



Mediation as an Alternative Dispute Resolution Mechanism in India: A Legal Review

Vinutha P Kalae¹ and Dr. G.M. Mamatha²

¹Research Scholar, School of Law, Presidency University Itagalpur Bangalore.

²H.O.D., School of Law, Presidency University Itagalpur Bangalore.

¹Corresponding Author Email: vinutha.20223LAW0008@presidencyuniversity.in

²Author Email: mamatha.gm@presidencyuniversity.in

ABSTRACT:

Mediation is emerging as a key alternative dispute resolution tool in India's legal landscape, providing a balance to the formalism of traditional litigation. In addition to high costs and slow courts, the exponential build-up of case backlogs in Indian courts has fostered the recognition of mediation as a tool for accessible, swift and consensual justice delivery, both within institutions and in legislation. The Mediation Act, 2023 marks a turning point in this process by introducing statutory provisions into the mediation process, covering pre-litigation mediation, court-annexed mediation, mediator appointment and mediator settlement enforcement. This paper will proceed to provide a doctrinal legal examination of the conceptual basis of mediation, its development in the Indian constitutional and legal framework and the substantive aspects of the 2023 legislation. It analyzes the judicial reaction to mediation, assesses the promise of mediation to improve access to justice while maintaining the autonomy of the parties, and identifies some gaps in implementation that have remained consistent: quality of mediators, lack of awareness by parties and the general public of mediation and mediated settlements, and concerns about power differentials in mediated settlements. The paper concludes that the Mediation Act, 2023 provides the legal backbone for mainstream mediation, but it requires ongoing institutions capacity building efforts, cultural shifts in the legal profession, and appropriate design of compulsory mediation regimes to ensure the voluntary nature of mediation.

Keywords: *Mediation; Alternative Dispute Resolution; Mediation Act, 2023; Access to Justice; Institutional Mediation.*

1. INTRODUCTION:

The contemporary Indian judicial landscape is faced with a dilemma: on one hand constitutional provisions for access to justice and on the other hand, an unprecedented burden of cases on the judiciary. Delays are common across the nation's courts at every level, where hundreds of thousands of cases languish for months, sometimes spanning years, instead of months. This systemic congestion has real costs to the disputants, especially those without the means of continuing with litigation. In this context, alternative dispute resolution procedures, and mediation in particular, have consistently been the subject of legislative and judicial interest as tools which can break down a case from the formal court system without sacrificing substantive fairness and party autonomy (Chandra, 2017). The process of dispute resolution is a fundamental part of the legal system. A distinction between a functioning legal order and one based on private violence or self-help is its ability to resolve conflicts and disputes through a formal and neutral process. Traditional litigation is the dominant model of dispute resolution in common-law countries like India, where the resolution of the dispute is delegated to independent judicial actors who are bound by procedural rules and legal norms. However, the structure of litigation is opponent-oriented with its own drawbacks. Proceedings can be very expensive, time-consuming, and have two outcomes: win or lose (Carver, 2004). This “win-lose” relationship often harming underlying relationships, this zero-sum structure often results in narrowly drawn decisions, to no-win situations for parties with continuing relationships and to waste judicial resources on issues that could be settled through negotiation.

Alternative dispute resolution (ADR) is an overall term referring to mediation, arbitration, conciliation, and hybrid processes, which developed over the last two decades of the common-law system as a response to the shortcomings of litigation (Ainapur, 2015). There are different philosophical principles behind the operation of ADR mechanisms. Instead of imposing a solution on the parties to a dispute by an outsider, ADR methods involve the parties as active creators of solutions. Mediation is the most dialogic form of this participatory approach. While arbitration is a process that provides a binding determination from an arbitrator or a conciliation, which falls in between these extremes, mediation process leaves the parties free throughout the process (Baplawat, 2015). The mediator is a neutral third party who helps the parties communicate, finds common ground and helps them reach mutually agreeable solutions.

India has gone through several stages in its mediation journey. Traditional dispute resolution mechanisms were panchayati arbitration, community councils, and customary settlement practices, which were pre-modern and colonial in nature, and represented localised and non-state methods of dispute resolution (Rahman, 2008). After independence, India's justice system was characterised by formal proceedings, with the Constitution and judicial decisions, consistently stressing the State's responsibility for ensuring the facilitation of accessible justice. The Arbitration and Conciliation Act, 1996 was a watershed moment when arbitration and conciliation were recognised as methods of dispute resolution alongside litigation.

