of best practises from other nations.

Keywords: Mediation, Parties, Voluntary, Dispute, Resolution, Mediator, Legislation, Disagreement.

INTRODUCTION

In today's world, everyone's life is surrounded by disputes. Disputes will inevitably come up in every personal or professional relationship. There are three components to any dispute: people, process, and problem. A disagreement is completely normal, but how the parties choose to handle it is crucial. There are two possible approaches to resolving a dispute: non-adversarial approaches like mediation and conciliation, and adversarial approaches like litigation and arbitration. The adversarial approach of dispute resolution is one in which the opposing claims of parties are presented to a neutral third party with the authority to impose powers by legal representatives who have an interest in the settlement of the conflict.¹ Non-adversarial ADR processes like mediation are personal, accessible, and less sophisticated

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¹ Mondaq, 'Alternative Dispute Resolution in India: A Brief Overview' (2019)

<<https://www.mondaq.com/advicecentre/content/4458/Alternative-Dispute-Resolution-In-India-A-Brief-Overview>> accessed 8 April 2023.

than the adversarial manner of conflict settlement. Joseph Grynbaum once quipped, "An ounce of mediation is worth a pound of arbitration and a tonne of litigation," and he couldn't have been more accurate. The fact that mediation has increasingly found its way into the Dispute Resolution sections of practically all contemporary business agreements is proof of the effectiveness of mediation as an alternative dispute resolution strategy. This is a positive progression. There are variations from nation to nation even though the mediation procedure is the same in all countries. In India, where there is currently no specific legislation governing mediation, the practise has a broad application. It is currently scattered across many provisions. Establishing more transparency and incentivizing parties to mediate are two benefits of comprehensive legislation that establishes an institutionalised framework for mediation. India should take inspiration from the existing mediation laws and mediation models applicable in different countries like China, the US, Italy, etc. For instance, various countries, including Australia and Singapore, have standalone laws on mediation.²In order to safeguard the interests of the parties concerned and provide a quick and economical course of action regarding the execution of such a settlement agreement, it is more important than ever that a unified legislative framework be developed with regard to mediation.

WHAT IS MEDIATION?

Mediation, according to the Mediation and Conciliation Project Committee(MCPC), constituted in 2005 by the then Chief Justice of India Hon'ble Mr. Justice R.C. Lahoti, is a "voluntary, binding process in which an impartial and neutral mediator facilitates disputing parties in reaching a settlement." A mediator does not impose a solution but creates a conducive environment in which disputing parties can resolve all their disputes.³ The mediator helps the parties to understand each other's perspectives and work towards finding a mutually acceptable solution by facilitating conversation and encouraging cooperation. The parties may interact with each other to address the underlying issues that are causing their disagreement, discover their shared interests, and focus on coming to a resolution on their own with the support of mediation since it is conversational, accessible, and less complicated.

² Report of the High Level Committee to Review the Institutionalisation of Arbitration Mechanism in India (Chair: Retd. Justice B.N. Srikrishna, 2017).

³ Supreme Court of India, *Mediation Training Manual of India*, Mediation and Conciliation Project Committee <<https://main.sci.gov.in/pdf/mediation/Brochure%20-%20MCPC.pdf>> accessed on 8 April 2023.

The roots of mediation can be traced back to ancient civilizations. For instance, in ancient China, the concept of “peace-making” was emphasized, where mediators, known as “zhi ren,” were appointed to assist in resolving conflicts between individuals and communities.⁴ Similarly to this, the idea of mediation has a long history in India. There is a significant tradition of mediation in India, evidenced by instances like Lord Krishna mediating between the Kauravas and Pandavas in the Mahabharata, family elders settling household disagreements, and Panchayats resolving conflicts at the communal level.

In the past, mediation has demonstrated its viability as a procedure for a number of reasons. It is employed as a tool to maintain relationships and bring peace between contending parties. For instance, mediation is utilised in indigenous cultures, where social cohesiveness and cultural harmony are highly prized, to restore equilibrium. Also, it is used as a quick and inexpensive technique for resolving disputes. Formal legal systems are frequently confrontational, time-consuming, and have winners and losers. On the other side, mediation gives parties a chance to work together and come up with ideas that are advantageous to both parties. It encourages ingenuity in coming up with solutions that might not be feasible in a court of law and gives parties authority over the dispute settlement procedure.

