

INTERNATIONAL JOURNAL OF LEGAL STUDIES AND SOCIAL SCIENCES [IJLSSS]

ISSN: 2584-1513 (Online)

Volume 3 | Issue 5 [2025] | Page 33 - 38

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MANDATORY MEDIATION: CATALYST FOR RESOLUTION OR JUST ANOTHER FORMALITY?

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ABSTRACT

This paper examines whether mandatory mediation can ease India's judicial backlog, where over 87% of cases remain pending, largely in district courts. Drawing on Singapore's success with mandatory mediation and its high settlement rates, the study highlights its potential. However, in India, the absence of standardized mediator training and low public awareness hinder its effectiveness.

As we can see in the case of *Patil Automation v. Rakheja Engineers*², where non-compliance with mandatory mediation resulted in case dismissals. While mediation has the potential to reduce court backlogs, the pressing need for interim relief sometimes allows parties to bypass the process creating a loophole. Can significantly speed up the process of dispute resolution by addressing the conflicting issue without any rigidity of legal documents.

To fully unlock the potential of mandatory mediation, the paper concludes that India must implement reforms.

Keywords

Mandatory mediation, case backlog, legal reforms, alternative dispute resolution, Indian judiciary.

INTRODUCTION

In 2024, with over 87% of cases arising from government litigation, India's judiciary faces an unprecedented burden. This raises the question: can mandatory mediation help ease the load? Unlike rigid litigation, mediation fosters dialogue, collaboration, and flexibility. This paper argues

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² *Patil Automation Pvt. Ltd. v. Rakheja Engineers*, 2022 SCC OnLine SC 1028 (2022), <https://www.scconline.com>.

that, if implemented thoughtfully, mandatory mediation could not only reduce court congestion but also strengthen India's justice system by making it more accessible, efficient, and fair.

Without timely delivery of justice, a robust legal system is meaningless. Over 87% cases are pending in district courts in India, and another way of stating this is justice delayed is justice denied. The government itself is responsible for nearly 50% of these cases, leading to an overwhelmed judiciary.³

This context is where mandatory mediation could become a game-changer. Unlike traditional legal proceedings, mediation focuses on the parties' actual needs rather than rigid legal doctrines.

DISCUSSION

In the field of alternative dispute resolution mediation is recognised as a method of involving a neutral 3rd party who would assist as a mediator to resolve the conflict between the parties by giving a mutually accepted settlement which would be negotiated by both the parties. A mediator does not impose a solution on the parties neither do they determine their fault unlike the judges or the other dispute resolution methods instead of that they give a common ground for communication and help the parties to get to a solution rather than depending on the legal doctrines and it also maintains confidentiality.⁴

Mediation has been employed in various contexts such as labor-management disputes, international conflicts, contractual disagreements, and interpersonal conflicts. Section 89 of the Code of Civil Procedure (CPC), amended in 2002, formalized mediation in India as a part of alternative dispute resolution (ADR) mechanisms, alongside arbitration and conciliation. Through this approach, mediation offers a cost-effective, time-saving, and less adversarial method of resolving disputes.⁵

³ National Judicial Data Grid, *E-Courts Project* (last visited Oct. 2, 2024), <https://ecourts.gov.in>.

⁴ U.S. Department of Commerce, *What is Mediation?* (last visited Oct. 2, 2024), <https://www.commerce.gov/mediation>.

⁵ High Court of Uttarakhand, *Concept of Mediation* (last visited Oct. 2, 2024), <https://www.highcourtsofuttarakhand.gov.in>.

Mediation can be applied to most civil disputes, such as money recovery, rent matters, property partitions, matrimonial and labor issues, contract enforcement, damages, injunctions, landlord-tenant disputes, and cheque bounce cases under Section 138 NI Act. It is also used in motor accident claims, IPR disputes, and certain compoundable criminal cases under Section 320 CrPC.

Though we cannot deny that mediation of its own but with that there are also some grounds upon which mediation settlement may be challenged the mediation act under the Indian law allows the challenges on the following grounds :

- **Fraud:** If one of the parties engages in fraudulent activities during the mediation process, the settlement can be challenged.
- **Corruption:** Any involvement of corrupt practices or bribery by the parties or the mediator can lead to the invalidation of the settlement.
- **Impersonation:** If it is discovered that one of the parties was impersonated during mediation, the agreement can be overturned.
- **Non-suitability for Mediation:** If the mediation was conducted in disputes that are not fit for mediation as per Section 6 of the Mediation Act, the settlement may be challenged.