However, mediation had a grey zone since from time-to-time courts facilitated settlement, there was no all-encompassing legislation applicable to the mediation procedures (Jain & Pathak, 2022).

The right to access to justice enshrined in Article 21 of the Indian Constitution (right to life and personal liberty) has evolved over time to include not only formal legal avenues but substantive availability of justice mechanisms, irrespective of economic status (Chandrika 2016). The jurisprudence of this development opened conceptual room for ADR mechanisms, and of course, mediation, as equal to or inseparable from access to justice. The institutional mediation started to grow in terms of court-annexed schemes, in which judiciary-related mediators could help litigants who were already involved in formal proceedings to reach a settlement. At the same time, a growing number of scholarship articles and judicial opinions emphasized mediation's power to save on the burden of litigation, costs, and the speed of resolution, along with its ability to save relationships (Kanchankaur, 2019). The Mediation Act, 2023 is a piece of legislation that reflects a process of evolution of doctrine and institutions over many years (Baug, 2024). The statute establishes a broad structure of mediation in a variety of settings: pre-litigation mediation, court-referred mediation in the course of litigation and institutional mediation, conducted in government or private mediation centres. The law covers some of the most important operational issues that were not covered by any legislation or were covered in an informal manner through judicial practice, such as the laws on mediators' qualification and appointment, confidentiality requirements, enforceability of settlement agreements, and the modalities of online mediation (Kothari & Mohanty, 2025). Through its passage, the legislature is making it clear that mediation is not an "alternative" to justice, but a fundamental vehicle for delivering justice.

The current relevance of mediation in Indian justice system is a result of convergence. Lack of judicial infrastructure, particularly with regard to staffing and equipment, is a constant problem in relation to workload; limited budgets require a slow pace of court staffing and equipment. Litigant populations are beginning to understand the inefficiencies of formal litigation, especially commercial actors, who often want to find settlement processes that are confidential and quick (Malik, 2025). Professional mediation, which is becoming more professionalized today under training accreditation schemes and institutional oversight, holds the promise of a scalable and accessible dispute resolution capacity on top of state adjudication. This paper examines whether mediation, as now recognized by law, can be substantively beneficial to the justice delivery in India without compromising substantive fairness or party autonomy (Kranti, 2023). The research issue that motivated this investigation is the disconnect between mediation theory and practice.

2. Research Objectives

1. To examine and critically analyse the comprehensive legal framework governing mediation in India, with particular emphasis upon the Mediation Act, 2023, its substantive provisions, and implications for dispute resolution practice.

2. To evaluate the effectiveness of mediation as an alternative dispute resolution mechanism in advancing access to justice, reducing litigation burden, and preserving party autonomy within India's justice system.
3. To identify the principal legal, institutional and practical challenges impeding mediation's effectiveness and to formulate evidence-based recommendations for strengthening mediation infrastructure, mediator competence and institutional support structures.

3. Research Methodology

The research method used in this research is doctrinal legal which is carried out through textual analysis of primary legal sources, secondary legal sources and judicial decisions. Only those statutory texts, reported judicial decisions, government reports and peer-reviewed legal scholarship made available by the researcher are used in the investigation. The research is analytical and not empirical, meaning it does not include fieldwork, interviews, surveys or statistical analysis. Doctrinal methodology involves careful analysis of the wording of the legal provisions, to discover their meaning, scope, purpose and implications; the contextualization of legal provisions within the wider jurisprudential environment; and the critical examination of how legal rules are applied in practice as demonstrated in judicial interpretations and as researched by scholars. Special focus is placed on the principles of statutory interpretation that guide Indian courts in interpreting statutes, the identification of any conflict between legal language and intent, and the recognition of any ambiguity or gaps in the law. The research combines primary legal sources (statutes, constitutional provisions, case law) with secondary academic sources examining the effectiveness of mediation, practical issues in its implementation and comparative legal discussion on mediation. This doctrinal, interpretive is designed to produce legally sound analysis which can guide legal practice and policy-making.

