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“MEDIATION IN INDIA: TRACING THE EVOLUTION AND CHARTING THE COURSE TOWARDS GLOBAL HARMONIZATION”

AUTHORED BY - ADITI A A

Abstract:

Mediation has emerged as a pivotal mechanism in the global movement toward efficient, cost-effective, and amicable dispute resolution. In India, while informal mediation has deep historical and cultural roots, formal legal recognition and structured implementation have gained momentum only in recent decades. This research paper provides a comprehensive overview of mediation in India, tracing its evolution from traditional practices to formal institutionalization through the enactment of the Mediation Act, 2023.

The paper examines the historical background, the origins of formal mediation frameworks, and the factors that led to the introduction of a dedicated statute. Key features of the Mediation Act such as mandatory pre-litigation mediation, online mediation, enforceability of settlement agreements, and the establishment of the Mediation Council of India are analysed to assess their role in promoting a unified and globally aligned mediation ecosystem.

Recent developments and judicial trends are discussed to highlight India's progress in embracing alternative dispute resolution mechanisms. The paper concludes by outlining the way forward, including institutional strengthening, capacity building, public awareness, and India's potential alignment with international conventions such as the Singapore Convention on Mediation. Through this study, the paper aims to present mediation as a viable, evolving, and globally converging dispute resolution model for India.

Introduction:

Whether in business or personal interactions, disagreements are an unavoidable aspect of human contact. Three essential components are present in every conflict: the underlying issue, the process, and the individuals. Even while disagreements are inevitable, how they are resolved affects the final result and the long-term effects on the parties. In general, there are two types of dispute resolution: non-adversarial or friendly methods like mediation and

conciliation, and adversarial methods like arbitration and litigation. Mediation provides a cooperative and adaptable substitute for litigation, which is costly, time-consuming, and frequently combative. A neutral third party, known as a mediator, helps disputing parties communicate and negotiate in order to reach a mutually agreeable resolution. It is a voluntary and private process. The parties retain control over the resolution, which makes the settlement more permanent and more customized than court rulings or arbitral awards. Settlements reached through mediation are generally enforceable by contract and are becoming more and more accepted by contemporary legal systems. The idea of mediation is not new in India, despite its increasing popularity in modern legal and corporate systems. Mediation's origins can be found in the Vedic era, when village leaders used discussion and consensus to settle internal conflicts. Later, this custom was formalized through Gram Panchayats and other local conflict resolution organizations, which were essential to preserving societal harmony. ¹The importance of mediation has been generally acknowledged on a global scale. To resolve a range of international conflicts, organizations including the United Nations (UN), International Chamber of Commerce (ICC), World Intellectual Property Organization (WIPO), and International Centre for Dispute Resolution (ICDR) have all used mediation. ²During historical events like the Cold War and more recently in attempts to control tensions and foster communication in disputes like the Russia-Ukraine crisis, the UN has notably played a significant mediating role. In a similar vein, WIPO has created specialized mediation frameworks to assist parties involved in intellectual property in successfully and economically resolving disputes, encouraging creativity and collaboration in the global economy. Following international patterns, India has acknowledged the value of formalizing mediation as a dispute settlement process. A significant step in this direction was taken with the passage of the Mediation Act of 2023. India is now a formidable competitor in the field of international dispute resolution because to this legislation, which not only unifies the country's mediation laws but also attempts to align them with best practices around the world.

This study looks at how mediation has changed in India, evaluates the Mediation Act of 2023, and considers its effects in relation to global norms and practices. It further outlines recent developments, identifies key challenges, and suggests a way forward for India to emerge as a

¹ R.K. Jain, Justice at the Grassroots: A Study of Panchayati Raj Institutions, Indian Law Institute, New Delhi (2012).

² United Nations, Handbook on Dispute Avoidance and Resolution, United Nations Publications (2021), available at: <https://desapublications.un.org/publications/united-nations-handbook-dispute-avoidance-and-resolution/>; International Chamber of Commerce, Mediation Rules, ICC Publications (2014), available at: <https://iccwbo.org/dispute-resolution/dispute-resolution-services/adr/mediation/mediation-rules/>.

global leader in the field of mediation.

