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DIFFERENCES IN THE CONCEPTUAL FRAMEWORK OF MEDIATION AND LITIGATION

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ABSTRACT

This paper explores how mediation and litigation, though often framed as alternatives, actually represent two very different ways of thinking about justice. Litigation rests on the authority of the state the power to decide, to enforce, and to end disputes through rights. Mediation, by contrast, leans on dialogue, trust, and the hope that parties can shape their own peace. The Mediation Act, 2023 sits right in the middle of this tension. Using it as the focal point, the paper examines how India is trying to institutionalise consensus through decree-like settlements and mandatory pre-litigation mediation, without brushing against constitutional rights under Articles 32 and 226. The discussion moves beyond statutory clauses to ask a deeper question: is law meant only to decide, or also to heal? Drawing on comparative insights from the United States, United Kingdom, Singapore, and India, as well as theories of Legal Realism and Restorative Justice, the paper traces how design, culture, and judicial temperament shape the life of a dispute. It also acknowledges what most reforms overlook delay, imbalance, uneven mediator training, and a steady decline in settlement rates. The argument is simple: mediation is not the rival of litigation but its relief valve. When used wisely, it can ease the strain on a system choking under more than 53 million pending cases. The paper concludes that India needs a pluralist approach where courts and mediators work side by side because in the end, justice survives not only by deciding, but by listening.

Keywords: Mediation Act 2023; Litigation; ADR; Legal Realism; Restorative Justice; Access to Justice; Comparative Jurisprudence

INTRODUCTION

A. CONCEPTUAL CLARITY

It is tempting to dismiss mediation as just another alternative" forum, something courts outsource when their dockets are overflowing. But that framing doesn t really capture it. Its intellectual roots are different. Mediation is not about procedure in the strict sense; it is about conversation often messy, sometimes emotional, sometimes surprisingly practical steered by a neutral who nudges parties toward recognising their own interests and, ideally, shaping their own peace.[2]

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[2] CARRIE MENKEL-MEADOW, THE MANY WAYS OF MEDIATION: THE TRANSFORMATIVE POWER OF CONFLICT RESOLUTION 2–5 (2001).

The Mediation Act, 2023 tries to crystallise this into statutory form: mediation is a process, whether referred by a court or otherwise, in which parties, with the assistance of a mediator, attempt to reach an amicable settlement of their dispute."[3] Notice what is missing the mediator has no power to dictate an outcome. That blunt limit is what makes mediation both liberating and, to some critics, frustrating.

Litigation, by contrast, rests on a different kind of promise: the state s authority to decide and to enforce. India inherited the adversarial model from Anglo-Saxon common law, where lawyers argue before a judge who alone pronounces rights and obligations.[4] The whole process is public, formal, and bound up in rules. Its legitimacy comes precisely from being coercive. If mediation bends with the parties, litigation stiffens into structure. The divide here isn t merely about procedure it reaches into the philosophy of law itself.[5]

B. WHY COMPARE MEDIATION AND LITIGATION IN 2025?

The timing is not incidental. India s justice system is staggering under a backlog that feels less like numbers and more like quicksand. In June 2019, the Supreme Court had about 60,000 pending cases. By June 2025, that number had crossed 85,000.[6] That s just the top of the pyramid. At the base, district courts alone account for nearly 47 million of the total 53 million cases clogging the system.[7] These aren t just statistics they translate into frozen contracts, delayed projects, and everyday disputes that drag for decades. Economists have tried to quantify it: judicial delay is estimated to shave off more than 2 percent of GDP every year.[8]

Parliament s response, at least in part, was the Mediation Act, 2023. It sets up a statutory council, recognises settlements, and makes pre-litigation mediation compulsory for some disputes. But does this lighten the load, or does it simply add another stop before litigants finally reach the courts? That question remains open, and it is exactly what makes comparison right now, in 2025 unavoidable.

C. OBJECTIVES AND SCOPE

This paper is not about declaring a winner. Mediation and litigation are too different to be stacked side by side like competitors in the same race. The aim is more modest (and maybe more useful): to compare them as parallel frameworks overlapping at points, colliding at others, occasionally complementing each other in ways neither was designed for.

India is the focal point, for obvious reasons. The Mediation Act, 2023 has changed the terrain too recently, and too abruptly, to ignore. But the comparison cannot be trapped within Indian borders. American courts, for instance, have normalised court-annexed ADR sometimes mandatory, sometimes

[3] Mediation Act, No. 29 of 2023, § 3 (India).
[4] U. BHATT, INTRODUCTION TO THE INDIAN LEGAL SYSTEM 67–70 (2021).
[5] M.P. JAIN, INDIAN CONSTITUTIONAL LAW 101–02 (9th ed. 2023).
[6] Supreme Court Observer, Case Pendency Data (June 2025), https://www.scobserver.in/statistics/pendancy-data.
[7] Nat'l Judicial Data Grid, Dashboard (2025), https://njdg.ecourts.gov.in/njdgnew.
[8] WORLD BANK, EASE OF DOING BUSINESS: ENFORCING CONTRACTS DATA (2020), https://www.doingbusiness.org/en/data/exploretopics/enforcing-contracts (estimating impact of delays on GDP).

not. The UK dragged its feet for years, insisting mediation had to be voluntary, almost as if compulsion was an insult to party autonomy. Then came the 2024 amendment to the Civil Procedure Rules, and suddenly judges could push parties into mediation, even penalise them in costs for refusing. That is a sharp turn, perhaps too sharp for comfort. Singapore, meanwhile, went in the opposite direction planned mediation almost like an export product. With its 2017 statute, sleek centres, and a whole ecosystem, it has branded itself a global hub. Whether that model can be transplanted elsewhere, say into an overburdened Indian district court, is anyone s guess.

As for international instruments, the UNCITRAL Model Law (2018) and the Singapore Convention (2019) are not just neat footnotes in textbooks. They act as pressure points. Countries like India are now judged, implicitly, against these templates. Whether that yardstick is fair or even useful is another matter. The scope of this paper, then, is not to argue that one system is better, but to map the cross-currents, acknowledge the frictions, and ask perhaps a bit bluntly whether the 2023 Act can shift India s dispute culture without eroding the constitutional guarantees that still anchor litigation.

HISTORICAL AND THEORETICAL FOUNDATIONS

A. ORIGINS OF LITIGATION

The adversarial courtroom is not native to India. It arrived with colonial rule and dug in through the nineteenth century.[9] The Civil Procedure Code of 1908 codified civil practice,[10] while the Indian Penal Code, 1860 (since replaced by the Bharatiya Nyaya Sanhita, 2023) and the Criminal Procedure Code, 1973 (replaced by the Bharatiya Nagarik Suraksha Sanhita, 2023) laid down criminal law. The underlying assumption was deceptively simple: truth emerges from contest. Two sides argue, evidence is tested, and a judge imagined as a neutral umpire delivers the outcome.[11] It is a system that prizes structure and precedent, sometimes at the cost of speed.

