Court-Referred Mediation in the States of West Bengal and Jharkhand

Uday Shankar
Arindam Basu
Tapas K Bandyopadhyay
Shreya Matilal

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Mediation is gaining prominence in lessening the burden of the traditional courts. Gradually, it is getting institutionalised either through the legal process or informal acknowledgement in commercial set ups. In order to bring mediation under the limelight of our regular justice delivery system, the research has tried to identify certain catchment areas after analysing prevalent practices in our society. For the present project, the two jurisdictions are selected to understand the functioning of the mediation process across various legal disciplines.

The humongous task of suggesting implementable outcomes would not have been possible in the absence of the overwhelming support advanced by experts and the research associates. The researchers use this opportunity to acknowledge the support of individuals and organisations.

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EXECUTIVE SUMMARY

The traditional practice of resorting to the court for formal adjudication of disputes in recent times is nuanced with the advent of alternative dispute resolution (ADR) processes. Mediation is one such avenues that allows the parties engaged in serious disagreements to avoid court battle that may very well be time consuming and uncertain. In mediation a mediator guides the parties in disputes to agree on amicable solution. Mediation is classically considered as voluntary process. However, to provide a quick and economical solution, the court also from time to time can prescribe mediation as an alternative dispute resolution process to the parties.

For last few decades, a fairly common criticism that judiciary frequently has faced is about a legal impasse originating from clogged dockets of adversarial litigation system. This, as critiques argue, has resulted in delayed justice that further has wrinkled the rule of law in our country. This Report intends to address that problem.

This Report highlights the prospects and possibilities of Court-Referred Mediation (CRM), reiterating on the fact that CRM is the right remedy for the parties to envision "win-win situation" in the dispute.

This report is a follow up of the previous Interim Report sent in March 2020 which was prepared based on the data made available by the State Legal Services Authority - Jharkhand, State Legal Services Authority - West Bengal and the High Court Mediation and Conciliation Centre – Kolkata.

Some of our key findings of the previous Interim Report are as follows:

- Lack of cooperation between litigants to the dispute, or not turning to mediation by the litigants as their first option is one of the major causes for non-proliferation of mediation.

- Though the nature of cases referred to mediation varies, matrimonial cases are identified as a category which is most often referred for mediation by the judges.

- Although CRM cases generally increased between 2016 and 2019, there are further opportunities for increasing referral rates by raising awareness amongst litigants, and improving the interest in mediation among referral judges.

This report is built on that preliminary survey and data collected through doctrinal surveys, suggest that, mediation as an ADR mechanism for resolving conflict is yet to serve a significant proportion of the cases that are referred to it. The Report concludes with essential recommendations for reforms principally on two fronts – institutional and administrative reforms and legislative reforms.

The followings are brief highlight:

(I) Institutional and Administrative Reforms:

- *Popularising Mediation*- It is essential to ensure the supply of quality mediators along with building infrastructure necessary for an informal and comfortable experience for the litigants. Furthermore, at the institutional level, the judiciary should make a greater effort to promote mediation. In addition to regular training and awareness-raising programs for judges and lawyers on the mediation process, the judiciary also needs to work with governments to improve the dissemination of mediation information.

- *Training of Mediators* - To ensure quality mediation, training of mediators are the need of the hour. It is of utmost necessity to professionalize CRM in India. Encouragement must be there to opt for mediation as a full-time profession. The lawyers who already manage the mediation work are required to enhance proficiency similar to the arbitration professionals in India.

- *Sensitization of Referral Judges* - There is an indispensable and urgent need to train existing and potential referral judges regarding the basic principles of mediation process and varied methods of mediation. Chief Justices of all higher courts must provide and monitor a rigorous training system for all judges in the courts within their respective jurisdictions.

(ii) Legislative Reforms:

- *Referral Judges* - In order to facilitate the role of referral judges, legislation may prescribe regulatory standards that should guide judges in determining the suitability of nature of mediation cases. The types of cases in which mediation should be compulsory and where judges should determine the suitability of mediation at their discretion should also be listed. Legislation should also

provide for restraining factors, such as reimbursement of costs to the parties that do not give a fair opportunity to settle suitable disputes and it should explicitly allow the parties to choose mediation at any stage of the ongoing trial.