History and Evolution of Mediation in India:

- **Ancient and Pre-Colonial Period:** Mediation, though formally recognized in modern times, has existed in India since ancient days as an informal, community-based method of dispute resolution. Traditional Indian society emphasized collective harmony and social justice over adversarial confrontation, leading to the development of indigenous mechanisms like Panchayats, Kul-Mukhiya, and village elders' councils. Dispute resolution was often guided by Dharma, with village elders or spiritual leaders facilitating settlements.³The Rig Veda and other scriptures emphasize the importance of consensus, non-violence (ahimsa), and mutual respect. Ancient texts like Manusmriti classified disputes and recommended resolution methods such as negotiation, conciliation, and arbitration. Mediators, or madhyasthas, played an essential role in maintaining social equilibrium. Disputes in rural areas were largely settled by caste councils or local assemblies (Sabhas), based on custom and community values, well before the advent of a formal legal system. The British introduced the common law legal system in India, emphasizing formal litigation in courts and reducing the significance of informal dispute resolution. However, they also acknowledged the need for alternatives: Civil Procedure Code, 1859 & 1908 and Arbitration Act, 1940.⁴Despite these legislative developments, the importance of village panchayats and informal mediation forums remained prevalent, especially in rural India.
- **Post Independence Era:** After independence in 1947, the Indian legal system retained the British adversarial structure but increasingly acknowledged the benefits of alternative dispute resolution (ADR). The Industrial Disputes Act, 1947, which established comprehensive processes for resolving disputes out of court, is credited with formally integrating mediation into the Indian legal system during the post-British era. Following this, the Legal Services Authority was established.

The concept of mediation was further stimulated by the Act of 1987, which established Lok Adalat.

³ R. Thakur, Panchayati Raj and the Traditional Justice System in India, Indian Law Institute (2016), available at: <https://www.ili.ac.in/pdf/panchayatijustice.pdf>.

⁴ While traditional mechanisms persisted, formal legal systems recognized the importance of alternative dispute resolution. The Civil Procedure Codes of 1859 and 1908 introduced structured court procedures, but also hinted at settlement outside the courtroom. Later, the Arbitration Act of 1940 provided a legislative framework for formalized ADR in India.

An important step in Favor of business mediation was the passage of the business Courts Act, of 2015, which mandated pre-institutional mediation in specific classes of commercial suits in which no urgent relief is sought. ⁵The 253rd Law Commission of India's suggestion served as its foundation.

LEGAL RECOGNITION AND MEANING OF MEDIATION IN INDIA:

Mediation is a voluntary, non-adversarial process where a neutral third party, known as the mediator, facilitates communication and negotiation between disputing parties to help them reach a mutually acceptable resolution. Unlike litigation or arbitration, mediation does not involve a binding decision imposed by the mediator; instead, it empowers parties to craft their own solutions, preserving relationships and reducing hostility.

Key features of mediation include:

- **Voluntary Participation:** Parties engage willingly and can withdraw at any time.
- **Confidentiality:** Discussions during mediation are private and cannot be used as evidence in court.
- **Neutrality:** The mediator remains impartial, ensuring a balanced process.
- **Flexibility:** The process is informal, allowing creative and tailored solutions.
- **Cost and Time Efficiency:** Mediation is generally quicker and less expensive than litigation.

In the Indian context, mediation is particularly significant due to the overburdened judicial system, with over 50 million pending cases (as of 2025)⁶, making ADR mechanisms like mediation critical for reducing backlog and ensuring access to justice.

Code of Civil Procedure, 1908 (CPC):

Section 89: Introduced by the 1999 amendment (effective 2002), Section 89 empowers courts to refer cases to ADR mechanisms, including mediation, where there is a possibility of settlement. It lists mediation alongside arbitration, conciliation, and Lok Adalat's. Courts can refer cases with the consent of parties, ensuring alignment with the voluntary nature of mediation. Order X, Rule 1A-1C: These rules outline the procedure for referring cases to ADR, including mediation, and require courts to ensure parties are informed about available options.

⁵ Ministry of Law and Justice, *Commercial Courts Act, 2015*, Government of India, available at: <https://legislative.gov.in/sites/default/files/A2015-4.pdf>.

⁶ National Judicial Data Grid, *Pending Cases Statistics*, Government of India, available at: <https://njdg.ecourts.gov.in/njdgnew/>

Arbitration and Conciliation Act, 1996:

While primarily focused on arbitration and conciliation, the Act's framework for conciliation (Sections 61–81) shares similarities with mediation, such as neutrality and confidentiality. Courts have interpreted these provisions to support mediation-like processes, especially in commercial disputes. The 2015 and 2019 amendments to the Act emphasized ADR, indirectly bolstering mediation by promoting institutional mechanisms.

