
RISE OF COMMERCIAL MEDIATION IN INDIA-A CONTEMPORARY ANALYSIS

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ABSTRACT

Mediation is an informal process of settling disputes amicably, which has been widely promoted globally in general and India in particular. While, Section 89 of CPC has given teeth to such ADR mechanism, laws such as the Commercial Courts have provided a real impetus to such a process. Its importance has been emphasised in various judgements of the Supreme Court and the High Court as a process due to its cost-effective and timely resolution, which reduces the burden on Courts. However, the reality is a bit different wherein this process has only become a formality without proper enforcement wherein, data from various states show an abysmal rate of success. This paper mentions delineates upon the various reasons for its failure along with providing solutions for the same. In conclusion, the paper has touched upon the institutional collaboration among stakeholders that will augment its success.

Key Words: - Mediation, Right to Health, Enforcement, ADR Mechanism, Commercial Courts. Settling Disputes.

INTRODUCTION

In today's time disputes concerning any commercial or personal problems are present in everyone's life and it is vital to understand how both parties can solve and handle such disputes. There are modes via which such disputes can be resolved including the traditional routes of Litigation and the modern routes of Mediation and Conciliation. The question now arises as to why a rise in commercial mediation is there because of the benefits that mediation provides showcasing itself as a prominent dispute resolution method even before invoking the arbitration clauses. Mediation is confidential, time-sensitive, inexpensive, less formal and most importantly is the factor that there is a stress reduction. Negotiation under Mediation involves settlements that are made by the meeting parties themselves and make these settlements binding in a manner/or form in a contract. It is very different from court litigation or an arbitration process because the parties who were present in the negotiation can determine the extent of damage, the process of mitigation and further obligations moving forward.

FACTORS AFFECTING FOR THE GROWTH OF COMMERCIAL MEDIATION:

1. Mistrust of mediation and ignorance — The legal community has never fully embraced mediation. Training sessions and seminars should be held to acquaint judges and other interested legal professionals with the advantages of mediation to publicize it as a conflict settlement method. This will contribute to the development of a favourable atmosphere for mediation in India. Furthermore, there should be a greater public awareness of mediation, particularly in the business sector. Public education on the advantages of mediation can be aided by a coordinated effort between the Judiciary and the Executive.¹
2. Quality control and infrastructure concerns A greater focus on mediation will inevitably result in an increased burden for mediation centers that lack administrative capacity. This may cause cases that violate mediation's fundamental principle—the prompt resolution of disputes—to stagnate. To address this, India is looking towards professionalizing the mediation profession. Individuals ought to be encouraged to work as full-time mediators. There is a pressing need of forming a regulatory body to ensure quality control.

¹Vaibhavi Khuthia, 'Adopting a Transformative Vision for Mediation', *The Hindu* (14 May 2024) <https://www.thehindu.com/opinion/op-ed/adopting-a-transformative-vision-for-mediation/article68171975.ece> accessed 24 December 2025.

3. Disparities in the current Mediation laws In the case of **M/s Afcons Infra. Ltd. &Anr. v. Cherian Varkey Construction Co. Pvt. Ltd**², the Supreme Court declared that the terms "conciliation" and "mediation" are interchangeable. On the other hand, Section 89 of the CPC's wording indicates that the legislative purpose of the section was to distinguish between conciliation and mediation. As a result, the mediation process is now somewhat ambiguous due to the current ambiguity.
4. Lack of successful settlements- The amount of success when it comes to settlements is less. This often leads to dissuade companies from attempting mediation as for instance, out of 10334 cases referred in West Bengal in 2019, only 3771 were settled.³

HOW HAS THE GLOBAL LANDSCAPE ADAPTED TO THE RISE IN COMMERCIAL MEDIATION?

The significant development of having mediation to be the foremost option for cross-border disputes is evident from the signing of the United Nations Convention on International Settlement Agreement, which came into existence due to the Convention on Mediation. We should have our look at Singapore an island nation making strides in the Mediation circuits and being an early adopter of the abovementioned convention. Singapore made quite a name for itself for its arbitration system and through its system of learning and experience the establishment of the Singapore International Commercial Court (“SICC”) made available to commercial parties world-class services related to dispute resolution that covers arbitration, litigation and mediation.⁴

The Middle East is becoming pro-mediation with Saudi Arabia hosting the Riyadh International Disputes Week during March 2024. Qatar, UAE and even Saudi Arabia have passed laws about making mediation an attractive mode for dispute resolution.

ASEAN countries for the past few years have pushed for the use of Mediation which has led to the introduction of various legislations and rules be it, Malaysia's Mediation Act of 2012 or Vietnam's Decree 22 (2017).

²Afcons Infrastructure Ltd v Cherian Varkey Construction Co (P) Ltd, (2010) 8 SCC 24.

