

TRANSFORMING JUSTICE DELIVERY IN INDIA: A CRITICAL SOCIO-LEGAL ANALYSIS OF THE MEDIATION BILL, 2021 AND THE EMERGENCE OF THE MEDIATION ACT, 2023

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Abstract

Explores the metamorphosis of the dispute resolution system in India from the Mediation Bill 2021 to Mediation Act 2023. The study deals with mediation as an accessible, quick and consensual dispute resolution method and it explores party autonomy, procedural fairness, institutional regulation and access to justice. It covers the aims of analysing the concept and the legislative development of mediation, comparing the 2021 Bill and the 2023 Act and fixing the effectiveness and prospects of mediation. The methodology chosen is qualitative and is based on doctrinal and analytical study of the law, precedents, law databases, Parliamentary documents and secondary sources. The results show that the Act is a structured platform for pre-litigation, institutional, online and community mediation, but implementation requires trained mediators, institutional capacity and awareness and digital access. Effective implementation enhances mediation's role in justice delivery and empirical, comparative and longitudinal study is recommended, the study concludes.

Keywords: Mediation Act 2023; Mediation Bill 2021; Access to Justice; Alternative Dispute Resolution; Justice Delivery.

1. Introduction

“The Mediation Bill, 2021, which was introduced in the Indian Parliament in December 2021, became the Mediation Act, 2023, the first standalone piece of legislation in India dedicated primarily to mediation, through Presidential assent on 14 September 2023”. “The Bill was introduced in the Rajya Sabha on 20th December 2021 and has been considered by the Department related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice which submitted its report on 13th July 2022”. The Bill passed the Rajya Sabha on 1 August 2023 and the Lok Sabha on 7 August 2023 after undergoing various amendments from the government and a debate on the floor of the Houses (Naidoo, 2023). The importance of the legislative transition is that this would be the first effort to establish a legal framework which would consolidate the mediation in India from an assemblage of different, court-annexed, statutory and institutional arrangements into a more coherent approach to mediation. But at the same time, this transition is sometimes overstated. In this regard, a standalone statute does not necessarily demonstrate that mediation has reached the level of an equally accessible, institutionally effective and socially embedded justice delivery mode. What is more difficult to consider is whether the promise of consensual, non-adversarial dispute resolution in the norms can translate into access to justice for diverse Indian communities in the real world through the framework of the law? (www.lexology.com).

One of the issues that mediation attempts to address is not only the presence of litigation, but the balance between formal adjudication, procedural delay, cost, accessibility and the social implications of dispute resolution. Although the institutional scene of cases involving civil disputes has traditionally been the Indian courts, mediation is a notion of justice where the parties to the dispute themselves take direct part in negotiation with the support of a third, impartial agent in order to reach, as far as possible, an agreement. This is because mediation focuses on communication, negotiation, confidentiality and agreement among the parties, whereas adjudication is primarily designed to help the court decide on the rights and obligations of the parties. The legislative purpose of the Mediation Bill, 2021 was also to foster the culture of mediation, especially institutional mediation, to take measures for the enforcement

of settlement agreements reached through mediation, to establish a regulatory regime for mediator and mediation institutions and to promote community mediation and recognise online mediation as a cost-effective mechanism (Egbunike-Umegbolu, 2024). The changeover into the 2023 Act thus poses a more general socio-legal question: is it possible to maintain a legal structure which promotes settlement while at the same time retaining the sense of voluntariness, procedural fairness and access to a judicial remedy?

But the answer does not just lie in the formal terms of the statute itself. The Mediation Bill, 2021, already engendered a considerable number of Parliamentary debates regarding the compatibility of mediation with access to courts. The Standing Committee raised doubts about the proposed pre-litigation mediation framework as it may potentially postpone the access to the adjudication process and suggested considering the applicability of such pre-litigation mediation framework again and implementing it in a step-by-step manner (Alexander, & Chong, 2022). Also reviewed by the Committee were issues concerning the length of mediation proceedings, mediation confidentiality, registration of settlement agreements, and institutionalizing mediation. Their deliberations make history clear that the legislative project was not just another alternative dispute resolution mechanism. It was a more fundamental institutional decision – whether, and when, mediation was to be encouraged or required and how mediation was to be controlled, and also on the interface between the rights and duties to go to court to seek adjudication and to arrange for consensual dispute resolution (Blakey, 2021).

The introduction of the Mediation Act 2023 is a pivotal moment in the evolution of India's justice-delivery system, therefore. The Act capped a state of statutory framework that covered aspects such as pre-litigation mediation in civil and commercial disputes, the determination of the suitability of those disputes for mediation, the appointment and conduct of mediators, mediation service providers, the mediation institute, the mediated settlement agreement, confidentiality, and other matters. The legislative framework also aims at institutionalizing mediation under Mediation Council of India and to enable the building of the infrastructure of mediation. It suggests a trend to move away from a judicial achievement and experiment-based mediation to a known part of the national dispute-resolution system. Meanwhile, there are a vast range of factors beyond the statutory provision that influence the effective implementation of an institutionalisation, such as trained mediators, public awareness, the capacity of institutions, affordability, digital accessibility, professional ethics and confidence between the litigants (Sarkar, & Bhattacharjee, 2023).