Commercial Courts Act, 2015:

Section 12A mandates pre-institution mediation for commercial disputes (except those requiring urgent interim relief) before filing a suit. This provision, introduced by the 2018 amendment, underscores mediation's role in reducing litigation in commercial matters. The mediation process under this Act is conducted by court-annexed mediation centres or institutions recognized by the government.

Legal Services Authorities Act, 1987:

This Act establishes Lok Adalat's, which often incorporate mediation principles for resolving disputes, particularly in family, labour, and consumer matters. Permanent Lok Adalat's for public utility services also use mediation techniques. Section 19 empowers legal services authorities to organize Lok Adalat's, which may include mediation as a tool for settlement.

Family Laws and Mediation:

Mediation is widely used in family disputes, supported by statutes like the Hindu Marriage Act, 1955, and the Family Courts Act, 1984⁷. Section 9 of the Family Courts Act encourages courts to attempt reconciliation, often through mediation, before adjudicating matrimonial disputes.

⁸The Protection of Women from Domestic Violence Act, 2005, also allows mediation in certain cases, provided it ensures the safety and consent of the parties.

Consumer Protection Act, 2019:

The Act promotes mediation for resolving consumer disputes, with Section 74 establishing mediation cells attached to consumer forums. ⁹This reflects the growing legislative push for

⁷ The Hindu Marriage Act, 1955, Act No. 25 of 1955; The Family Courts Act, 1984, Act No. 66 of 1984.

⁸ Section 9 of the Family Courts Act, 1984 mandates that family courts make efforts for settlement and reconciliation, including the use of mediation, before proceeding with the adjudication of matrimonial disputes.

⁹ The Consumer Protection Act, 2019 promotes mediation as a method of resolving consumer disputes. Section 74 of the Act provides for the establishment of mediation cells attached to each consumer forum to facilitate out-of-court settlements.

mediation in consumer matters.

Mediation Act, 2023:

The most significant recent development is the enactment of the Mediation Act, 2023, which provides a comprehensive legal framework for mediation in India. Countries all over the world have pro-actively welcomed mediation as a means of dispute resolution for a long time but the scenario was not the same for India. The system of Private Mediation in India has been bereft of proper structure and legal recognition, thus, discouraging involvement of the parties and, as a result, a rise in the burden of the judiciary. In contrast to arbitration and conciliation, mediation was not expressly governed by any general law in India.

Notified on September 15, 2023, the Mediation Act, 2023, promises a revolutionary change in the direction of alternative dispute settlement. In addition to formalizing mediation, this law offers a thorough definition that covers pre-litigation and court-annexed mediation, online platforms, and community mediation, among other types of mediation, with the goal of promoting amicable settlements through the assistance of an impartial mediator. The Act provides a thorough and legal framework for mediation implementation and guidance. The Act's main objective is to encourage the use of mediation, particularly institutional mediation, to settle personal or business conflicts and uphold mediated settlement agreements. The Act also provides for a body for the registration of mediators to encourage community mediation and to make online mediation an acceptable and cost-effective process and for matters connected therewith or incidental thereto.

Key Features:

- Applies to both domestic and international mediation.
- Establishes a Mediation Council of India for standard-setting, accreditation, and training.
- Mandates pre-litigation mediation in civil and commercial disputes (with exceptions).
- Provides enforceability of mediated settlement agreements as if they were a decree of a civil court.
- Ensures confidentiality and introduces online mediation mechanisms.
- This Act formalizes and institutionalizes mediation as an integral part of the Indian legal system and is expected to boost its usage across the country.

Despite increasing recognition, mediation in India faces several challenges:

- Lack of awareness among the public and legal professionals.

- Inadequate training and accreditation of mediators.
- Scepticism regarding enforceability and neutrality.
- Resistance from legal practitioners fearing loss of litigation revenue.

Judicial Pronouncements:

- **MR Krishna Murthi v. New India Assurance Co. Ltd:**

In January 2020, the Supreme Court of India, in the case of M.R. Krishna Murthi v. New India Assurance Co. Ltd., emphasized the pressing need for the enactment of a comprehensive and uniform legislation on mediation.¹⁰ Recognizing the absence of a consolidated legal framework, the Court constituted a committee to draft a model law that would grant legal recognition to settlements achieved through mediation. The introduction of such a statute is essential at this juncture. Ideally, this legislation should seek to make mediation a compulsory preliminary step before parties are allowed to initiate proceedings before courts or arbitral tribunals. Such a move would significantly transform mediation from an optional method of dispute resolution into a mandatory first-tier mechanism, thereby embedding it more deeply within the formal justice delivery system.