B. EVOLUTION OF MEDIATION IN INDIA

Mediation, by contrast, has long indigenous roots. Ancient Indian texts spoke of the Kula (family councils), Shreni (guilds), and Puga (community assemblies), where disputes were settled through reconciliation rather than adjudication.[12] Panchayats carried that role forward, relying on community elders to restore harmony rather than punish.[13] Even the epics are instructive Krishna s failed attempt to reconcile the Pandavas and Kauravas before war is perhaps the most famous mediation story in Indian literature.[14] Under the Mughals, advisers like Birbal often acted informally to settle quarrels.[15]

[9] U. BHATT, INTRODUCTION TO THE INDIAN LEGAL SYSTEM 68–69 (2021).
[10] Code of Civil Procedure, No. 5 of 1908, §§ 26–35 (India).
[11] MIRJAN DAMAŠKA, THE FACES OF JUSTICE AND STATE AUTHORITY 103–06 (1986).
[12] P.V. KANE, 3 HISTORY OF DHARMASASTRA 338–39 (1946).
[13] B.N. KRISHNAMURTHY, PANCHAYAT RAJ IN INDIA: LEGAL AND HISTORICAL PERSPECTIVES 44–45 (1964).
[14] THE MAHABHARATA, Udyoga Parva, Ch. 93 (Bibek Debroy trans., 2010).
[15] R.C. MAJUMDAR, THE MUGHAL ADMINISTRATION 119 (1954).

Colonial courts marginalised these traditions. Gandhi stood out, insisting that a lawyer s higher duty was to end disputes rather than multiply them.[16] After Independence, conciliation got statutory space in the Industrial Disputes Act, 1947, which required attempts at conciliation before strikes. Section 89 of the CPC (added in 1999) gave courts explicit power to refer matters to mediation,[17] and Part III of the Arbitration and Conciliation Act, 1996 covered conciliation. But a comprehensive law on mediation had to wait until 2023.[18]

C. INTERNATIONAL FRAMEWORKS

When you step outside India, you realise mediation has been creeping into the mainstream in strange, uneven ways. Some of it comes from international treaties, some from local traditions, and some of it honestly feels like arbitration dressed up in a new suit and called mediation."

The UNCITRAL Model Law (2018) is a good place to start, not because it was revolutionary (it wasn t) but because it gave governments a sort of off-the-shelf vocabulary.[19] Countries that had been fumbling with half-baked mediation policies suddenly had a template a way to say, look, we are modern too." The text itself is technical, but its effect was more political than legal.

Then came the Singapore Convention on Mediation (2019). That really shook things up. For the first time, a mediated settlement wasn t just a local handshake it could, in theory, travel across borders and be recognised abroad.[20] People call it a legal passport." Maybe that metaphor is too neat after all, you still need a national court to stamp it. And courts, as we know, don t always play along. The tension between the shiny promise of the Convention and the stubborn realities of domestic enforcement hasn t been fully worked through.

Meanwhile, national systems look like a patchwork quilt. In the United States, the ADR Act, 1998 makes federal courts run mediation programmes, but most participation is voluntary, and enforcement can still end up back in court.[21] In the UK, judges used to be allergic to compulsion Halsey v. Milton Keynes (2004) practically made refusal to mediate a badge of honour until 2024, when the Civil Procedure Rules were amended. Now, suddenly, courts can order parties into mediation and slap cost penalties if they refuse.[22] That s a remarkable turnaround, maybe too sharp to sit comfortably in a system that prides itself on adversarial purity. Singapore, on the other hand, planned the whole thing like a business model. With its Mediation Act, 2017, well-funded centres, and aggressive marketing, it has turned itself into a global shopfront for mediation.[23] But whether Singapore s formula can be transplanted elsewhere say, into a rural Indian district court is doubtful.

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[16] M.K. GANDHI, AN AUTOBIOGRAPHY: THE STORY OF MY EXPERIMENTS WITH TRUTH 134–35 (1927).
[17] Code of Civil Procedure, No. 5 of 1908, § 89 (India); Industrial Disputes Act, No. 14 of 1947, § 4 (India).
[18] Arbitration & Conciliation Act, No. 26 of 1996, Part III (India).
[19] UNCITRAL Model Law on Int'l Commercial Mediation & Int'l Settlement Agreements Resulting from Mediation, G.A. Res. 73/198 (Dec. 20, 2018).
[20] Singapore Convention on Mediation, art. 3, Dec. 20, 2018, 58 I.L.M. 1.
[21] Alternative Dispute Resolution Act of 1998, 28 U.S.C. § 651 (2018).
[22] Civil Procedure Rules 1998, SI 1998/3132 (UK), as amended 2024.
[23] Mediation Act 2017 (Sing.).

Set against all this, India s Mediation Act, 2023 looks like both a follower and an improviser. Follower, because it clearly borrows from UNCITRAL and Singapore. Improviser, because unlike any of these countries, India is staring at 53 million pending cases and hoping mediation will somehow be a pressure valve. No other jurisdiction has ever tried to use mediation at that kind of scale. Will it end up closer to Singapore s slick hub model, or the UK s uneasy experiment? It s too early to tell, but the stakes are much higher here.

CONCEPTUAL FRAMEWORKS

A. PHILOSOPHICAL BASIS

Litigation has often been called adversarial and rights-based, the courtroom imagined as an arena where one side wins and the other loses, with the judge acting on behalf of the state.[24] That is the theory. In practice, the picture is not so noble files pile up, appeals stretch for years, and what began as an attempt to vindicate rights often feels like being slowly worn down by procedure and cost.[25] Yet, despite these frustrations, people still return to courts, partly because precedent and the chance of appeal lend the system a kind of legitimacy that mediation cannot replicate.

Mediation, on the other hand, is less about declaring rights and more about salvaging relationships. It tries to dig beneath positions to ask what the parties actually care about and whether there s common ground to be found.[26] Carrie Menkel-Meadow once described it as a sensibility" rather than just a tool,[27] and Gandhi, much earlier, had insisted that persuading parties toward settlement was a lawyer s duty, not just a professional tactic.[28]

B. ROLE OF THE NEUTRAL

Judges sit with the authority of the state behind them: they can admit or exclude evidence, control the pace of a case, and issue orders that bind.[29] In theory, independence of the judiciary is the safeguard of neutrality, but anyone who has observed an overburdened trial court will know that perceptions of bias whether because of docket pressures or uneven resources linger.[30]

Mediators have none of that coercive backing. They rely on the trust of the parties. The Mediation Act, 2023 says they assist" but cannot impose outcomes.[31] In practice, neutrality is more delicate it lies in the way questions are framed, or in how silence is allowed to sit. The Act provides for ethical duties and

[24] H.L.A. HART, *THE CONCEPT OF LAW* 114–15 (2d ed. 1994).

[25] Nat'l Judicial Data Grid, Dashboard (2025), https://njdg.ecourts.gov.in/njdgnew.

[26] Frank E.A. Sander, Varieties of Dispute Processing, 70 F.R.D. 79, 111–12 (1976).

[27] Carrie Menkel-Meadow, The Many Ways of Mediation, 2001 J. DISP. RESOL. 25, 27–28.

[28] M.K. GANDHI, HIND SWARAJ 78–79 (1909).

[29] INDIA CONST. arts. 124–147.

[30] Law Comm'n of India, Report No. 245, Arrears and Backlog: Creating Additional Judicial (2014).

[31] Mediation Act, No. 29 of 2023, § 3 (India).

codes of conduct, but whether parties feel the mediator leaned one way is often a matter of perception, not statute.[32]

C. AUTONOMY AND PROCEDURE

Once litigation starts, autonomy largely disappears. The CPC, BNSS, and Bharatiya Sakshya Adhiniyam prescribe the flow: pleadings, discovery, trial order.[33] There is room for some tactics, but outcomes are essentially out of parties hands until judgment.

Mediation tells a different story. Parties select their mediator, shape the sessions, and can walk away until a settlement is signed.[34] Voluntariness is the anchor.[35] The new rule of mandatory pre-litigation mediation complicates this, though. If attendance is compelled before filing suit, how voluntary" can it really be?[36] That is a live question Indian courts have not yet resolved.

