

## **THE CHANGING FACE OF CONTRACTUAL DISPUTE RESOLUTION: A STUDY OF ADR MODES IN INDIA**

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### **Abstract**

Contracts are the backbone of trade, business and daily life, and disagreements over them are unavoidable. Courts remain the traditional forum for settling such disagreements, but rising case pendency, cost and delay have pushed parties towards faster and friendlier routes. This paper studies Alternative Dispute Resolution (ADR), with a close look at conciliation, arbitration and mediation, as tools for resolving contractual disputes. It places India's legal framework, including the detailed provisions of the Mediation Act, 2023, within the wider international picture, examines how mediation is becoming a preferred choice for commercial parties, and studies the opportunities this shift opens up for lawyers. It further looks at the growing need for trained mediators, the institutes now offering mediation courses, the legislative steps taken in India, the contribution of legal academia, the role played by the Bar Council of India and the judiciary, and finally the question of how binding ADR outcomes are. The paper closes with concrete suggestions for strengthening ADR as the future pathway for resolving contractual disputes in India.

**Key Words:** Mediation Act, 2023, Conciliation and Arbitration, Commercial Dispute Resolution, Mediation Council of India, Enforceability of Settlement Agreements

### **1. Introduction**

Alternative Dispute Resolution System is not new, since inception of the human being it was in existence in one or other forms. Romila Thaper's "A History of India" Where in it was clearly mentioned that Indian ancient civilisation has very useful and professionally developed legal system. However, in modern era it has played a very important role to reduce the burden of judiciary. As the litigations are increasing day by day judicial recourses are not enough to deal with it. Hence lot of efforts are taken at judicial level and governmental level to make the ADR form more effective. It can be seen by the effort taken by apex court while promoting the lok Adalat functioning<sup>1</sup>. Now days every agreement carries within it the possibility of disagreement. Two parties who once shook hands over a contract may later find themselves divided over its terms, its performance or its breach. For a long time, the courtroom was seen as the only proper place to settle such disagreements. But courts across the world, and especially in India, are today burdened with lakhs of pending cases, and a contractual dispute filed today may take years,

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<sup>1</sup> The Legal Services Authority Act, 1987

sometimes even a decade or more, to reach a final decision. This delay defeats the very purpose of a contract, which is to give the parties certainty and a working relationship.

It is against this background that Alternative Dispute Resolution, commonly called ADR, has grown in importance. ADR is not a new idea; forms of it have existed in villages and trading communities for centuries in the shape of panchayats and community elders settling disputes. What is new is the degree of legal recognition, structure and state support that ADR now receives. This paper studies ADR as it applies specifically to contractual disputes, and tries to map out where this field is headed in the years to come.

The approach was shifted from modern judicial system to the traditional dispute resolution mechanism. The need of new scientific method for dispute resolution was fulfilled by the traditional alternative means for dispute settlement scientifically designed.

It is also made clear that ADR is not applicable only to commercial but also in civil and criminal matter too. It is already incorporated under various statutes. There are various reasons to justify the ADR need of an hour. Following are some of the reasons<sup>2</sup>;

1. Amicable settlement of disputes
2. Speedily disposal of disputes
3. Economical settlement of disputes
4. A time saving management
5. Legal regulation
6. Globalization of commercial activities
7. Advent of Multinational Corporation

### **1.1 Research Methodology**

This paper adopts the doctrinal legal research methodology, also called the traditional or library-based method of legal research. Under this method, the researcher does not rely on field surveys, questionnaires or statistical sampling of human subjects; instead, primary legal materials, such as the Arbitration and Conciliation Act, 1996, the Code of Civil Procedure, 1908, the Commercial Courts Act, 2015 and the Mediation Act, 2023, together with reported judicial decisions of the Supreme Court and the High Courts, are read, compared and systematically arranged. These primary sources are studied alongside secondary sources, namely law commission reports, government notifications, textbooks, law journal articles and commentary published by recognised legal publishers and bar associations.