Moreover, mediation has shown to be a successful method for advancing fairness and social justice. Instead of focusing on the positions or legal rights of the parties, mediation focuses on their needs and interests. It offers more nuanced and contextualised solutions that take into consideration the parties' individual situations, cultural norms, and power relationships. It may be viewed as a means of ensuring equality of opportunity and giving voice to excluded or disadvantaged groups in order to advance their objectives and interests.

Nowadays, mediation is a recognised and officialised technique for resolving disputes. It is widely accepted and used in several nations across the world, with a variety of applications in many different disciplines, including family law, business disputes, workplace conflicts, neighbourhood conflicts, and international conflicts. The practise of mediation is governed by laws and regulations in many nations, and professional associations like the International Mediation Institute (IMI) and the American Bar Association (ABA) have created rules of

⁴ Joint Learning Initiative on Faith and Local Communities, ‘Towards a Shared Sustainable Future’ (2019) <<https://jliflc.com/wp-content/uploads/2019/01/Towards-a-Shared-Sustainable-Future.pdf>> accessed 12 April 2023

conduct for mediators. These guidelines guarantee that the mediation process is fair, unbiased, without prejudice, and private, and protects the parties' rights and interests.

CURRENT JURISPRUDENCE ON MEDIATION IN INDIA

India has used mediation procedures since the 17th century. The scope of mediation in India covers a wide range of civil and commercial disputes. For example, in matrimonial cases, where disputes arise between spouses over issues such as property division, child custody, and alimony, mediation is widely used to facilitate dialogue and negotiation. Mediation allows for quicker and cost-effective solutions in resolving consumer issues such as disputes related to defective products, faulty services, and unfair trade practices. It is utilized in business contracts and transactions where disputes may arise over issues such as breach of contract, and partnership disagreements. For example, in cases of harassment, discrimination, or dispute over wages or benefits in a workplace, mediation provides a confidential and impartial forum to work towards a mutually satisfactory outcome. Moreover, disputes related to loans, debts, insurance claims, and coverage issues are resolved through mediation in the banking and insurance industries.

In addition to commercial and civil conflicts, numerous politically and socially sensitive issues have also tried mediation. For instance, mediators, who are frequently chosen by the government or labour organisations, help parties to discussions in situations like labor-management disputes, strikes, and lockouts. sustaining both labour productivity and peace. Furthermore, mediation provides a neutral forum for parties to express their concerns in socially sensitive problems such as situations of infringement on private property or disputes between groups over religious or cultural matters. Mediation continues to play a significant role in India's legal and social framework.

In 2002, an amendment was made via section 89 read with Order X Rule 1a of the CPC⁵ that empowered courts to refer matters that 'contained elements of settlement' to be settled out of court. The section enumerates different options for alternative dispute redressal, one of them being mediation. According to this, the Court shall order the parties to the suit to choose one of the modes of settlement outside the Court as specified in Section 89 (1) of the CPC, which is arbitration, conciliation, judicial settlement, including settlement through Lok Adalat, or mediation, after recording the admission and denial of documents. As a result, it allows for

⁵ Code of Civil Procedure (Amendment) Act, 1999, No 46, Acts of Parliament, (India2002).

the referral of cases that are now before the courts to the aforementioned methods of conflict settlement. The honourable Supreme Court ordered the appointment of a committee to draught model guidelines outlining the mediation process in *Salem Bar Association v Union of India*.⁶As a result, the Mediation and Conciliation Project Committee will, among other things, fund training programs, certify mediators, offer grants, and run awareness campaigns.

The Supreme Court of India's Mediation and Conciliation Project Committee (MCPC) characterizes mediation as a tried-and-true alternative to litigation. Delhi, Ranchi, Jamshedpur, Nagpur, Chandigarh, and Aurangabad have all had remarkable success with it. At the direction of the Supreme Court of India, the MCPC was established in 2005 with the goal of creating and implementing a comprehensive framework for mediation and conciliation throughout the nation. It monitors the development and maintenance of mediation centres in various states, as well as the training and accreditation of mediators. It also develops rules, guidelines, and standards for the efficient application of mediation in India. Litigants participating in the mediation process have unequivocally endorsed it. Any person who undergoes the required 40 hours of training as stipulated by the MCPC can be a mediator.⁷The work of MCPC has helped India establish a strong mediation ecosystem and increased awareness of mediation as a beneficial and practical method for resolving conflicts, expanding access to justice, and clearing the backlog of cases in the Indian judiciary. Although mediation isn't officially regulated by the law in India, several other pieces of legislation is put in place. In 2003, the Law Commission of India created a consultation paper on alternative dispute resolution and mediation rules in accordance with the aforementioned ruling, and other High Courts accepted it to create their own Mediation Rules.