D. FLEXIBILITY AND INFORMALITY

Litigation is wedded to codes and precedent. Even with reforms such as e-filing and video hearings,[37] the culture of adjournments remains entrenched.[38]

Mediation, by contrast, sometimes appears too loose. Some mediators use caucuses, others joint sessions; some encourage storytelling, others stick to narrow legal issues.[39] The Mediation Act acknowledges this openness by recognising online and community mediation (§§ 17, 44),[40] but whether these formats function the same way in a Delhi commercial matter and a rural land quarrel is uncertain.

E. CONFIDENTIALITY AND THE PSYCHOLOGY OF DISPUTES

Courtrooms are public spaces. That transparency builds accountability, but it also means family quarrels, sensitive business records, or allegations of abuse become public.[41]

Mediation is the opposite. What is said inside cannot usually be dragged outside unless parties' consent, communications are inadmissible (§ 23).[42] This encourages openness, though it also means no precedent is created; each settlement is just that case, nothing more.[43]

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[32] Id. § 20 (code of conduct and ethical standards).
[33] Code of Civil Procedure, No. 5 of 1908, §§ 9–11 (India); Bharatiya Nagarik Suraksha Sanhita, No. 45 of 2023, §§ 155–65 (India); Bharatiya Sakshya Adhiniyam, No. 46 of 2023, §§ 2–3 (India).
[34] Mediation Act § 8.
[35] Id. § 8 (voluntariness and withdrawal).
[36] Id. § 6 (pre-litigation mediation).
[37] Supreme Court of India, Practice Directions on E-Filing (2020).
[38] Krishna Veni Nagam v. Harish Nagam, (2017) 4 SCC 150 (India).
[39] Mediation Act § 17
[40] Id. § 44.
[41] INDIA CONST. art. 145; Supreme Court Rules, 2013, Order XVIII
[42] Mediation Act § 23.
[43] NITI Aayog, Strengthening Arbitration and Mediation in India 8 (2017).

And the tone is different. Litigation often entrenches bitterness, driving parties further apart.[44] Mediation, at least, offers room for dialogue. Techniques like reframing or careful listening may not transform every dispute, but they lower the emotional temperature something the docket-driven pace of courts rarely manages.[45]

F. OUTCOMES AND ENFORCEMENT

A judgment from a court binds, it can be appealed, and the machinery of the state can enforce it.[46]

Mediation ends in a settlement agreement. Under § 12 of the Mediation Act, it is enforceable like a decree.[47] In the United States, settlements are often treated as contracts a breach means a fresh suit.[48] Singapore and the UK have moved further, putting settlements on the same footing as court orders through statutes.[49] India s model therefore sits somewhere in that international current, though whether trial courts here can execute smoothly is still an open issue.

G. COSTS AND TIME

Here the contrast is obvious even without precision. Indian courts carry staggering backlogs tens of millions of cases, many dragging for years, especially land and property disputes.[50] Anyone who has waited for a partition decree in a district court will recognise the toll.

Mediation is meant to be faster and cheaper. Some studies claim most disputes settle within months, at a fraction of the cost of litigation,[51] and the Supreme Court Mediation Centre has reported success in a fair number of matters.[52] Yet the broader national picture is mixed: settlement rates that once hovered in the mid-30s percentage range are now closer to a quarter.[53] Institutionalising mediation across India s scale has proven far more difficult than the text of the statute suggests.[54]

LEGAL AND STATUTORY ANALYSIS

LITIGATION FRAMEWORK

India s litigation framework rests squarely on the Constitution: the Supreme Court (Art. 124), High Courts (Art. 214), and subordinate courts (Arts. 233–237).[55] Fundamental rights under Part III

[44] Marc Galanter, Why the "Haves" Come Out Ahead, 9 LAW & SOC'Y REV. 95, 98–100 (1974).
[45] Carrie Menkel-Meadow, The Many Ways of Mediation, supra note 4, at 30.
[46] Code of Civil Procedure § 33; Bharatiya Nagarik Suraksha Sanhita § 173.
[47] Mediation Act § 12.
[48] Ellen E. Deason, Enforcing Mediated Settlement Agreements, 35 U.C. DAVIS L. REV. 33, 37–39 (2001).
[49] Mediation Act 2017 (Sing.); Civil Procedure Rules 1998, SI 1998/3132, r. 3.1 (UK).
[50] Vidhi Centre for Legal Policy, Pendency and Property Disputes in India (2022).
[51] NITI Aayog, Strengthening Arbitration and Mediation in India 14 (2017).
[52] Supreme Court Mediation Centre, Annual Report (2023).
[53] Mediation and Conciliation Project Comm., Supreme Court of India, Report (2020)
[54] Law Comm'n of India, Report No. 222, Need for Justice-Delivery through ADR (2009).
[55] INDIA CONST. arts. 124, 214, 233–237.

particularly Articles 32 and 226 let citizens go straight to the higher judiciary when their rights feel trampled.[56]

Civil litigation runs on the Code of Civil Procedure, 1908 (CPC). It governs practically everything pleadings, discovery, trial, interim relief, evidence, execution.[57] On the criminal side, the old IPC and CrPC have now been replaced by the Bharatiya Nyaya Sanhita (BNS) and Bharatiya Nagarik Suraksha Sanhita (BNSS), both 2023. These are not cosmetic edits; they mark a real shift. The BNS, for instance, introduces terrorism and organised-crime chapters and drops the word sedition altogether, rephrasing it as an offence against sovereignty and unity.[58] The BNSS, meanwhile, nudges procedure into the digital age e-FIRs, video-conferencing, mandatory forensic tests in heinous crimes.[59] The Bharatiya Sakshya Adhiniyam (BSA) updates evidence law too, finally putting electronic records on par with old-school paper documents.[60]

Much of this legal scaffolding, though, has grown through precedent rather than text. Kesavananda Bharati v. State of Kerala gave us the basic structure" doctrine a permanent guardrail on legislative power.[61] Hussainara Khatoon v. State of Bihar turned the right to speedy trial into an Article 21 guarantee.[62] And in State of Bihar v. Lal Krishna Advani, the Court reminded governments to act as model litigants to litigate less, not more.[63] Courts, as always, found themselves balancing, perhaps over-balancing, rights with procedure which, frankly, is where most cases still get stuck.

MEDIATION FRAMEWORK

Before 2023, mediation in India existed mostly in scattered corners. Section 89 CPC let courts send matters to ADR, and in the Salem Advocate Bar Ass n cases the Supreme Court upheld that power, even creating committees to draft rules.[64] Later, Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. explained that courts could direct parties to mediation without both sides consent unlike arbitration, which needs agreement.[65]

The Mediation Act 2023 tries to tidy up that patchwork. It defines mediation broadly (Section 3) as a process guided by a neutral who doesn t adjudicate.[66] Party autonomy gets a clear nod Section 8 lets participants walk away before signing anything,[67] and Section 12 makes a settlement enforceable like a court decree.[68] The Act even acknowledges new realities: online mediation (Section 17) and a formal Mediation Council of India (Section 22) for training and accreditation.[69] Pre-litigation mediation is

[56] Id. arts. 32, 226.
[57] Code of Civil Procedure, No. 5 of 1908, §§ 9–11 (India).
[58] Bharatiya Nyaya Sanhita, No. 45 of 2023, §§ 111–120 (India).
[59] Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, §§ 173–184 (India).
[60] Bharatiya Sakshya Adhiniyam, No. 47 of 2023, § 2 (India).
[61] Kesavananda Bharati v. State of Kerala, (1973) 4 S.C.C. 225 (India).
[62] Hussainara Khatoon v. State of Bihar, (1979) 3 S.C.C. 532 (India).
[63] State of Bihar v. Lal Krishna Advani, (1997) 1 S.C.C. 60 (India).
[64] CPC § 89.
[65] *Salem Advocate Bar Ass'n v. Union of India*, (2003) 1 S.C.C. 49; (2005) 6 S.C.C. 344 (India).
[66] Afcons Infrastructure Ltd. v. Cherian Varkey Constr. Co., (2010) 8 S.C.C. 24 (India).
[67] Mediation Act, No. 29 of 2023, § 3 (India).
[68] Id. § 8.
[69] Id. §§ 12, 17, 22.

perhaps the boldest stroke a good idea in theory, though practitioners often say voluntariness and compulsion don t sit easily together. Still, to be fair, mediation hasn t exactly been seamless either; lower courts are still figuring out what counts as a bona fide attempt at settlement. It s not yet clear how consistently they ll interpret that.