The doctrinal method, often described as the black-letter law approach, proceeds through a descriptive-cum-analytical process: the law as it stands is first described accurately, its historical development is traced, its working is then critically analysed in light of judicial interpretation and

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<sup>2</sup> Dr. S.C. Tripathi, *Arbitration & Conciliation Act, 1996, with Alternative means of Settlement of Disputes*, 8<sup>th</sup> Edition 2017, ISBN : 978-93-86456-18-2, Central Law Publication.

practical experience, and reasoned conclusions and suggestions are drawn at the end. This method was considered the most appropriate for the present study because the object of the paper is to understand what the law on ADR actually provides, how courts have interpreted it, and how it may be improved, rather than to measure public opinion or behaviour through empirical data collection. Data for this paper have accordingly been drawn from bare statutory texts, official government and judicial sources, and peer-reviewed or professionally edited legal commentary, all of which have been analysed using this doctrinal approach to arrive at the findings and suggestions set out in the concluding part of this paper.

## **2. Meaning of Alternative Dispute Resolution System (ADR System)**

Alternative Dispute Resolution describes the various ways in which people can settle a disagreement without going through a full court trial. The United States Department of Labor describes it as a procedure agreed to by the parties to a dispute in which a neutral person helps them reach an agreement and avoid litigation.

*“The term alternative dispute resolution (ADR) means any procedure, agreed to by the parties of a dispute, in which they use the services of a neutral party to assist them in reaching agreement and avoiding litigation.”<sup>3</sup>*

Cornell Law School’s Legal Information Institute explains that ADR covers every process and technique used to settle conflicts outside of a government court, the most common being mediation, arbitration, conciliation, negotiation and settlement through direct dealing between the parties.

In simple words, ADR is any route to justice that does not require standing before a judge and going through the full procedure of a civil suit. It usually costs less, takes less time, and allows the parties themselves more say in how their dispute is resolved. Because ADR relies on the consent of the parties, in most of its forms, it also tends to protect the working relationship between them, which matters greatly in business and contractual settings where the parties may need to deal with each other again in future.

ADR is usually placed on a spectrum running from the least formal to the most formal process. At one end sits negotiation, where the parties themselves talk without any outside neutral. Moving along the spectrum, one finds mediation and conciliation, where a neutral person assists but does not decide the outcome, and finally arbitration, where the neutral decides the dispute much as a judge would, but through a private and consensual process. Contractual disputes, being largely disputes between parties who once willingly agreed to work together, are particularly well suited

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<sup>3</sup>U.S. Department of Labor, Alternative Dispute Resolution, available at <https://www.dol.gov/general/topic/labor-relations/adr> (last visited 20 March 2026).

to this spectrum of consensual and semi-consensual processes rather than to the wholly adversarial process of a civil suit.

K. Jayachandra Reddy judge of Supreme Court and Chairman of Law Commission has stated that actually informal dispute resolution has a long tradition in many of the world societies dating back to 12<sup>th</sup> century in China, England and America.

### **3. Contractual Disputes**

In the area of dispute resolution arbitration, conciliation & mediation is getting worldwide recognition as a mechanism for dispute settlement. A contractual dispute arises when one party to an agreement believes that the other party has failed to perform a promise made under the contract, or has performed it wrongly, or is trying to escape an obligation altogether. Such disputes may relate to non-payment of dues, delay in delivery of goods or services, disagreement over the quality of work, disputes about the interpretation of a clause, disagreements over the calculation of damages, or claims of the contract having been broken entirely.

Contractual disputes touch almost every sector of the economy, from construction and infrastructure to information technology, banking, insurance, real estate, employment and international trade. Because contracts are drafted for the future and no drafter can foresee every situation, some disagreement over meaning or performance is almost inevitable over the life of a long-term contract. What matters is not whether disputes will arise, but how quickly and fairly they can be resolved once they do. This is precisely where ADR mechanisms, being flexible and less adversarial than litigation, have found a natural home.

It is also useful to note that contractual disputes are, by their very nature, disputes between parties who have already shown a willingness to cooperate, since they entered into the contract in the first place. This existing relationship, and often the desire to continue it, is what makes ADR mechanisms, and mediation in particular, especially suitable for such disputes, as compared to disputes arising from an accident or a crime, where the parties may never have had, and may never wish to have, any continuing relationship with each other.

### **4. ADR Mechanisms for Contractual Disputes**

Not even India but England, America, Japan and china have seen towards ADR Mechanism mainly arbitration Conciliation & Mediation as scientific alternative dispute Mechanism. Now it is internationally accepted that the arbitration Conciliation and mediation is efficient means for dispute settlement.

Indian law recognises several routes for resolving contractual disputes outside of ordinary litigation. The three most significant are conciliation, arbitration and mediation. Each has its own character, its own degree of formality, and its own place within the wider structure of Indian

dispute resolution law, principally the Arbitration and Conciliation Act, 1996 and, more recently, the Mediation Act, 2023.