- *Maintaining of Professional Standards* - Mediators must comply with a code of ethics and should follow the professional standards.

- *Accreditation of Mediators* - Legislation should prescribe minimum standards for the training of mediators. In addition to training, the accreditation of mediators may also be done which should be based on the educational and professional experience of the mediators. Accreditation will help judges to choose mediators for parties or judicial mediation centres.

Background:

"Mediation is one such mechanism available to parties to a dispute which has the above mentioned characteristics. Apart from the fact that it is cost effective, time saving and convenient to parties, there is another facet of mediation that marks it out as perhaps a better alternative for parties"

Chief Justice of India N V Ramana
International Virtual Mediation Summer School, 2021
organised by Supreme Court trained mediators -
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This report aims to help contesting parties to strengthen the understanding of effective mediation, and to assist mediators in maximizing the chances for success.

Mediation is a specialized activity. Through a professional approach, mediators and their teams provide a buffer for conflicting parties and instill confidence in the process to nurture expectancy for a peaceful resolution at the earliest. An effective mediation process responds to the specificity of the conflict. It primarily takes into account the causes and dynamics of the conflict. Besides, the positions, interests, coherence of the parties and the needs of the broader society are also important considerations in the process of a successful mediation.

To address these issues, this report has been prepared after careful inspections and empirical research conducted little over the span of two years. Some important reasons that need to be considered in mediation are: preparation, consent; fairness; inclusiveness; international law and harmonization, coordination of mediation work; and quality settlement agreements. The report explains each fundamental aspect, outlines some potential challenges faced by mediators, and offers much needed guidance. This report recognizes the complexity of the environment within which mediators work. On frequent occasions, mediators confront with problems and difficulties that are difficult to resolve. Each situation must be approached differently and ultimately the success depends on the understanding of specific requirements of the conflicting parties. Therefore, speculative attention to these fundamentals can increase the prospects for a successful mediation which may substantially enhance the visibility of the court-referred mediation process.

Chapter 1: Comprehensive Analysis of Mediation

1.1 Introduction:

The recognition of mediation as an affordable and accessible means for alternative dispute resolution has triggered a significant rise in the number of mediators who went through mediation training under the Mediation and Conciliation Project Committee established by the Supreme Court of India. In general, courts are establishing an ever-increasing presence, either individually or by utilizing a panel of mediators, across the country to popularise mediation. However, the path is riddled with sizable challenges. Among the greatest trials, the current focus needs to be on devising an effective plan for popularising mediation and forming productive strategies to implement it.

Therefore, the role of lawyers in promoting controversial dispute resolution mechanisms is undoubtedly very important because ADR represents an alternative to justice by its naming method and expands the possibilities in many ways: access to justice. With only 19 judges per millions of people, India ranks last in terms of quality and fast justice. In the past few decades, the explosive growth of legal disputes has posed an ominous threat to society. The trial map in India shows a significant increase in cases, especially since the 1990s. The courts have become the preferred venue for dispute resolution, and our society has become less cooperative and warlike.[1] Thus, ADR as a mechanism to supplement the efforts by the courts require special attention.

A successful awareness campaign incorporates positive local and national press, a loyal referral base, and the belief that Mediation assists the parties in negotiating a consensual and informed settlement agreement. Possibly the greatest advantage of popularising mediation is the absence of compulsions on the parties to accept it. Mediation is favored considering the fact that it's miles a non-binding procedure, i.e., the parties preserve the right to accept or decline the agreement provide on the give up of the procedure.

Mediation is a voluntary, party-centered, and dependent negotiation procedure of resolving troubles which have won large reputation global and are ever-growing in its demand.

[1] See Report on Alternative Dispute Resolution (ADR) Mechanism and Legal Aid in the Settlement of Disputes: A Case Study of State of West Bengal, File No. N-9/6/2014-NM, 2017.