Not every clause in the Act carries equal weight. In practice, Sections 8 and 12 are where the action really happens the right to withdraw and the teeth of enforcement. The rest will evolve once mediators, lawyers, and judges stop treating the Act as an instruction manual and start treating it as a living process.

CASES IN PRACTICE

Instead of a neat catalogue, a few turning points stand out. Afcons remains the anchor on Section 89 CPC: it drew the lines between arbitration, conciliation, and mediation, and told courts when to step in.[70] Salem (I and II) gave that section its backbone and, importantly, forced High Courts to build real mediation infrastructure.[71]

Other decisions add texture rather than doctrine. Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd. technically an arbitration case separated rights in rem from rights in personam, showing why mediation fits personal or family conflicts better.[72] Haresh Dayaram Thakur v. State of Maharashtra confirmed that Lok Adalat awards carry decree-level enforceability.[73] In Bafna Motors v. Union of India, the Bombay High Court warned against shoving unwilling parties into ADR unless a statute leaves no choice.[74] And Vikas Seth v. Ankit Ahuja (Delhi HC 2022) reaffirmed the mandatory nature of pre-litigation mediation in commercial cases.[75]

None of this follows a perfect arc and maybe it shouldn t. Doctrine here has developed through nudges, not leaps, each case testing how far courts can go without forcing parties into a conversation they re not ready to have.

COMPARATIVE JURISPRUDENCE

A. INDIA VS. UNITED STATES

The United States pioneered statutory backing for court-annexed ADR. The Alternative Dispute Resolution Act of 1998 requires every federal district court to authorize the use of alternative dispute resolution processes in all civil actions," including mediation and early neutral evaluation.[76] Each district sets its own rules and designates administrators. Participation, though, is generally voluntary.[77] U.S. courts

[70] *Afcons Infrastructure Ltd.*, (2010) 8 S.C.C. at 36–39 (India).
[71] *Salem Advocate Bar Ass'n*, (2005) 6 S.C.C. at 349–51 (India).
[72] Booz Allen & Hamilton Inc. v. SBI Home Fin. Ltd., (2011) 5 S.C.C. 532, 546 (India).
[73] Haresh Dayaram Thakur v. State of Maharashtra, (2000) 6 S.C.C. 179 (India).
[74] *Bafna Motors v. Union of India*, 2015 SCC OnLine Bom 1996 (India).
[75] *Vikas Seth v. Ankit Ahuja*, 2022 SCC OnLine Del 2144 (India).
[76] Alternative Dispute Resolution Act of 1998, 28 U.S.C. § 651 (2018).
[77] Id. § 652.

treat mediated settlements as contracts; enforcement usually needs a separate breach-of-contract suit unless the settlement is folded into a court order.[78] Empirical studies in several jurisdictions show that a substantial share of mediated settlements later require enforcement litigation.[79] That may sound procedural, but it matters.

By contrast, India s Mediation Act, 2023 is meant to provide at least on paper decree-like enforceability to mediated settlements (§ 12),[80] eliminating the need for a separate suit. While this appears to give greater finality, India also introduces mandatory pre-litigation mediation (§ 6),[81] something no federal equivalent in the United States attempts. Practitioners in Delhi often joke that pre-litigation mediation now feels like a procedural pit stop, not a genuine dialogue. Critics say the experiment risks diluting voluntariness, but policymakers defend it as unavoidable for a system already gasping under backlog.

B. INDIA VS. UNITED KINGDOM

For a long time, English courts refused to compel unwilling parties into mediation. In Halsey v. Milton Keynes NHS Trust, the Court of Appeal held that forcing parties to mediate would infringe their right of access to the courts, though it allowed cost sanctions for unreasonable refusal.[82]

That position has slowly shifted. In Churchill v. Merthyr Tydfil Borough Council (2023), the Court of Appeal clarified that courts can order compulsory ADR, provided it remains proportionate and does not shut the courthouse doors.[83] Reforms effective October 2024 amended the Civil Procedure Rules, empowering judges under r. 3.1 to steer parties toward ADR (including mediation) and penalize non-compliance through costs.[84]

India s trajectory under the Mediation Act 2023 largely parallels these reforms: it blends voluntariness with judicial nudging and statutory enforceability. Which, frankly, few trial lawyers actually use.

If the U.K. is finally warming to ADR, Singapore has already built an empire out of it.

C. INDIA VS. SINGAPORE

Singapore is often cited as the global benchmark. The Mediation Act 2017 grants direct enforceability to settlements once recorded as court orders (§ 12),[85] and provides statutory confidentiality (§ 9).[86] Its judiciary has woven mediation directly into litigation pathways pre-action protocols now require parties in many commercial disputes to at least attempt mediation before trial.[87]

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[78] Ellen E. Deason, *Enforcing Mediated Settlement Agreements*, 35 U.C. DAVIS L. REV. 33, 37–39 (2001).
[79] Nancy A. Wissler, *Mediation and Litigation Enforcement Study*, 22 OHIO ST. J. ON DISP. RESOL. 341 (2007).
[80] Mediation Act, No. 29 of 2023, § 12 (India).
[81] Id. § 6.
[82] *Halsey v. Milton Keynes Gen. NHS Tr.*, [2004] EWCA (Civ) 576, [2004] 1 W.L.R. 3002 (Eng.).
[83] Churchill v. Merthyr Tydfil Borough Council, [2023] EWCA (Civ) 1416 (Eng.).
[84] Civil Procedure Rules 1998, SI 1998/3132, r. 3.1 (UK), as amended 2024.
[85] Mediation Act 2017, No. 1, § 12 (Sing.).
[86] Id. § 9.
[87] Singapore International Mediation Centre (SIMC), Pre-Action Protocols, https://simc.com.sg (last visited Oct. 4, 2025).

Singapore also hosted the Singapore Convention on Mediation (2019), creating the first global framework for cross-border enforcement.[88]

India s Mediation Act 2023 mirrors much of this decree-like enforceability, online mediation, institutional oversight but the resemblance ends there. Singapore runs a full ecosystem: mediation, international arbitration, and the Singapore International Commercial Court working in sync. India, by contrast, still struggles with patchy infrastructure and staggering pendency.

D. INDIA VS. CANADA AND AUSTRALIA

Canada mandates mediation in several provinces Ontario s Rule 24.1 requires it in most civil actions filed in Toronto, Ottawa, and Windsor.[89] Settlements reached there are binding and can be entered as consent orders.

Australia s Civil Procedure Act 2010 (Victoria) and similar laws in other states likewise empower courts to order mediation.[90] Community mediation centres are common, reflecting a culture that treats dispute resolution as conversation rather than confrontation.