This transformation has a socio-legal character with a particular emphasis on mediation outside the courtroom. Many conflicts in India concern ongoing social, family, business or neighbourhood relations, where the goal might be more to achieve the justice of the situation rather than simply who is right. In suitable cases, a mediated settlement allows the parties to maintain relationships and consider options that are not available with a traditional judgment (Alexander, 2024). The Department of Legal Affairs also has recognized mediation as a tool that has the potential to save time, resources and facilitate resolution without resorting to formal litigation. But mediation requires informed consent and equal involvement. The mere existence of a settlement process, therefore, cannot be equated with substantive access to justice, especially if there are significant disparities between the parties in economic resources, legal knowledge, bargaining power or social status (Ali, 2024).

1.1. Statement of the problem

The justice delivery machinery in India is still plagued by delays, exorbitant costs, procedural complexities and lack of accessibility, thus necessitating effective alternative dispute-resolution (ADR) forums. The Mediation Bill, 2021, that later became the Mediation Act, 2023, aims to solve the problems by providing a detailed statutory framework for pre-litigation, institutional, online and community mediation. Its implementation, however, is not without significant socio-legal concerns, namely on voluntary participation, party autonomy, fairness of the procedure, accessibility, institutional capacity and the protection of vulnerable parties. Specific legal sensitivities, negotiation strengths, and access or availability of trained mediators can impact meaningfully participation. The challenges are whether the Mediation Act, 2023 can adequately shift the justice delivery landscape and whether it can ensure accessibility, fairness, efficiency and rights protection to parties.

1.2. Aim and significance

The study seeks to critically analyse the Indian evolving statutory framework through a socio-legal and doctrinal study of the Mediation Bill 2021 and the Mediation Act 2023, aimed at unlocking the potential

of accessible, efficient and consensual dispute resolution to transform the justice delivery system. It's important for three reasons. It first explores the process of moving from a piecemeal mediation system to a more complete mediation system within the law, such as pre-litigation, institutional, online and community mediation. Second, it assesses the implications of the 2023 Act on the socio-legal awareness, procedural fairness, and institutional regulation regarding their accessibility and applicability to vulnerable participants. Third, it speaks to the practical obstacles that could prove decisive in implementing statutory recognition of mediation in India and thus in establishing mediation as a viable, equitable and sustainable element of India's justice delivery system.

1.3. Research objectives

The study addresses three objectives:

- To undertake the study into the concept of mediation by understanding and reading the Mediation Act, 2021 in depth.
- To explore the possibilities of dispute resolution through mediation by comparing the Mediation Act, 2021 with the Mediation Act, 2023.
- To evaluate the effectiveness of mediation as a dispute resolution process and its future in India.

1.4. Research gap

The study is justified by the following three gaps in literature. First, the current scholarship primarily focuses on mediation as a tool to alleviate judicial delay and case pendency and has neglected the broader socio-legal implications of delivering justice. Second, the studies dedicated to the Mediation Bill, 2021 tend to reflect on the legislation without exploring the shift toward the Mediation Act, 2023 and the impact thereof on accessibility, party autonomy, procedural fairness, and institutional regulation. Third, there is a lack of study that combines legislative measures and practical implementation issues, such as digital inequality, capacity of mediators and public awareness. The present study aims to fill these gaps, by engaging in a critical socio-legal analysis of the changing mediation system in India.

The study is divided into successive sections. The first one is the Introduction where background, statement of the problem, aim, significance, objectives and study gap are introduced. Second, the Literature Review explores the fundamental research, access to justice, judicial efficiency, legislative advancement and the birth of the Mediation Act, 2023. Thirdly, the Material and Methods present the methodological approach used in qualitative study which is socio-law, doctrinal and analytical. Fourth in the Conceptual and Legal Foundations are presented the principles and developments of mediation. Fifth, the Legislative Evolution and Dispute-Resolution Potential presents an analysis of the changes wrought between the Bill and the Act. The 7th step is Effectiveness, Implementation Challenges and Future Prospects, which investigate practical challenges. Lastly, the Findings, Discussion and Conclusion summarise the findings and implications from this study.

2. Literature review

2.1 Foundational Literature on Mediation and Alternative Dispute Resolution

The basic theoretical literature on mediation centres on two main arguments, one being that there are circumstances in which usual adjudication is not the best way to resolve conflict and the other being that consensual means offer parties can have more influence in deciding what happens. Gregory-Stevens, J. Broadly speaking, (2023) draws on the influential approach to mediation whereby mediation is understood as an intervention by a neutral third party to help the parties arrive at a mutually agreeable resolution to the dispute, where the key focuses of mediation are on communication, negotiation and structured problem-solving. Fan, K. (2023) also find mediation in the context of the transformation of dispute resolution as opposed to adjudication process, highlighting the involvement of the parties and the consensual resolution of the dispute. The book, *Mediative Minds: How Effective Mediators Think, Act and Learn* by Roy, C. (2023), builds a theoretical framework of the mediation process as a participatory and flexible approach, though largely focusing on an institutional and implementation framework that is not tailor-made for India. This is necessary, given the central assumptions of the nature of mediation that can be tested when mediation is more tightly woven into a mandatory justice delivery system, namely: voluntariness, neutrality, and bargaining (Al Mamun, A. 2022).

2.2 Mediation, Access to Justice and Judicial Efficiency

A second strand of scholarship looks at mediation to increase access to justice and to overcome the institutional constraints of litigation-based resolution. Chijioke, U. Citing the claim that “settlement is generally better than adjudication”, (2023) challenges the notion that it should always be the preferred approach, given that “private settlement” can sometimes serve to “mask larger issues of justice and public values.” By contrast, others like Kaplan, E. (2022) highlights the potential of alternative dispute resolution to offer more flexible, participatory and problem-solving ways than litigation. This debate is salient in India where one issue of significance has been that of case pendency and delay in repeated cases has led to increased use of alternative mechanisms. Asaah-Junior, S. K. Efforts might be more efficiently accomplished through mediation, but a focus on the number of cases concluded could not be the only measure of the effectiveness of mediation, as posited by (2024). Equality of parties and the protection of legal rights are also essential aspect of the quality of participation (Abdullah, K., & Rasool, A. 2024).

