

MAPPING THE EVOLUTION OF MEDIATION IN THE 21ST CENTURY: A BIBLIOMETRIC STUDY OF CONTEMPORARY DISPUTE RESOLUTION

¹Dr (CA) Vishwanathan Iyer, ²Dr Prachi Wani, ³Dr Pritesh Somani

¹Senior Assistant Professor, Balaji Institute of International Business, Sri Balaji University, Pune.

²Senior Assistant Professor, Balaji Institute of Management and Human Resource Development, Sri Balaji University, Pune

³Senior Assistant Professor, Balaji Institute of International Business, Sri Balaji University, Pune

Abstract:

The growth of this world has increased the webs of complexities around it. The newer way of life is more complex than it was in earlier years. This has led to a stressful and painful life, with the added disadvantage of low patience levels of modern-day people. The overall result of these negatives of life are constant fights, illegal possession, and cruel behavior of one person towards another person.

As a matter of last resort, every person knocks on the door of the judicial system seeking justice. Considering the mammoth population and growing discontent amongst people, justice seems far from being impossible. With problems arisen opportunities, so the growth of Alternative Dispute Resolution system surfaced.

Arbitration, Negotiation, Mediation, are a few commonly used ADP options across the world. India has accepted ADR as a system and with improved awareness and acceptance, its impact can be studied over a timeline. Of all the ADR available, Mediation is considered a better mechanism for the benefits it comes along with it.

In India, the Mediation Act, was passed in the year 2024. Becoming 1 year older, this Act has proved its mettle and the reasons due to which this method is the best are clearly understood by all. The wastage of time and money in the judicial courts are a pain for all the people seeking justice. Mediation proves itself as a powerful and beneficial tool for all the parties and all of them take advantage of this powerful mechanism. This paper is an attempt to study the relevance and importance of Mediation as a powerful Alternative Dispute Resolution mechanism using Bibliometric Analysis. Bibliometric analysis is a statistical tool to understand the trends of various literature reviews from standard repository, analyzing the trend and providing a conclusive note for the research with a strong reference.

Keywords: Alternative dispute resolution, Mediation, Mediator, Justice, ADR

Introduction:

“Justice delayed is Justice denied” is a phrase that is commonly used. In a country like India that has a huge geographical area and an equally complex demography, expecting justice that is fast as well as cost effective is rare as well as almost improbable. Many families have got decisions after decades and still many have not been fortunate enough to get the same. The judiciary system cannot be solely blamed for the delay. The population, the greed amongst people, the breakup of family system, and the fall in ethical and moral values across all the sections of society lead to constant quarrels, dissatisfaction and a feeling of loss. So, literally everyone fights for his cause and approaches the judiciary to seek justice. In such a situation, with increasing cases each passing day, the pressure on the entire judiciary system is huge.

As a route to escape the harshness of the judiciary, especially by way to time loss, Alternative Dispute Resolution aka ADR has emerged as a solution. All cases that are tried under judicial courts can now be resolved by using various mechanisms of ADR. Arbitration, Mediation, Conciliation, Conciliation, negotiations are a few out of the court settlements that helps to reach to better and faster conclusions.

The ADR movement started in United States of America in 1970

Mediation is a technique in which a neutral person, generally a third party, is appointed by the disputants and after careful hearing of the case, the mediator reaches a logical and legal conclusion. It is the most used tool for resolution amongst the parties involved by way of Alternative Dispute Resolution. A mediator is a common person who can either be known to

both the parties or he cannot be known to the parties. He plays a pivotal role in reviving the discussions between the parties which seem to have reached a dead lock. He emphasizes both the parties focus on their area of interest rather than defend or attack the fixed position taken by them. A mediator can be a known person to both parties or unknown to either of them as well. He must possess strong communication skills, persuading skills and legal skills as well. A mediator conducts separate meetings with both the aggrieved parties and notes down the reasons due to which the dispute arose or understands the points which may help both the parties patch up amicably.

The world recognised the importance and effective of Alternative Dispute Resolution much earlier than India. In the earlier stage, only Arbitration was considered a tool of ADR. However, owing to certain drawbacks that Arbitration as a system involved, other mechanisms were explored. Out of all the other alternative systems, Mediation is considered as the most effective tool of dispute resolution for the benefits it brings to a normal consumer. Practically speaking, the Courts (the Judges) double up as mediators after the regular court hours to facilitate the justice.

Though mediation is considered as the best mechanism, it faces criticism for encouraging biasness of the mediator. Also, the process of mediation is not yet standardized to evolve correct results. Lack of Awareness stands out as another challenge for spread of mediation as an alternative dispute resolution. For the purpose of understanding mediation fully, The Mediation Act, 2023 was passed. The types of mediations, the process of mediation and all other details related to mediation are mentioned in this Act for reference purposes.