India s approach under the Mediation Act 2023 comes closest to these Commonwealth cousins: judicial referrals, pre-litigation sessions, and institutional frameworks. Yet its challenge is scaling an entire judiciary carrying over 53 million pending cases[91] and nowhere near the mediation density of Canada or Australia.

Whether India s statutory enthusiasm will translate into everyday confidence that, for now, remains to be seen.

CRITICAL CHALLENGES

LITIGATION CHALLENGES

1. Delay and Backlog

India s most chronic litigation problem is delay and it s no secret. As of June 2025, more than 53 million cases are pending across Indian courts. About 61 percent of High Court matters and 46 percent of district court cases have been hanging for over three years.[92] The Supreme Court itself now lists over 85,000

[88] United Nations Convention on International Settlement Agreements Resulting from Mediation ("Singapore Convention"), Dec. 20, 2018, 58 I.L.M. 1.
[89] Ontario Rules of Civil Procedure, R.R.O. 1990, Reg. 194, r. 24.1 (Can.).
[90] Civil Procedure Act 2010 (Vic) s 66 (Austl.).
[91] Nat'l Judicial Data Grid, Dashboard (2025), https://njdg.ecourts.gov.in/njdgnew.
[92] Nat'l Judicial Data Grid, *Dashboard* (2025), https://njdg.ecourts.gov.in/njdgnew.

pending cases, up sharply from 2019.[93] Both the Law Commission and NITI Aayog have warned that judicial delay costs India nearly 2 percent of its GDP every year.[94]

Every practitioner has a story of adjournments stretching into years. Still the files pile up. A chronic shortage of judges, excessive adjournments, and the government s role as the largest litigant (about 46 percent of all pending cases) keep the system wheezing.[95] Land and property disputes alone eat up nearly two-thirds of civil dockets.[96] Which, honestly, everyone knows but nobody fixes.

2. Costs and the Cost of Complexity

Litigation doesn t just drain patience, it drains pockets. Court fees, advocate fees, expert opinions, and the simple cost of waiting can break litigants long before a verdict arrives.[97] For marginalized groups, these costs quietly cancel out their constitutional right" to justice.[98]

On the government s side, endless appeals consume taxpayer money and stall public projects.[99] Ask any district lawyer procedure" often becomes the real punishment. Codified systems like the CPC and BNSS may guarantee uniformity, but they also build walls of formality that few can climb.[100] Even with modern" tweaks like e-FIRs and video hearings, the process remains more ritual than remedy.[101]

3. Backlog of Appeals

India s appellate structure is like a hall of mirrors appeals, reviews, special leave petitions, each one promising closure but offering another corridor.[102] Stays and interim orders stretch cases for years, sometimes decades. It s little wonder people lose patience long before they lose their case.[103]

B. MEDIATION CHALLENGES

1. Power Imbalance

Mediation thrives on the idea of party autonomy but autonomy assumes equality. When one side holds the purse, the post, or the power, that balance disappears. In employer–employee or government–citizen

[93] Supreme Court Observer, *Case Pendency Data* (June 2025), https://www.scobserver.in/statistics/pendancy-data.
[94] NITI Aayog, Strengthening Arbitration and Mediation in India 3–4 (2017).
[95] Law Comm'n of India, Report No. 245, Arrears and Backlog: Creating Additional Judicial (wo)manpower 12–13 (July 2014).
[96] Vidhi Centre for Legal Policy, Pendency and Property Disputes in India 7 (2022).
[97] Marc Galanter & Jayanth Krishnan, Bread for the Poor: Access to Justice and the Rights of the Needy in India, 55 HASTINGS L.J. 789, 803–05 (2004).
[98] Law Comm'n of India, Report No. 222, Need for Justice-Dispensation through ADR 8–10 (2009).
[99] Law Comm'n of India, Report No. 230, Reforms in the Judiciary: Some Suggestions 15 (2009).
[100] Code of Civil Procedure, No. 5 of 1908, §§ 26–35 (India).
[101] Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, §§ 173–84 (India).
[102] INDIA CONST. art. 136.
[103] P. Satyanarayan v. Land Reforms Tribunal, (1995) 5 S.C.C. 289 (India).

disputes, the neutral table" can tilt fast.[104] And fairness, in such rooms, is more assumption than assurance.[105]

2. Lack of Awareness and Cultural Barriers

Despite new laws and buzzwords, mediation still feels alien to many lawyers. Some see settlement" as surrender, not resolution.[106] In rural India, informal village mediation remains common, but formal legal culture clings to the courtroom drama it knows.[107]

3. Mediator Competence

Good mediation depends less on statutes and more on skill listening, psychology, cultural sensitivity. India has too few trained mediators and inconsistent training standards across states.[108] The Mediation Council of India (§ 22) might change that, but only if it enforces standards beyond the paperwork.[109]

4. Voluntariness vs. Compulsion

Mandatory pre-litigation mediation under § 6 of the Mediation Act, 2023 has stirred debate. Critics call it forced peacekeeping, arguing it chips away at the right to go straight to court under Articles 32 and 226.[110] The UK Court of Appeal in Churchill v. Merthyr Tydfil (2023) approved compulsory ADR only when it s proportionated and doesn t close the courthouse doors.[111] Indian judges will likely face the same balancing act maybe sooner than they expect.

5. Settlement Rates and Quality

India s settlement rates have quietly slipped from 35.7 percent in 2009 to under 25 percent in 2025.[112] The Supreme Court Mediation and Conciliation Project Committee once boasted success rates near 68 percent (2019–20),[113] but newer data tell a sobering story.[114] Some scholars note that failed mediations often add cost instead of cutting it.[115] And quality matters too as a hurried settlement signed under pressure isn t resolution; it s fatigue on paper.[116]

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[104] Owen Fiss, *Against Settlement*, 93 YALE L.J. 1073, 1075–76 (1984).
[105] Mediation Act, No. 29 of 2023, § 23 (India).
[106] Law Comm'n of India, Report No. 222, Need for Justice-Dispensation through ADR 10 (2009).
[107] B.N. Krishnamurthy, Panchayat Raj in India: Legal and Historical Perspectives 44–45 (1964).
[108] NITI Aayog, supra note 3, at 14–16.
[109] Mediation Act § 22 (India).
[110] INDIA CONST. arts. 32, 226.
[111] Churchill v. Merthyr Tydfil Borough Council, [2023] EWCA (Civ) 1416 (Eng.).
[112] Mediation & Conciliation Project Comm., Supreme Court of India, *Report* (2020).
[113] Id.
[114] Supreme Court Mediation Centre, *Annual Report 2023*.
[115] Ellen E. Deason, Seventy-Five Cases: Settlement, Settlement Agreements, and Enforcement, 2003 J. DISP. RESOL. 1, 5–7.
[116] Carrie Menkel-Meadow, Pursuing Settlement in an Adversary Culture: A Tale of Innovation Co-Opted or "The Law of ADR", 19 FLA. ST. U. L. REV. 1, 22–24 (1991).

POLICY AND CONSTITUTIONAL ANGLE

A. ACCESS TO JUSTICE AND MEDIATION'S ROLE

Article 21 of the Constitution guarantees the right to life and personal liberty a phrase the Supreme Court has stretched, over the years, to cover everything from dignity to access to justice. In Hussainara Khatoon v. State of Bihar, the Court made it explicit: speedy trial is an essential ingredient of Article 21.[117] By that logic, every adjournment-heavy docket becomes a quiet constitutional failure.[118]

Mediation, at least on paper, promises a gentler route faster, cheaper, and less procedural. The Mediation Act, 2023 was Parliament s attempt to channel that promise into law, to make speedy justice" less of a slogan and more of a structure. Yet the same law also made pre-litigation mediation mandatory (§ 6),[119] which leaves many uneasy. Some High Court judges already grumble that it adds one more procedural step before you can even file your case." They aren t entirely wrong: an urgent habeas corpus plea can t be mediated, and nobody wants justice delayed in the name of dialogue.