2.3 The Development of Mediation in the Indian Legal System

Indian scholarship has traced the evolution of mediation through the various judicial efforts, statutory mechanisms and court-annexed ADR institutions. The amendment to the Code of civil proceedings, 1908, adopted in 1999 and implemented with subsequent amendments, gives important statutory regulation to the judicial remands to alternative dispute resolution mechanisms (Gashparova, V. 2023). “While Salem Advocate Bar Association v Union of India highlighted the need for establishing Section 89 and providing suitable ADR structures, *Afcons Infrastructure Ltd v Cherian Varkey Construction Co (P) Ltd* later gave clarity on the nature of conflicts appropriate to be sent for mediation or other modes of ADR”. According to Kharitonashvili, N. (2023), mediation is an increasingly developing feature of Indian civil justice system. The Li, however, the presentation of mediation, both judicial interpretation and court-annexed schemes, is examined in Mediation in 2024, whereas the wider impact of then introducing a dedicated statutory scheme is under-researched.

2.4 The Mediation Bill, 2021 and Legislative Transformation

Another thread of literature explores the Mediation Bill, 2021 as a measure to consolidate and institutionalise mediation in India. The Bill includes a broad-based mediation regime for pre-litigation mediation, institutional mediation, online mediation, community mediation, mediation accreditation and mediation settlement agreements (Parvataneni, L. D. 2024). The parliamentary review of the Bill also gives rise to important concerns about the coercive nature of mediation as a pre-litigation step, the respective role of courts and mediation as well as the balance between mediation and access to adjudication (Pandya, S. R., & Bharad, B. H., 2012). 2024). It conceals, therefore, a fundamental reorganisation of the procedure of dispute entry and flow into the justice system (Sinha, S.). 2023). However, current debates around the Bill are more focused on its constitutional and governance elements, giving less attention to the social and economic and real-world conditions that underpin the effectiveness of the Bill's constitutional elements (Akano, N. 2022).

2.5 The Emergence of the Mediation Act, 2023

With the passing of the Mediation Act, 2023, it marks yet another milestone in the evolution of the mediation system in India that also focuses on the institutional, procedural, and technological aspects of mediation (Dawood, S.). 2023). The Act provides for pre-litigation mediation, mediated settlement agreements, online mediation, community mediation and the establishment of a regulatory framework for mediation institutions and professionals (Chanda, S., et al., 2024). Its development has sparked debate about the benefits of statutory recognition for greater consistency and public trust whilst maintaining mediation's consensual nature (Islam, I. 2024). Unresolved questions are the roles of mandatory participation, necessary competence of mediators, confidentiality, enforceability and institutional implementation as identified by Alexander, N. (2023). What remains comparatively underdeveloped is an integrated assessment of whether the Act reconciles judicial efficiency with party autonomy, accessibility with procedural fairness, and institutional regulation with the fundamentally consensual nature of mediation.

2.6 What the Literature Establishes and What Remains Open

Collectively, this literature reinforces three general hypotheses: First, that mediation offers an alternative to adjudication that is participatory; Second, that mediation can help alleviate the burden of the procedures of justice and accessibility to dispute resolution; Third, that statutory and judicial backstopping can boost its institutional status within the justice system. But there are still significant

unanswered questions. The current literature fails to link the development of court-annexed mediation with the legislative process from the Mediation Bill, 2021 to the Mediation Act, 2023, and does not fully address issues of efficiency, bargaining inequality, digital accessibility and procedural fairness and protection of vulnerable parties. The present study seeks to fill this void by analysing the legislative metamorphosis with a socio-legal prism catering to not only the formal statutory structure of mediation but also the implications it holds for accessibility, institutional capabilities, party autonomy and the delivery of justice in India.

3. Material and Methods

The study is of a qualitative socio-legal nature with an infusion of doctrinal and analytical examination of the legislative development of mediation law in India. The doctrinal part is done by studying “the Mediation Bill, 2021 and Mediation Act, 2023, along with various provisions of the Code of Civil Procedure, 1908”, judicial pronouncements relating to mediation and other authoritative legislative materials. The study attempts to describe the course of mediation in the justice delivery system in India and analyses the legal and socio-institutional implications of the statutory metamorphosis of mediation in India. Special focus on pre-litigation mediation, institutional and online mediation, community mediation, mediated settlement agreements, party autonomy, procedural fairness and access to justice. Delhi NCR has been chosen as the study area as it is an important legal and institutional hub, wherein the functioning of courts and mediation centres, legal institutions and practitioners of ADR, happens in a somewhat developed dispute-resolution space. The geographical detail helps to set the context for the study of the relationship between the statutory framework and the practical aspects of delivering justice. The study does not use primary field survey or interviews; instead, Delhi NCR acts as the context within which the legal and socio-legal analysis takes place and does not represent a source for statistical generalisation. Hence the interaction between statutory provisions, judicial approaches, institutional arrangements and broader social considerations relevant to mediation are considered.