³Calcutta High Court, ‘Notice – MC/3101’
<https://www.calcuttahighcourt.gov.in/Notice-Files/MC/3101> accessed 24 December 2025.

⁴Gloria Lim, ‘International Commercial Mediation: The Singapore Model’ (2019) 31 *Singapore Academy of Law Journal* 377.

LEGAL LANDSCAPE OF COMMERCIAL MEDIATION IN INDIA:

Mediation is not a new concept for India as many histories can be evidence of it, we have mediation through the system of Panchayat for conflicts between the communities to be resolved effectively. The Code of Civil Procedure, 1908 under Section 89(1) permits the court to suggest arbitration, conciliation, judicial settlement or mediation for dispute resolution. In addition to Section 89 of the Code of Civil Procedure Code(supra), Order xxxiiA recommends mediation. Other provisions related to resolution of disputes stem from the Legal Services Authorities Act, 1987 read with Section 89 of the Civil Procedure Code where under Section 21 of the Legal Services Authorities Act, 1987 a settlement before a Lok Adalat is enforceable as a decree of Court. The framework of mediation in India was drawn by the Hon'ble Supreme Court of India in *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*⁵, which propounded that unless a case falls under a recognised category of cases which are excluded, for example, cases involving criminal offences, serious allegations of fraud fabrication of documents, representative suits under Order 1 Rule 8 CPC⁶, etc. “*reference to ADR process is a must*”

The essence of the “Mediation Act 2023” is to promote and facilitate mediation with an exceptional focus on uniformity of laws, institutional mediation, online mediation, and community mediation so that disputes can be resolved in a time-bound manner. It is to be pointed out that India is a signatory to the above-mentioned Singapore Convention on Mediation on 7 August 2019, but it has not yet been ratified and the current Mediation Act 2023 does not adopt the Singapore Convention on Mediation.

The Mediation Act of 2023 refers to the establishment of the Mediation Council of India which has been tasked with the duties of being a robust centre for domestic and international mediation. Additionally, the council is also expected to establish guidelines for conducting mediation proceedings, recognize, and cancel Mediation service providers to keep an electronic record of the mediated settlement agreements and provide an annual report to the Central Government. Another aspect is the mediation agreement which can either be in the form of a clause in a particular agreement or it can be a different agreement altogether. Additionally, Parties have the option to submit a dispute to mediation even after it has arisen. The Mediation Act means to

⁵*supra*

⁶Code of Civil Procedure 1908, Order 1 rule 8.

cover more ground than only civil and commercial disputes that would involve conflicts related to compoundable and pending between the parties (matrimonial offences).

The Mediation Act also provides for corresponding amendments to be brought about in existing statutes, including, the Arbitration and Conciliation Act, of 1996, the Micro, Small and Medium Enterprises Development Act, of 2006, the Companies Act, of 2015, the Commercial Courts Act 2015 and the Consumer Protection Act, 2019.

COLLABORATION WITH STAKEHOLDERS

Several institutions have joined together in promoting mediation globally, such as the Singapore International Mediation Centre collaborated with the International Centre for Settlement of Investment Disputes to facilitate mediation. In India, institutions like The Foundation for Sustainable Rule of Law (FSRI) collaborate with various institutions like Calcutta High Court to promote mediation.⁷ Also, private institutions who seeks to promote mediation as a form of Alternate Dispute Resolution are also introducing Qualifying Assessment Program (QAP) for the International Mediation Institute in India. Even educational institutions like NLSIU where the Department of Consumer Affairs has established The Online Consumer Mediation Centre for providing state-of-the-art infrastructure for resolving consumer disputes both through physical as well as online mediation through its platform.⁸

CONCLUSION

Out of all the states that have adopted mediation in India, it is only the commercial States of Karnataka and Maharashtra that have a high success rate i.e. 66% and 33% respectively. Contracts govern commercial relations and an effective enforcement of contracts is essential to economic development. This is especially applicable to international business and commercial transactions. Advancements in technology, transport, and communication have made international business the “most significant, ever-growing, and predominant aspect of the modern world. India is not untouched by these changes and accordingly is concerned about a host of indices including the one on ‘Ease of Doing Business’. The selection of a proper dispute

⁷Calcutta High Court, *Mediation Newsletter* (2022) Issue 2
<https://www.calcuttahighcourt.gov.in/Notices/MC?page=2> accessed 24 December 2025.

⁸National Law School of India University, ‘Online Consumer Mediation Centre’
<https://www.nls.ac.in/centres/online-consumer-mediation-centre/> accessed 24 December 2025.

resolution method in commercial arrangements is an important risk management strategy. While mediation may not be the right option for all types of commercial disputes, for example, the Petroleum Sector disputes, mediation may be suited for resolving commercial suits in a majority of the matters as the mediators can bring parties closer by creating an overall atmosphere conducive to resolve amicably.