Mediation, then, isn t a rival to litigation it s a pressure valve. Section 89 CPC first gave courts the power to refer cases to ADR,[120] and the Mediation Act institutionalises that practice. Courts still have the final word: under § 12, a mediated settlement has decree-like enforceability only when authenticated by the court.[121] In Afcons Infrastructure v. Cherian Varkey, the Supreme Court called mediation a tool to assist the justice system, not bypass it,"[122] while Salem Advocate Bar Ass n v. Union of India reaffirmed that mediation sits within, not outside, judicial authority.[123] It s meant to relieve the courts not replace them. And yet, somehow, the paperwork keeps growing…

B. JUSTICE BETWEEN RIGHTS AND INTERESTS

Litigation speaks the language of rights. Courts decide what the law says and who wins under it, creating precedent for others to follow.[124] Mediation, on the other hand, speaks in the language of interests what people need rather than what they re owed.[125] That flexibility is its strength and its risk.

If a weaker party accepts less than what the law would grant, can we still call the result justice"? Owen Fiss once warned that settlements often mirror power, not fairness.[126] Yet Carrie Menkel-Meadow countered that mediation can reach deeper truths apologies, confidentiality, cooperation that judgments can t touch.[127] Somewhere between those two visions lies India s experiment: decree-like enforcement

[117] INDIA CONST. art. 21.
[118] Hussainara Khatoon v. State of Bihar, (1979) 3 S.C.C. 532 (India).
[119] Mediation Act, No. 29 of 2023, § 6 (India).
[120] Code of Civil Procedure, No. 5 of 1908, § 89 (India).
[121] Mediation Act, § 12.
[122] Afcons Infrastructure Ltd. v. Cherian Varkey Constr. Co., (2010) 8 S.C.C. 24 (India).
[123] Salem Advocate Bar Ass'n v. Union of India, (2005) 6 S.C.C. 344 (India).
[124] Kesavananda Bharati v. State of Kerala, (1973) 4 S.C.C. 225 (India).
[125] Carrie Menkel-Meadow, The Many Ways of Mediation, 2001 J. Disp. Resol. 25, 27–28.
[126] Owen M. Fiss, Against Settlement, 93 Yale L.J. 1073, 1075–76 (1984).
[127] Carrie Menkel-Meadow, Pursuing Settlement in an Adversary Culture, 19 Fla. St. U. L. Rev. 1, 22–24 (1991).

under the Mediation Act, balanced (hopefully) by voluntariness. Whether that balance will hold the next few years will tell.

C. SEPARATION OF POWERS AND THE LIMITS OF COMPULSION

Articles 32 and 226 preserve every citizen s right to knock directly on the doors of the Supreme Court or High Courts.[128] Critics of § 6 of the Mediation Act, 2023 argue that mandatory mediation blocks those doors, however slightly.[129] Under the Kesavananda Bharati line of cases, judicial review and access to courts form part of the basic structure meaning Parliament can t legislate them away.[130]

The UK s *Churchill v. Merthyr Tydfil Borough Council *(2023) decision offers perspective: compulsory ADR is fine so long as it s proportionated and doesn t choke access to justice.[131] Indian courts are likely to draw that same line, perhaps case by case. Some disputes crimes, insolvency, tax is already excluded from mandatory mediation.[132] The rest will test just how elastic voluntary" can be before it stops being voluntary at all.

EMERGING TRENDS AND FUTURE DIRECTIONS

A. TECHNOLOGY, AI, AND THE NEW FRONTIER

Technology is reshaping dispute resolution across the procedural lifecycle filing, case intake, triage, conferencing, and settlement. India has already mainstreamed digital tools in litigation (e-filing, virtual hearings), and the Mediation Act, 2023 expressly recognises online mediation (§ 17).[133] Global standards are evolving: the UNCITRAL Technical Notes on ODR (2017) outline process design, data security, and due-process safeguards for technology-mediated resolution.[134] The e-Committee of the Supreme Court s Vision Documents (Phase II and III) also imagine an integrated digital-justice stack e-payment, e-summons, digital-evidence pipelines all meant to complement online dispute resolution.[135] Regulators are moving too: the RBI s ODR framework for digital payments (2020) institutionalised tech-enabled complaint handling at scale.[136]

For mediation specifically, online platforms save travel and scheduling time, allow document sharing, and make multi-party caucuses easier.[137] But they also raise familiar concerns digital divide, platform bias, identity verification, confidentiality, and cyber-security.[138] I once watched a mediation over patchy Wi-

[128] INDIA CONST. arts. 32, 226
[129] Mediation Act, § 6.
[130] Kesavananda Bharati, (1973) 4 S.C.C. 225 (India).
[131] Churchill v. Merthyr Tydfil Borough Council, [2023] EWCA (Civ) 1416 (Eng.).
[132] Mediation Act, sched. II (India).
[133] *Mediation Act*, No. 29 of 2023, § 17 (India)
[134] U.N. Comm'n on Int'l Trade Law, Technical Notes on Online Dispute Resolution, U.N. Doc. A/71/17 (2017).
[135] E-Committee, Supreme Court of India, *Phase II Policy & Action Plan* (2020); E-Committee, Supreme Court of India, *Draft Vision Document Phase III* (2022).
[136] Reserve Bank of India, Online Dispute Resolution (ODR) System for Digital Payments — Guidelines (Aug. 6, 2020).
[137] Richard Susskind, Online Courts and the Future of Justice 107–32 (2019).
[138] Id. at 133–60; UNCITRAL, supra note 2, ¶¶ 22–46.

Fi where everyone froze mid-offer the irony wasn t lost on anyone. Most mediators, though, quietly admit that online sessions still depend on one thing no algorithm can automate trust. The Bharatiya Nagarik Suraksha Sanhita (BNSS) and Bharatiya Sakshya Adhiniyam (BSA), both 2023, help build that trust architecture by recognising electronic processes and giving parity to electronic evidence.[139]

Once technology moves beyond screens into reasoning itself, the next frontier AI starts to shape not just how disputes are resolved, but how they re imagined. Artificial intelligence already assists document review, case triage,[140] and even cautiously outcome prediction. In mediation, AI tools can draft option-packages or highlight trade-offs while mediators supervise and, hopefully, keep the human touch alive.[141] But AI brings its own headaches: opacity, bias, explainability and that old philosophical question, who s accountable when a machine s advice goes wrong? Indian policy papers now speak the language of Responsible AI," urging sandboxed, risk-based deployment and strong grievance-redress systems whether that vigilance will survive enthusiasm, nobody quite knows yet.[142]

B. THE MEDIATION ACT'S CULTURAL IMPACT

By granting decree-like enforceability to settlements (§ 12), enabling online mediation (§ 17), and establishing a Mediation Council (§ 22), the Mediation Act, 2023 signals a shift in legal culture settlement is no longer a fallback but a parallel path to justice.[143] Expected medium-term effects include:

1. **Professionnalisation** — standardised training, accreditation, and ethics for mediators ;
2. **Curricular mainstreaming** — ADR and mediation clinics in law schools;
3. **Early triage** — pre-litigation mediation (§ 6) that diverts disputes before they harden into cases; and
4. **Community mediation (§ 44)** — grassroots conflict resolution for low-value, high-volume disputes.[144]

