**MEDIATION IN INDIA**

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**Abstract**

Mediation has emerged as a significant alternative dispute resolution mechanism in India, fostering timely and efficient resolution of conflicts. This abstract provides a succinct overview of mediation laws in India. The legal framework for mediation in India primarily revolves around the Civil Procedure Code (CPC), with Section 89 empowering courts to refer disputes to mediation. Additionally, the Arbitration and Conciliation Act (ACA) of 1996, amended in 2019, encompasses provisions for court-referred mediation and the enforcement of mediated settlements.

In 2020, the Indian government enacted the Mediation Act, which seeks to formalize and regulate the mediation process. This legislation sets forth standards for mediator qualifications, confidentiality, and the enforceability of settlement agreements. The National Legal Services Authority (NALSA), along with state legal service authorities, actively promote and facilitate mediation services, particularly in family disputes and cases involving marginalized communities.

Furthermore, various specialized mediation institutions, such as the Indian Institute of Arbitration and Mediation (IIAM) and the Centre for Advanced Mediation Practice (CAMP), play pivotal roles in training mediators and administering mediation proceedings. Despite these advancements, challenges persist, including limited awareness, inadequate infrastructure, and the need for cultural acceptance of mediation as a mainstream dispute resolution mechanism.

Mediation laws in India are evolving to provide a robust framework for resolving disputes efficiently and amicably. Continued efforts towards awareness, capacity-building, and institutional support are crucial for fostering a culture of mediation and reducing the burden on the Indian judicial system.

**Keywords :** Mediation, Legal framework, Institutional infrastructure, Challenges, Alternative dispute resolution

**Introduction**

Mediation, as an alternative dispute resolution mechanism, has gained considerable traction in India in recent years. With its ability to provide timely and cost-effective resolutions to conflicts, mediation offers a promising avenue for alleviating the burden on the overburdened judicial system and fostering harmonious outcomes in disputes. This introduction aims to provide a comprehensive overview of the mediation landscape in India, focusing on the legal framework, institutional infrastructure, and challenges encountered in its implementation.

**Legal Framework**

The legal foundation for mediation in India is primarily rooted in the Civil Procedure Code (CPC) and the Arbitration and Conciliation Act (ACA). Section 89 of the CPC empowers courts to refer disputes to mediation, conciliation, or other alternative dispute resolution mechanisms[[1]](#footnote-1). This provision underscores the judiciary's recognition of the efficacy of mediation in resolving disputes and encourages parties to explore non-adversarial means of settlement.

Moreover, the Arbitration and Conciliation Act of 1996, amended in 2019, encompasses provisions for court-referred mediation and the enforcement of mediated settlements[[2]](#footnote-2). These statutory provisions provide a robust framework for the conduct of mediation proceedings and the recognition of mediated agreements as binding and enforceable.

In addition to these enactments, the Indian government took a significant step towards formalizing and regulating the mediation process with the enactment of the Mediation Act in 2020[[3]](#footnote-3). This legislation delineates standards for mediator qualifications, confidentiality of mediation proceedings, and the enforceability of settlement agreements reached through mediation. By providing statutory backing to key aspects of the mediation process, the Mediation Act aims to instill confidence in parties opting for mediation and enhance the credibility of mediated settlements.

**Institutional Infrastructure**

Institutional support plays a crucial role in facilitating the growth and efficacy of mediation in India. The National Legal Services Authority (NALSA), along with state legal service authorities, actively promote and facilitate mediation services across the country[[4]](#footnote-4). These entities provide logistical support, training programs for mediators, and financial assistance to parties seeking mediation, particularly in cases involving family disputes and marginalized communities.

Furthermore, specialized mediation institutions, such as the Indian Institute of Arbitration and Mediation (IIAM) and the Centre for Advanced Mediation Practice (CAMP), have emerged as key players in the mediation landscape[[5]](#footnote-5). These institutions offer training courses, accreditation programs for mediators, and administrative support for mediation proceedings. By fostering the professional development of mediators and standardizing mediation practices, these institutions contribute significantly to the quality and credibility of mediation services in India.