4. Conceptual Foundation of Mediation as an ADR Mechanism

Theoretically, mediation is a unique form of dispute resolution. In mediation, as opposed to litigation where a state body empowered by the courts makes binding determinations, or arbitration where a chosen arbitrator makes binding awards, the parties negotiate a mutually satisfactory resolution with the help of a neutral third party (Baplawat, 2015). This separation of mediation from other forms of ADR is fundamental because it lays the groundwork for the philosophical underpinning of mediation, which is the principle of party determination as opposed to external determination. The key qualities of mediation are based on this principle. The sole principle behind mediation is that it is a voluntary process and part of it is consent of parties (Ameen Jauhar, 2019). Modern mediation laws may develop systems to facilitate court referral or pre-litigation mediation programs, but the actual mediation treatment relies on parties' willingness to participate in a constructive way. Mediation does not take the place of litigation or arbitration, in which determined legal authority has the power to compel participation and to make binding decisions despite objections by the parties.

Careful conceptualisation is required for the role of the mediator. The mediator's role is to be neutral and not to act as a judge or an advocate, but rather as a facilitator (Menkel-Meadow, 2001). The mediator does not make decisions, but aims to help parties to understand each other's position, find common ground and help them negotiate a settlement. Such a neutrality has substantive implications. The mediator is not to be partial to either party, does not have the authority to reveal confidential information shared by one party with the other party, and should not have any independent decision-making power. Mediator neutrality, as understood, is impartiality towards the parties and their results not necessarily impartiality towards the process, or procedural fairness. While respecting party autonomy, ethical mediators can be involved in intervening to deal with power imbalances, to allow for informed decision making, and to prevent manifestly unjust agreements. Another characteristic is confidentiality. The rationale behind mediation is that communication in mediation is privileged and confidential and cannot be compelled or disclosed to a court or third party without consent of the parties (Shinde, 2012). This confidentiality fosters candid communication and parties are not worried about having to make admissions, proposals or evaluations made during mediation used as a weapon on trial. This protective envelope allows parties to discuss settlement options and recognize weaknesses in their case without producing clear documentation that may be beneficial for an adversarial settlement.

The centripetal force of mediation is party autonomy: that is the outcomes of mediation are determined by the parties themselves and not by mediators or the law. Part of the legitimacy of mediation is that parties do not agree to mediate in response to an external obligation to act in a way that matches the outcomes of a court case, but rather to be heard, to participate in a process, and to have the final say. The benefit of mediation as compared to litigation and arbitration is based on a number of characteristics. Mediation tends to be less time consuming and expensive than either litigation or arbitration, involves a cooperative process and values the party-to-party relationship, and allows parties to decide the outcome instead of relying on the judgment of a mediator or the outside party (Kranti, 2023). The ability to design flexible solutions makes mediation an option that can yield creative solutions that are impossible to achieve in binary legal decisions. However, mediation has some drawbacks. Because mediation requires a party's choice, parties can engage in mediation strategically, and drop out if they do not deem settlement to be in their best interest. A mediator can be neutral, but if there are differences in sophistication between the parties, it can affect the terms of the settlement (Kanchankaur, 2019). There is no precedent that comes from mediation; mediations result in private settlements rather than in jurisprudential developments.

4.1 Evolution of Mediation in the Indian Legal System

India's mediation history is a unique one, from informal customary practice to colonial oblivion to present day recognition. India during pre-modern, and early colonial times, had advanced non-state mechanisms for dispute resolution. As opposed to formal law, village conflicts were settled by Panchayats or councils in which the respected members of the community, decided conflicts according to the customary norms and community expectations (Rahman 2008). These mechanisms were informal and did not involve state

coercion, but rather social authority and consensus. But they were examples of the existence of dispute resolution 'capacity' which was available and culturally ingrained, resolved conflicts without the need for the State to intervene. This landscape was significantly remodeled by the colonial administration. British legal institutions introduced adversarial litigation models based on English common law, which involved the formalisation of dispute resolution in courts based on formal procedural codes. Indigenous mechanisms continued in an informal way, but they did not have a prominent role. The establishment of the Indian State as a single legal entity after the independence of the country moved further the power to resolve disputes towards the formal institutions, yet constitution and statutory frameworks have sometimes taken reference to their responsibility to provide dispute settlement facilities in addition to the litigation process.