Although Alternative Dispute Resolution (ADR) mechanisms like Mediation is quite famous in developed countries like U.S.A, Singapore, England, etc. its popularity in India is almost negligible. The notion in India is that justice can be departed only by the means of a complex adversarial system of law. Hereby, eclipsing the whole idea of ADR mechanisms like mediation, which has seen distinguished success in other countries. The burden on Indian courts has increased ever since resulting in an expensive affair to clogged dockets and delay in justice delivery. It has adversely affected people's confidence in rule of law leading to mob violence and various other contentions. Therefore, to efficiently tackle the incoming flow of an incessant number of cases, it is desirable that courts should refer more cases to mediation.

The prospects for the development of mediation in India are extensive. In particular, neutralizing communication skills and effective negotiation strategies to promote negotiation can strengthen the system's ability to be justice to society.[2] However, despite the obvious value of these methods, there are still several major obstacles to the mediation process. The road to mediation in India Judges and lawyers is understandable about the relationship between mediation and formal legal procedures. They are deeply skeptical about the use of mediation in various litigation in India.[3] Mediators trained in most courts are not yet available. In anticipation of a more comprehensive narrative and fascinating national debate on these important issues, some opinion leaders are still too early to clearly understand the limited role of mediation.[4] In the end, despite these obstacles, some short-term incentives (systematic judicial evaluations, compensation lawyers' methods, parties to disputes, and a series of dispute resolution resources) continue to encourage opposition to mediation, causing social dilemmas. Which key players think their short-term careers or Personal interests may be incompatible with the long-term goals of the system.[5]

The national judicial system has failed to fulfill major commitments related to democracy and globalization. Political and economic intervention in the impartiality and judicial delays are currently undermining the core goals of many countries. The principle of invalidity undermines private individuals' legal rights and obligations and

[2] Hiram E. Chodosh ,MEDIATING MEDIATION IN INDIA , Fulbright Senior Scholar, Indian Law Institute, New Delhi (2003)
[3] Ibid.
[4] Ibid.
[5] Ibid.

creates an environment conducive to corruption, where the strong are weak.[6] These general institutional problems undermine equality before the law and undermine the important motivation to comply with the law.

1.2 Evolution of Mediation:

"Mediation," to put it simply, is a dispute settlement procedure in which one or more impartial third parties with special communication and negotiation skills intervene in conflicts or disputes with the consent of the parties and help them reach a consensual and informed agreement. India has a strong mediation culture, from Lord Krishna, the mediator between Kauravas and Pandavas in the Mahabharata, to the elders in the family who solve family problems, to the panchayats who mediates in the community. In fact, mediation is the oldest and most effective way to resolve social disputes without resorting to formal courts or violence.

There is a reassuring alternative and similarities between mediation and the traditional forms of dispute resolution before colonial influence. Reformers are increasingly interested in restoring or expanding traditional forms of dispute resolution (such as the sulha process in the Middle East or the panchayat process in India) and integrating them into formal litigation systems. Commentators have rightly noted that ADR processes are not new but have rather been rediscovered as informal judicial mechanisms, which have long been the primary method of dispute resolution in many societies, indigenous communities in particular.[7] The study of ancient legal history unveils the role of private persons (arbitrators) in *Panchayats*, *Puga*[8], *Sreni*[9] , and *Kula*[10].

France expanded its legal framework for judicial arbitration and mediation in 1995. Other countries such as Tanzania and Ukraine are implementing mediation reforms in response to modern needs.[11] In many of these jurisdictions, mediation is not only seen as facilitating small claims, car accidents, family disputes, and petty crimes in court systems clogged by a modern docket. But it is also seen as an alternative to more