- **In Afcons Infrastructure Ltd v M/s Cherian Varkey Construction:**

In the case of Afcons Infrastructure Ltd. v. M/s Cherian Varkey Construction Co. (2010), the Supreme Court of India clarified that the terms ‘mediation’ and ‘conciliation’ are used interchangeably.¹¹ Accordingly, throughout the judgment, references to ‘mediation’ and ‘mediator’ should also be understood to include ‘conciliation’ and ‘conciliator’. The Court examined the scope, applicability, and procedural aspects under Section 89 of the Civil Procedure Code (CPC), and addressed certain inconsistencies in the terminology, particularly concerning the use of the expressions ‘Judicial Settlement’ and ‘Mediation’. It was held that the terms as used in Clause (c) (‘Judicial Settlement’) and Clause (d) (‘Mediation’) appear to be erroneously interchanged, and their meanings only become coherent when they are swapped.

Furthermore, Section 89(1) requires the court to formulate the terms of settlement before referring a matter to ADR, which the Court identified as a major impediment

¹⁰ (2020) 14 SCC 274

¹¹ (2010) 8 SCC 24

to the effective implementation of the provision. This issue was later addressed in the Salem Advocate Bar Association (II) v. Union of India case, where the Supreme Court mitigated the problem by interpreting ‘terms of settlement’ to mean merely a ‘summary of the dispute’. This interpretation relieves the court from the burden of drafting the actual settlement terms, requiring it only to provide a brief outline of the dispute before referring it to mediation.

- **Perry Kansagra vs. Smriti Madan Kansagra:**

In this case, the Court emphasized that confidentiality is a fundamental aspect of the mediation process. Unlike conventional adjudicatory proceedings, which are inherently adversarial, mediation operates on a distinct and non-adversarial platform.

¹²The primary objective of mediation is to facilitate a mutually agreeable resolution between the parties, promoting cooperation and harmony rather than conflict.

Challenges of Mediation in India:

While the scope of mediation in India is undeniably broad, its successful implementation and public trust must reach a level comparable to that enjoyed by the judiciary. As the world’s most populous nation, India faces significant challenges in achieving widespread acceptance and effectiveness of mediation. A large segment of the population remains unaware of mediation as an Alternative Dispute Resolution (ADR) mechanism. The general lack of public knowledge and a preference for the traditional litigation process despite its time-consuming and costly nature continues to hinder the growth of mediation. Cultural factors further complicate the situation. Indian society has traditionally valued authoritative and hierarchical forms of decision-making, often placing greater trust in judicial determinations than in collaborative or consensus-based processes like mediation. In addition to cultural obstacles, legal and institutional challenges persist. Although mediation has gained statutory recognition, it still lacks a robust constitutional framework. One major limitation is the difficulty in enforcing mediated settlements, due to the absence of a uniform and streamlined mechanism for converting such agreements into binding legal orders. This often discourages parties from choosing mediation as a viable dispute resolution option. Professional and practical limitations also pose significant concerns. The success of mediation largely depends on the competence and skill of the mediator, yet India faces a shortage of well-trained and qualified mediators.

¹² (2020) 19 SCC 606.

There is no uniform certification or regulatory framework, leading to inconsistencies in the quality of mediation services. Although Indian courts currently mandate 40 hours of training for mediators, this is widely viewed as insufficient. Participation in Continuing Mediation Education (CME) programs is highly recommended to enhance the professional standards and practical skills of mediators.¹³ Moreover, the lack of well-established, accessible mediation centres across the country further restricts the public's ability to utilize mediation services. Insufficient funding and inadequate resources severely impact the operational effectiveness of existing centres and limit efforts to conduct awareness and outreach programs. Finally, perception and trust-related issues remain significant barriers. Mediation is often perceived as a secondary or informal process compared to litigation, which undermines its credibility and acceptance. There is a general lack of trust in the neutrality and impartiality of mediators, with concerns about potential biases discouraging parties from opting for mediation. Even though confidentiality is a core principle of mediation, doubts about the security and privacy of shared information persist. It is, therefore, essential to establish strong confidentiality protections to build and sustain public trust in the mediation process.