The Arbitration and Conciliation Act, 1996 was a pivotal institutional turning (Arbitration and Conciliation Act, 1996). Thus, the statute gave effect to arbitration and conciliation, as it effectively accepted that litigations was not the only or best way to settle a dispute. This was a statutory framework which provided for mediation practices without the existence of any broad-based mediation legislation with courts and practitioners functioning through general ADR framework and institutional regimes; no mediation-specific statutes existed (Jain & Pathak, 2022). Encouragement for mediation in the judiciary has grown through dicta and pronouncements that settlement is preferable to litigation (Chandra, 2017). There have been periodic calls from high courts and the Supreme Court to mediation and settlement as means to lighten caseload and improve access to justice. At case management stages, judges directed litigants to engage in settlement negotiations, and in some cases, even mediated settlement negotiations. The judicial activism was interpreted within the framework of legitimacy that Article 21 gave to access to justice, broadly construed, and courts saw mediation as a means to deliver constitutionally guaranteed justice (Chandrika, 2016).

During the late twentieth and early twenty-first centuries, institutional mediation schemes sprang up. Several high and district courts started court-annexed mediation programmes, in which mediation services were part of the court system. In certain jurisdictions, government funded mediation centres were set up. The private provision of mediation services emerged through the operation of private mediation providers, who were increasingly professionalised in training and accreditation, providing services to commercial litigants and private disputants in return for fees (Patadiya, 2024). Pre-litigation mediation, in which parties try to resolve their disputes through mediation before they start litigation, became more common in commercial cases. Commercial parties realised the value of mediation for the speedy and confidential resolution of high-stakes disputes. Pre-litigation mediation, however, had no statutory rules and regulations, which led to uncertainties about enforceability of mediated agreements, confidentiality clauses and the liability of the mediator (Praveen & Rashika, 2025). The relentless flow of legislative and judicial decisions that fostered, advised or mandated mediation eventually became a legislative fact. Mediations potential was studied by various government commissions and working groups; their

recommendations all moved in the direction of an overall bill of mediation which would enhance access to justice and dispute resolution processes (Law Commission Report, 1978). The government of India has clearly stated that it is promoting the use of ADR, which provides a Political Platform for Legislation (Government of India at the forefront to promote alternative dispute resolution systems, 2024).

This longstanding institutional development is reflected in the Mediation Act, 2023. The Act is essentially a codification of the meditation principles, procedures, and protections that were previously spread across judicial decisions, institutional plans, and general ADR frameworks (Baug, 2024). The passage of this legislation demonstrates a legislative appreciation of the mature status of mediation as an alternative, legitimate justice process, and an appreciation that it deserves full statutory recognition and the necessary regulatory framework.

4.2 Legal Framework Governing Mediation in India

The Mediation Act, 2023 brings in the first-ever comprehensive statutory regime for mediation processes in India (Kothari & Mohanty, 2025). The Act shall be applicable to any mediation proceeding in which parties seek to settle their disputes through mediated settlement. Importantly, the Act identifies four types of mediations: pre-litigation mediation; court annexed mediation, where parties are referred to mediation by the court during an ongoing lawsuit; institutional mediation (where the mediation is conducted by a government or private mediation provider); and community mediation. This categorical approach acknowledges that mediation process exists within a variety of institutional settings and that, therefore, it warrants some somewhat different regulatory treatment. The agreements of mediation are important legal documents provided under the Act. The cornerstone of the enforceability and protection of mediation is a mediation agreement, which is the written or oral agreement in which the parties agree to engage in mediation (Baug, 2024). The Act sets out requirements for an effective mediation agreement, such that the parties are truly willing to participate in mediation and understand what it means. The Mediation Act, 2023, provides explicit statutory recognition of pre-litigation mediation, which was problematic under previous law as to whether pre-litigation mediation would result in a binding contract, and what enforceability protections would apply to pre-litigation mediation settlements (Kothari & Mohanty, 2025). The Act provides that settlements negotiated by mediation prior to litigation are binding contracts, subject to general contractual law principles of offer, acceptance, consideration and absence of vitiating factors like fraud, duress or misrepresentation (Malik, 2025). Eliminates previous ambiguity; mediates settlements before litigation are recognized with the same effect as negotiated settlements outside mediation structures. The Act sets out specific types of conflict which are not appropriate for mediation or which need to be given special protection. There cannot be mediations of criminal cases. Family law cases that relate to children and custody are given special protection; mediation can help with family negotiations for child custody and maintenance, but courts can have the capacity to ensure that the child's welfare is not put at risk by court ordered settlements (Rohan, 2025). This means that the judiciary has the power to refer parties to mediation through the court or tribunal referral provision, which in turn

operationalises the judiciary's capacity to do so (Kothari & Mohanty, 2025). In the event of ongoing litigation, however, where either a civil or commercial dispute is involved, courts may order referrals to mediation, especially at initial case management stages. The Act sets forth the requirements and process for referrals, with a focus on the interests of judicial efficiency as well as party autonomy. While mediation does not diminish judicial authority, courts have the ability to return to an issue despite failure to achieve a successful mediation (Baug, 2024).