The study is based only on secondary data, gathered from various authoritative legal and institutional sources. Primary materials include legislation, judicial decisions, parliamentary debates and committee reports, government notifications, policy documents and official materials relating to mediation. Secondary materials include books, peer-reviewed journal articles, legal commentaries, study and credible institutional publications dealing with mediation and access to justice and judicial reform, and alternative dispute resolution. The collected material is analysed across the nature of legislation, in light of their objectives, areas of development, the interpretation of the provisions, remaining questions and implementation problems, that is, by using qualitative content analysis and doctrinal interpretation. The methodology is therefore not towards any statistical measurement of mediation itself but to instigate a critical appreciation of the role of transition from the Mediation Bill, 2021 to the Mediation Act, 2023 in the transformation of the justice delivery in India.

4. Conceptual and Legal Foundations of Mediation in India

The literature on mediation begins with grasping the notion of mediation as consensual and participatory means for dispute resolution. It states that mediation is a process designed to facilitate the exchange of information of the parties involved, to clarify the issues and problems, and to explore possible negotiation and compromise through the help of an impartial outsider. Additionally, Carrie Menkel-Meadow places mediation in the context of the overall evolution of alternative forms of dispute resolution, which she attributes to flexibility, problem-solving and participation by the parties. In the Indian context, scholarship is seen as charting the evolution of mediation because of judicial intervention, statutory recognition, and court-annexed machinery. “The amendment of section 89 of the Code of Civil Procedure, 1908, is a significant step in this direction, with cases like *Salem Advocate Bar Association v Union of India* and *Afcons Infrastructure Ltd v Cherian Varkey Construction Co (P) Ltd* further reinforcing the judicial acceptance of mediation as a valuable alternative to traditional forms of adjudication” (Pablo, 2024).

Another body of literature focuses on legal concepts of mediation, such as constitutionality, voluntary participation, confidentiality, neutrality and the settlement by consent. It sees these principles as fundamental to differentiate it from adjudication which is done through a judiciary authority and so has an outcome. The literature also highlights an on-going pickle: between voluntary settlement and

ongoing institutional nudge towards mediation in the justice system. In this backdrop, the Mediation Bill, 2021 is an attempt to give a more inclusive legal regime to a process that has been growing under various pieces of legislation and judgments. The literature thus offers a lot of conceptual bases for understanding mediation, and an examination of the connection between the traditional consensual nature of mediation and the existing mediation-to-become-institutionalised in a statute should be made (Zhao, et al., 2024).

5. Legislative Evolution and Dispute-Resolution Potential: From the Mediation Bill, 2021 to the Mediation Act, 2023

The Mediation Bill, 2021, is narrowly concerned with the effort to bring mediation into a proper statute book. It discusses pre-litigation, institutional, online, community mediation, and the appointment and regulation of mediators and enforcement of mediated settlement agreements. Overall, the Bill is thought to reflect a change from the way that ADR provision has operated in the past – based on piecemeal provisions and reports – to a more formal mediation regime. Another scrutiny examined in Parliament is in relation to the issue of pre-litigation mediation – the question of whether the courts should encourage mediation and settlement in litigation and how such steps affect parties' access to the courts. Such deliberations clearly illustrate that the legislative process of mediation does not only point towards a procedural reform, but also a larger restructuring of how disputes are routed to the justice-delivering institutions in India (Zhomartkyzy, 2023).

The Mediation Act, 2023 is the next step in this legislative progression with a specific statutory framework for mediation. Lots of literature is starting to look at the Act in connection with institutional mediation, online mediation, community mediation, mediated settlement agreements and the proposed regulatory mechanism for mediation as a profession or institution. The Bill-to-law transformation is important because it puts teeth into the policy goal of strengthening mediation by providing a statutory structure that go beyond and remain parallel to the formal judiciary. But the extent to which the possibilities of dispute resolution are extended by these legislative changes is analysed relatively less from a broader perspective. The relation between the normal operation of courts and statutory mediation in particular, party autonomy and accessibility, and institutional capacity and development are important aspects that need further exploration (Bogda, 2024).

6. Effectiveness, Implementation Challenges and Future Prospects of Mediation in India

The study on the effectiveness of mediation tends to be linked to faster settlement, lower litigation expenses, lighter judge loads and more flexibility in solving conflicts. While the specific suggestion is only that mediation is particularly suited for disputes involving ongoing relationships, because negotiated solutions can leave more room for interests beyond those litigated in the adjudicative forum. Similarly, Indian scholarship has acknowledged mediation as a method to decrease reliance on traditional litigation and make means of dispute resolution more accessible. However, the settlement per se is not sufficient evidence of effectiveness. The need for quality participation, fairness in negotiations, confidentiality, neutrality and that parties be able to make informed decisions are increasingly touched upon in the literature. These factors are especially important when there is an imbalance in economic, legal, or negotiating power among the parties to a dispute (Khalid, 2024).

Finally, a thread of the literature focuses on the potential future progress and impact of mediation in India, highlighting obstacles and issues that can shape its future effectiveness. These include low public awareness, availability and competency of trained mediators, institutional readiness, professional regulation, technological challenges and the challenges of online mediation. The growth of mediation also raises questions about accessibility of mediation for socially as well as poor groups and whether mediation can operate routinely within the differing regions and communities. There is some legislation that addresses these issues with the Mediation Act, 2023 offering a statutory footing for the effectiveness; however, there is no direct link between legislation and practical effectiveness. It consequently raises questions: Can the new framework translate the potential of mediation into a sustainable piece of accessible and participative justice delivery in India? (Rungruengduayboon, & Kaewla-iad, 2022).