This research paper is an attempt to understand the basics of Alternative Dispute Resolution with special emphasis on Mediation as a power tool in the modern world.

Note on Bibliometric Analysis:

Bibliometric analysis is a scientific method that can be useful for both established and emerging scholars who wish to pursue broad and rich areas of business research. The bibliometric analysis has gained tremendous acceptance in the world of research very recently. The bibliometric analysis finds the application of quantitative techniques on bibliometric data. The analysis of data can be done on various grounds and path-breaking conclusions can be drawn based on research papers of past many years. Graphical representations along with tables based on research papers give a clear idea regarding the study undertaken.

Review of Literature:

The review of literature includes research papers from various secondary sources like research articles, peer reviewed journals, and books from reputed publishers. The review of literature helps to understand the views of various authors who have worked on relevant topics for the past few years.

a) Mediation – the best ADR tool:

The policy makers will benefit from considering the interrelated nature of various types of dispute resolution, the preferences of disputants, and the multiple societal interests that are and can be served by a procedural system of justice. In simple words, the role of Alternative Dispute Resolution system, including mediation, in the justice system will play a pivotal role for better cost effective and faster justice. (Sternlight, 2003)

ADR methods like mediation can be more effective than litigation in certain circumstances because they focus on the parties underlying interest rather than their legal rights.(Hill, 2014) Mediation is a preferred method of resolving trust and probate disputes, as it can be often effective than traditional litigation. Mediation helps to maintain the terms of trust or will, which is a key objective for the grantor. (Akthar, 2019)

(Melenko, 2020) Mediation has the most comparative advantages among alternate dispute resolution (ADR) methods. However, there are several shortcomings including insufficient requirements for mediator competencies and lack of mechanisms to enforce mediation agreements that hinder the effective functioning of mediation.

(Miles et al., 2007) Mediation as an ADR mechanism is effective tool for resolving commercial disputes. The role of mediator, the mediation process are some important areas that needs to be understood for an effective mediation mechanism to function effectively.

ADR procedures encompass a range of mechanisms, such as mediation, arbitration, ombudspersons, and peer review, that are used to resolve disputes in the workplace and other settings. ADR procedures can have different impacts on different parties involved in a dispute, and that evaluating ADR requires considering the processes it is replacing. (Colvin et al., 2006)

The growth of Mediation has grown in business sector, with some businesses taking a more systematic approach to conflict management while others have a more ad hoc, reactive approach. Very simply put up, the role of Alternate Dispute Resolution and especially, mediation has grown from strength to strength in the last few years.(Stipanowich, 2009).

There are many factors that contribute to mediation being the most preferred Alternative Dispute Resolution. While Situation, Mediator and Procedure influenced mediation effectiveness, the relevance of procedure was in important variable in mediation for researchers and practitioners. Other factors like number of parties, number of advisers, type of issue and intervention techniques did not primarily affect the mediation. In case of Construction disputes, cases with large amounts at stake settled less often and the procedure to settlement was a prime cause that emerged after research in Mediation as an Alternative Dispute Resolution mechanism.(Henderson, 1996)

Mediation can create value by mediating the flow of information thereby mitigating adverse selection and moral hazards. This ensures proper communication happens between the affected parties and the requirement of adjudicating claims or proposing settlements is reduced to a great extent.(Brown & Ayres, 1994).

Mediation can be an effective tool for religious conflicts. Mediation offers faster solutions that can satisfy both the parties and lead to peace. (Ishak, 2022)

Med-Arb is a modern method which is a combination of Mediation and Arbitration. This is proved to be an effective model in the world of Alternate Dispute Resolution as compared to other traditional litigation. (Landry, 2012)

b) Mediation tool used at international level:

In Australia, Community Justice uses mediation almost entirely. Two countries, Australia and United States of America are most highly developed mediation techniques and also, they are well researched topics. It can be concluded that mediation technique with its advantages and disadvantages is most suitable in the fields of family and neighborhood disputes. (Clarke & Davies, 1991.)

For UK, mediation is considered the adversarial nature of mediation in the UK has been effectively tempered as it has become an increasingly common alternative to traditional litigation. (Mason, 2012)

ADR as an alternative approach to resolving disputes with a goal of solving conflicts between parties with the help of professionals is growing each passing day, especially in European Union (EU) through mediation. The European law and legislation is highly favourable of Mediation as a cost effective and time saving technique for dispute resolution.(Khan et al., 2021).

There has been a dramatic growth in the use of Alternative Dispute Resolution such as Mediation and Arbitration to resolve disputes in the United States over the past decade. The

third party neutrals chosen by the disputants themselves rather than approaching judicial provide a better opportunity for dispute resolution in US. (Lipsky & Seeber, 2000).