#### **4.1 Conciliation**

Conciliation is a process in which a neutral conciliator does more than merely help the parties talk to each other; the conciliator may actively suggest possible terms of settlement for the parties to consider. Conciliation is voluntary throughout, and either party may walk away from the process at any point before a settlement is signed. Once the parties do agree on terms, the resulting settlement agreement carries the same status as an arbitral award on agreed terms and can be enforced in the same way as a decree of a court.

In India, conciliation of contractual and commercial disputes is governed by Part III of the Arbitration and Conciliation Act, 1996, sections 61 to 81, which were themselves modelled on the UNCITRAL Conciliation Rules. Conciliation is especially useful in ongoing commercial relationships, such as between a contractor and an employer on a construction project, where both sides may prefer a solution suggested by a respected neutral rather than a solution imposed after months of adversarial argument. Conciliation is also widely used in labour and public-sector contractual disputes, where it is often carried out by a statutory or departmental conciliation officer even before the parties think of approaching a court or a tribunal.

#### **4.2 Arbitration**

Arbitration is the most formal of the three mechanisms and the one that most resembles a court proceeding, without actually being one. The parties refer their dispute to one or more arbitrators, chosen by agreement or by a procedure set out in their contract, and the arbitrator's decision, called an award, is final and binding on the parties, subject only to limited grounds of challenge before a court.

The Arbitration and Conciliation Act, 1996 was enacted to consolidate and modernise Indian arbitration law, bringing it in line with the UNCITRAL Model Law on International Commercial Arbitration.

*“An Act to consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards as also to define the law relating to conciliation and for matters connected therewith or incidental thereto.”<sup>4</sup>*

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<sup>4</sup>The Arbitration and Conciliation Act, 1996, Preamble, reproduced in Free Law, “Arbitration and Conciliation Act, 1996 — Key Features”, available at <https://www.freelaw.in/legalarticles/Understanding-the-Basics-of-the-Arbitration-and-Conciliation-Act-1996-> (last visited 3 April 2026).

The Act's central aims are to keep judicial interference in arbitration to a minimum, to give the parties maximum freedom to design their own procedure, and to make sure that both domestic and foreign arbitral awards can be enforced without unnecessary delay. Most commercial contracts of any size in India today carry an arbitration clause, precisely because arbitration offers a private, expert and time-bound alternative to a civil suit. At the same time, arbitration in high-value contractual disputes has, in recent years, begun to resemble litigation in its cost and duration, since parties often engage large legal teams, raise numerous procedural objections and challenge awards before courts, a criticism that has strengthened the case for exploring mediation as a lighter-touch alternative for many contractual disagreements.

### **4.3 Mediation**

Mediation is the least formal of the three mechanisms. The Mediation Act, 2023 defines mediation as a process where the parties try to reach an amicable settlement with the help of a third person, the mediator, who does not have the power to force a settlement upon them.

#### **4.3.1 Key Provisions of the Mediation Act, 2023<sup>5</sup>**

The Mediation Act, 2023 is India's first standalone legislation on mediation, and it lays down, across sixty-five sections and ten schedules, a complete procedural and institutional framework for the conduct of mediation, whether court-referred, pre-litigation, institutional, online or community-based. A close reading of its principal provisions shows how thoroughly the Act has organised what was, until 2023, a largely informal and court-dependent practice.

Section 4 of the Act lays down the ingredients of a valid mediation agreement, requiring that it be in writing and contain a clause referring present or future disputes to mediation, whether as a separate agreement or as a clause within the main contract itself.

Section 5 permits parties to voluntarily and with mutual consent take steps towards pre-litigation mediation before filing a civil or commercial suit; notably, the original Mediation Bill, 2021 had proposed to make such pre-litigation mediation compulsory, but the final Act, following the recommendation of the Parliamentary Standing Committee, kept it voluntary in order to protect a litigant's right of access to the court.

For commercial disputes of a specified value, however, the proviso to section 5(1) preserves the separate and mandatory requirement of pre-institution mediation under section 12A of the Commercial Courts Act, 2015, so that a commercial plaintiff not seeking urgent interim relief must still attempt mediation before filing suit.

Section 18 imposes a firm timeline on the process: mediation must ordinarily be completed within one hundred and twenty days from the date fixed for the first appearance of the parties before the

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<sup>5</sup> THE MEDIATION ACT, 2023 NO. 32 OF 2023

mediator, extendable by mutual consent for a further period not exceeding sixty days, giving mediation a maximum life of one hundred and eighty days before the parties are free to return to litigation.