**Enforcement and Effects of Breaching Mediation Settlement**

The fact of the matter is that the settlement arrived by the parties in mediation in India are unenforceable. India, as stated above, has no dedicated legislation for the enforcement of mediation settlement which results in opening up of cases again in the court very often. It is merely an agreement which is not enforceable under any law and therefore, unless made vide a decree of the court, cannot bind the parties.

The area concerning the enforceability of mediation settlements has always remained grey. Former CJI S. A. Bobde has also called for a statute in relation to the enforceability of mediation agreement or settlement.[[6]](#footnote-6)

India has a different mechanism for the enforcement of settlements arrived between the parties on the basis of whether they were a result of pre-litigation or court referred mediation proceedings. For the latter one, the settlements are enforceable only if they are placed before the court for recording the settlement and disposal.[[7]](#footnote-7) For the cases referred to mediation under section 89 of CPC, the mediation institution will be deemed as Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 will be applicable and therefore the award shall be final and will be deemed to be a decree of civil court.[[8]](#footnote-8) The mediation settlement is drawn into a decree by virtue of Order XXIII[[9]](#footnote-9) and therefore, binds the parties to discharge their obligations. It is based on the well settled law that agreement or compromise, in whole or part is to be recorded[[10]](#footnote-10) and the decree is to be passed.[[11]](#footnote-11)

For pre-litigation mediation, the parties can file a suit and make an application to the court of competent jurisdiction to pass a decree. They can also get it enforced by virtue of the principles of contract law.[[12]](#footnote-12)

It is worth noting that even though the Supreme Court has held that conciliation and mediation are synonyms, it is still unclear as to whether settlements arrived through mediation will be enforceable in the same manner as that arrived through conciliation are. However, the answer to this question as of now seems to be in negative. The reasons are two-fold. The conciliation settlements are enforceable by the virtue of section 74 of the Arbitration and Conciliation Act. The act doesn’t talk about mediation at all and therefore, stretching the same and subjecting it to the provisions of the Arbitration and Conciliation Act based upon the judicial precedent would amount to an uncalled purposive interpretation. Also, if mediation settlements are deemed to be covered by the act, the Mediation Model Rules, 2003 would become infructuous. The other reason is the recent judicial trend. The courts on various occasions have questioned the genesis of the settlement in question. The courts have denied relief to litigants on account of the settlement in question being a result of mediation and not conciliation[[13]](#footnote-13) and therefore, denied enforcing the settlement as per the Arbitration and Conciliation Act.[[14]](#footnote-14)

**Criminal Cases**

The issue of enforcement of mediation settlement in criminal cases has been discussed by the Kerala High Court in Sreelal v. Murali Menon.[[15]](#footnote-15) Here, the court held that the criminal court cannot pass any civil decree to effectuate the settlement and it can only record that the offence is compounded and that compounding would be equivalent to acquittal.[[16]](#footnote-16) A decree therefore, cannot be passed in any circumstances in case of settlement of a criminal case.[[17]](#footnote-17) It should also be observed[[18]](#footnote-18) that a mediation agreement, unless accepted by the court and a decree is passed under CPC,[[19]](#footnote-19) will have no effect. The other way to validate the same is to get it converted into a conciliation agreement which would, therefore, be enforceable u/s 74 of the Arbitration and Conciliation Act once an award thereupon is passed. However, it is bewildering how the Punjab and Haryana High Court Mediation and Conciliation Centre has failed[[20]](#footnote-20) to understand the basic difference between the enforceability of settlements arrived at after mediation and conciliation in as much as their “pre-litigation mediation” has been made enforceable under Arbitration and Conciliation Act. As described above, conciliation settlements are enforceable by virtue of Section 74 of the Arbitration and Conciliation Act whereas mediation settlements are enforceable by virtue of the decrees imipliciter. It is submitted that the settled law of the land[[21]](#footnote-21) is contrary to the view of the Punjab and Haryana High Court Mediation Center which is neither substantiated by any authority nor by any statutory provision. However, the settled law of the land is contrary to the view otherwise.

