

## Is Mediation The Favoured Dispute Resolution Mechanism? Reassessing Mediation In Contemporary India

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### ABSTRACT

Mediation has moved from being seen as a soft and informal settlement process to becoming an increasingly serious part of justice delivery in India. The older view of mediation was mainly centred on the personal skills of the mediator such as patience, neutrality, listening, reframing and confidentiality. Those elements remain important even today. However, the present phase of mediation is different because mediation is no longer discussed only as a moral or practical alternative to litigation. It is now supported by a dedicated statutory framework under the Mediation Act, 2023. The law has attempted to give mediation a firmer institutional structure by recognising pre litigation mediation, enforceability of mediated settlement agreements, online mediation, community mediation, and the future role of mediation institutions and service providers. This paper examines whether mediation can truly be called the favoured dispute resolution mechanism in India today. It first explains the basic idea of mediation and the conduct expected from a mediator. It then revisits the key features which make mediation attractive, such as party autonomy, confidentiality, flexibility, preservation of relationships and procedural economy. After that, it studies contemporary developments. These include the burden of court pendency, the shift from Section 89 CPC based referral culture to a separate mediation statute, the rise of online dispute resolution, the international relevance of the Singapore Convention, and the growing discussion on AI assisted mediation. The paper argues that mediation has indeed acquired a stronger legal and policy position than before, but it cannot become the truly favoured mechanism unless questions of training, public trust, digital access, institutional quality, and ethical use of technology are carefully addressed

### INTRODUCTION:

Mediation is generally understood as a voluntary and structured process in which a neutral third person assists disputing parties in reaching a mutually acceptable settlement. Unlike litigation, the mediator does not impose a decision. Unlike arbitration, the mediator does not adjudicate

rights in a binding manner. The strength of mediation lies in dialogue. It seeks to uncover interests behind positions, reduce hostility, and create a settlement that parties can own as their own decision. This understanding is also reflected in India's training material on mediation, which treats communication, trust building, issue identification, and problem solving as central to the process.<sup>1</sup>

The need for such a process becomes clearer when viewed against the background of court burden. The National Judicial Data Grid presently shows more than 4.87 crore pending cases in district and taluka courts alone, with a significant share of matters remaining pending for several years. Such numbers do not mean that every case is

suitable for mediation, but they do show why consensual settlement mechanisms have become important in policy as well as in practice. Mediation helps not only because it may settle a particular dispute, but also because it may reduce the social and economic cost of prolonged adversarial litigation.<sup>2</sup>

At the same time, mediation should not be promoted merely as a tool for reducing pendency. That would make mediation appear as a convenience for the court rather than a justice process for the parties. Mediation has its own independent value. It gives room for apology, acknowledgement, future arrangements, business continuity, confidentiality, and tailored solutions which courts often cannot provide in the same form. This is especially visible in family disputes, partnership disputes, property arrangements, neighbourhood conflicts, consumer complaints, workplace disagreements, and technology related commercial disputes. In these categories, the legal question is often only one part of the conflict. The other part is emotional, relational, practical,

<sup>1</sup> Mediation and Conciliation Project Committee, Supreme Court of India, *Mediation Training Manual of India* (Supreme Court of India) (visited on March 16, 2026).

<sup>2</sup> National Judicial Data Grid, *Pendency of Cases Dashboard*, NJDG (visited on March 16, 2026).

or commercial. Mediation is useful because it can address both.<sup>3</sup>

### Research Questions and Methodology

This paper proceeds broadly on two questions. First, what conduct is expected from a mediator, and what should a mediator avoid in order to preserve fairness and confidence? Second, why is mediation increasingly described as a preferred or favoured method of dispute resolution in India, and what contemporary developments support or weaken that claim?