ADR makes it easier to view dispute resolution as a business problem and to investigate business solutions by active participation of management and lawyers. The management representatives and lawyers are creative while dealing with ADR mechanisms like mediation to reach a logical and legal conclusion. Hence, it can be cost effective as well as faster delivery with a probability of re-establishment of lost relationship as well. (Allison, 1990.)

ADR including mediation provides faster and cheaper solutions than court procedures, especially for cross border conflicts. This is possible due to the development of transnational principles. One more advantage of mediation is that the case is in control and the procedure is conducted in private and the parties can agree to keep the results confidential as well. (Haertling, 2012)

c) Disadvantages of Mediation, as an ADR tool:

(Michael, 2005) Mediation is a useful tool to address the employment discrimination disputes. However, mediation needs a balanced approach, too many expectations not too many limitations, may actually destroy the basic structure of mediation. The employers develop a comprehensive conflict resolution system and include mediation as a process that is case-specific and adheres to the needs of all the parties, rather than the intention of the mediator.

The history and spread of Alternative Dispute Resolution with a focus on increased institutionalization of ADR, particularly in relation to mediation within the Court, has proved to be a great advantage in more cases than not. However, the constant increasing number of certified mediators can dilute the essence of the mechanism. (Press, 1997.)

(Vardha, 2024) There is insufficient information, research data and training regarding the use of mediation for being used as an alternative to judicial reviews to help the practitioners to advise the clients confidently. The importance of issues concerned makes it essential for policy makers to demonstrate that their decisions are based on more than declaration of good faith in the value of mediation.

Mediation is a powerful tool for settlement of international disputes as it facilitates flexibility and cost effectiveness. However proper care needs to be taken for appointment of mediator as his role is a key factor in providing fair justice with in-depth knowledge of legal framework so that public morals and public order is not violated.(Sherman & Momani, 2024).

The rise of Mediation as an Alternative Dispute Resolution system in UK is very low. The lack of experience in mediation by lawyers was one of the prime reasons that was followed by resistance to compromise. Also, lack of public awareness was one of the reasons for slow rise of mediation in UK.(Imgrogo, 1999).

Research Methodology

The study is purely qualitative in nature comprising of secondary data and exploring the available literature in the domain. An effective data extraction requires an appropriate and a qualitative search engine. Scopus Data base was used as a reference. The basic reasons behind using Scopus data base as a reference was it is one of the most prominent databases further it publishes only high-quality research work. A total of 6449 documents related to “Dispute resolution” and “Mediation” were found across the Scopus database.

The documents were trimmed on different factors based on the type of publication, the years during which the publication were done, the present study was done keeping in mind the time duration between 2004 and 2024 and the theme of the study.

Analysis and Discussion:

The following are the analysis and discussion relevant to the above research methodology.