The Delhi High Court Mediation and Conciliation Centre, known as Samadhan, established in 2006, is a prime example of how the High Court engages with judges, attorneys, and litigants to operate their own mediation centres.⁸ It is the outcome of a combined endeavour by the Delhi High Court's Bench and Bar, who have committed themselves to Mediation as a suitable technique for ADR. Samadhan functions as a specialised resource centre with experienced mediators on staff that may help parties resolve disagreements amicably.⁹In

⁶ *Salem Bar Association v Union of India* (2003) 1 SCC 49; [2005] 6 SCC 344 (India).

⁷ Supreme Court of India, *Mediation Training Manual of India*, Mediation and Conciliation Project Committee <<https://main.sci.gov.in/pdf/mediation/Brochure%20-%20MCPC.pdf>> accessed on 8 April 2023.

⁸ Ministry of Law and Justice, Government of India, 'About Us', Delhi High Court Mediation Centre <<https://dhcmediation.nic.in/about-us>> accessed on 17 April 2023.

⁹ Pillai, K. N. Chandrasekharan and V. S., Jaya and Konoorayar, Vishnu, 'ADR: Status/Effectiveness Study' (May 8, 2014), SSRN<<http://dx.doi.org/10.2139/ssrn.2535079>> accessed on 17 April 2023.

order to spread the word about the advantages of mediation and increase stakeholders' ability, it regularly holds seminars, training sessions, and awareness campaigns. The centre initiative's provision of mediation services to parties in civil cases still pending before the Delhi High Court is one of its main goals. The Centre has dealt with a wide range of cases, including those involving business contracts/transactions, real estate and construction, consumer issues, employment and service issues, labour disputes, banking and insurance cases, trademark and copyright disputes, accident-related claims, landlord-tenant disputes, partnership disputes, family and matrimonial disputes, child custody and visitation rights, verification in habeas corpus matters, etc. Government agencies, departments, and organisations have also participated.¹⁰

The Samadhan Centre has had great success. Almost 300 cases recommended by the Delhi High Court and the Supreme Court of India have been resolved in the past 18 months, and these resolutions also put an end to more than 400 connected matters that were ongoing in other courts. Samadhan has been affiliated with Justice A. K. Sikri since its inception. Sikri, the third chair of the center's Overseeing Committee and a retired judge of the Supreme Court of India, played a key role in encouraging Samadhan to innovate and "Indianize" mediation to make their approach more dynamic in effectively addressing both "global" and "local" challenges.¹¹

Laws are not far behind either. The Companies Act¹²Laws are not far behind either. The Companies Act of 2013 makes reference to mediation in Section 442, which states that the Central Government shall maintain a panel of experts called the Mediation and Conciliation Panel consisting of as many experts with the appropriate credentials as may be required for mediation between the parties while any proceedings before the Central Government, the Tribunal, or the Appellate Tribunal under this Act. This necessitates the establishment of a mediation panel to which the parties or the Court may refer the subject at any point throughout the proceedings in an effort to reach a mutually agreeable resolution. Moreover, Section 12A of the Commercial Courts Act, 2015, which was added in 2018, states that

¹⁰ Ministry of Law and Justice, Government of India, 'About Us', Delhi High Court Mediation Centre <<https://dhcmediation.nic.in/about-us>> accessed on 17 April 2023.

¹¹ Ibid.

¹² Section 442, The Companies Act, 2013, No.18, Acts of Parliament, (India).

parties must exhaust pre-institution mediation before filing a lawsuit that does not call for urgent interim relief.¹³

On a global scale, India joined the UN Convention on International Settlement Agreement as a signatory, demonstrating its support for mediation.¹⁴ Likewise, provisions have been included particularly to encourage the litigants to voluntarily follow this course of action. For instance, if the issue is eventually resolved utilising an alternate dispute resolution process, Section 16 of the Court Expenses Act, 1870¹⁵ provides for the reimbursement of all court expenses. Additionally, the Mediation Bill, 2021 aims to support mediation, particularly institutional mediation, and offer a way to enforce settlement agreements reached through mediation. The bill has been referred to the Standing Committee on Personnel, Public Grievances, Law and Justice.