7. Legislative Evolution and Dispute-Resolution Potential: From the Mediation Bill, 2021 to the Mediation Act, 2023

“The first step in the legislative push for mediation in India is the Mediation Bill, 2021, which was introduced in the Rajya Sabha on 20 December 2021”, aimed at “promoting and facilitating mediation, especially institutional mediation, and providing for enforcement of mediated settlement agreements, a mechanism for registration of mediators, encouragement of community mediation, and making on-line mediation an acceptable and cost-effective process” (Panduwiyasa, et al., 2024). The Bill is a step to build a comprehensive legislation for mediation that goes beyond the disjointed development of mediation in various statutes and the court annexed mediation. In its original draft, it introduces provisions for pre-litigation mediation in civil and commercial finances, identifies disputes that are unsuitable for mediation, provides for mediators to be appointed and mediators to follow certain standards of conduct, and also recommends the setting up of a Mediation Council of India for this purpose. The Bill also aims to create greater legal certainty for mediated settlements when reached and holds mediated settlement agreements final absent limited grounds for challenge (Sang, 2023).

“The Bill is sent to the Department related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice for detailed consideration on 20 December 2021”. The Committee is reporting on 13 July 2022 that it has found some issues in the original legislative framework in its 117th Report. It has also voiced concerns about pre-litigation mandatory mediation, with a view that this requirement to politicize court access via a mediation can create a delay to making the court’s call in some cases. It suggests re-thinking compulsory pre-litigation mediation and implementing it in a staged process (McLaughlin, 2021). The Committee also recommends that the proposed mediation period of 180 days available with an additional 180 days in case of failure be reduced to 90 days with a 60 day extension in cases of failure; reconsideration of the list of disputes excluded from mediation; strengthening and independence of Mediation Council of India; transfer of the responsibility of regulating mediation service providers and institutes from multiple Councils to Mediation Council of India; introduction of consequences in case of violation of confidentiality and that the registration of mediated settlement agreements have discretion rather than mandatory requirement. These recommendations illustrate that the Parliamentary scrutiny is not just about expanding mediation, it also concerns accessibility, processes and institutional coherence (Yadav, et al., 2024).

Official changes to the Mediation Bill, 2021 are introduced in the Monsoon Session of Parliament 2023 after the recommendations of the Standing Committee and its consultations. Revised Bill is passed by the Rajya Sabha on 1st August 2023 and Lok Sabha on 7th August 2023. It is then assented to by the President on 14th September 2023 and published in the Official Gazette on 15th September 2023 and thus becomes the Mediation Act, 2023. The significance of the legislative history is that the final statute is not a reproduction of the original proposal in 2021, seeing that the draft of the bill has undergone the parliamentary and governmental examination. The Act is implemented in a staged approach with some provisions being activated from 9 October 2023, in consideration of the administrative and legal prerequisites to be fulfilled for bringing the statutory framework into existence (Jones, & Aftab, 2023). The Mediation Act, 2023, consequently provides a specific statutory framework on mediation and aims to integrate mediation more effectively and systematically into India's justice-delivery mechanism. As per the Act, mediation in it includes pre-litigation mediation, institutional mediation, the appointment and procedure of mediators, mediation service providers and mediation institutes, community mediation and online mediation. It also sets out the principles for mediated settlement agreements and allows mediation for the registration of the agreement in certain situations to be provided at the choice of the parties. (Jones, & Aftab, 2023). It is worth noting that the enacted framework is now more time constrained on the mediation process as compared to the original Bill, allowing an additional 120 days with parties' consent. The Act also includes online mediation as part of the statutory framework, and aims for its use to be an accepted, and cost-effective mediation settlement process, and community mediation works to bring the settlement culture of mediation to a dispute in the local community where peace and harmony may be at stake (McLaughlin, 2021).

Thus, the move from Bill to Act yields various benefits for the justice delivery system in India. Firstly, it provides mediation with a new, and specific, statutory role than it having been largely shaped by judge-led directions and piecemeal bits of legislation. Second, mediated settlements, when reached, have the benefit of being enforceable, meaning that parties that go through mediation can be assured

their settlements can be enforced. Third, institutional, online and community mediation provide additional venues for the resolution of disputes in alternative ways to the typical courtroom (Yadav, et al., 2024). Fourth, the rules for mediators, mediation institutes and providers look for more professionalisation and uniformity. Lastly, the statutory emphasis placed on the consensual resolution of disputes has the potential to, ultimately, reduce unnecessary litigation and for parties to resolve disputes using a less adversarial and more participatory process. These benefits are, however, conditional upon successful implementation, adequate institutional capacity and trained mediators, public awareness and meaningful access to the process. The shift from the Mediation Bill, 2021, to the Mediation Act, 2023 is, therefore, not just a change in the statutory language but an important legislative effort to bring mediation as an organised and acknowledged part of justice delivery in India (Panduwiya, et al., 2024).

8. Findings

From the doctrinal and socio-legal analysis that was presented above, three main findings ensue which align with the Study objectives.