The next issue is whether the settlement arrived at between parties would be tantamount to a decree passed by the court and if yes, how it can be enforceable. The issue was answered in the affirmative[[22]](#footnote-22) and therefore a settlement, though not ordinarily, can be tantamount to a decree if it complies with the procedure of Order XXII[[23]](#footnote-23) and thereafter, the execution proceedings would be what they are in case of a decree passed by court.

**Non-compliance with Mediation Agreement**

Where one party undertakes to comply with certain directions or conditions in pursuance of mediation agreement and he does not do so despite having reasonable opportunity to perform the same, the relief claimed by such person in lieu of it cannot be given to him.[[24]](#footnote-24)

A similar view has been adopted by the Karnataka High Court[[25]](#footnote-25) wherein it was held that undertakings given to the bench should be complied with in every situation, the only exceptions being fraud or statutory bar. However, the benefit of interim bail conferred already on a party giving any undertaking to the satisfaction of the court would not ordinarily be asked to be restored.[[26]](#footnote-26) It was held that when the court was persuaded to accept the terms of compromise for grant of bail, it is not permissible for the parties to resile from those terms and conditions.[[27]](#footnote-27)

Where the parties have not complied with the mediation agreement arrived between them earlier, the appropriate course of action would be to reopen the original case and the court will then decide the matter on merits.[[28]](#footnote-28)

**Whether breach of mediation settlement amounts to Contempt**

Here, it is important to note that the mediation agreement cannot become the part of a judgment or the order,[[29]](#footnote-29) especially in criminal cases. It is because of the fact that what has conspired during meditation (sittings or hearing) is very confidential and therefore cannot be made public. Confidentiality is one of the reasons why the parties are advised to opt for mediation at the beginning. Therefore, the court would not ordinarily annex the copy of the mediation settlement with the judgment. However, the same exists with the parties and is annexed in the court records. Therefore, the provisions for contempt of court become ineffective as the judgment or the order merely records the fact of settlement and quashing, and no undertaking is given in such cases to the court but is given to the opposite party. In this respect, therefore, the court cannot initiate contempt proceedings against any party.[[30]](#footnote-30) The action for contempt of court can be initiated only in the case of breach of any undertaking given to the court, inter alia. Any undertaking given to a court is totally different from when a counsel states that he undertakes on his client’s behalf. When a person gives any undertaking to the court, it carries sanctity[[31]](#footnote-31) with it and is different from an undertaking given to the other side.[[32]](#footnote-32) Therefore, any willful disobedience of the undertaking given to the court attracts the action for contempt.[[33]](#footnote-33) Where on the basis of any undertaking given to the other party, the court has followed one path or recourse and was persuaded to pass the order and the court ultimately finds that the party that has given the undertaking never intended to abide by the same, the action for contempt lies.[[34]](#footnote-34) The enforcement in the case of consent order i.e., decree[[35]](#footnote-35) therefore, could be made either through execution[[36]](#footnote-36) or injunction from the court of competent jurisdiction,[[37]](#footnote-37) which is applicable to the cases of civil nature.

However, in cases of court annexed mediation, the party can institute an action against the breaching party under the Contempt of Courts Act, 1971. Once proved that the respondent party was a party to the breached agreement or settlement, the party has willfully done some act or omission which consequently has breached the said settlement or agreement, it will become a clear cut case of civil contempt.[[38]](#footnote-38) It is because the court has put its seal on the matter which means that the parties have given the undertakings before the bench and based on the same, the court has proceeded with the matter.[[39]](#footnote-39) The other reason for contempt action is that the parties were at liberty to negotiate and come to a conclusion thereon at that time and the present settlement has been arrived at with their consent. Because of the estoppel by prior consent and conduct, the parties cannot deny honoring the undertakings given by them at the time of mediation settlement which ensures that the settlement is not violated at any point of time. It is important here to note that the disobedience should be willful and should not be one which has arisen due to inevitable circumstances or circumstances that are not in the hands of either party. The court[[40]](#footnote-40) has rightly concluded that in order to prevent the undermining of the majesty and the authority of the court, parties should not be allowed to resile from an undertaking given to the court without any penal consequences following the same. Otherwise, the sanctity attached to such undertakings would be completely destroyed and blown to the winds. If the courts take this action of the parties for granted, dishonesty and disrespect towards the judicial process will expand its horizon. Therefore, the position is that if the party has tendered an undertaking to abide by the terms of the agreement which stands accepted by the court; in the event of breach of the undertaking, action and consequences under the Contempt of Courts Act would follow.[[41]](#footnote-41)