Necessity of Mediation:

The well-known adage, "**Justice delayed is justice denied,**" underscores the urgent necessity for mediation in a country like India, where the backlog of cases and the number of undertrial prisoners continue to rise daily.¹⁴ To fully grasp the relevance and importance of mediation in the present context, it is essential to examine the prevailing data and statistical trends reflecting the strain on the Indian judicial system.

- **Pendency of Cases:** Eminent jurist Nani Palkhivala once remarked, "If the longevity of litigation is made an item in Olympics, no doubt the Gold will come to India," highlighting the chronic delays plaguing the Indian judicial system.¹⁵ This issue remains pressing in 2025, with the judiciary burdened by a staggering backlog of cases. As of early 2025, over **5.2 crore (52 million)** cases are pending across various levels of the Indian judiciary. Notably, **more than 85%** of these cases are in district courts, and over **1.8 lakh** cases have been pending for more than 30 years.¹⁶ A significant

¹³ Mediation and Conciliation Project Committee, *Handbook on Mediation Training*, Supreme Court of India (2016), p. 15–18, available at: <https://main.sci.gov.in/pdf/mediation/Mediation%20Training%20Manual.pdf>

¹⁴ National Judicial Data Grid, *Pending Cases and Undertrial Prisoner Statistics*, Government of India (2025), available at: <https://njdg.ecourts.gov.in/njdgnew/>

¹⁵ R. Nair, *Judicial Delays in India: Causes and Remedies*, 37(3) Indian Bar Review 289 (2019)

¹⁶ National Judicial Data Grid (NJDG), *Pendency Statistics*, Government of India, available at: <https://njdg.ecourts.gov.in/njdgnew/>

contributor to this backlog is the government itself, accounting for approximately **50%** of the pending cases. In the Supreme Court, the number of pending cases has risen to **81,551** by March 2025, up from 61,142 in March 2020. This increase reflects a consistent upward trend over the past five years. The High Court's collectively have over **62 lakh (6.2 million)** pending cases, with **61%** of these cases pending for more than three years. District courts are grappling with nearly **five crore** pending cases, and **46%** of these have been unresolved for over three years. A notable example of prolonged litigation is a case filed in 1951, which was finally settled by the Calcutta High Court in January 2023. The presiding Chief Justice, Prakash Srivastava, was born a decade after the case was initiated. Despite this resolution, the Calcutta High Court still has two of the five oldest pending cases in the country, both filed in 1952.

- **The number of undertrial prisoners is increasing and Prison overcrowding:**

As of 2025, undertrial prisoners' individuals awaiting trial or sentencing—constitute a significant majority of India's incarcerated population. According to the India Justice Report 2025, undertrials make up approximately 76% of the total prison population, a notable increase from 66% in 2012. The situation is particularly acute in certain regions. For instance, Delhi's prisons are severely overcrowded, with undertrial inmates constituting 91% of the incarcerated population. Similarly, Bihar has the highest proportion of undertrial prisoners among large states, at 89%, while Uttar Pradesh holds the highest number, accounting for 22% of all undertrial prisoners nationwide.

Recent Developments:

On May 3, 2025, the Mediation Association of India (MAI) was launched, and the First National Mediation Conference 2025 was inaugurated at Bharat Mandapam in New Delhi, marking a significant milestone in India's mediation landscape.¹⁷ The event, attended by prominent figures including the President of India, Smt. Draupadi Murmu, the Attorney General for India, R. Venkataramani, Chief Justice of India, Justice Sanjiv Khanna, Union Minister of Law and Justice, Arjun Ram Meghwal, and Supreme Court Judge, Justice B.R. Gavai, underscored the growing emphasis on mediation as a cornerstone of dispute resolution in India. The conference, organized by the MAI a pioneering initiative envisioned by the Attorney General brought together 15 Chief Justices of various High Courts, Advocate Generals from 12 states, and two judges from the Supreme Court of Nepal, highlighting its