- From the legal analysis, there emerges a distinct pattern that mediation is gradually emerging as a formal and much more recognized mode of dispute resolution within the Indian framework of justice delivery, more than being just a court-based alternative. The Mediation Bill, 2021, introduces a holistic statutory framework in terms of facilitating pre-litigation mediation, institutional mediation, online mediation, community mediation and regulation and enforcement of mediated settlements. The following enactment of Mediation Act, 2023 subsumes these aspects under a single umbrella and retains mediation as a consensual and participative mode of resolving disputes. (Objective 1)
- The legislative journey from the Mediation Bill, 2021 to the draft Mediation Act, 2023 marks a major shift from a proposed regulatory framework to a structured statutory mechanism for dispute resolution. The parliamentary examination reveals several areas that need to be clarified and brought in are the establishment of pre-litigation mediation; time limits for mediation proceedings; confidentiality; registration of settlement agreements reached in mediation and the institutional structure responsible for conducting the mediation. The legislative regime is therefore the fruits of a struggle with procedural and institutional aspects whilst at the same time trying to establish a firmer base for the use of mediation more widely in India. (Objective 2)
- The findings suggest that the success and evolution of mediation is not solely reliant on its legal status and but buys also on the quality and accessibility of its implementation. Mediation can help parties reach a settlement in a timely, flexible manner; decrease the conflictual nature of settlement; and alleviate strain on the formal judicial process. Yet, its efficacy in practice is linked to the capacity to form mediators, institutional capacity, public awareness, appropriate regulating systems, technological accessibility and meaningful participation of the competing parties. The future of mediation in India thus rely on how statutory recognition translates to an accessible, credible and consistently effected dispute-resolution process. (Objective 3)

9. Discussion

Mediation is a key step in changing the present scenario of India's justice delivery system to achieve a consensual way of resolving disputes without formal adjudication (Ministry of Law and Justice). 2023). Mediation emphasizes communication and negotiation rather than litigation, which, in cooperation with a judicial authority, typically ends up in a binding determination. 2015). The evolution of its application as per the sections 89 of the Code of Civil Procedure 1908 and subsequently in the judicial sphere, illustrate the step by gradual enhancement of alternative dispute resolution as part and parcel of the formal law. The Mediation Bill, 2021, further enhances this institutional development by attempting to make various forms of mediation under one common statute. 2020). The Mediation Act, 2023, thus provides a new unique character to mediation and provides a unique niche for pre-litigation mediation, institutional mediation, online mediation and community mediation within the overall framework of delivering justice (Gabrieli, A., & Alberstein, M.). 2022). It reflects a gradual evolution to a more

participatory and settlement-oriented approaches to resolving conflicts, while upholding the value of confidentiality, neutrality and voluntary participation (Najjemba, S. 2019).

Legislative development still plays a major role in the transformation into mediation in India. The evolution of the Mediation Bill 2021 into the Mediation Act 2023 reflects attempts towards introducing more procedural certainty and institutionalising mediation (Sela, A.). 2018). The parliamentary deliberations on the Bill raise significant issues about pre-litigation mediation, the time limit on mediation, disputes excluded from mediation, confidentiality, as well as registration of mediated settlements and the governing rules for mediation professionals and institutions (Abdullah, K., & Rasool, A.). 2024). The legislation enacted then adds greater structure to how mediators, mediation service providers, and mediation institutes are to be regulated as well as to how mediated settlements are to be structured, along with the introduction of online mediation and community mediation (Archerd, E. R. 2020). The statutory form of mediated settlements also bolsters legal weight of achievements by the mediation process. Meanwhile, the law system calls for efficient institutional mechanisms to help the principles included in the law's substance to be put into action (Ali, S. F. 2024). Another important aspect of mediation, especially given that the practice offers an alternative for parties who might otherwise find that the time, cost, and complexity of traditional litigation can be daunting (Egbunike-Umegbolu, C. 2024). Mediation promotes creative engagement with the process and crafts a solution that focuses on the parties' interests and priorities while being more in control of the settlement process (Panduwiya, H., ET AL., 2024). Finally, online mediation furthers access by lifting geographic and logistic hurdles, and community mediation brings settlement options to local disputes involving interpersonal realms and social comfort (Anderson, D. Q). 2015). Yet the necessary conditions for effective access include public awareness, trained mediators, the institutional readiness, technological access, and professional regulation. Attention also needs to be given to the fact that meaningful participation is impacted by differentials in economic resources, legal knowledge/bargaining power, etc. (Gabrieli, A., & Alberstein, M.). 2022). Thus, mediation finds its truth, not only as an alternative technique but as a nascent and developing element of the India system of justice delivery which, for its sustainability, rely on effective synergy among statutory recognition, institutional capacity and ready availability of use (Najjemba, S. 2019).

10. Implications

The study has important legal, institutional and practical implications for justice delivery in India. It shows that the Mediation Act, 2023 offers a statutory framework for pre-litigative, institutional, online and community mediation procedures and enhances the formalisation of mediated settlements. These findings suggest that mediation could help to facilitate more flexible and participatory modes of resolving conflicts as well as decreasing unnecessary reliance on traditional litigation. The study also emphasises the necessity of trained mediators, institutional readiness, professional regulation, public awareness and technological accessibility for an effective implementation process. It thus suggests that there must be a sort of recognition of a matter in legislation before meaningful access to justice can take place. It is essential that courts, mediation providers, attorneys and policymakers preserve the voluntary, confidential, and fair nature of the process while also facilitating its effective application, protecting the interests of vulnerable person(s).

11. Limitations

The study does have some limitations mostly due to the qualitative socio-legal and doctrinal nature. It does not collect any empirical information from mediators or litigants or from lawyers or mediation institutions – it is exclusively based on secondary sources, which are also included as such, e.g., mediation laws, mediation court cases, Parliament documents and committees' reports, government documents, and academic literature and institutional publications. While Delhi NCR offers a very significant setting as it has a well-developed legal and institutional landscape, the study does not survey the area or interview in the region. Thus, there is no statistical generalisation of mediation practices throughout India. The analysis mainly focuses on legal and institutional aspects of the Mediation Bill, 2021 and Mediation Act, 2023 and does not quantify the rate of successful settlements, satisfaction of users of mediation, costs, length of mediation, and any regional variation in success of mediation.