[6] Ibid
[7] See Report on Alternative Dispute Resolution (ADR) Mechanism and Legal Aid in the Settlement of Disputes: A Case Study of State of West Bengal, File No. N-9/6/2014-NM, 2017.
[8] Board of persons belonging to different sects and tribes but residing in the same locality.
[9] Assemblies of tradesmen and artisans belonging to different tribes but connected in some way with each other.
[10] Group of persons bound by family ties.
[11] See Hiram E. Chodosh, Stephen A. Mayo, Fathi Naguib, & Ali El Sadek, Egyptian Civil Justice Process Modernization: A Functional and Systemic Approach, 17 MICH. J. INT'L L. 865, 895 (1996).

complex issues, including those related to the environmental issues (such as water rights) and intellectual property rights (*e.g.*, patents) previously considered to be irreconcilable. The speed of change in strong national and emerging global markets is putting increasing pressure on the interests of large companies, requiring them to use fast, cheap, peaceful, constructive, and creative ways to resolve disputes. It maximizes long-term interests and maintains ongoing commercial relationships.[12]

In the past ten years, the United Nations has further promoted the role of mediation in dispute resolution and conflict prevention and issued guidelines for effective mediation.[13,14] The World Bank has an arbitration office as part of its dispute settlement plan.[15] As a parallel approach to arbitration, scientists suggest that mediation may be useful in disputes between investors and the state[16] , and the International Bar Association (IBA) has issued rules to govern such mediations.[17] Currently, a UNCITRAL working group is reviewing the United States proposal for a convention on recognizing and enforcing international settlement agreements resulting from mediation.[18]

The idea of mediation was given a legislative reputation in India for the first time in the Industrial Disputes Act, 1947. The conciliators appointed under Section 4 of the Act are 'charged with the responsibility of mediating in and promoting the settlement of

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[12] Ibid.

[13] See REPORT OF THE SECRETARY-GENERAL ON ENHANCING MEDIATION AND ITS SUPPORT ACTIVITIES, S/2009/189 (Apr. 8, 2009) (describing the need for experienced mediators and support teams with women adequately represented, who have sufficient resources to intervene at early stages of conflict and attempt to address the root causes of conflict, overcome impediments to progress and obtain agreements that result in sustainable peace.) [hereinafter REPORT OF THE SECRETARY-GENERAL].

[14] See e.g., UNITED NATIONS GUIDANCE FOR EFFECTIVE MEDIATION, REPORT OF THE SECRETARY GENERAL (2012), available at http://www.un.org/ga/search/view_doc.asp?symbol=A/66/ 811 [hereinafter UNITED NATIONS GUIDANCE]. Key factors for effective mediation include consent, impartiality, preparedness, inclusivity, national ownership, international law and normative frameworks, coherence, coordination, and complementarily of the mediation effort and quality peace agreements.

[15] Mediation Services, THE WORLD BANK OFFICE OF MEDIATION SERVICES, http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/ORGANIZATION/ORGUNITS/EXTCRS/EXTMEDIATION/0,,contentMDK:20224649~menuPK:64166116~pagePK:64166099~piPK:64166052~theSitePK:471064,00.html (last visited Mar. 23, 2015).

[16] See Jack J. Coe, Jr., Toward A Complementary Use of Conciliation in Investor-State Disputes–A Preliminary Sketch, 12 U.C. DAVIS J. INT'L L. & POL'Y 7 (2005); Nancy Welsh and Andrea Schneider, The Thoughtful Integration of Mediation into Bilateral Investment Treaty Arbitration, 18 HARV. NEGOT. L. REV. 71 (2013).

[17] See IBA RULES, supra note 4.

[18] INT'L MEDIATION INST., HOW USERS VIEW THE PROPOSAL FOR A UN CONVENTION ON THE ENFORCEMENT OF MEDIATED SETTLEMENTS (2014), available at http://imimediation.org/unconvention-on-mediation.

industrial disputes.' As a dispute resolution procedure, Arbitration was recognized as early as 1879 and found its place in the Codes of Civil Procedure Code1879, 1882, and 1908. When the Arbitration Act was enacted in the year 1940, the provision for arbitration made in Section 89 of the Code of Civil Procedure, 1908 was repealed.