The issue of mediators' qualification and appointment becomes a key statutory issue. The Mediation Act, 2023 provides for the accreditation of mediators, categorizing mediators as institutional mediators of government or private mediation centres and independent mediators (Kothari & Mohanty, 2025). Accreditation usually specifies training, competency and Continuing Professional Development. The Act assumes mediators have set requirements for their qualifications and that they will work within ethical guidelines which cover impartiality, confidentiality and professional conduct. Regulatory oversight of institutional mediation providers ensures that the provider has an adequate roster of mediators, adheres to procedures and manages settlement agreements appropriately (Sapre, 2024). The processes for appointments vary from context to context. Court-referred mediation usually takes place with mediators appointed by the court with panels established by courts or by legal services authorities (LSAs). In pre-litigation institutional mediation, mediators are provided by the mediation provider. The mediator(s) in party selected mediation are chosen by the parties themselves, with the qualifications for mediation being prescribed by the Act (Kothari & Mohanty, 2025).

The Act's most important substantive protections of confidentiality are. The Mediation Act, 2023 provides far-reaching privilege to protect mediation communications from disclosure in future proceedings (Baug, 2024). Subject to express party consent to disclosure, what is said in mediation, the mediator's notes, settlement offers, party statements, and the mediator's evaluations are confidential and not admissible in court, arbitration or administrative proceedings. This confidentiality protection is essential to the mediation process; if parties know their admissions and settlement offers would be later used as ammunition, they will not be forthcoming in mediation. Proceeding of mediation is still largely flexible and party-led, with the informality of mediation procedure being evident in the conduct of proceedings (Kothari & Mohanty, 2025). While the Act sets forth principles of mediator impartiality, opportunity to participate, and procedurally fair process, it does not provide strict rules and regulations on procedural requirements. Mediation could take place at joint sessions where both parties and the mediator sit together, at shuttle sessions where the mediator attends individual sessions with each of the parties, or at hybrid sessions where the parties consult with the mediator in private, but then meet to discuss matters together. The Act, 2025, provides statutory recognition for mediated settlement agreements (Kothari & Mohanty, 2025). When mediated agreements are reduced to a writing and signed by the parties, they are binding contracts subject to the ordinary law of contracts, and in some cases, to court decree. The Act assumes that parties will be able to submit courtally approved and executed mediated settlement agreements for

conversion into court orders, thereby offering a more enforceable settlement option. The Act does not differentiate between enforceable and unenforceable settlements; settlements made under the auspices of mediation but obtained through fraud, duress, unconscionable bargaining or by means of an illegal subject matter are not enforceable settlements. In addition, the online mediation provisions recognize technology-based dispute resolution, which is a form of mediation that does not require the parties to be based in the same location (Kothari & Mohanty, 2025). The Mediation Act, 2023 envisions mediation conducted via video, digital platforms or online, asynchronous communication between parties, thus increasing the accessibility of mediation to geographically separated parties. There are specific issues of confidentiality, verification of mediators and enforcement which are of particular concern in the context of online mediation. The Act creates a framework which allows for online mediation with procedural protections tackling these concerns (Baug, 2024).

The Act provides regulatory recognition to mediation service providers, private institutions that provide mediation services. The Act provides recognition to mediation service providers, that are private institutions that provide mediation services. Service providers draw up lists of mediators they have accredited, create administrative systems to schedule and conduct mediations and keep confidentiality and dispute management procedures. The Act assumes that the government will have oversight of service providers, and that they will uphold professional standards, ensure that confidential information is handled appropriately and make reasonably reliable settlement agreements (Sapre, 2024).