Year Wise Documents publication

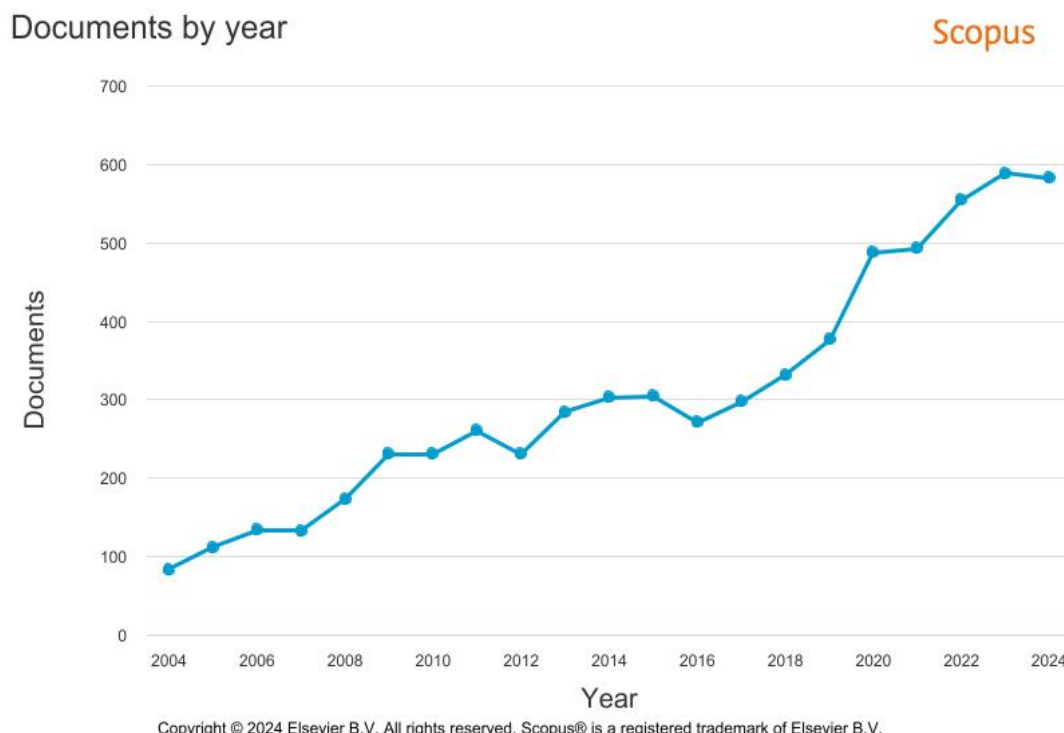


Figure 1: Year-wise publication

From Figure 1 there is a consistent increase in number of documents from the year 2004 to 2024. The least number of publications was found in the year 2004 (83) while the highest number of publications were found in the year 2023 (588) with a slight decline in the year 2024 (582). The year 2022 witnessed a huge jump as compared to year 2021, showcasing a total growth of almost 11 % which is wither able growth showcasing the growing importance of topic.

Country-wise Publication

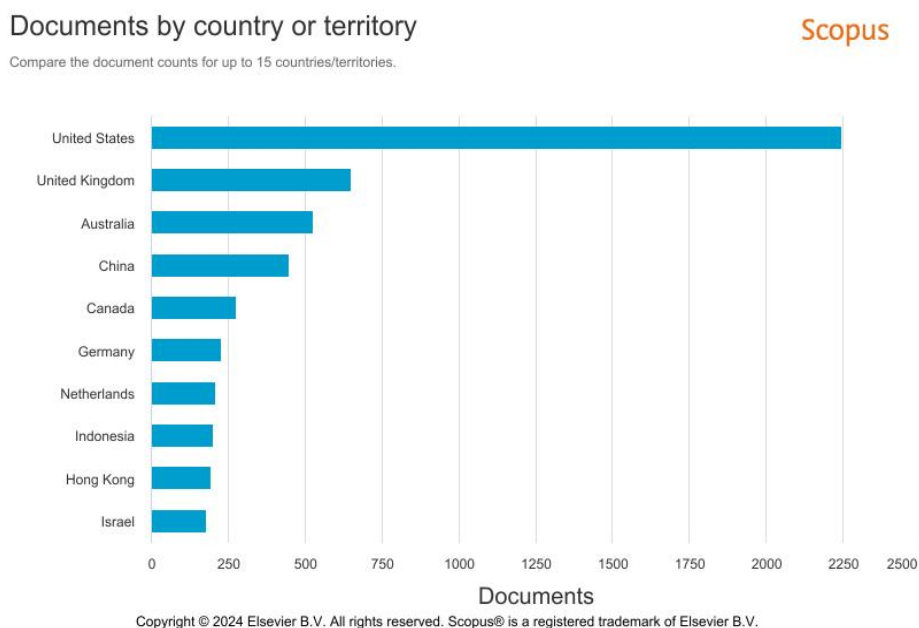


Figure 2: Country-wise publication

It can be interpreted from the figure 2, United States of America is leading with 2242 publications, which is almost 35 % of the total publications while Israel stood at the lowest publications with a total of 175 (2%) publication among the top 15 publishing countries. It can be noted India does not feature in the top 15 country as India stands at 17th Rank with a total of 125 publications.