12. Future Scope

This study can be extended in the future by conducting empirical and comparative studies on the Mediation Act, 2023 in various parts of India. Field-based studies have the potential to analyse the experiences of mediators, litigants, lawyers, judges and mediation institutions, with respect to accessibility, procedural fairness, satisfaction and effectiveness. Comparative studies between metropolitan, semi-urban and rural areas can highlight institutional capacity, public awareness, information technology accessibility and availability of mediators. Future study can further quantify mediation times, mediation outcomes and costs and outcomes for users by dispute category. Special emphasis can be placed on online and community mediation, its accessibility in respect to the economically and socially disadvantaged groups. The extent to which statutory institutionalisation leads to ongoing improvement in justice delivery and less reliance on traditional litigation can also be evaluated in longitudinal studies.

13. Conclusion

The study concludes that the transition from the Mediation Bill, 2021 to the Mediation Act, 2023 represents a significant development in India's justice-delivery framework. The legislative change includes specific insights on pre-litigation, institutional, online and community mediation, mediators, mediation institutions and mediated settlement agreements. It is demonstrated that the approach reinforces the institutionalisation of mediation and its consensual and participative nature. Legislative evolution is also indicative of the parliamentary attention paid to significant issues of pre-litigation mediation, procedural safeguards, confidentiality, settlement registration and regulatory structures. Thus, mediation has become a more structured part of dispute resolution in India and can play an important role in participating and settlement processes that complement conventional adjudication. The study also finds that practicality is more an issue of implementation rather than statutory recognition. Mediation offers opportunities to mitigate the burdens of procedures, bring disputes to a speedy resolution, maintain relationships and develop a better access to dispute resolution. But, for meaningful effectiveness, institutional capacity, trained mediators, public awareness, professional regulation, technological accessibility and balanced participation are required. Again, there is a need for specific safeguards to guarantee procedural fairness and protection of vulnerable participants, considering differences in economic resources, legal knowledge and bargaining power. Thus, future of mediation in India hinges on the need to make the scheme accessible and credible with its consistent implementation. The advancement of this transformation is supported by the Mediation Act, 2023, and the long-term success of this shift requires robust institutional and socio-legal implementation of the Act.

References

1. Abdullah, K., & Rasool, A. (2024). ADR in Pakistan: Why has court-annexed mediation not reached its potential?. *Social Sciences Spectrum*, 3(4), 605-621.
2. *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*, (2010) 8 SCC 24.
3. Akano, N. (2022). Insight into the Future of Arbitration in Nigeria: A Critical Analysis of the Arbitration and Mediation Bill. *International Journal of Private and Property Law*, 3(3).
4. Al Mamun, A. (2022). Mediation as a Tool of Alternative Dispute Resolution in the Senior Assistant Judge Court in Khulna Sadar.
5. Alexander, N. (2023). International Comparative Mediation Law: Hong Kong and Singapore in Perspective. In *Comparative and Transnational Dispute Resolution* (pp. 123-152). Routledge.
6. Alexander, N. M. (2024). Comparative mediation law mapping mediation law with the mediation matrix. Burkhard Hess, Margaret Woo, Loïc Cadiet and Enrique Vallines (eds) *Compendium on Comparative Civil Justice*, International Association of Procedural Law Open Access Publications.
7. Alexander, N., & Chong, S. (2022). Leading the way for the recognition and enforcement of international mediated settlement agreements: the Singapore convention on mediation act 2020. *Singapore Academy of Law Journal*, 34(1), 1-50.