¹⁷ Press Information Bureau, Government of India, available at: <https://pib.gov.in/>

national and international significance.¹⁸ President Droupadi Murmu, who inaugurated the conference, emphasized the transformative potential of the Mediation Act, 2023, describing it as a foundational step in consolidating India's civilizational legacy of out-of-court dispute resolution. She advocated for extending the dispute resolution mechanism under the Act to rural areas, empowering Panchayats to mediate conflicts legally. She stated, "Social harmony in villages is an essential prerequisite for making the nation strong," linking mediation to national development goals such as Viksit Bharat by 2047. The President highlighted mediation's role in speeding up justice delivery, reducing the judicial burden, and enhancing both the ease of doing business and the ease of living. She noted that India's historical tradition of Panchayat-based amicable resolutions was sidelined during colonial rule, and the Mediation Act, 2023, addresses this gap by providing an institutional framework. The establishment of the MAI, she added, is a "significant step forward" in promoting mediation as a preferred, structured, and accessible mode of dispute resolution, fostering dialogue, understanding, and collaboration for a harmonious society. Attorney General R. Venkataramani, the architect behind the MAI, articulated the conference's objective to institutionalize mediation as a primary mode of dispute resolution across India. Speaking to the media on April 29, 2025, he described the MAI as a "bold vision to transform conflict resolution across the nation, weaving mediation into the fabric of society." He emphasized the urgency of mediation to address the pendency of over 5.2 crore cases in Indian courts, particularly commercial disputes, noting, "To fight pendency, mediation is the need of the hour." Venkataramani highlighted plans for a future conference focused on corporate stakeholders to address their specific mediation needs. Regarding the delay in establishing the Mediation Council of India, he clarified that the Ministry of Law and Justice is working cautiously to ensure the Council's members are free from commercial conflicts of interest, underscoring the commitment to integrity in institutional frameworks. Chief Justice Sanjiv Khanna provided empirical evidence of mediation's impact, stating that between 2016 and early 2025, over 7.57 lakh cases were settled through mediation in India. Despite this achievement, he noted that mediation remains underutilized, particularly in rural areas, describing it as "still at the periphery." He urged for greater outreach to homes and villages to make mediation a household mechanism, aligning with the President's call for rural empowerment. Justice Khanna's remarks reflect the judiciary's recognition of mediation's critical role in reducing the judicial backlog and the need for broader adoption to achieve global standards. Union Minister Arjun Ram Meghwal highlighted the government's

¹⁸ Ministry of Law and Justice, First National Mediation Conference 2025, Government of India, available at: <https://lawmin.gov.in/>

commitment to mediation through the implementation of the Mediation Act, 2023, which has established a “dedicated and structured ecosystem” for dispute resolution. He emphasized the Act’s provisions for mandatory pre-litigation mediation, online mediation, and the enforceability of mediated settlement agreements, which align with international frameworks like the UNCITRAL Model Law and the Singapore Convention on Mediation. Meghwal’s statements underscored the government’s proactive role in modernizing India’s dispute resolution landscape to meet contemporary needs. The First National Mediation Conference 2025 represents a call to action for nurturing trust, building professional capabilities, and making mediation accessible across all sections of society, as articulated by President Murmu. The MAI’s establishment and the focus on institutionalizing mediation align with international standards, such as those set by the International Mediation Institute (IMI) and the Singapore Convention on Mediation. However, the Attorney General’s acknowledgment of delays in forming the Mediation Council highlights the need for expedited institutional reforms to fully realize global harmonization. The conference’s emphasis on rural mediation and community engagement also positions India to balance its cultural heritage with modern legal frameworks, a critical step toward becoming a global mediation hub.

Key Developments Highlighted

The conference showcased several recent developments in India’s mediation framework:

- **Launch of the Mediation Association of India (MAI):** The MAI, established as a national institution, aims to support India’s transition toward a mediation-centric culture. It will bring together arbitration and mediation institutions to address key issues, provide a platform for collaboration, and promote best practices.
- **Focus on Rural Mediation:** The President’s emphasis on empowering Panchayats aligns with the Mediation Act’s provisions for community mediation, aiming to revive traditional dispute resolution mechanisms while ensuring legal recognition.
- **Judicial and Institutional Support:** The participation of High Court Chief Justices, Advocate Generals, and international delegates (e.g., Nepal’s Supreme Court judges) signals robust judicial and cross-border support for mediation, enhancing India’s global credibility.
- **Addressing Judicial Backlog:** The conference highlighted mediation’s role in tackling the pendency of over 5.2 crore cases, with Chief Justice Khanna’s data on 7.57 lakh settled cases underscoring its efficacy.

- **Alignment with Global Standards:** Discussions on the Mediation Act's provisions, such as online mediation and enforceability, reflect efforts to align with international norms, although the Attorney General's cautious approach to the Mediation Council's formation indicates ongoing challenges in implementation.