There is explicit statutory recognition of institutional mediation (mediation within the court infrastructure or government-sponsored mediation centres). The Act envisages the existence of in-house mediation services in courts, legal service authorities running mediation programmes and government setting up legal mediation centres which deal with specific types of disputes (Kothari & Mohanty, 2025). In the context of resolving neighbourhood disputes, local conflict and grievances without the formal institutional structures, community mediation provisions come into play (Sindhu & Shukla, 2024). The Act envisages the development of mediation programmes in communities where trained community members act as mediators to resolve conflict among the members of the community to sustain the unity and harmony of the community (Sadual & Sadual, 2026).

5. Mediation and Access to Justice: Critical Examination

Various aspects of mediation come into contact with access to justice. Access-to-justice rationale is the concept that there is a wide section of the Indian population that cannot avail of formal litigation, either due to its cost, the amount of time it takes or psychological factors (Khan, 2025). Formal proceedings are out of reach for economically marginalised populations because of the cost of litigation (court costs, lawyer fees, witness fees etc.). This litigious method can take years, even after going through appeal levels, making 'justice' a distant prospect. Many people do not go to court because of psychological pressures, such as the stress of oppositional proceedings, appearing before court in public and emotional fatigue. Mediation, on the other hand, tends to be less expensive, especially in the institutional setting, is

more expedient, and is conducted confidentially, providing a remedy to several access to justice issues (Sadual & Sadual, 2026). The potential of mediation to lighten judicial load should be considered, in addition to access-to-justice issues. Indian courts are under perpetual shortage of resources manpower, infrastructure, funding, etc. hampering case progress. Every case that is mediated resolves a case, frees up court resources, and allows the court to focus on issues that cannot be resolved by a mediation (Chandra, 2017). This systemic benefit is felt not just on a case-by-case basis, but extends to the broader justice delivery system as well: the shorter the average case length, the better the justice can be done for everyone involved in a court case.

The dimension of mediation which is beneficial for certain types of disputes is the relationship preservation aspect (Mrs. Rakhee Mehernosh Poonawalla et al., 2024). Although the parties are adversarial in a “matrimonial” case, mediation can help to keep co-parenting relationships functioning even after the marriage has ended, while the traditional “win-lose” model of litigation often adds to conflict. Commercial disagreements between parties that are considering continuing relationships also find a beneficial application in mediation and ensuring business relationships are maintained can be more worthwhile than the pursuit of the immediate advantage in litigation.

However, the advantages of mediation for access to justice are dependent on structural conditions, which may not be generally present. The parties are expected to have a rational capacity to negotiate in mediation; parties with serious power imbalances or emotional distress may not possess realistic capacities for meaningful participation in mediation (Ojo, 2023). A spouse who is economically dependent when negotiating a settlement, without legal counsel, may be able to settle for much less than they are legally entitled to receive, due to the more sophisticated spouse. Parties with a lack of legal expertise may not understand the implications of proposed settlements, may not recognise unfavourable terms (Siddiqui, 2025). The access-to-justice benefits, in turn, rely not just on mediation's existence, but on the quality of institutions, the skills of mediators, and measures to safeguard against uninformed or overreached parties' retaining meaningful choices. The issues of participatory justice reflect the potential of mediation to improve democratic legitimacy and party dignity. Formal rules of litigation tend to exclude parties from any meaningful participation; courts are in control; legal professionals dominate language. In contrast, mediation focuses on the parties by having them express their interests, brainstorm options, and decide on the outcomes (Sindhu & Shukla, 2024). This participatory aspect may have a psychological and/or relational value, which goes beyond the settlement itself and can be important to parties even if at the end of the day the outcome is not exactly what they were entitled to by law.

6. Challenges and Limitations of Mediation in India

Despite the theoretical potential of mediation, there are substantial issues of implementation that limit the effectiveness of mediation today and likely in the future. Public awareness of mediation is still a significant obstacle (Yadav, 2025). Many Indians are not aware that mediation is a form of dispute resolution or are not aware of mediation's unique nature. This lack of awareness is due, in part, to the

relatively new role of mediation in the Indian legal arena and, in part, to a lack of public awareness campaigns. The lack of public awareness about the availability of mediation services and its advantages continues to stifle demand for mediation services (Junaid, 2023). Lack of skilled and effective mediators is a structural barrier. The quality of mediation is crucially reliant on the capacity of the mediator; mediations with poorly trained mediators who are lacking relevant substantive knowledge or communication skills are poor at helping lead negotiations to settlement (Singh, et al., 2026). India's pool of mediators remains small as compared to the demands. This shortage is particularly evident in the area of institutional mediation, with courts and legal services authorities finding it hard to keep their roster of mediators in balance for cases referred to them. Geographic disparities place mediators in metropolitan areas, and smaller towns or rural contexts have less access to trained mediators (Patadiya, 2024).