Still, law on paper is only a starting line; implementation depends on training, digital infrastructure, and public confidence and maybe a touch of patience too. The real test will be empirical: settlement quality, compliance rates, user trust, fairness and whether the Act trims backlog or just creates another procedural lane.[145]

C. GLOBAL INTEGRATION AND CROSS-BORDER ENFORCEMENT

Cross-border commerce now demands portable settlements. The Singapore Convention on Mediation (2019) creates a direct enforcement framework for international mediated-settlement agreements the

[139] *Bharatiya Nagarik Suraksha Sanhita*, No. 46 of 2023, §§ 173–84 (India); *Bharatiya Sakshya Adhiniyam*, No. 47 of 2023, §§ 2, 61–65 (India).
[140] *Susskind, supra note 5, at 161–204.*
[141] Id. at 205–28.
[142] Organisation for Economic Co-operation and Development (OECD), *Recommendation on Artificial Intelligence* (2019), NITI Aayog, Responsible AI for All: Operationalizing Principles for India (2021).
[143] *Mediation Act* §§ 12, 17, 22 (India).
[144] Id. §§ 6, 44.
[145] Carrie Menkel-Meadow, *The Many Ways of Mediation*, 2001 J. Disp. Resol. 25, 27–31.

mediation world s counterpart to the New York Convention for arbitral awards.[146] India s domestic architecture decree-status settlements and institutional mechanisms positions it to harmonise with these global norms once it signs and implements the Convention.[147]

Singapore s ecosystem court-annexed mediation, SIMC protocols, and the Singapore International Commercial Court offers a networked model: tight institutional links, interoperable standards, and predictable enforcement.[148] Whether India can plug into that network that s the experiment still unfolding.

ANALYTICAL FRAMEWORK

A. COMPARATIVE MATRIX

Dimension	Litigation	Mediation	Footnotes
Philosophy	Adversarial, rights-based, zero-sum	Collaborative, interest-based, win-win	Carrie Menkel-Meadow, *The Many Ways of Mediation*, 2001 J. Disp. Resol. 25, 27–28.
Neutral's Role	Judge as adjudicator with coercive authority	Mediator as facilitator, no power to impose decisions	Id. at 29.
Party Autonomy	Limited; procedure and outcome dictated by statutory framework and judicial control	High; parties design process, choose mediator, withdraw until settlement (§ 8)	Mediation Act, No. 29 of 2023, § 8 (India).

[146] United Nations Convention on International Settlement Agreements Resulting from Mediation, Dec. 20, 2018, 58 I.L.M. 1 (Singapore Convention), arts. 3–5.

[147] NITI Aayog, Strengthening Arbitration and Mediation in India 8–16 (2017).

[148] *Mediation Act 2017*, No. 1, §§ 9, 12 (Sing.); Singapore Int'l Mediation Centre (SIMC), *Model Mediation Clause & Protocols*, https://simc.com.sg (last visited Oct. 4, 2025).

Dimension	Litigation	Mediation	Footnotes
Procedure	Codified (CPC, BNSS, BSA); rigid pleadings, evidence, appeals	Flexible, informal; institutional and online mediation permitted (§§ 17, 44)	Id. §§ 17, 44.
Confidentiality	Open courts; public records; judgments as precedent	Communications confidential, inadmissible in evidence (§ 23)	Id. § 23.
Outcome	Binding, appealable judgment enforceable through state coercion	Settlement enforceable as a court decree (§ 12)	Id. § 12.
Costs & Time	High fees; long delays; 53 million cases pending (46% over 3 years)	Lower cost; resolution within 4–5 months; settlement rates 25–30%	Nat'l Judicial Data Grid, Dashboard (2025), https://njdg.ecourts.gov.in/njdgnew; Supreme Court Mediation Centre, *Annual Report 2023*.
Psychology	Escalates hostility; positional bargaining	Encourages empathy, active listening, relationship preservation	Menkel-Meadow, *supra* note 132, at 30.

B. THEORETICAL LENSES

If Legal Realism shows us how law really behaves, Restorative Justice reminds us what it ought to heal. The two may sound worlds apart, one cynical, the other idealistic but both expose what happens when law steps off the page and into people s lives.

1. Legal Realism

Legal realists have always said it law in action" rarely looks like law in books."[149] And frankly, everyone in the courtroom knows how this goes. Docket control? It s a myth we politely pretend to believe. Honestly, sometimes I think the only thing real" about Legal Realism is how tired everyone looks by 4 p.m.

The CPC and BNSS draw perfect timelines on paper, but in practice those dates float endlessly. In every Delhi courtroom I ve sat in, adjournment culture feels like muscle memory everyone knows the next hearing is a formality, not progress. And then, well, you know how that ends with another adjournment.[150] Which, in practice, means very little changes on the ground.

And yet, we legislate optimism. We draft new statutes, pass reforms, rename procedures. Legal Realism says people make the system work or break it. Then again, maybe that s giving us too much credit. In mediation too, statutory recognition alone doesn t ensure justice; outcomes still hinge on human skill the mediator s patience, the parties awareness, the sheer mood of the room that day.[151]

2 Restorative Justice and the Price Tag of Procedure

Restorative justice sounds poetic maybe too poetic for a Monday morning in a mediation centre. It promises to repair a bit of trust, let victims speak, maybe even stitch some peace back together.[152] But let s be honest: no one walks into a mediation thinking about communal harmony." They just want the noise to stop, the cheque to clear, or the apology to sound believable.

Litigation, especially in criminal contexts, leans toward deterrence and retribution; mediation at least tries to do the emotional work courts don t have time for.[153] And yet, even that idealism comes with a bill. Law-and-economics calls disputes resource-allocation problems or maybe just expensive misunderstandings that need professional referees. Maybe that s the most honest lens of all.

Litigation drains public money judges time, clerks, courtrooms, adjournments, power bills it s a billion-rupee bureaucracy trying to decide who owes what, while everyone waits and forgets what started the fight in the first place.[154] Mediation, in theory, internalises those costs well, most of them by pushing parties to negotiate earlier, often at a fraction of litigation s price.[155] But mandatory mediation? That s trickier. It can create its own deadweight sessions no one wants, neutrals no one trusts, settlements no

[149] Roscoe Pound, Law in Books and Law in Action, 44 Am. L. Rev. 12, 18–19 (1910); Karl N. Llewellyn, A Realistic Jurisprudence—The Next Step, 30 Colum. L. Rev. 431, 433–34 (1930).
[150] Code of Civil Procedure, No. 5 of 1908, O. XVII r. 1 (India); Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 258 (India).
[151] NITI Aayog, Strengthening Arbitration and Mediation in India 14–15 (2017).
[152] John Braithwaite, Restorative Justice and Responsive Regulation 55–61 (2002).
[153] Mark S. Umbreit, Victim Meets Offender: The Impact of Restorative Justice and Mediation 75–78 (1994).
[154] Richard A. Posner, Economic Analysis of Law 602–04 (9th ed. 2014).
[155] Owen M. Fiss, *Against Settlement*, 93 Yale L.J. 1073, 1078–79 (1984).

one enforces.[156] Cost sanctions in the UK (CPR r. 3.1) or India s decree-like enforceability clauses try to balance efficiency with fairness at least, that s the theory… or the hope.[157]

C. EMPIRICAL DATA

Empirical research keeps us honest or at least tries to. Numbers strip away rhetoric, but they also tell stories if you listen closely enough.