International Standards in Mediation:

Mediation, as a dispute resolution mechanism, has seen a global resurgence due to its emphasis on party autonomy, confidentiality, and cost-effectiveness. In the last two decades, international efforts such as the **UNCITRAL Model Law on International Commercial Mediation** and the **Singapore Convention on Mediation (2019)** have sought to create a uniform framework that fosters enforceability and reliability of mediated settlements across borders.¹⁹ As India integrates deeper into global trade and commercial relations, aligning its domestic mediation practices with these international norms has become a necessity. These standards emphasize:

- **Voluntariness and Confidentiality:** Mediation must be consensual, with strict confidentiality to protect parties' interests and encourage open dialogue.
- **Mediator Competence:** Mediators should undergo accredited training, adhere to ethical codes, and demonstrate neutrality and impartiality.
- **Procedural Flexibility:** Mediation processes should be adaptable but structured to ensure fairness and transparency.
- **Enforceability:** Mediated settlement agreements should be enforceable across jurisdictions, as facilitated by the Singapore Convention, which provides a mechanism for cross-border enforcement.
- **Institutional Support:** Robust institutional frameworks, such as mediation centres and professional bodies, are essential for training, accreditation, and oversight.

These standards are reflected in practices adopted by leading mediation institutions, such as the International Mediation Institute (IMI), the Centre for Effective Dispute Resolution (CEDR), and the American Arbitration Association (AAA), which prioritize professionalization and global interoperability.

¹⁹ United Nations Commission on International Trade Law (UNCITRAL), *Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation*, 2018, available at: <https://uncitral.un.org/en/model-laws/mediation>; also see United Nations, *Singapore Convention on Mediation*, 2019, available at: https://uncitral.un.org/en/texts/mediation/conventions/international_settlement_agreements.

Gaps in Indian Mediation Practices:

While India has made strides in institutionalizing mediation, several gaps hinder alignment with international standards:

- **Lack of Uniform Accreditation:** Unlike international frameworks that require certified training and accreditation (e.g., IMI's certification criteria), India lacks a standardized national framework for mediator qualifications. Mediators in court-annexed programs may receive basic training, but private mediators often operate without formal certification, leading to inconsistencies in competence.
- **Inconsistent Procedural Standards:** Court-annexed mediation follows guidelines set by the Supreme Court's Mediation and Conciliation Project Committee (MCPC), but private mediation lacks standardized procedures. This contrasts with international practices that emphasize structured yet flexible processes.
- **Limited Awareness and Adoption:** Mediation remains underutilized in India due to a cultural preference for litigation and arbitration, particularly in commercial disputes. Internationally, mediation is often a preferred first step, supported by public awareness campaigns and mandatory mediation clauses.
- **Enforceability Challenges:** Prior to the Mediation Act, 2023, mediated settlement agreements in India were enforceable only as contracts, requiring court intervention for execution. While the Act addresses this by recognizing mediated agreements as enforceable instruments, India's implementation of the Singapore Convention (signed but not ratified as of 2025) lags, limiting cross-border enforceability.
- **Cultural Influences:** Indian mediation often incorporates evaluative approaches, where mediators provide opinions or suggestions, reflecting traditional practices. This contrasts with the facilitative model prevalent internationally, where mediators remain neutral and refrain from directing outcomes.

Strategies for Harmonization

To align Indian mediation practices with international standards, a multi-faceted approach is necessary, balancing cultural sensitivities with global best practices:

- **National Accreditation Framework:** Establish a national body, such as a Mediation Council of India (as proposed under the Mediation Act, 2023), to oversee mediator training, accreditation, and ethical standards. Adopt international benchmarks, such as IMI's competency criteria, while tailoring training to India's socio-cultural

context. Mandate continuing professional development (CPD) for mediators to ensure ongoing skill enhancement.