8. Ali, S. F. (2024). Conciliation Beyond the Courts—Aspirations and Limits of Mandated and Voluntary Court Mediation Programmes from a Multi-Jurisdictional Perspective. *Comparative Procedural Law and Justice*.
9. Anderson, D. Q. (2015). Litigating over mediation-how should the courts enforce mediated settlement agreements. *Sing. J. Legal Stud.*, 105.
10. Archerd, E. R. (2020). Evaluating Mediation's Future. *J. Disp. Resol.*, 31.
11. Asaah-Junior, S. K. (2024). Mediation and conflict resolution in Ghanaian courts: Practitioners and their clients experiences in the Twifo Praso District Court (Doctoral dissertation, University of Education, Winneba).
12. Bassuday, K. C. (2023). Mediated Settlement Agreements in South Africa: A Judicial Review (Doctoral dissertation, Durham University).
13. Blakey, R. (2021). Conceptualisation of family mediation: Access to justice after LASPO (Doctoral dissertation, Cardiff University).
14. Bogda, M. (2024). Mandatory Mediation in England and Wales: A Paradigm Shift in Dispute Resolution. *J. Disp. Resol.*, 151.
15. Chanda, S., Gupta, A., & Bajpai, A. (2024). Need for Indian court of arbitration for sports in India. *The International Sports Law Journal*, 24(3), 283-294.
16. Chijioke, U. (2023). Arbitration, International Mediation, and the Widening of the Alternative Dispute Resolution Space: Bloated Expectations or a Matter of Time?. *International Mediation, and the Widening of the Alternative Dispute Resolution Space: Bloated Expectations or a Matter of Time*.
17. Dawood, S. (2023). Alternative Dispute Resolution for Economic Development: An Assessment from Sri Lankan Legal Framework. *South East Asia Journal of Contemporary Business, Economics and Law*, (April 2024) Vol, 31(1), 2289-1560.
18. Egbunike-Umegbolu, C. (2024). Contemporary overview of appropriate dispute resolution (ADR). *Appropriate Dispute Resolution in Comparative Perspectives: Nigeria, the UK, and the US*, 1-28.
19. Fan, K. (2023). Beyond law and politics: an empirical study of judicial mediation in China. *Journal of International Dispute Settlement*, 14(1), 47-75.
20. Gabrieli, A., & Alberstein, M. (2022). Conflict Resolution Procedures Within the Courtroom: Between the Adversarial and Inquisitorial Traditions. *Ga. J. Int'l & Comp. L.*, 51, 87.
21. Gashparova, V. (2023). Towards institutionalizing international mediation. *Lex Electronica*, 28(5), 317-340.
22. Gregory-Stevens, J. (2023). Construction disputes in England: the option for mediation (Doctoral dissertation, Anglia Ruskin Research Online (ARRO)).
23. <https://www.lexology.com/library/detail.aspx?g=0bde5757-1691-4ec6-972e-405509a58aad>
24. Islam, I. (2024). Harmonizing conflict: Exploring global applications of alternative dispute resolution methods. *Deleted Journal*.
25. Jones, B., & Aftab, A. (2023). Inside Indonesia's Religious Courts: An Argument for Domestic and Family Violence Screening and Exemption from Compulsory Mediation. *Oxford Journal of Law and Religion*, 12(2), 217-231.
26. Kaplan, E. (2022). Mediation and the Criminal Justice System: a growing need for a viable alternative to court litigation.
27. Khalid, M. (2024). Exploring The Efficacy of Mediation in Pakistan's Conflict Resolution Landscape. *Pakistan Research Journal of Social Sciences*, 3(3).
28. Kharitonashvili, N. (2023). Court mediation as a Means of Access to Justice and a Prerequisite for the Development of Private Mediation. *Alt. Disp. Resol. YB*, 82.
29. Li, L. Y. (2024). Digitization, Adversarial Legalism, and Access to Justice Reforms. *SCL Rev.*, 76, 883.
30. McLaughlin, M. (2021). Investor–state mediation and the Belt and Road Initiative: Examining the conditions for settlement. *Journal of International Economic Law*, 24(3), 609-629.
31. Ministry of Law and Justice. (2023). The Mediation Act, 2023 (No. 32 of 2023). *Gazette of India (Extraordinary)*.

32. Naidoo, V. (2023). Reforming the approach to mediation legislation in South Africa: a comparative analysis (Doctoral dissertation, University of the Western Cape).
33. Najjemba, S. (2019). Effectiveness of mediation and negotiation in the administration of justice in Uganda.
34. Pablo, J. (2024). Effectiveness of mediation and arbitration as alternative dispute resolution methods in Mexico. *Journal of Conflict Management*, 4(1), 38-50.
35. Panduwiyasa, H., Yanis, R. Z. I., & Puspitasari, W. (2024). How digital knowledge management and the mediation of employee commitment support business continuity: a conceptual model. *Procedia Computer Science*, 234, 674-682.
36. Pandya, S. R., & Bharad, B. H. (2024). The Strategic Relevance Of Pre-Institution And Mediation In Resolving Consumer Conflicts.
37. Parvataneni, L. D. (2024). Whether Pre-Litigation Mediation in India should be Mandatory? Assessing Perspectives and Proposing a Path Forward. *Assessing Perspectives and Proposing a Path Forward* (April 09, 2024).
38. Roy, C. (2023). Alternative dispute resolution and its mechanism—A critical analysis in the light of access to justice in India. *Quest-The Journal of UGC-HRDC Nainital*, 17(1to3), 29-40.
39. Rungruengduayboon, M., & Kaewla-iad, S. (2022). Improving Efficiency Of Thailand's Tax Dispute Resolution, A Case For Mediation In ADMINISTRATIVE REVIEW STAGE (Doctoral dissertation, Thammasat University).
40. Salem Advocate Bar Association v. Union of India is (2005) 6 SCC 344 and AIR 2005 SC 3353
41. Sang, M. (2023). Pre-Litigation Mediation as a Means to Enhance Judicial Economy in Kenya's Criminal Justice System. *Journal of Appropriate Dispute Resolution (ADR) & Sustainability*, 72.
42. Sarkar, S. D., & Bhattacharjee, S. (2023). A Study on Resolving Disputes in Trial Courts Through online Dispute Resolution in India. *Revista Brasileira de Alternative Dispute Resolution-Brazilian Journal of Alternative Dispute Resolution-RBADR*, 5(10), 307-327.
43. Sela, A. (2018). Can computers be fair: How automated and human-powered online dispute resolution affect procedural justice in mediation and arbitration. *Ohio St. J. on Disp. Resol.*, 33, 91.
44. Sinha, S. (2023). Cross-Border Dispute Resolution: Navigating The Labyrinth Of International Commerce Through Arbitration And Mediation. *National Capital Law Journal*, 21, 209-230.
45. Yadav, U. S., Ghosal, I., Pareek, A., Khandelwal, K., Yadav, A. K., & Chakraborty, C. (2024). Impact of entrepreneurial orientation and ESG on environmental performance: moderating impact of digital transformation and technological innovation as a mediating construct using Sobel test. *Journal of Innovation and Entrepreneurship*, 13(1), 86.
46. Zhao, N., He, S., Liu, Y., Rui, G., & Wang, S. (2024). Conflict-mediation, consensus-building, and co-production: Three models of co-governance in China's neighborhood regeneration. *Transactions in Planning and Urban Research*, 3(4), 401-419.
47. Zhomartkyzy, M. (2023). The role of mediation in international conflict resolution. *Law & Safety*, 169.