Sections 22 and 23, read together, impose a strict duty of confidentiality on the mediator, the parties and any other participant, so that communications made during mediation, including any admission or proposal for settlement, cannot later be used as evidence in any court or arbitral proceeding, a protection designed to encourage the frank and open discussion on which successful mediation depends.

Once a settlement is reached, section 20 allows the parties to optionally register the mediated settlement agreement with an authority constituted under the Legal Services Authorities Act, 1987, within one hundred and eighty days of receiving the authenticated copy, though the explanation to the section makes clear that registration is not compulsory and does not by itself affect the right to enforce or challenge the agreement.

Section 28 permits a mediated settlement agreement to be challenged only on narrow grounds, namely fraud, corruption, impersonation, or the dispute being one not fit for mediation, and fixes a limitation period of ninety days from receipt of the agreement, extendable by a further ninety days, for filing such a challenge.

On the institutional side, Chapter VIII of the Act, particularly sections 31 to 38, establishes the Mediation Council of India as a body corporate with its head office at Delhi, entrusted with registering mediators, recognising mediation institutes and mediation service providers, prescribing codes of conduct, and generally promoting mediation, including international and online mediation, across the country.

This institutional design moved from paper to practice recently when the Central Government, exercising its power under section 31 of the Act, formally notified the establishment of the Mediation Council of India with its head office at Delhi, a step that gives the regulatory architecture envisaged by the Act its first concrete, operational shape.

Sections 40 to 42 further empower the Council to recognise and grade mediation service providers, which include court-annexed mediation centres, authorities under the Legal Services Authorities Act, 1987, and private mediation institutes, thereby creating a graded, quality-conscious institutional ecosystem for mediation rather than leaving its practice entirely unregulated.

The Act also carves out community mediation as a distinct track for disputes likely to affect peace and harmony within a locality, and, being conscious of the sensitivities involved when government bodies are litigants, section 2(iv) generally excludes the Government from the Act's application except where the dispute is a commercial one, recognising that government departments together account for a very large share of all pending litigation in the country.

Most significantly for the enforceability of mediation as a dispute resolution tool, section 27 of the Act provides that a mediated settlement agreement, other than one arising from community mediation, shall be final, binding on the parties and enforceable in the same manner as if it were a judgment or decree passed by a civil court.

## **5. International Perspective: Commercial Disputes and the Role of Conciliation, Arbitration and Mediation**

Contractual disputes rarely stay within one country's borders in today's globalised trade. A supply agreement between an Indian manufacturer and a European buyer, or a technology licence between companies in different continents, may require a dispute resolution mechanism that works across jurisdictions. Arbitration solved this problem first, through the New York Convention of 1958, which requires member states to recognise and enforce foreign arbitral awards. This single treaty made international arbitration the default choice for cross-border commercial contracts for several decades, and it remains the backbone of international commercial dispute resolution even today.

Mediation lacked an equivalent international enforcement treaty until the Singapore Convention on Mediation, adopted by the United Nations in 2018 and opened for signature in 2019, gave international mediated settlements a status similar to what the New York Convention gives arbitral awards.

Commentators have described this development as giving mediation "teeth" for the first time in the international commercial context, since the Convention lets an enforcing party approach a court in a contracting state directly, without first having to obtain a fresh judgment for breach of the underlying settlement contract.

Under the Singapore Convention, a party to an international mediated settlement agreement arising from a commercial dispute can go directly to a court in any contracting state and ask for enforcement, instead of first suing for breach of the settlement and only then enforcing that court judgment. This has removed one of the biggest practical objections that businesses had to choosing mediation for cross-border contracts, namely the fear that the other side could simply walk away from a mediated settlement with little consequence.

India has not yet signed the Singapore Convention, though the Mediation Act, 2023 gives full domestic effect to mediated settlements and creates room for India to accede to the Convention at a later stage. Meanwhile, well-established international arbitration institutions such as the International Chamber of Commerce, the Singapore International Arbitration Centre and the London Court of International Arbitration continue to handle a large volume of international contractual disputes, and many of these institutions now also offer mediation services alongside arbitration, reflecting a broader international trend of treating mediation, conciliation and arbitration as complementary tools rather than competing alternatives.