Poorly-structured mediation quality across various providers and practitioners raises concerns about the legitimacy of mediation. If the quality standards are not uniform and enforcement mechanisms are not in place, the quality of mediation services can be very high or very low, even negligent or exploitative (Kranti, 2023). Messy proceedings lower the credibility of mediation as a viable method of dispute resolution to the public. The limitations in the institution hinder mediation function. The court-annexed mediation programmes are under-resourced and are constantly underfunded despite growing in numbers (Chandra, 2017). Many courts have no dedicated mediation facilities, have limited mediator rosters or lack administrative support for mediation. Mediators might not have offices to meet for private consultation; mediation sometimes takes place in court corridors or court offices where confidential discussions are difficult. To obtain justice, courts need to squeeze out the time for mediation, which does not afford sufficient time for meaningful exploration and negotiation of the dispute (Kaur, 2024).

An imbalance of bargaining power between the parties involved in a conflict is a persistent issue. The core principle of mediation is that when neutral facilitation is used, negotiations can result in a settlement which is fair to both parties, an assumption that is made when there is relatively equal bargaining power between them. However, there are significant differences between many of the parties to conflict (Ojo, 2023). In general, commercial parties challenging individuals are better funded, with greater access to information and legal expertise. As a result, the fact that mediation is voluntary and participative is not enough to overcome these structural inequalities: while one party might be sophisticated and force another party to settle an agreement which is disadvantageous for the latter, such party can manipulate the former's information, or threaten to go to court, or apply economic pressure (Siddiqui, 2025). Mediations that are unfairly weighted can consistently yield inequitable results and give the impression of consent.

The issue of voluntariness is especially relevant in mediation ordered by a court. In the judicial mediated proceedings when these parties are forced to mediate, they do not enjoy the basic autonomy which is central to mediation's voluntary instantiation (Kanchankaur, 2019). The interest of courts in settlement is a related one: mediation reduces caseload, which may conflict with parties' autonomous choice. Mediation may be imposed as a remedy by a court, and may be intimidating, or may be perceived as not a true

indication of good faith in mediation, to parties. There remains a concern regarding enforceability even after it has been statutorily validated by the Mediation Act, 2023. Settlement agreements are legally binding, but may pose enforcement challenges (Malik, 2025). After an agreement has been entered into, any party may assert invalid consent due to duress, fraud or misrepresentation. Enforcement via damages claims might be insufficient; parties might prefer to assume damages liability over performance. Subsequent litigation could challenge and possibly change court orders derived from mediated settlements (Kothari & Mohanty, 2025).

The issue of confidentiality is one of the conflicts between mediation's privilege to protect and the greater public interest in transparent mediation (Melenko, 2020). It is necessary to keep the disputes out of sight while conducting mediation; disputes with community impact are conducted confidentially, keeping public learning and precedent development from being developed (Sharma & Choudhary, 2025). Practical infrastructure limitations continue to be a problem. The physical environment, technological resources for online mediation, as well as administrative systems for arranging, documenting and follow-up are important prerequisites for mediation (Patadiya, 2024). The Online Mediation Accessibility is a special concern of the Digital Divide. Parties who do not have a reliable internet or a technological facility will not be able to participate in the mediation process. Digital divides may exclude marginalised populations from reaping the benefits of mediation (Yadav, 2025). Lack of legal professionals' willingness to mediate is a cultural barrier. Attorneys' fees come out of litigation; lawyers have an economic vested interest in litigation not settlement. Mediation decreases lawyers' opportunities for billing; lawyers might deter clients from mediation (Kanchankaur, 2019). One of the most basic problems that India's legal system faces is the lack of mediation culture (Chandra, 2017). Adversarial litigation has become the normal way to handle disputes, and generations of lawyers and citizens have come to accept it as the norm. To change this cultural baseline, institutional commitment, professional education, public awareness campaigns and successful mediation experience in the multiple contexts of the dispute are required (Yadav, 2025).