- **Standardized Procedural Guidelines:** Develop uniform procedural guidelines for court-annexed, private, and community-based mediation, drawing from UNCITRAL's Model Law. Promote facilitative mediation techniques to align with international practices, while allowing flexibility for evaluative approaches in culturally sensitive disputes.
- **Ratification of the Singapore Convention:** Expedite ratification of the Singapore Convention to enhance the enforceability of mediated settlement agreements in cross-border disputes. Align domestic laws with the Convention's requirements, ensuring seamless integration with India's legal framework.
- **Public Awareness and Capacity Building:** Launch nationwide campaigns to promote mediation as a viable ADR mechanism, targeting businesses, legal professionals, and the public. Partner with international mediation bodies (e.g., IMI, CEDR) to conduct workshops and exchange best practices.
- **Institutional Development:** Strengthen mediation institutions, such as the Bangalore Mediation Centre and Delhi Mediation Centre, to serve as models for regional centres. Encourage private mediation providers to adopt international standards, fostering competition and innovation.
- **Technology Integration:** Leverage online dispute resolution (ODR) platforms to enhance access to mediation, particularly for cross-border disputes. India's ODR initiatives, such as SAMADHAN, can be aligned with global platforms like Modria or eBay's Resolution Centre.²⁰ Ensure data privacy and cybersecurity standards meet international norms, such as the EU's General Data Protection Regulation (GDPR).

Challenges in Implementation:

Despite progressive legislation, India faces several hurdles in fully aligning with international mediation standards.

- **Non-Ratification of the Singapore Convention:** As of now, India has not ratified the Singapore Convention on Mediation, which hampers its ability to offer cross-border enforceability of settlements on par with other global mediation hubs.

²⁰ NITI Aayog, ODR: The Future of Dispute Resolution in India, Discussion Paper (2020), available at: https://www.niti.gov.in/sites/default/files/2020-11/ODR-ReportFinal_0.pdf

- **Lack of Uniformity in Practice:** Mediation practices vary widely across states and courts, with differing rules, infrastructure, and mediator training standards, causing inconsistency and unpredictability.
- **Awareness and Acceptance:** There is still limited awareness and trust in mediation among litigants, lawyers, and even judges. The adversarial mindset of the legal fraternity often resists the conciliatory ethos of mediation.
- **Capacity Constraints:** India has a shortage of professionally trained mediators with international exposure. There is also a need for stronger institutional frameworks with global credibility.

Recommendations and Suggestions:

- **Ratify the Singapore Convention on Mediation:** India should promptly ratify the Singapore Convention on Mediation (2019) to enable direct enforcement of international mediated settlement agreements. This would enhance India's credibility as a pro-mediation jurisdiction and encourage foreign parties to choose India as a venue for dispute resolution.
- **Standardize Mediation Practices Across India:** The Mediation Act, 2023 should be followed by uniform implementation guidelines for all states and mediation institutions. Removing procedural inconsistencies will ensure predictability and uniformity, in line with the UNCITRAL Model Law and global best practices.
- **Develop a Robust Accreditation and Training Framework:** Implement mandatory, standardized training and accreditation for mediators, with a tiered certification system based on expertise (e.g., beginner, advanced, specialized). Unlike international standards that mandate rigorous training (e.g., IMI's 40-hour certification requirement), India's current system allows unqualified mediators in private practice, undermining credibility. A structured framework enhances mediator competence and global interoperability.
- **Promote Facilitative Mediation While Preserving Cultural Practices:** Shift the dominant mediation approach in India from evaluative to facilitative, aligning with international norms, while retaining evaluative techniques for culturally sensitive disputes.
- **Enhance Public Awareness and Stakeholder Engagement:** Launch a nationwide campaign to promote mediation as a preferred dispute resolution mechanism, targeting legal professionals, businesses, and the public. Collaborate with bar

associations, corporate entities, and media to conduct workshops, webinars, and awareness drives. Integrate mediation education into law school curricula and judicial training programs.

- **Expand Use of Technology and Online Dispute Resolution (ODR):** Develop and support secure, scalable ODR platforms with multilingual and cross-border capabilities. Technology will be essential for global commercial disputes and to increase access to mediation in India's vast and diverse population.
- **Position India as a Global Mediation Hub:** Create India International Mediation Week or an annual Global Mediation Summit in India with stakeholders from UNCITRAL, SIAC, ICC, etc. India can emerge as a key destination for cross-border commercial mediation, especially in the Global South, with proper strategic positioning.
- **Address Implementation Challenges Proactively:** Develop a phased implementation plan to overcome resistance, resource constraints, and cultural barriers to harmonization. Form a multi-stakeholder task force, including judges, mediators, policymakers, and academics, to monitor progress and address challenges. Allocate budgets for training and infrastructure through public-private partnerships. Resistance from litigation-focused legal practitioners and resource limitations, as observed in India's arbitration reforms, can derail mediation efforts. Proactive planning ensures sustainability. Pilot harmonization initiatives in progressive states like Karnataka and Delhi, using their success to build momentum for nationwide adoption.

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