Taken together, the New York Convention, the Singapore Convention and various national conciliation laws modelled on the UNCITRAL rules show a global trend: arbitration, conciliation and mediation are increasingly treated as complementary parts of one international commercial dispute resolution system, rather than as rival or lesser alternatives to court litigation. Domestic legislation such as India's Mediation Act, 2023 can be understood as India's own contribution to this global movement, bringing Indian mediation practice closer to international standards of enforceability and institutional regulation.

## **6. Use of Mediation: An Upcoming Trend in Contractual Disputes**

Of the three mechanisms discussed above, mediation is the one showing the sharpest rise in India at present. Arbitration, though well established, has in recent years attracted criticism for becoming almost as slow, costly and adversarial as litigation itself, especially in high-value commercial matters where both sides hire large legal teams and contest every procedural point. Conciliation remains useful but has never developed the same institutional following as arbitration. Mediation, by contrast, is being actively promoted by the judiciary, the legislature and the legal profession as the mechanism best suited to preserve business relationships while resolving contractual disagreements quickly.

The Commercial Courts Act, 2015 has played a quiet but important part in this trend by making pre-institution mediation compulsory under section 12A for most commercial suits where urgent interim relief is not sought, meaning that a business must at least attempt mediation before it can approach the commercial court.

The Mediation Act, 2023 builds on this by creating a Mediation Council of India, recognising online mediation as a valid mode of proceeding, and giving statutory backing to mediation service providers and mediation institutes across the country. Together, these steps signal that mediation is moving from being a court-referred afterthought to becoming a distinct and organised system of dispute resolution in its own right.

It has also been observed that Indian civil and commercial litigation, taken through trial and appellate stages, can often take anywhere between five and fifteen years to reach finality, a statistic that is itself among the strongest arguments in favour of a time-bound, statutorily capped process such as mediation under the 2023 Act.

Online mediation, expressly recognised and encouraged under the Act, is also expected to accelerate this trend, since it removes the need for parties, mediators and counsel to travel and be physically present, and allows disputes to be mediated across different cities or even different countries at a fraction of the earlier cost. Given India's large and increasingly digitally comfortable commercial community, online mediation may in time become the default mode for resolving low and mid-value contractual disputes. The Amazon has made available mediation policy though not

all retail consumers but for the marketplace sellers. It reveals that Mediation is used as prefer ADR mode in case of commercial disputes.<sup>6</sup>

## **7. Opportunity for Lawyers**

The rise of mediation opens a new professional space for lawyers, alongside their traditional roles in litigation and arbitration. A lawyer trained in mediation can act as a party's counsel during the mediation process, helping the client prepare, assess offers realistically and draft an enforceable settlement agreement. A lawyer may also train to become a neutral mediator, building an independent practice around resolving other people's disputes rather than representing one side.

Legal commentary on the profession has observed that in more developed markets such as the United States and the United Kingdom, entire law firms now specialise only in mediation, and that Indian legal practice is expected to move in the same direction as the Mediation Act, 2023 takes fuller effect.

A practising mediator and Advocate on Record has similarly noted that abroad the concept of a dedicated mediation law firm is already well developed, and that people abroad are willing to pay for the speed that mediation offers, a trend she expects India to follow as its own mediation culture matures.

For young lawyers in particular, mediation offers an early entry point into dispute resolution work without requiring years of courtroom experience. For senior lawyers and retired judges, mediation offers a dignified and valuable second innings, using decades of legal judgment to help people settle rather than fight. Corporate lawyers, too, are increasingly expected to negotiate mediation and dispute resolution clauses carefully at the contract-drafting stage itself, since the choice of ADR mechanism written into a contract today decides how any future dispute under that contract will be handled. In-house counsel in companies are also beginning to be trained in mediation advocacy, a skill quite different from courtroom advocacy, since it calls for collaborative rather than combative representation of the client's interests.

## **8. Need of Skilled Mediators**

Mediation only works as well as the mediator conducting it. Unlike a judge or an arbitrator, a mediator has no power to impose an outcome, so the mediator's entire authority rests on skills such as active listening, patience, the ability to manage strong emotions in the room, and the creativity to help parties see options they had not considered themselves. A poorly trained mediator

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<sup>6</sup>[https://sellercentral.amazon.in/help/hub/reference/external/GG7CAYUTVZKATDUY?mons\\_sel\\_locale=te\\_IN&pageName=IN%3ASC%3ATrim-help%2Fhub%2Freference%2Fexternal%2FG201575280](https://sellercentral.amazon.in/help/hub/reference/external/GG7CAYUTVZKATDUY?mons_sel_locale=te_IN&pageName=IN%3ASC%3ATrim-help%2Fhub%2Freference%2Fexternal%2FG201575280)

can do real harm, either by pressuring parties towards a settlement they do not truly accept or by failing to notice a serious imbalance of bargaining power between the parties.