The method used here is doctrinal and analytical. It relies on the Mediation Act, 2023, judicial decisions under Section 89 CPC, official mediation manuals, policy reports on online dispute resolution, and international materials on mediation and enforcement of settlement agreements. Contemporary developments have been incorporated to show how mediation is changing from a mainly court annexed practice into a wider ecosystem involving pre litigation settlement, digital platforms, community mediation, and cross border commercial use.<sup>4</sup>

### Conduct of Mediators

The quality of mediation depends greatly on the quality of the mediator's conduct. A mediator must first create a safe and balanced environment.<sup>5</sup> This is not a small procedural matter. Parties usually arrive in mediation with suspicion, anger, hurt, fear, or strategic defensiveness. Unless the mediator can create confidence, the formal availability of mediation will not matter much.<sup>6</sup> The Mediation Training Manual of India treats the mediator as one who facilitates communication, identifies barriers, gathers information, understands underlying interests, and keeps the conversation focused and constructive. That approach remains sound even after the new statute.<sup>7</sup>

A good mediator must practise active listening. Active listening means more than hearing the words spoken by the parties. It includes noticing emotion, hesitation, silence, emphasis, and the gap between stated claims and real concerns. The mediator must acknowledge what is being said without endorsing one side. This is where neutrality becomes visible in action. Neutrality is not indifference. It is disciplined fairness. The mediator should never appear to ridicule a party, dismiss their grievance, pressure them into surrender, or behave as though one side is more reasonable from the outset. A mediator should not interrupt unnecessarily, should not argue with a party, and should not impose personal opinions. Those things continue to be highly relevant.<sup>8</sup>

The mediator must also know how to reframe and summarise. Reframing is important because parties often

speak in accusations. One side says that the other is dishonest, irresponsible, selfish, or abusive. If the mediator repeats such language mechanically, the dispute becomes sharper. But if the mediator carefully reframes the same statement into concerns about trust, security, communication, financial predictability, or parental access, the conflict becomes capable of resolution. Summarising serves a similar function. It allows the mediator to organise issues, confirm understanding, reduce noise, and keep the discussion future oriented. In family disputes, for example, the real issues may be children's schooling, monthly expenses, residence, visitation, emotional assurance, and dignity of communication. In commercial disputes, they may be payment timelines, quality assurances, delivery schedules, confidentiality obligations, and continuation of business. A skilled mediator helps parties move from emotional confusion to issue clarity.<sup>9</sup>

Confidentiality is another essential feature of mediator conduct. Parties speak candidly in mediation only when they trust that statements made in caucus or in negotiation will not automatically return to court or become weapons in future proceedings. The Mediation Act, 2023 now gives statutory recognition to confidentiality and privilege against disclosure within the mediation framework, which strengthens what was earlier often dependent on practice rules and understanding. This is one of the most important improvements over the older legal position.<sup>10</sup>

Today, mediator conduct also has a technological dimension. In online sessions, mediators must manage screen fatigue, digital interruptions, privacy risks at the parties' locations, and unequal access to devices or connectivity. If AI tools are used for note making, transcription, scheduling or issue clustering, the mediator must remain cautious. Technology can assist efficiency, but it cannot replace human judgement, trust building, and emotional intelligence. The OECD's 2024 ODR Framework stresses ethics, safeguards, fairness, transparency and trust in digital justice systems. These concerns apply directly to online mediation as well.<sup>11</sup>

### Key Features of Mediation

The first key feature of mediation is party autonomy. The disputing parties retain control over both process and outcome. Even where mediation is encouraged or referred by a court, the settlement itself comes from the parties. This makes compliance more likely because the solution is not externally imposed. The second feature is flexibility. Mediation can move through joint sessions, private caucuses, written exchanges, virtual meetings, and hybrid formats. It can address legal as well as non-legal

<sup>3</sup> *Supra* at 5.

<sup>4</sup> *Supra* at 4.

<sup>5</sup> Alysoun Boyle, "Effectiveness in Mediation: A New Approach", *The Newcastle Law Review*, 12.