The Indian Legislature made headway by enacting The Legal Services Authorities Act, 1987 and by constituting the National Legal Services Authority. Finally, the introduction of ADR mechanisms in the Code of Civil Procedure, 1908 is one more radical step taken in recent times by the Indian legislature. The new Section 89 and Order X Rules 1A, 1B, and 1C provide for ADR machinery even in cases pending before the civil courts and have further authorized the High Courts to frame rules for the purpose. Thus, it can be said that the Indian legislature has made sufficient provisions in the law to facilitate the introduction of court-annexed mediation.

In *Afcons Infrastructure case*, the Supreme Court referred to the definition of mediation as given in the Model Mediation Rules, according to which "settlement by 'mediation' means the process by which a mediator appointed by parties or by the court, as the case may be, mediates the dispute between the parties to the suit by the application of the provisions of the Mediation Rules, 2003 in Part II, and in particular, by facilitating discussion between the parties directly or by communicating with each other through the mediator, by assisting the parties in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise, generating options in an attempt to solve the dispute and emphasizing that it is the parties' responsibility for making decisions which affect them."[19]

1.3 Scope of Mediation:

The law relating to mediation in India is included in the following laws:

- Industrial Disputes Act 1947 stipulates that officials appointed by the government shall resolve industrial disputes;
- Section 89 of the Code of Civil Procedure, 1908;
- Arbitration and Conciliation Act 1996 (specifically Part III);

[19] Amendment of Section 89 of the Code of Civil Procedure, 1908 and Allied Provisions, Report no.238, 30.DEC.11.

- Hindu Marriage Act 1955, the Special Marriages Act 1954, and the Family Courts Act 1984, which require the court in the first instance to attempt mediation between parties;
- Legal Services Authorities Act 1987, which provides for setting up Lok Adalats;
- Section 442 of the Companies Act 2013, which provides for referral of company disputes to mediation by the National Company Law Tribunal and Appellate Tribunal read with the Companies (Mediation and Conciliation) Rules, 2016 (notified on 09th September 2016); and
- Section 12A of the Commercial Courts, Commercial Division, and Commercial Appellate Division of High Courts Act, 2015, provides mandatory pre-institution mediation in cases where the parties seek no urgent interim relief (such as an injunction) to the dispute.
- Section 32(g) of the Real Estate (Regulation and Development) Act, 2016, provides amicable conciliation of disputes between the promoters and allottees through dispute settlement forums set up by consumer or promoter associations.
- Consumer Protection Act, 2019 now also has embraced the concept of mediation for disposal of consumer disputes. The parties before the consumer courts now have an option of opting for mediation as a redressal mechanism for their disputes, at any time after the admission of the complaint. Further, as per Section 74 of the Act, the State government has been empowered to establish a consumer mediation cell to be attached to each district and state commission of that particular state. According to Section 37 (2) of the Act, where the parties agree for settlement by mediation and give their consent in writing, the District Commission will refer the particular matter for mediation within five days of receiving consent. In that scenario, the provisions of Chapter V, which relate to mediation, would apply.

1.4 Objectives of Mediation:

The followings are the objectives of mediation:

- Maintaining neutrality
- Ensuring knowledge and understanding of the process
- Establishing relationships with all parties
- Building trust and trust between parties

- Creating an environment that is conducive to constructive negotiations
- Motivate the parties for an amicable settlement of the dispute
- Establish control over the process

1.5 Some important aspects to be Highlighted by the mediators:

Important aspects that a mediator should highlight are:

- Voluntary
- Independent
- Non-adjudicatory
- Confidential
- Fair participation
- Time-bound
- Informal and flexible
- Direct and active participation of the parties
- Party-centered
- Mediator's neutrality and impartiality
- Finality
- Possibility of settling related disputes
- Necessity and relevance of separate sessions

1.6 Significance of Mediation:

The importance of ADR (also known as mediation) lies in its many advantages over judicial dispute resolution, as summarized below.