7. Critical Analysis and Recommendations

The Mediation Act, 2023 is landmark legislation for India's Dispute Resolution System (Baug, 2024). The Act's standout success is the statutory codification of mediation provisions, which is more complete than was previously found in the Indian legal system, ensuring clarity and predictability on the enforceability, confidentiality and procedures of mediation. Professionalisation of government-accredited mediations institutionalise mediation and differentiate qualified practitioners from unqualified people. The statutory acceptance of pre-litigation mediation eliminates previous uncertainties and promotes early settlement (Kothari & Mohanty, 2025). The Act's philosophy of confidentiality creates an all-encompassing privilege for mediation communications that are critical for mediation's effectiveness. But the Act has its own set of restrictions. The court-annexed mediation provisions have the potential to make mediation a tool for case-management rather than mediation itself being a genuine voluntary process (Chandra, 2017). Although mediator's qualification requirements fostering professionalism are not too stringent, there is

risk of failure to comply with the standards in some parts of the mediation market (Singh et al., 2026). The power imbalance and unequal bargaining aspects under the Act are still fairly minimal (Siddiqui, 2025). Confidentiality provisions create conflicts of interest concerning public interest in justice administration. As yet, there are implementation challenges; effectiveness of the Act will rely on government allocation of resources and court application (Baug, 2024).

Some recommendations which address the challenges discussed above include: continuing investment in mediation infrastructure, with dedicated facilities, mediator rosters and administrative support (Sapre, 2024); the development of comprehensive mediator accreditation standards prescribing training expectations, continuing education, and ethical standards (Singh et al., 2026); sustained public awareness campaigns to educate the public about mediation's availability, benefits, and procedures (Yadav, 2025); strengthening court-annexed mediation programmes through investment in resources, mediator capacity building, and procedural streamlining (Chandra, 2017) development of independent mediation institutions that will provide pre-litigation mediation capacity (Malik, 2025); institutional frameworks for addressing power imbalances and ensuring informed decision-making (Siddiqui, 2025); robust regulatory standards for online mediation, ensuring confidentiality, data security and procedural fairness (Kothari & Mohanty, 2025); integration of mediation into law school curricula and continuing legal education; development of nuanced approaches to balance confidentiality with public interest transparency (Melenko, 2020); and periodic statutory review (Baug, 2024).

8. Conclusion

The Mediation Act, 2023 marks a pivotal step in the evolution and institutionalisation of mediation in India, building upon decades of gradual doctrinal evolution and institutional experimentation. The Act provides for a comprehensive legal framework, which includes the recognition of mediation as a legitimate dispute resolution method going beyond being an alternative method, the encouragement of pre-litigation settlement, the protection of confidentiality, the creation of accreditation mechanisms for mediators and online mediation. However, the transformative power of mediation cannot be achieved through the mere act of codification; it requires a commitment to mediation from institutions and a reorientation of the culture of the Indian legal community and society as a whole. Governmental persistent efforts to overcome implementation hurdles, such as lack of awareness in the public, lack of supply of mediators, imbalance in power between the parties, and under-resourcing of the institutions, are essential to ensure the Act's promise. Mediation can truly contribute to access to justice, lessen the burden of judges and maintain relationships, but only where there are the necessary infrastructure, quality training and protective measures for equitable access to mediation across socioeconomic layers. An implementation fidelity and ongoing commitment that goes beyond statutory endorsement are necessary for mediation to demonstrate the transformative effect its use in the Indian justice system will offer.

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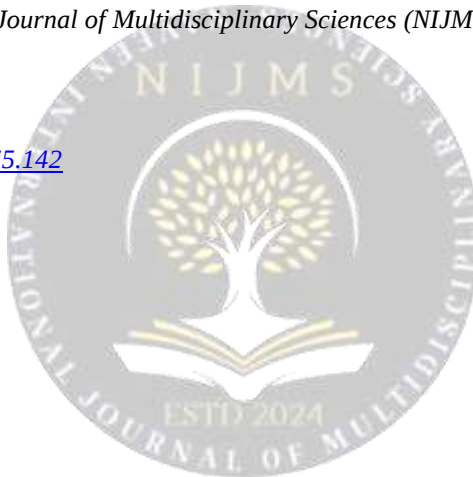
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