The Mediation Bill, 2021 of India seeks to institutionalise mediation as a means of resolving conflicts, both commercial and non-commercial. Regardless of whether there is a mediation agreement between them, the Bill calls for mandatory mediation to take place before any legal proceedings. Costs might be incurred by parties who skip pre-litigation mediation without a valid excuse. However, as per Article 21 of the Indian Constitution, access to justice is a constitutional right that cannot be fettered or restricted. Additionally, it goes against the principles of Mediation and defeats the purpose of mediation being an essential voluntary mechanism. Further, Clause 26 of the Bill goes against the spirit of the Constitution as the moment a law is passed, it will become the guiding force rather than the instruction given by the courts. Moreover, the Bill poses difficulties in conducting cross-border mediation in India which will lead to exclusion from the benefits of worldwide enforceability. Furthermore, the Bill does not provide any provision which deals with the punishment or liability that would be imposed on wilful breach of confidential requirements during the process of mediation. India may not be able to achieve its goals of being a centre for global mediation and simple commercial transactions if the problems with the law are not resolved.¹⁶ Hence, in spite of these laws, India's mediation still falls short of expectations in a

¹³ Inserted via The Commercial Court, Commercial Division and Appellant Division Of High Courts (Amendment) Act, 2018, No 28, Acts of Parliament, (India).

¹⁴ The Convention was adopted on 20 December 1988 and India became a signatory on 7 August 2018.

¹⁵ Inserted via Code of Civil Procedure (Amendment) Act, 1999, No 46, Acts of Parliament, (India).

¹⁶ The Hindu, 'Explained: The Mediation Bill, 2021' <<https://www.thehindu.com/news/national/explained-the-mediation-bill-2021/article65967986.ece>> accessed on 5 April 2023.

number of areas as compared to other nations. Legislation from other nations that is comparable to ours must be incorporated.

MEDIATION IN CHINA

In China, there are a few scattered references to mediation law in the CPL, the People's Mediation Law of the People's Republic of China, as well as in the rules promulgated by China's Supreme People's Court (SPC) and China's Ministry of Justice.¹⁷ These guidelines state that Chinese Mediation typically entails the foundational principles, steps, and standards for conducting mediation. Mediation in China typically follows a facilitative model and one of the key features is its integration with the court system. India could explore similar government support and involvement in the mediation process, which can provide legitimacy, resources, and authority to the mediation process.

China's Court-Connected Mediation is the mediation conducted during a lawsuit by a judge in civil proceedings where mediators are usually experienced judges or other legal professionals who mediate cases within the court system or refer cases to external mediators who are registered with the local mediation committees. It is stipulated in the CPL which encourages parties to attempt mediation before proceeding with formal litigation. This makes mediation a part of case trials and the settlement statement can be enforced by the court. For this purpose, Chinese courts have established a "docking mechanism to connect litigation with mediation."¹⁸

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Secondly, The 2010 People's Mediation Law focuses primarily on mediation. People's mediation denotes the free-of-cost and impartial representation of local inhabitants' interests by self-governing groups,¹⁹ which is mediation for a specific profession or to a member of a certain industry association, and also has applications in China. For instance, the China Securities Regulation Commission oversees the Securities Association of China, which settles securities disputes. There are several organisations dedicated to mediating business conflicts, most recently the Guangdong Hong Kong & Macau Commercial Mediation Alliance, founded in 2013. Moreover, Healthcare/Medical Mediation where mediation as an ADR strategy is used effectively to resolve medical conflicts in China. Since medical

¹⁷ China Justice Observer, 'Mediation in China: Past and Present' <<https://www.chinajusticeobserver.com/a/mediation-in-china-past-and-present>> accessed on 5 April 2023.

¹⁸ Ibid.

¹⁹ People's Mediation Law, China, (2010), Articles 4 and 8.

litigation has increased steadily over the past 10 years in India, the healthcare industry is one possible area that could be made amenable to ADR processes. Lastly, China's Mediation model focuses on promoting social harmony and stability, and mediators often prioritize maintaining social order over individual rights while also upholding individual needs and interests. India could adopt a similar approach, particularly in disputes that have broader social implications.