<sup>6</sup> Mediation and Conciliation Project Committee, Supreme Court of India, Delhi, Mediation and Training Manual of India, available at <https://main.sci.gov.in/pdf/mediation/MT%20MANUAL%20OF%20INDIA.pdf>. (last accessed on 11 March, 2026).

<sup>7</sup> *Supra* at 5

<sup>8</sup> *Ibid*.

<sup>9</sup> *Ibid*.

<sup>10</sup> *Supra* at 4.

<sup>11</sup> OECD, *OECD Online Dispute Resolution Framework* (OECD, 2024), available at [https://www.oecd.org/en/publications/oecd-online-dispute-resolution-framework\\_325e6edc-en.html](https://www.oecd.org/en/publications/oecd-online-dispute-resolution-framework_325e6edc-en.html) (last visited on March 16, 2026).

concerns. The third feature is confidentiality, which often encourages a degree of honesty that ordinary litigation does not permit. The fourth is preservation of relationships. In family and business settings, parties may have to continue dealing with each other even after the dispute. Mediation allows a less destructive path.<sup>12</sup>

The value of these features can be seen through contemporary examples. In matrimonial disputes, mediation can help parties build parenting plans, organise child visitation, divide responsibilities, and reduce the emotional burden of prolonged contested proceedings. In business disputes between suppliers and start-ups, mediation can preserve a commercially useful relationship by restructuring timelines or responsibilities rather than ending all engagement. In apartment and neighbourhood disputes, mediation can restore normal social interaction where a formal decree may solve only one legal point. In consumer and digital payments disputes, online mediation can settle low value but high-volume disagreements quickly and at lower cost. These examples show that mediation is not limited to one class of conflict. Its usefulness lies in its capacity to respond differently to different kinds of disputes.<sup>13</sup>

The Mediation Act, 2023 has strengthened these features by moving mediation beyond a loose or scattered structure. The Act's long title itself shows the legislative intention to facilitate institutional mediation, enforce mediated settlement agreements, encourage community mediation and make online mediation acceptable and cost effective. This is a marked departure from the earlier condition where mediation often depended mainly on Section 89 CPC, High Court rules, and judicial encouragement.<sup>14</sup>

### Contemporary Issues in Mediation

The first contemporary issue is the transition from Section 89 CPC to a dedicated mediation statute. Before the Mediation Act, much of the legal debate revolved around confusion in Section 89. In *Salem Advocate Bar Association v. Union of India*<sup>15</sup>, the Supreme Court upheld the broad constitutional validity of ADR oriented reforms and encouraged rule making. Later, in *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co.*<sup>16</sup>, the Court pointed out anomalies in Section 89, including

confusion between mediation and judicial settlement and lack of procedural clarity. The *238th Law Commission Report*<sup>17</sup> also recommended amendment of Section 89. The major contemporary development is that India now has a separate mediation statute, which answers at least part of that earlier uncertainty.

The second issue is implementation. A statute alone does not create a culture of mediation. The Act contemplates online mediation, community mediation, mediation service providers, mediation institutes, and a Mediation Council of India.<sup>18</sup> Yet the practical success of the system depends on trained mediators, institutional standards, referral culture, quality control, and awareness among lawyers and litigants.<sup>19</sup> The President of India, while addressing the First National Mediation Conference in 2025, emphasised that the Act was only the first step and that mediation must be strengthened in practice and extended effectively even to rural settings. This is an important reminder that legislation creates a foundation, not a finished ecosystem.<sup>20</sup>

The third issue is online mediation and ODR. This is one of the most important contemporary developments. NITI Aayog's ODR Policy Plan for India argued that digital processes can improve access, reduce transaction costs, and support dispute resolution in a country with heavy litigation burdens and large geographical diversity.<sup>21</sup> UNCITRAL's Technical Notes on ODR had earlier recognised that online systems can provide simple, fast, flexible and secure resolution without physical presence. More recently, the OECD's 2024 Framework has underlined governance, policy design, and ethical safeguards in ODR.<sup>22</sup> Together, these materials show that digital dispute resolution is no longer experimental. It is now a serious part of modern justice policy.