**Challenges and Way Forward**

Despite the advancements in mediation laws and institutional infrastructure, several challenges impede the widespread adoption and efficacy of mediation in India. Limited awareness about the benefits of mediation, particularly among litigants from rural and marginalized communities, remains a significant obstacle[[42]](#footnote-42). Additionally, inadequate infrastructure, including a shortage of trained mediators and mediation centers in remote areas, poses challenges to the accessibility of mediation services.

Cultural reluctance to embrace mediation as a mainstream dispute resolution mechanism also hampers its uptake in India[[43]](#footnote-43). Traditional preferences for adversarial litigation and skepticism towards out-of-court settlements inhibit parties from exploring mediation as a viable option for dispute resolution.

**Conclusion**

In conclusion, mediation laws and institutional infrastructure in India provide a solid foundation for the growth of mediation as a preferred mode of dispute resolution. However, addressing challenges related to awareness, infrastructure, and cultural acceptance is imperative for realizing the full potential of mediation in alleviating the burden on the judicial system and fostering amicable resolutions to disputes.

1. Section 89 of the Civil Procedure Code, 1908, India. [↑](#footnote-ref-1)
2. Arbitration and Conciliation Act, 1996, India [↑](#footnote-ref-2)
3. The Mediation Act, 2020, India [↑](#footnote-ref-3)
4. National Legal Services Authority (NALSA), India [↑](#footnote-ref-4)
5. Indian Institute of Arbitration and Mediation (IIAM), Centre for Advanced Mediation Practice (CAMP) [↑](#footnote-ref-5)
6. Pre-litigation mediation, supra note 4 [↑](#footnote-ref-6)
7. Afcons Infrastructure Ltd. v. Cherian Verkay Construction Co. (P) Ltd., (2010) 8 SCC 24. [↑](#footnote-ref-7)
8. Legal Services Authority Act, 1987, § 21, No. 39, Acts of Parliament, 1987 (India) [↑](#footnote-ref-8)
9. Code of Civil Procedure, 1908, No. 5, Acts of Parliament of 1908 (India). [↑](#footnote-ref-9)
10. Mohanan P.K. v. Sudakshina Ramakrishnan, 2017 SCC OnLine Ker 4735 : (2017) 3 KHC 155 [↑](#footnote-ref-10)
11. Hemanta Kumari Debi v. Midnapur Zamindari Co., 1919 SCC OnLine PC 41: AIR 1919 PC 79 (Buckmaster, J.). [↑](#footnote-ref-11)
12. Manual, supra note 77at 16 [↑](#footnote-ref-12)
13. Angle Infrastructure (P) Ltd. v. Ashok Manchanda, 2016 SCC OnLine Del 1534 : (2016) 228 DLT 624 (DB). [↑](#footnote-ref-13)
14. Ravi Aggarwal v. Anil Jagota, 2009 SCC OnLine Del 1475. [↑](#footnote-ref-14)
15. Sreelal v. Murali Menon, 2014 SCC OnLine Ker 28501 : (2014) 3 KLT 536. [↑](#footnote-ref-15)
16. Code of Criminal Procedure, 1973, § 320 (8), No. 2, 1973, Acts of Parliament, 1973 (India). [↑](#footnote-ref-16)
17. Dayawati v. Yogesh Kumar Gosain, 2017 SCC OnLine Del 11032 : (2017) 243 DLT 117. [↑](#footnote-ref-17)
18. Sreelal v. Murali Menon, 2014 SCC OnLine Ker 28501 : (2014) 3 KLT 536 [↑](#footnote-ref-18)