MEDIATION IN UNITED STATES

In the United States, forms of mediation may be found in the earliest records of the country extending back to Native American conflict settlement practises. In the US, there is a strong public policy that supports ADR techniques, including mediation. The Alternative Dispute Resolution Act was passed by the US Congress in 1998, mandating the use of ADR in all federal courts and giving judges the power to refer cases to such mandated ADR processes as mediation.²⁰ These days, mediation in all of its forms is often and effectively utilised to settle conflicts of all kinds, particularly those involving maritime and offshore issues. By adopting the Uniform Mediation Act (UMA)²¹ or their own mediation act with comparable features, several states have made an effort to harmonise their laws. One such mediation model is "The Chicago Rush Medical Centre Model," also known as The Rush University Medical Centre of Chicago, Illinois, USA, which was created in 1995 in reaction to exorbitant legal fees and inconsistent jury verdicts in malpractice cases.

The US has a noteworthy and established mediation industry, with mediation agencies and both full-time and part-time mediators offering their services either in specialised mediation facilities designed to put both parties at ease and allow them to remain engaged in the process for the long haul, or in a variety of offices.²² Now, less than 5% of lawsuits that are filed in courts all over the Country culminate in a complete trial. The effective use of mediation, which is thought to result in a successful resolution in around 80% of instances, is a significant contributor to those numbers.²³ Moreover, mediation is encouraged by public policy in the US because it promotes conflict resolution in communities, preserves

²⁰ ADR Act <www.adr.gov/pdf/adra.pdf> accessed on 4 April 2023.

²¹ Mediation Act <www.uniformlaws.org/Act.aspx?title=Mediation%20Act> accessed on 5 April 2023.

²² Lexology <<https://www.lexology.com/library/detail.aspx?g=1afc5951-1db6-4f91-8e3b-500022484dbd>> accessed on 10 April 2023.

²³ Stipanowich, Thomas J., 'ADR and the "Vanishing Trial": The Growth and Impact of "Alternative Dispute Resolution"' (2004) 1 Journal of Empirical Legal Studies, p.843-912 <<https://doi.org/10.1111/j.1740-1461.2004.00025.x>> accessed on 10 April 2023.

connections between parties following conflicts, and offers more suitable solutions than adjudication.²⁴ Indian judges have been quick to acknowledge that using mediation more frequently can help shorten case backlogs and delays, but Indian lawyers have been slower to embrace mediation. Indian attorneys are traditional, much as American lawyers were in the early 1980s. In this response, the Pew Mediation and ADR Model of Pennsylvania is worth mentioning. It fosters cooperation, openness, and inclusion while offering a thorough method of addressing problems and disputes. For instance, this strategy focuses on enhancing the dialogue between doctors and distressed patients, preparing disclosure discussions, and resolving potential claims.

Therefore, it can be argued that the US has a well-defined and structured mediation process that follows a specific framework. India could consider adopting a similar structured mediation process which could help streamline the mediation process and provide a clear roadmap for mediators and parties involved. Further, in the US, there are certifications and training programs for mediators to ensure that they meet certain standards of professionalism and competence. India could consider implementing similar certification and training requirements for mediators to enhance the quality of mediation services and build trust in the process. Moreover, India can consider following the robust system of creating awareness and educating the public about mediation as a viable alternative to litigation as in the US. However, it is important to note that while India could consider adopting mediation practices from the US, it should also take into account its unique cultural, social, and legal context to tailor the practices to suit its own needs and requirements.

MEDIATION IN ITALY

Italy has a comprehensive legal framework for mediation which is governed primarily by Legislative Decree No. 28 of 4 March 2010²⁵ (“Decree”). The Decree, also known as the “Mediation Law,” provides guidelines and regulations for the practice of mediation in Italy. In implementing the 2008 European Directive on cross-border mediation, Italian lawmakers decided to go beyond voluntary mediation and introduced mandatory pre-trial mediation in a variety of civil and commercial cases.²⁶ The Italian legislator has introduced the possibility of

²⁴ Cole, Sarah R. et al., *Mediation: Law, Policy & Practice* app. A (2013-2014 ed. 2013).