In India, this has direct practical relevance. E commerce complaints, payment service disputes, small business claims, digital lending disagreements, and service-related consumer grievances often involve relatively modest sums but large numbers of users. Traditional litigation is too slow and too expensive for many such disputes. Online mediation can therefore expand the reach of justice, especially where physical appearance is difficult. However, digital expansion also raises concerns. Unequal internet access, digital literacy gaps, privacy breaches,

<sup>12</sup> *Supra* at 5.

<sup>13</sup> NITI Aayog Expert Committee, *Designing the Future of Dispute Resolution: The ODR Policy Plan for India* (NITI Aayog, 2021).

<sup>14</sup> *Supra* at 4.

<sup>15</sup> *Salem Advocate Bar Association v. Union of India*, (2003) 1 SCC 49.

<sup>16</sup> *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*, (2010) 8 SCC 24.

<sup>17</sup> Law Commission of India, *238th Report on Amendment of Section 89 of the Code of Civil Procedure, 1908 and Allied Provisions* (Law Commission of India, 2011).

<sup>18</sup> Manisha T Karia, Effective implementation of Mediation in India: The way forward, Bar and Bench, available at

<https://www.barandbench.com/columns/effective->

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(Last visited on March 13, 2026),

<sup>19</sup> Dr. Justice Dhananjaya Y. Chandrachud Judge High Court at Bombay, Mediation - realizing the potential and designing implementation strategies, Law Commission of India, available at [https://lawcommissionofindia.nic.in/adr\\_conf/chandrachud3.pdf](https://lawcommissionofindia.nic.in/adr_conf/chandrachud3.pdf) (Last Visited on March 12, 2026).

<sup>20</sup> Press Information Bureau, Government of India, *President of India graces the First National Mediation Conference, 2025* (2025) (last visited on March 16, 2026).

<sup>21</sup> NITI Aayog Expert Committee, *Designing the Future of Dispute Resolution: The ODR Policy Plan for India* (NITI Aayog, 2021).

<sup>22</sup> United Nations Commission on International Trade Law, *Technical Notes on Online Dispute Resolution* (United Nations, 2017).

platform design bias, and the risk of one party feeling less heard in virtual settings must not be ignored. Mediation should not become efficient only for the system while becoming inaccessible for weaker parties.<sup>23</sup>

The fourth issue is cross border commercial mediation. International trade increasingly requires a reliable framework for enforcing mediated settlement agreements. The Singapore Convention on Mediation was adopted to create a harmonised structure for enforcement of international settlement agreements resulting from mediation. India approved signing of the Convention in 2019, recognising its utility for trade and commercial confidence.<sup>24</sup> For India, this is significant because it shows that mediation is not only a domestic family or local dispute mechanism. It is also a commercial justice tool with international relevance. Still, the true value of this framework will depend on deeper integration of international best practices into domestic institutional capacity.<sup>25</sup>

The fifth issue is AI assisted mediation. At present, AI in mediation is discussed more as an emerging possibility than as a settled legal practice. AI may assist with scheduling, transcription, issue mapping, document sorting, and generating draft summaries. In large commercial disputes, such tools may save time. Yet mediation is built on trust, empathy, silence, perception, emotion, and nuanced judgement. These are not purely mechanical inputs. The danger is that over reliance on AI may distort neutrality, reduce confidentiality, or create a false sense of objectivity. The broader ODR literature already insists on fairness, transparency and accountability in digital processes. Those concerns become even sharper when AI is introduced into a consensual process that depends heavily on human confidence. Therefore, AI may assist mediation, but it should not displace the mediator's responsibility.<sup>26</sup>

A final contemporary issue is the gap between policy enthusiasm and actual mediation culture. Recent official efforts such as the 2025 "Mediation for the Nation" campaign and the launch of the Mediation Association of India show growing institutional commitment. The 90 day national drive to settle pending cases through mediation reflects that mediation is now being taken seriously at a national scale. Yet campaigns must translate into durable institutional habits, not only temporary drives. Otherwise, mediation will remain event driven rather than system driven.