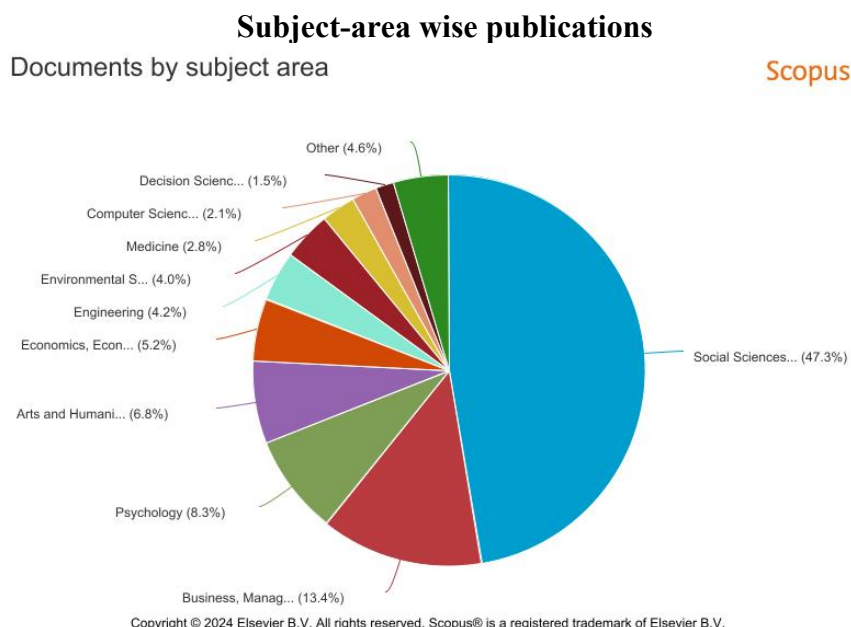


Figure 3: Subject-wise publication

It can be interpreted from figure 3, Social science was the highest contribution with almost 47.3% of the articles which show cases the broad penetration of the subject matter. On the other hand, Decision Science was at the lowest with a total of 1.5 % of publications. The second highest contributor was Business Management with a total contribution of 13.4% which further showcases the deep penetration of subject matter related to Social Sciences.

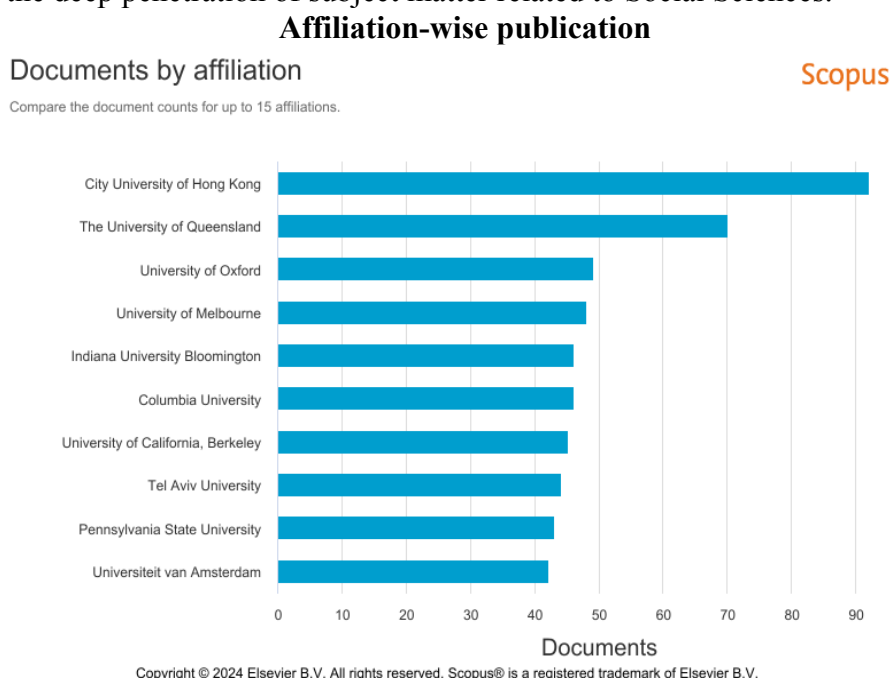


Figure 4: Affiliation-wise publication

It can be seen from the figure, City University of Hongkong had the highest contribution of 92 articles among the top 15 affiliating contributors while University van Amsterdam had the lowest count of 42 publications. There is no Indian University featuring in top 15 contributors showcasing the innovation of topic in India and the requirement of detailed research on the topic.