²⁵ Legislative Decree 28 of 4 March 2010 implementing Article 60 of Law 69 of 18 June 2009 on mediation aimed at the settlement of civil and commercial disputes, Official Gazette No 53 of 5 March 2010.

²⁶ Palo, Giuseppe De, and Lauren Keller, 'Mediation in Italy: Alternative Dispute Resolution for All', in Klaus J. Hopt, and Felix Steffek (eds), *Mediation: Principles and Regulation in Comparative*

voluntary 'facilitative' mediation, 'compulsory' mediation, mediation ordered by the judge and mediation provided for in a contract or statutes.²⁷ Firstly, all issues involving alienable rights are subject to voluntary 'facilitative' mediation, which has the potential to develop into 'adjudicative' mediation. In this case, the parties are free to choose whether to take part in the mediation and are not subject to any coercion to do so.

Subsequently, 'compulsory' mediation became a requirement before a number of legal disputes, including those involving heirship, hereditary succession, family covenants, rentals, loans, business leases, claims for damages from water or land traffic accidents, medical liability, and defamation in the press or other forms of publicity, could be brought to court. Every party that intends to seek judicial resolution of a dispute involving any of these matters must first undertake mediation in accordance with the guidelines established by Legislative Decree 28/10 on mediation. Although a significant portion of the Italian Bar has voiced strong opposition to obligatory mediation, mediation groups are moving forward to meet the rising demand, and the process as a whole is gaining ground.²⁸

Italy's 'Required Initial Mediation Session' Model, or compulsory mediation, helped potentially in reducing the backlogged cases of the Italian Judiciary. This promoted early and quicker resolutions as the model encouraged parties to engage in mediation at an early stage of a dispute. It further promotes consensual solutions which reduce future disputes and enhances the sense of ownership of parties potentially leading to more sustainable and lasting outcomes. This reduces the workload of courts and streamlines the judicial process by diverting cases to mediation and allowing the courts to focus on cases that require extensive judicial intervention. However, this model is not without its limitation and thus, careful implementation and monitoring are essential to ensure its effectiveness and address any potential limitations or concerns. Therefore, India can consider the adoption of this model of mediation as it might help in alleviating the backlog of cases in the Indian judiciary and result in cost savings for parties as well as the judiciary while also saving time by resolving disputes in a more efficient manner.

Perspective (Oxford, 2012; online edn, Oxford Academic, 24 Jan.

2013), <<https://doi.org/10.1093/acprof:oso/9780199653485.003.0012>> accessed 16 Apr. 2023.

²⁷ European Parliament, 'Study on the Use of Mediation and Conciliation in the EU Member States' (2011) <[https://www.europarl.europa.eu/RegData/etudes/note/join/2011/453175/IPOL-JURI_NT\(2011\)453175_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/note/join/2011/453175/IPOL-JURI_NT(2011)453175_EN.pdf)> accessed 16 April 2023.

²⁸ Legislative Decree 28 of 4 March 2010 implementing Article 60 of Law 69 of 18 June 2009 on mediation aimed at the settlement of civil and commercial disputes, Official Gazette No 53 of 5 March 2010.

A WAY FORWARD FOR INDIA- What should India incorporate?

The ability of the parties to agree to take into account a wide variety of circumstances, particularly when it comes to economic and commercial interests, is one of mediation's main benefits in India, a country with a large population. During mediation, parties can voice their thoughts, discover the perspectives of the other side, and create a strategy to try to resolve the problem. The Indian Mediation Law has to be updated, and this may be done by taking into account the following recommendations. The effectiveness of the mediator and the infrastructure should come first. The mediators appointed in the court-related programs must be of the highest calibre and must have the necessary subject-matter competence. To effectively aid the mediation process, mediators should have the requisite abilities, knowledge, experience, and adherence to moral principles. It is possible to put in place regular training and continuing education programs to keep mediators abreast of legal and mediation developments.

Additionally, the infrastructure for mediation, such as the boardrooms, conference rooms, and waiting areas, should be well-equipped and designed to create a comfortable and conducive environment for the process. The physical setup should support the cognitive comfort of an informal and transparent mediation process, with adequate seating arrangements and privacy. This will build the parties' trust in the process, allowing them to express themselves freely without any fear of reprisal. Moreover, the court should actively involve bar organisations through seminars and training sessions in order to inform them about the mediation process and promote it as an essential part of the framework for the administration of justice. It is crucial to make a concerted effort to apprise potential parties of the efficiency and added benefits of mediation. This may be done by making organised, well-thought-out efforts to publicise mediation as a valuable alternative to litigation in the traditional media and on social media. In order to organise lectures and seminars on the philosophy and practise of mediation, law schools and colleges might collaborate with national and international organisations and experts in the field.