India's rapid push towards mediation has therefore created an urgent and growing need for properly trained and skilled mediators, especially for commercial and contractual disputes, which often involve technical, financial or industry-specific issues that a mediator must be able to follow closely. A mediator handling a construction contract dispute, for example, benefits greatly from at least a working understanding of delay analysis, valuation of variations and standard forms of construction contracts, just as a mediator handling a shareholder or joint-venture dispute benefits from familiarity with company law and accounting concepts.

Building a large enough pool of competent mediators, spread across languages and regions and not concentrated only in a few metropolitan cities, remains one of the biggest practical challenges facing the ADR movement in India today. This challenge is compounded by the fact that mediation, unlike litigation, is not yet seen by most law graduates as a full-time career option, so the profession must actively work to attract talented young lawyers, retired judges, and experienced professionals from other fields into structured mediator training.

## **9. Institutes Running Mediation Courses**

Several institutions in India now offer structured mediator training. The Mediation and Conciliation Project Committee of the Supreme Court of India runs a basic forty-hour mediation training programme, followed by an assessment, after which a trained person may be listed on a court-annexed mediation panel.

Beyond the judiciary's own training scheme, private and professional bodies have also entered this space. The International Centre for Alternative Dispute Resolution in New Delhi has long conducted mediator training programmes and master-trainer courses, often in association with international bodies such as CEDR, London and the International Services for Dispute Settlement of California.

The Indian Institute of Arbitration and Mediation offers a professional mediator training programme, typically conducted over fifty-five hours in hybrid mode, that integrates the legal provisions of Indian mediation law with the science and technique of negotiation and mediation practice.

High Court mediation and conciliation centres, such as Samadhan at the Delhi High Court, similarly train and empanel mediators for court-referred disputes.

International professional bodies have also entered the Indian market, with organisations such as the Royal Institution of Chartered Surveyors offering a mediation training programme in India that is recognised by bodies including the Chartered Institute of Arbitrators and the International

Mediation Institute, and that allows successful candidates to seek empanelment with the Indian Council of Arbitrators.

Professional bodies outside the legal fraternity have also joined in; for instance, the Institute of Chartered Accountants of India now conducts a certificate course on mediation for its own members, recognising that mediation skills are useful for professionals who regularly deal with commercial and financial disagreements even though they are not lawyers.

Law schools have entered the field too, with foreign law schools such as the University of California Law San Francisco partnering with Indian institutions to strengthen mediation and negotiation teaching for Indian law students. Together, these varied institutes, ranging from the judiciary's own training committee to private academies, chartered professional bodies and foreign law schools, are gradually building the training infrastructure that India's growing mediation culture requires.

Maharashtra National Law University Mumbai has offered the 2 Year Mediation Degree program known as M.A. in Mediation and Conflict Resolution<sup>7</sup>.

## **10. Legislative Initiatives**

India's legislative journey on ADR began well before the Mediation Act. The Code of Civil Procedure, 1908 was amended in 1999 to insert section 89, obliging courts to explore settlement through arbitration, conciliation, judicial settlement or mediation whenever a case shows elements of a possible settlement.

The Arbitration and Conciliation Act, 1996 gave arbitration and conciliation their modern statutory shape, and the Commercial Courts Act, 2015 made pre-institution mediation compulsory for most commercial disputes below the stage of urgent interim relief. The most significant recent step is the Mediation Act, 2023.

The legislative process has continued even after the Act's passage, with different provisions being brought into force in stages; the establishment of the Mediation Council of India itself, though provided for in section 31 of the Act passed in 2023, was formally notified by the Central Government only in the recent past, with the Council's head office fixed at Delhi.

This staggered, notification-by-notification implementation is common in Indian legislative practice for complex regulatory statutes, and it shows that the legislative initiative on mediation is very much a continuing, live process rather than a matter that was fully completed the day the Act received the President's assent. Future legislative attention is likely to focus on framing the detailed regulations contemplated under the Act, such as the qualifications, code of conduct and

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<sup>7</sup> <https://mnlumumbai.edu.in/Mediation.php>

continuing training requirements for registered mediators, and on considering whether India should now accede to the Singapore Convention on Mediation to give Indian mediated settlements the benefit of cross-border enforceability.