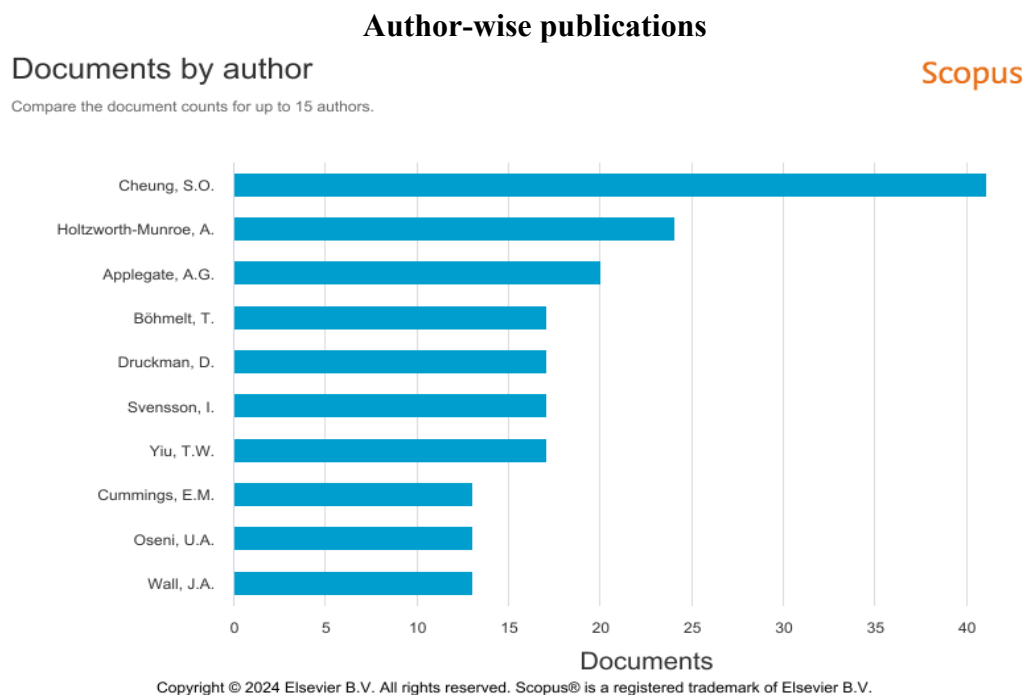


Figure 5: Author-wise publications

It can be understood from the figure 5, Cheung,S.O. was the highest contributing author with a total of 41 documents while Wall, J.A. was the lowest contributing author at 13 documents. The graph showcases the work of top 15 authors in the domain. The list does not feature any Indian author showcasing the work not majorly done in the domain.

Country wise Network Cluster

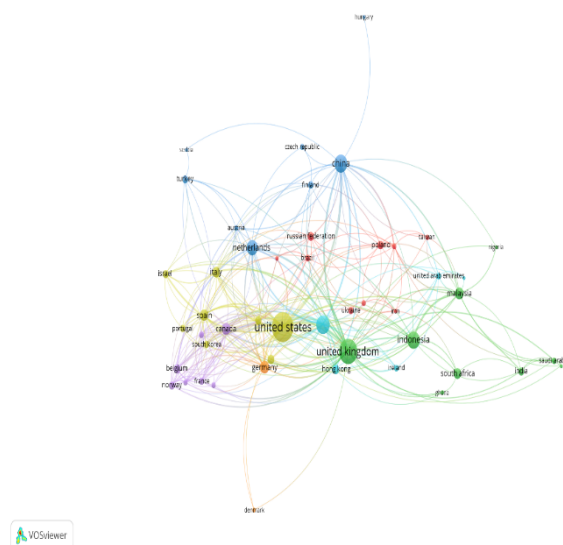


Figure 6: Country wise Cluster chart

It can be interpreted from the figure 6, Larger nodes—like the United States of America, United Kingdom, and China indicated that these nations have significant sway on the field of study. They appear to have the most publications or collaborations based on their size. The green cluster consists of countries like **India**, **Saudi Arabia** and **South Africa**, suggesting strong collaboration patterns among these nations. The Yellow cluster consists of country likes United States, Spain, Italy to name a few, representing a global cluster connecting major smaller nodes. The Blue cluster focused on country likes China and Hungary representing their niche range of collaboration. The red cluster consist of Poland, Ukraine and other countries to name a few like majorly showcasing their specific region wise connection. The graph's general structure points to a highly integrated research network, with certain nations acting as linkages between clusters.

Author-wise cluster

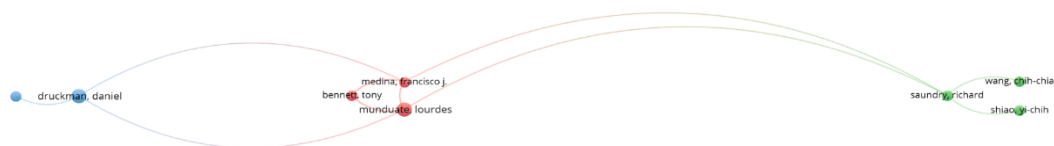


Figure 7: Author-wise Cluster Chart

The graph showcases three distinct clusters, each represented by a unique colour: blue, red, and green. Each cluster represents a collective of individuals who engage in closer collaboration with one another. Includes Druckman Daniel, possibly indicating an individual who works autonomously or engages in few partnerships. Includes Medina Francisco J, Bennett Tony, and Munduate Lourdes, suggesting a closely connected team that works together regularly. Includes Saunders Richard, Wang Chih-Chia, and Shiao Chih, indicating a related group of collaborators. The red cluster acts as a link between the blue and green clusters, indicating that individuals such as Medina Francisco J or Bennett Tony could be crucial in uniting otherwise separate research teams.