WHY MAKE MEDIATION MANDATORY?⁶

There are several compelling reasons for making mediation a mandatory precondition for litigation, especially in civil cases:

1. One of the most critical arguments for mandatory mediation is its potential to reduce the enormous backlog of cases in the Indian judiciary. With over 87% of cases pending in district courts as of 2024, the judicial system is overwhelmed.
2. In voluntary mediation, parties often perceive mediation as a sign of weakness. Many litigants fear that initiating mediation may indicate they lack confidence in their legal position. Mandatory mediation eliminates this stigma by making participation a requirement rather than a choice, thus encouraging greater participation from both parties.

⁶ *Mediation Act, 2023*, Ministry of Law and Justice, Government of India (last visited Oct. 2, 2024), <https://legalaffairs.gov.in>.

3. The exploration of alternatives might not be available in the court but it provides an open ground for communication and to find solution which could only be found outside the court. It also preserves the relationship as it would otherwise be damaged if gone through the way of litigation.
4. Countries like Singapore have a framework where 90% of the cases have been resolved through mediation in a single day they demonstrate a high success rate in mandatory mediation as reducing their case backlogs and resolving the dispute more efficiently we can learn from these international examples

THE PROMISE OF MEDIATION

By the way of mediation parties could have an open conversation while giving a better understanding of the viewpoints of each other's as the mediator helps them resolve the conflict. This approach not only avoids the high costs and delays of litigation but also provides an easier path to resolving disputes.

However, exceptions do exist, such as in cases requiring urgent interim relief. The Supreme Court's interpretation in *Bolt Technology OU v. Ujoy Technology*⁷ clarifies that the need for interim relief depends on the facts and circumstances, leaving it to the court's discretion. Similarly, in *Yamini Manohar v. T.K.D. Keerthi*⁸ the court stressed the need for careful scrutiny to ensure that interim relief requests aren't used as a loophole to avoid mediation.

COMPARATIVE INSIGHTS: INDIA VS. INTERNATIONAL MEDIATION

Despite India's recent efforts, the country lags behind other nations in fully integrating mediation into its legal framework. For example, Singapore has seen impressive results, with 67% of cases being settled via mediation, 90% of which are resolved within a single day. In contrast, India has

⁷ *Bolt Technology OU v. Ui Technology Pvt. Ltd.*, 2022 SCC OnLine Del 1122: (2023) 96 PTC 155.

⁸ *Yamini Manohar v. T.K.D. Keerthi*, (2024) 5 SCC 815 (2024)

barely settled 0.11 million cases through mediation from April 2022 to June 2023, a minuscule figure compared to the 10 million pending civil cases in Indian courts.

Key differences between India and other countries include:

- Other countries have established legislation and strong professional support for mediation.
- India lacks consistent training across states, while in other countries, ethics and mediation practices are part of standard legal education.
- Indian mediation is not as institutionalized, nor is there widespread encouragement by judges to refer cases to mediation.
- While awareness of mediation is growing in India, it is already high in many other countries.

THE WAY FORWARD: MAKING MANDATORY MEDIATION MORE EFFECTIVE

To get to the full potential of mandatory mediation in our country there are several key reforms which are needed to be done which would be firstly to standardise the training for mediators nationwide to make sure that they have the skill and knowledge to handle disputes. With that we should also include mediation in the legal education system while encouraging the law students to practise in mediation competitions. Judges also may play a crucial role as they should refer more and more cases to be resolved by the process of mediation when it's appropriate making it a standard to resolve disputes.

CONCLUSION: A CATALYST FOR RESOLUTION

As per all the information which is given above, we can conclude that in respect of India mandatory mediation is a critical step towards decreasing the overwhelming burden which is on the Indian judicial system. This research uncovers the potential of mandatory mediation not only as an obligatory step in some litigation process but as a tool which is capable of saving time and money while giving an amicable resolution to the dispute. By taking steps such as enhancing the public awareness, training the mediators and encouraging the judicial system to refer case to mediation,

India can effectively transition from seeing mandatory mediation as a formality to boost to the judicial system. By taking a look at the other international models for the same India can further evaluate its own framework and make the necessary developments.