## **11. Academic Contribution**

Legal academia has played a steady, if sometimes understated, role in building India's ADR framework. Law Commission reports going back decades have repeatedly recommended strengthening ADR and training lawyers and judges in its use, laying much of the intellectual groundwork that later legislation, including section 89 of the Code of Civil Procedure and the Mediation Act, 2023, eventually built upon.

Individual law teachers and practitioners have also shaped the field directly, for example by designing the mandatory mediation course now taught across Indian law schools and by writing training manuals used in court-annexed mediation programmes. Academic journals and law reviews continue to publish case comments and analytical articles on the Mediation Act, 2023 and on evolving Supreme Court interpretations of section 89, work that feeds back into judicial training and future legislative reform. International academic collaboration, such as the multi-year partnership between an American law school and Indian legal educators aimed specifically at strengthening mediation pedagogy, further shows that Indian legal academia is actively seeking global best practice rather than working in isolation.

Doctrinal research of the kind undertaken in this very paper also forms part of this academic contribution, since careful, source-based analysis of statutes and case law helps identify gaps, drafting ambiguities and implementation challenges that policymakers and the Mediation Council of India may otherwise overlook.

## **12. Role of the Bar Council of India**

The Bar Council of India is the statutory body responsible for setting standards of legal education and regulating the legal profession in India, a role given to it under the Advocates Act, 1961. It has made Mediation as compulsory subjects for 3 year and 5 years Law Course Curriculum<sup>8</sup> as essential in light of New Education Policy. As it is significant integration between Legal Education, Government and Judiciary will help to deliver speedy justice.

Its most direct contribution to the ADR movement has been curricular: by making a compulsory subject on mediation, along with conciliation, part of the law degree, the Bar Council of India has ensured that ADR is no longer treated as an optional or peripheral topic in Indian legal education.

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<sup>8</sup> BCID-0468-2024 (LE Circular-06/2024)-Comprehensive Implementation of Legal Education Reforms, Mandatory Guidelines, Norms & Rules of Legal Education.

This decision, however, also created a practical challenge, since a large number of the more than a thousand law schools in India lack teachers with real mediation training or experience.

This gap has prompted external partnerships, such as the multi-year collaboration between the University of California Law San Francisco and Indian institutions aimed specifically at improving the quality of mediation and negotiation education in Indian law schools.

The Bar Council of India also lays down the minimum hours of mediation training expected of those seeking to practise as mediators, and continues to be an important stakeholder in discussions on how continuing legal education for practising advocates should evolve to include ADR skills, not just substantive law. Going forward, the Bar Council is likely to play an important complementary role alongside the newly notified Mediation Council of India, since the former shapes the ADR training of every future advocate while the latter regulates mediators, mediation institutes and mediation service providers once those advocates, and other professionals, actually enter mediation practice.

### **13. Role of the Judiciary**

The judiciary's support for ADR has been decisive at every stage. In *Salem Advocate Bar Association, Tamil Nadu v. Union of India*, the Supreme Court upheld the constitutional validity of section 89 of the Code of Civil Procedure and directed that judges be trained and that infrastructure be created to make ADR referrals workable in practice.

In *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd*<sup>9</sup>, the Supreme Court went further and explained which categories of civil and commercial disputes are generally suitable for ADR and which are not, cautioning that section 89 should never be applied mechanically to every case that comes before a court.

Beyond deciding individual cases, the judiciary has also built the institutional backbone of ADR in India. The Supreme Court's own Mediation and Conciliation Project Committee designs the national curriculum for mediator training and oversees court-annexed mediation centres set up in almost every district. High Courts have established their own mediation and conciliation centres, several of which, such as Samadhan in Delhi, are now well known and heavily used.

Senior members of the judiciary have also used public platforms to encourage the profession to see mediation as a serious career path, with one judge of the Supreme Court remarking that the time is not far when mediation will be cherished as a viable career opportunity for students and young practitioners.

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<sup>9</sup> *M/S. Afcons Infra. Ltd. & Anr vs M/S Cherian Varkey Constn Co.P.Ltd.& .* on 26 July, 2010

Judicial encouragement, through binding precedent, administrative action and public advocacy alike, has therefore been at least as important to the growth of ADR in India as the legislation itself, and the judiciary is likely to remain the single most influential institutional voice steering the practical implementation of the Mediation Act, 2023 in the years immediately ahead.