### Suggestions for the Promotion of Mediation

First, India must focus on quality, not only quantity. More referrals do not necessarily mean better mediation. Poorly trained mediators or hurried sessions can damage trust in

the process. A strong accreditation, refresher training and monitoring system is necessary. The Supreme Court's mediation manuals provide a sound pedagogic base, but continuous professional development is equally necessary.<sup>27</sup>

Second, lawyers must be made central to the mediation movement rather than being seen as obstacles to it. Many litigants take mediation seriously only when their lawyers explain its value. Lawyers should be trained to identify which disputes are suitable for mediation, how to prepare clients for negotiation, and how to draft durable settlement terms. Mediation succeeds best when lawyers shift from a pure combat approach to a problem-solving approach where appropriate.<sup>28</sup>

Third, law schools should teach mediation not merely as a chapter in ADR, but as a practical skill. Negotiation, listening, counselling, and settlement drafting should be taught through simulations and clinical programmes. This would create a deeper mediation culture at the entry level of the profession.

Fourth, online mediation should be expanded, but with safeguards. Platforms should ensure privacy, informed consent, secure data handling, language accessibility, and support for parties with weak digital literacy. Technology must remain a means to improve access, not a new ground of exclusion.<sup>29</sup>

Fifth, India should gradually build a stronger mediation culture in commercial and cross border disputes. Here, institutional mediation can improve confidence among businesses. The experience of international bodies and centres, including WIPO's growing dispute administration in 2025, shows that mediation is increasingly important in technology and innovation related conflicts. India should learn from such developments while building its own institutional credibility.<sup>30</sup>

### Conclusion

Mediation in India has entered a new stage. Earlier, the argument for mediation rested mainly on its practical benefits such as saving time, preserving relationships, and reducing litigation. Those arguments still hold good. But today mediation also stands on a firmer legal and policy basis because India now has a dedicated statute, official institutional support, digital dispute resolution thinking, and growing national level attention. In that sense, mediation is much closer than before to being a favoured dispute resolution mechanism.

Even so, the claim should be made with caution. Mediation cannot become the favoured mechanism only by legislative declaration or policy enthusiasm. It will

<sup>23</sup> *Supra* at 25.

<sup>24</sup> Press Information Bureau, Government of India, *Cabinet approves signing of the United Nations Convention on International Settlement Agreements Resulting from Mediation* (2019).

<sup>25</sup> United Nations Convention on International Settlement Agreements Resulting from Mediation, 2018.

<sup>26</sup> OECD, *OECD Online Dispute Resolution Framework* (OECD, 2024).  
*Advances in Consumer Research*

<sup>27</sup> National Legal Services Authority / Mediation and Conciliation Project Committee, *Mediation for the Nation Campaign Circular* (2025).

<sup>28</sup> *Ibid.*

<sup>29</sup> NITI Aayog Expert Committee, *Designing the Future of Dispute Resolution: The ODR Policy Plan for India* (NITI Aayog, 2021).

<sup>30</sup> World Intellectual Property Organization, *WIPO ADR Highlights 2025* (WIPO, 2026).

deserve that status only when parties trust mediators, lawyers use the process responsibly, settlements are drafted well, digital tools remain fair and safe, and institutions maintain quality. Mediation works best when it is not forced as a ritual but offered as a meaningful space

for resolution. Therefore, the future of mediation in India lies not only in statutes and campaigns, but in building a culture of principled dialogue, trained neutrality, and accessible justice. On that test, India has made strong progress, but the journey is still continuing.

## REFERENCES

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