Findings:

- 1) There is a consistent rise in the mediation related publications during 2020-2024, with 588 papers being recorded in 2023, indicating a global growth with regards to mediation as an alternative dispute resolution system.
- 2) India ranks 17th with regards to contribution in global publications indicating that it is considered as an emerging area for research. However, USA dominates the global research output with over 35% contributions in the same domain.
- 3) Mediation is considered as a socio-legal and behavioral alternative rather than a purely legal or procedural alternative as social sciences accounted for 47.3% of the total publications.
- 4) City University of Hongkong has the highest contributor for global research followed by other global universities. Sadly, no Indian University's name appeared in the list indicating the requirement of more research in the domain of Mediation as an effective ADR.
- 5) Amongst the authors, the US, UK, China and European authors exhibited better networking with regards to Mediation research.
- 6) India is still emerging with research focus on mediation. However, the Mediation Act, 2023 has set the foundation for research focus in this direction.
- 7) The Judicial acceptance of mediation has increased with Indian Judges participating as mediators after the regular court hours.

- 8) Mediation is cost effective, fast as well as result oriented.
- 9) The public awareness regarding use of Mediation as an effective ADR is poor and it is reflected on the application of ADR in real life scenario.
- 10) Even the standardization and the mediator training programs are not developed in India.
- 11) The bibliometric data revealed a gap between developed and developing countries in terms of research and practical application of the concept.
- 12) This study highlighted the fact that mediation is not just a legal process and extends to psychology, management and sociology, thereby reflecting its holistic approach.

Recommendations:

From the above analysis and discussion, it is obvious that Mediation as a concept is picking up slowly and steadily. The growth and acceptance of this concept has grown in the past few years consistently. Western countries have adopted this concept more successfully. Understanding the benefits of this amazing tool of Alternative Dispute Resolution, it has spread its wings in other parts of the world as well. Awareness of the availability of such wonderful legal aid is necessary through official communication channels.

The following are a few suggestions that needs to be implemented for growth and development of Mediation, as a concept and practical application tool:

- 1) To make Mediation an effective tool of dispute resolution, its awareness among citizens, legal professionals and corporate entities must be enhanced.
- 2) Awareness through legal literacy campaigns, bar associations, Universities and NGO's need to be initiated at all levels.
- 3) The success of Mediation would depend on the voluntary acceptance of this system and hence establishment of mediation centers near district courts, municipal corporations, and panchayat offices must be considered.
- 4) For Mediation to be institutionalized as an integral part of the judicial delivery, it must be embedded within the legal education system and judicial training programs.
- 5) One major finding during the study was lack of standardization of mediation as a ADR mechanism. It is suggested to create a national accreditation authority (NAA) under the Mediation Act, 2003.
- 6) Public-Private Partnership can be encouraged to create sector-specific mediation centers, ensuing that businesses can settle disputes amicably without resorting to costly litigation.
- 7) In the age of digitalization the inclusion of digital signatures, virtual mediation rooms, and AI driven case management tools can streamline the process and make mediation a part of the Digital Justice drive.
- 8) The enforcement mechanism needs to have more clarity. The binding nature of mediated settlements, the role of courts in enforcing agreements and extent of confidentiality needs better legal clarity.
- 9) Since research and academic publications are lesser in Indian Universities, a special ADR Research Centers can be opened to collect data on mediation outcomes and UGC/ICSSR can provided funded projects for such enriching publications and research.
- 10) Government must incentivize mediation by offering reduced court fees, tax deductions or exemptions for mediated settlements (as applicable), and faster registration process for mediated agreements.

Conclusion:

In its process to evolve as a powerful nation, the entire legal system of India is undergoing a transformation. The Bhartiya Nyaya Sanhita (BNS), the Bhartiya Nagrik Suraksha Sanhita (BNSS), and the Bhartiya Sakshya Adhinyam (BSA) passed in the parliament last year, 2023 December, replace the Indian Penal Code (IPC), 1860, the Criminal Procedure (CrPC) and the Indian Evidence Act, 1872 respectively.

During this time, a new Act, the Mediation Act 2023 has also been passed. Over the years, it has been proved that Mediation is the commonly used Alternative Dispute Resolution across the world for problems across the spectrum. The future of India can expect better and faster results in a record time due to increased awareness and acceptance. Mediation as an effective ADR will change the thoughts of average Indian and help them grow at personal level. The judiciary will implement Mediation at a large scale and ensure that majority of the backlog are solved without further delay.

This development in the judicial system hopes to revive the entire legal fraternity positively and mediation as a tool would prove to be a game changer in more than one way.

In the current times, mediation stands at a pivotal juncture that is poised to redefine the judicial system in India. The fundamental Indian principles of *Samvaad* (dialogue) and *sulah* (settlement) are the core values of Mediation, which is in alignment with the typical Indian thought process. Integration of public awareness, political will, standardized procedures, training, and digitalization are required to prove mediation as the best ADR for people of all communities. This would decongest the overburdened judiciary and trust in dialogue-based settlement.