Given that attorney and their clients have a fiduciary responsibility, it is crucial to educate lawyers about the mediation process so that they may encourage their clients to resolve disputes whenever possible. The possibility of mediating conflicts is unlikely to be acknowledged by the parties without awareness and acceptance of mediation among attorneys. The Honourable Supreme Court of India's Constitution bench, which consists of

five judges, mandated a court-supervised mediation in the Ayodhya issue.²⁹The Hon'ble Supreme Court of India's referral of the extremely sensitive Ayodhya issue to mediation has drawn public attention to the mediation process. It is crucial to raise public knowledge of the mediation in order to move it forward and utilise it in the greatest way possible. Mediators must develop their mediation abilities in a systematic and scientific way. Through mediation, many relationships may be preserved, and the burden of cases upon the courts may also be reduced.

Further, integrating clauses for employing technology in mediation can be investigated as online and distant mediation become more common with technological advances, particularly during unanticipated periods like the COVID-19 epidemic. Technology may be utilised to speed up the mediation case filing process and manage the processes using online portals, allowing parties to electronically file cases or schedule sessions, follow the progress, and share pertinent documents. Internet surveys, feedback forms, and assessment tools can be used to determine if parties are satisfied with the mediation process, spot areas for improvement, and make the necessary changes to increase service quality while upholding the process' integrity. Nonetheless, suitable methods and caution should be used while using technology, taking into account matters like accessibility, data security, and confidentiality. Finally, the models covered above may be taken into consideration and implemented in the Indian context with the appropriate modifications. The NITI Aayog (2021) has noted that nations like Italy, Brazil, and Turkey have found success with the mandatory mediation approach up to a few sessions.³⁰ Some nations, including Australia and England, have laws requiring mediation in specific situations or allowing courts to require it.³¹If adopted, these modifications will bring India's mediation law closer to compliance with global norms.

CONCLUSION

In light of the aforementioned reasoning, it is fairly evident that India's judiciary has promoted mediation as a form of dispute resolution, but there are still a number of inadequacies that need to be furnished. Drawing inspiration from other nations might be beneficial for India, but careful evaluation, planning, and execution would be required to

²⁹ *M Siddiq (D) ThrLrs v. Mahant Suresh Das & Ors*, Civil Appeal No. 10866-10867/2010, (India).

³⁰ NITI Aayog, 'Designing the Future of Dispute Resolution: The ODR Policy Plan for India' (October 2021) <<https://www.niti.gov.in/sites/default/files/2021-11/odr-report-29-11-2021.pdf>> accessed on 14 April 2023.

³¹ Section 60I, Family Law Act 1975 (Australia); The Civil Procedure Act 2005 (New South Wales, Australia); *Halsey vs. Milton Keynes General NHS Trust*, Court of Appeal (England), [2004] 4 All ER 920.

make sure the adopted features are functional and fit with the Indian context. In a direct and concise manner, the Hon'ble Supreme Court of India has emphasised the need of using mediation where appropriate. Through mediation, the parties' core interests are addressed, and if a resolution is reached, it can put everyone involved in a win-win situation. Every nation needs its judicial system to operate effectively. The courts in India are bound to act in accordance with the procedure established by law. Despite the fact that 'justice delayed is justice denied,' litigation is a time-consuming procedure that delays justice. Even though it is widely accepted that everyone should be treated equally before the law, delay in justice occasionally results in the marginalized being disregarded. This is because litigation costs keep rising with each hearing. By using mediation, which allows individuals the opportunity to do so for free or at a moderate cost, this can be reduced. Therefore, it is crucial that the parties have a chance to resolve their dispute without having to resort to formal litigation. Providing the parties a chance to do so is strikingly in line with the legislative objective of Article 39A of Part IV of the Indian Constitution (fair justice and free legal assistance for all). Not only is mediation, as an alternative dispute resolution technique, in the best interests of the parties, but it is also indispensable.