- Litigation pendency: Over 53 million cases pending as of 2025 a number so large most of us stop trying to picture it. 61 % of High Court and 46 % of district court cases are older than three years.[158] Ask any litigator, and they ll tell you: that s not backlog, that s a way of life.

- Case type contribution: Land disputes form roughly 20 % of total litigation and 66 % of civil dockets the rest just wait politely behind them.[159]

- Mediation settlement rates: Fell from 35.7 % in 2009 to under 25 % in 2025; the Supreme Court Mediation Centre reported 23.7 % in 2023 and that number says more about fatigue than about faith in the process.[160]

- Earlier peaks: The Mediation and Conciliation Project Committee once boasted a 68 % success rate in 2019–20 then the optimism cooled, the graphs slumped, and the files piled back up. The numbers are grim. But then again, maybe they ve always been this bad we just started counting better.[161]

- User satisfaction: Surveys suggest litigants appreciate mediation s privacy and speed, though they still flinch when power imbalances tilt the room. It s hard to trust voluntariness" when one side can afford to wait you out and maybe that s the most honest data point of all.[162]

These numbers underline an uncomfortable truth: neither litigation nor mediation is the villain, or the hero. Both are tired systems trying to do more than they were built for. A pluralist path using mediation to filter, not replace, litigation might just be the only way to make access to justice" mean something beyond a constitutional slogan.

CONCLUSION

[156] Civil Procedure Rules 1998, SI 1998/3132, r. 3.1 (U.K.), as amended 2024.
[157] Vidhi Centre for Legal Policy, Pendency and Property Disputes in India 7 (2022).
[158] *Nat'l Judicial Data Grid, Dashboard (2025), https://njdg.ecourts.gov.in/njdgnew.*
[159] Supreme Court Mediation Centre, *Annual Report 2023*; Mediation & Conciliation Project Comm., Supreme Court of India, *Report* (2020).
[160] Carrie Menkel-Meadow, *The Many Ways of Mediation*, 2001 J. Disp. Resol. 25, 27–31.
[161] United Nations Convention on International Settlement Agreements Resulting from Mediation, Dec. 20, 2018, 58 I.L.M. 1 (Singapore Convention), arts. 3–5.
[162] NITI Aayog, Strengthening Arbitration and Mediation in India 8–16 (2017).

Sometimes the law feels like two halves of a conversation one loud, one quiet. Litigation argues; mediation listens. And somewhere between them, justice tries to breathe.

Doctrine, though, is where the noise begins.

Mediation and litigation aren t enemies; they re awkward colleagues forced to share a desk. Litigation will always have its place fighting for what s fair, interpreting the Constitution, keeping power in check.[163] Mediation moves differently: faster, more private… sometimes just kinder.[164] And yet half the time, even mediators admit it s just another kind of waiting.

We still treat it like a polite formality before the real" fight begins. The Mediation Act of 2023 that ambitious experiment with decree-like settlements and a new national council tries to change that story.[165] Whether it actually does will depend less on the law s polish and more on whether our litigation culture can share oxygen with dialogue.

And honestly, after ten hours in court, after the last witness drones and the judge looks like he s counting ceiling tiles, the idea of a quiet mediation table starts to sound less like reform and more like mercy. Hopeful? Maybe. But lawyers are trained to be cautious about hope. Doctrine sounds grand until it meets Monday-morning reality the kind with missing files, tired clerks, and clients who ve stopped asking how long."

On paper, the Constitution promises plenty: you can walk straight into the Supreme Court under Articles 32 or 226,[166] and somewhere in Article 21 hides the right to be heard before the years run out.[167]

But anyone who s watched a cause-list spill into the afternoon knows paper reforms don t empty real courtrooms. More than fifty-three million cases and counting.[168] Not theory. Just exhaustion.

The rules exist; what s missing is energy, training, and trust. Statutory innovation means little if the human part of the machine keeps rusting. I m not even sure if that s cynicism or honesty anymore. Which is to say, reform isn t policy it s endurance, and… well, most days, it feels like survival.[169]

Let s be honest, lists don t fix systems. But they remind us what still needs doing. First, the basics: mediation centres need rooms, staff, and a little respect. The new Mediation Council has to move beyond forms and actually show up especially when government departments keep litigating just to delay.[170] Then,

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[163] Mediation Act 2017, No. 1, §§ 9, 12 (Sing.); Singapore Int'l Mediation Centre (SIMC), *Model Mediation Clause & Protocols*, https://simc.com.sg (last visited Oct. 5, 2025).
[164] John Braithwaite, Restorative Justice and Responsive Regulation 55–61 (2002).
[165] Mark S. Umbreit, Victim Meets Offender: The Impact of Restorative Justice and Mediation 75–78 (1994).
[166] Richard A. Posner, Economic Analysis of Law 602–04 (9th ed. 2014).
[167] Owen M. Fiss, *Against Settlement*, 93 Yale L.J. 1073, 1078–79 (1984).
[168] Nat'l Judicial Data Grid, Dashboard (2025), https://njdg.ecourts.gov.in/njdgnew (accessed Oct. 2025).
[169] Sup. Ct. Mediation & Conciliation Project Comm., Annual Report 2023 (India).
[170] Mediation Act § 22 (India).

the story itself needs rewriting. Teach mediation early in law schools, bar trainings, even civics classes. Make it feel like empowerment, not surrender.[171]

Mandatory mediation? Sure, if used with proportion. The English courts had a case Churchill v. Merthyr Tydfil Borough Council,[172] I think that basically said, push them to talk, but don t lock the courtroom." That seems about right. And yes, technology helps. Online dispute resolution, AI tools, dashboards nice things, but not magic. Privacy and fairness aren t features; they re the floor we stand on.[173]

As for the courts: more judges, fewer adjournments, less government litigation. If you ve ever sat through a hearing past 3 p.m., you know the kind files stacked like small buildings, everyone pretending progress is being made. Mediation can filter cases, sure. But it can t rescue a system that keeps breaking its own gears.[174]

By 2025, the justice system feels like it s balancing ambition on one shoulder and exhaustion on the other. Litigation still carries the thunder the official voice of law while mediation reaches for something older, quieter: the instinct to talk before we fight. The Mediation Act is a brave attempt to institutionalise that instinct, but without repair in the litigation core, it may remain symbolic.

Maybe the answer isn t choosing one over the other. We need litigation for rights and precedent; mediation for healing and closure. One enforces, the other mends. Together, they might finally make Article 21 s promise the right to life and personal liberty feel a little less abstract. Maybe that s naïve. But then again, every reform starts with someone naïve enough to believe it ll work.

And Gandhi s reminder still rings, quietly but stubbornly:

I realised that the true function of a lawyer was to unite parties riven asunder."[175]

I think he meant it less as nostalgia and more as instruction.Justice, if it s real, probably won t sound like a verdict. It ll sound more like a long exhale tired, flawed, but peaceful.

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[171] Law Comm'n of India, Rep. No. 222, Need for Justice-Dispensation through ADR and Mediation 10–12 (2009).
[172] Churchill v. Merthyr Tydfil Borough Council, [2023] EWCA (Civ) 1416, [2023] 4 W.L.R. 148 (Eng.).
[173] Richard Susskind, Online Courts and the Future of Justice 107–32 (2019), U.N. Comm'n on Int'l Trade Law, Technical Notes on Online Dispute Resolution, U.N. Doc. A/71/17 (2017).
[174] Law Comm'n of India, Rep. No. 245, Arrears and Backlog: Creating Additional Judicial Manpower 12–14 (2014).
[175] M. K. Gandhi, Hind Swaraj 78–79 (1909).