#### **14. Bindingness**

A recurring question for any ADR mechanism is whether its outcome actually binds the parties, since a settlement that can be ignored without consequence offers little real advantage over litigation. Arbitration has always scored well on this count: an arbitral award is final and enforceable as a decree of the court, subject only to narrow grounds of challenge under the Arbitration and Conciliation Act, 1996.

Conciliation settlements have similarly long enjoyed the status of an arbitral award on agreed terms once signed by the parties.

The Mediation Act, 2023 has now closed this gap. Under section 27, a mediated settlement agreement, other than one reached through community mediation, is final, binding on the parties and enforceable in the same manner as if it were a judgment or decree of a court.

This bindingness is not, however, absolute; section 28 permits the agreement to be challenged only on the narrow grounds of fraud, corruption, impersonation, or the dispute being one that was not fit for mediation in the first place, and requires any such challenge to be brought within ninety days of receipt of the agreement, extendable by a further ninety days by the court.

#### **15. Conclusion and Suggestions**

ADR has moved, over the last three decades, from being a marginal alternative to litigation to becoming a central part of how contractual disputes are resolved in India. Arbitration gave commercial parties a private and enforceable route to a final decision; conciliation offered a softer, settlement-oriented option within the same statutory family; and mediation, strengthened at last by a dedicated statute, clear timelines, confidentiality protection and a real rule on bindingness, is now emerging as the mechanism best suited to preserving relationships while resolving disagreements quickly and at lower cost. The recent notification of the Mediation Council of India confirms that this is not merely a paper reform but an institutional project that is now actively being built.

Based on the doctrinal analysis undertaken in this paper, the following suggestions are offered as a way forward for strengthening ADR, and mediation in particular, as the future pathway for resolving contractual disputes in India:

- Rules and regulations under the Mediation Act, 2023, particularly those governing the qualifications, training hours, code of conduct and continuing education of registered mediators, should be framed by the Mediation Council of India at the earliest, so that the registration system under section 30 becomes fully operational and uniform across the country.
- Mediator training must be expanded well beyond the major metropolitan cities, with subsidised or free basic training offered in Tier-II and Tier-III towns, so that commercial parties in smaller cities are not forced to rely only on litigation or costly big-city mediators.
- Specialised mediator training tracks should be developed for particular categories of contractual disputes, such as construction and infrastructure contracts, technology and licensing agreements, and shareholder or joint-venture disputes, so that mediators bring adequate technical understanding to complex commercial disagreements.
- The Bar Council of India and law universities should invest in properly trained faculty and simulation-based teaching for the compulsory mediation course, rather than treating it as a purely theoretical subject, so that law graduates leave law school genuinely comfortable with mediation advocacy and practice.
- The legal profession, bar associations and law firms should actively promote mediation as a distinct and respectable career path, including through dedicated mediation practice groups within law firms, so that talented young lawyers do not see mediation merely as a fallback to litigation.
- Commercial contracts, especially long-term and high-value agreements, should as a matter of good drafting practice include a tiered dispute resolution clause that requires the parties to attempt mediation before proceeding to arbitration or litigation, so that the benefits of mediation are built into the contract from the outset rather than considered only after a dispute has already hardened.
- The Central Government should give serious and time-bound consideration to India's accession to the Singapore Convention on Mediation<sup>10</sup>, so that Indian businesses can enjoy the same cross-border enforceability for mediated settlements that Indian arbitral awards already enjoy under the New York Convention.
- Public awareness campaigns, seminars and outreach programmes aimed at businesses, trade associations and individual citizens should be conducted regularly, so that mediation is chosen because parties understand and trust it, and not merely because a court or a statute has directed them towards it.
- Regular empirical and doctrinal research on the working of the Mediation Act, 2023, including tracking of settlement rates, timelines actually achieved under section 18, and

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<sup>10</sup> <https://www.singaporeconvention.org/convention> as on 12 Aug 2026

the grounds on which settlements are challenged under section 28, should be encouraged, so that future amendments to the Act are based on real experience rather than assumption.

If these steps are taken together, mediation, alongside arbitration and conciliation, is well placed to become the preferred future pathway for resolving contractual disputes in India, easing the burden on courts, saving valuable time and money for commercial parties, and, most importantly, allowing parties to a contract to resolve their differences without permanently destroying the relationship that first brought them together.