To conclude, the success of mediation as an effective ADR will be proved only on the basis of number of court cases settled through mediation. In simple words, Mediation will redefine the judiciary system, only if the execution is done properly.

Bibliography: (in alphabetical order)

1. Akthar. (2019). Mediation as a remedy in trust and probate disputes: A review of the comparative approach for international lawyers. *Journal of Mediation & Applied Conflict Analysis*, 6(1), 728–742. <https://doi.org/10.33232/jmaca.6.1.10944>
2. Allison, J. (n.d.). *Five Ways to Keep Disputes Out of Court*. Retrieved December 9, 2024, from <https://hbr.org/1990/01/five-ways-to-keep-disputes-out-of-court>
3. Brown, J. G., & Ayres, I. (1994). Economic Rationales for Mediation. *Virginia Law Review*, 80(2), 323. <https://doi.org/10.2307/1073526>
4. Clarke, G., & Davies, E. (n.d.). *ADR — Argument for and Against Use of the Mediation Process Particularly in Family and Neighbourhood Disputes* | *QUT Law Review*. Retrieved December 9, 2024, from <https://lr.law.qut.edu.au/article/view/343.html>
5. Colvin, A. J. S., Klaas, B., & Mahony, D. (2006). *Research on Alternative Dispute Resolution Procedures*. <https://hdl.handle.net/1813/76027>
6. Haertling, J. (2012). *Regulating Dispute Resolution: ADR and Access to Justice at the Crossroads* | *European Business Organization Law Review*. <https://link.springer.com/article/10.1017/S1566752912000389>
7. Henderson, D. A. (1996). *Mediation Success: An Empirical Analysis*. <https://www.semanticscholar.org/paper/Mediation-Success%3A-An-Empirical-Analysis-Henderson/b57f889a5a5cccfddeef35e55db54f4cd2806669>
8. Hill, R. (n.d.). *Theoretical Basis of Mediation and Other Forms of ADR: Why They Work* | *Arbitration International* | *Oxford Academic*. Retrieved December 9, 2024, from <https://academic.oup.com/arbitration/article-abstract/14/2/173/181612>
9. Imgrogo, A. R. (1999). *Using ADR to Address Issues of Public Concern: Can ADR Become an Instrument for Social Oppression*. 14.
10. Ishak, F. (2022). The Concept Of Mediation In Alternative Dispute Resolution (Adr) And Its Implementation Against Religious Conflict Management. *International Journal of Advanced Research*. <https://www.journalijar.com/article/>

11. Khan, A., Ansari, A. R., Soomro, N.-E.-H., & Arafa, A. (2021). *An Overview of Alternate Dispute Resolution From the Contractual Perspective in Europe* (SSRN Scholarly Paper No. 3835294). Social Science Research Network.
12. Landry. (2024.). *Med-arb: Mediation with a bite and an effective ADR model.* - Vol. 63 No. 2, April 1996—*Defense Counsel Journal—Books and Journals—VLEX* 53588352. Retrieved December 8, 2024, from
13. Lipsky, D. B., & Seeber, R. L. (2000). *Resolving Workplace Disputes in the United States: The Growth of Alternative Dispute Resolution in Employment Relations.*
14. Mason, J. (2012). How Might the Adversarial Imperative be Effectively Tempered in Mediation? *Legal Ethics*, 15(1), 111–122.
15. Melenko, O. (2020). Mediation as an Alternative Form of Dispute Resolution: Comparative-Legal Analysis. *European Journal of Law and Public Administration*, 7(2), 46–63.
16. Michael, G. (2005). *Tackling Employment Discrimination with ADR: Does Mediation Offer a Shield for the Haves or Real Opportunity for the Have-Nots?*
17. Miles, D., Mackie, K. J., Allen, T., & Marsh, W. (2007). *The ADR Practice Guide: Commercial Dispute Resolution Third Edition* (3rd edition). Tottel Publishing.
18. Sherman, N., & Momani, B. T. (2024). *Alternative dispute resolution: Mediation as a model* (No. 13:778). F1000Research. <https://doi.org/10.12688/f1000research.152362.1>
19. Sternlight, J. (2003). *ADR Is Here: Preliminary Reflections on Where it Fits in a System of Justice* | Request PDF. ResearchGate.
20. Stipanowich, T. (2009). *ADR and the “Vanishing Trial”: The Growth and Impact of “Alternative Dispute Resolution”* (SSRN Scholarly Paper No. 1380922). Social Science Research Network. <https://papers.ssrn.com/abstract=1380922>
21. Vardha. (2024). (PDF) Mediation and Judicial Review – Mind the Research Gap. *ResearchGate*.