19. Code of Civil Procedure, 1908, § 89, No. 5, Acts of Parliament of 1908 (India); See also Code of Civil Procedure, 1908, Order 23 (3), No. 5, Acts of Parliament of 1908 (India). [↑](#footnote-ref-19)
20. 4 Mediation Ctr. High Ct. of Punjab & Haryana, Conditions for Pre-Litigation Mediation [↑](#footnote-ref-20)
21. Pre-litigation mediation, supra note 4; Sreelal v. Murali Menon, 2014 SCC OnLine Ker 28501 : (2014) 3 KLT 536. [↑](#footnote-ref-21)
22. Dayawati v. Yogesh Kumar Gosain, 2017 SCC OnLine Del 11032 : (2017) 243 DLT 117 [↑](#footnote-ref-22)
23. Code of Civil Procedure, 1908, or. 22, No. 5, Acts of Parliament of 1908 (India). [↑](#footnote-ref-23)
24. Deep Parikh v. State, 2017 SCC OnLine Del 7955; Shikha Bhatia v. Gaurav Bhatia, 2011 SCC OnLine Del 1014 : (2011) 178 DLT 144 [↑](#footnote-ref-24)
25. S. Balasubamaniyam v. P. Janakaraju, 2004 SCC OnLine Kar 226 : (2004) 5 Kant LJ 338 [↑](#footnote-ref-25)
26. Biman Chatterjee v. Sanchita Chatterjee, (2004) 3 SCC 388 [↑](#footnote-ref-26)
27. Sajan K. Varghese v. State of Kerala, (1989) 2 SCC 208 : 1989 SCC (Cri) 339. [↑](#footnote-ref-27)
28. Dinesh Gulati v. Ranjana Gulati, MAT APP (FC) 70 of 2016, decided on 2-8-2016 (Del) [↑](#footnote-ref-28)
29. Sivarajan v. Subash, 2020 SCC OnLine Ker 337 : (2020) 1 KLT 717. [↑](#footnote-ref-29)
30. Contempt of Court Act, 1971, § 2, No. 70, Acts of Parliament, 1971 (India) [↑](#footnote-ref-30)
31. C.F. Angadi v. Y.S. Hirannayya, (1972) 1 SCC 191 (“Order by consent is not a mere contract between the parties but is something more because there is super-added to it the command of a Judge”). [↑](#footnote-ref-31)
32. Bajranglal Gangadhar Khemka v. Kapurchand Ltd., 1950 SCC OnLine Bom 12 : AIR 1950 Bom 336. [↑](#footnote-ref-32)
33. Rama Narang v. Ramesh Narang, (2006) 11 SCC 114 [↑](#footnote-ref-33)
34. Ritu Markandey v. Surjit Singh Arora, (1996) 6 SCC 14. [↑](#footnote-ref-34)
35. Pulavarthi Venkata Subba Rao v. Valluri Jagannadha Rao, AIR 1967 SC 591, (defining ‘decree’). [↑](#footnote-ref-35)
36. Code of Civil Procedure, 1908, or. 21, No. 5, Acts of Parliament of 1908 (India) [↑](#footnote-ref-36)
37. Suman Chadha v. Central Bank of India, 2018 SCC OnLine Del 11536 : (2018) 254 DLT 29. [↑](#footnote-ref-37)
38. Contempt of Court Act, 1971, § 2, No. 70, Acts of Parliament, 1971 (India). [↑](#footnote-ref-38)
39. Ritu Markandey v. Surjit Singh Arora, (1996) 6 SCC 14 [↑](#footnote-ref-39)
40. Avneesh Sood v. Tithi Sood, 2012 SCC OnLine Del 2445 [↑](#footnote-ref-40)
41. Dayawati v. Yogesh Kumar Gosain, 2017 SCC OnLine Del 11032 : (2017) 243 DLT 117 [↑](#footnote-ref-41)
42. Roy, S., & Sen, S. (2019). Mediation: A Ray of Hope for Access to Justice in India. Indian Journal of Arbitration Law, 8(1), 85-102. [↑](#footnote-ref-42)
43. Choudhury, N. (2018). Mediation: An Alternative Dispute Resolution Mechanism in India. Journal of Indian Law Institute, 60(4), 491-508. [↑](#footnote-ref-43)