1.6.1 Speedy and Economic Disposal of Cases:

As we all know, due to lengthy procedures and technical details leading to inevitable delays, legal procedures sometimes fail to provide a satisfactory way to resolve disputes.[20] On the other hand, ADR provides a cheap, fast, and informal way to resolve disputes. This quick and cheap remedy is indispensable because judicial delays often lead to injustices for all parties in the litigation. For example, in a motor accident, the

[20] Goda Raghuram, 'Alternative Dispute Resolution', Nyaya Deep, Vol. VIII, Issue 2, April 2007, pp. 17 - 24 at p. 22.

victim can immediately seek compensation to pay for medical and other expenses; in this case, any unreasonable delay will violate the true purpose of compensation. The ADR mechanism is beneficial for victims to get help quickly.[21] Inordinate delays, which have become very visible in the ordinary legal process, may also emotionally affect the parties and cause frustration, thereby eroding public trust and confidence in the legal institutions.[22]

1.6.2 Less Complex Nature:

Mediation is the most viable conflict-resolution system as it involves fewer technicalities. It is a tool that will withstand the test of time. ADR procedures are not afflicted with the rigorous rules of procedure.[23] In Mediation since there are no complex procedures, the parties may meet and fix the procedures for themselves with the help of a mediator. This is important as it will aid people who are unprivileged and unable to understand complex technicalities. Through Mediation, they can easily resolve their disputes on their terms without any confusion which is otherwise created by stringent rules. Hence, mediation is a remedy to judicial delays.

1.6.3 Parties' Autonomy:

Apart from the pros that Mediation has to offer, like the flexibility of procedures, it also provides autonomy to the conflicting parties to choose their mediator. This enhances a mediator's credibility as this may lead to the appointment of people who are familiar with the business or have other relevant experience, thus playing an effective role in dispute resolution. It also compliments his neutrality and creates transparency in the procedure of appointment of the mediator. Concerning this, Australian Supreme Court in Mitsubishi *Motors Corporation v. Solar Chrysler Plymouth Inc*[24]had commented that adaptability and access to expertise are the hallmarks of ADR. The persons selected for arbitration, arbitration or mediation are usually experts on the subject of the dispute. In

[21] Ever since Lok Adalats have been given statutory recognition in 1987, more than 8.25 crore cases have been settled. See http://nalsa.gov.in/lok-adalat. (Accessed on November 11, 2019)
[22] Hiram Chodosh, Niranjan Bhatt and Firdosh Kassam, Mediation in India: A Toolkit, (New Delhi: United States Educational Foundation in India, 2004) p. 13.
[23] William W. Park, Arbitration of International Business Disputes: Studies in Law and Practice, (Oxford: Oxford University Press, 2006) p. 604.
[24] 87 L Ed 2d 444 (1985) p. 459.

contrast, judges have little practical experience in the technical aspects of the subject matter in question.[25]

The time and date of mediation are fixed according to the convenience of all concerned and as per the willingness of the parties. Thus, an advantage of ADR is that the process is participatory and solution-oriented.[26] The ADR mechanism provides more effective dispute resolution because the parties are more actively involved in the process, and the process is swift.[27]

1.6.4 Confidentiality:

All Mediators shall discuss confidentiality issues before anyone provides confidential information. The mediator will keep all the information they receive during the mediation process confidential unless the parties agree otherwise. The mediator should not disclose to non-participants the information about the parties' behavior during the mediation process, as this would endanger the parties' autonomy.

The Supreme Court of India in *Moti Ram (D) TR. LRS v. Ashok Kumar*[28] had referred a matter to court-referred mediation. The mediation failed. In the report submitted to the court, the mediator detailed various offers and counter-offers made by the parties. The Court said that "mediation proceedings are confidential proceedings." It is different from the publicly announced court situation: if the mediation is successful, the mediator must send the agreement signed by both parties to the court without mentioning what happened during the mediation process. If the mediation is unsuccessful, the mediator only needs to write the sentence "mediation has been unsuccessful" in the report submitted to the court. Disclosure would violate the confidentiality of the mediation process.

1.6.5 Mediation helps in salvaging relationships:

Mediation is a dispute resolution system that iterates on the fact that it helps in the amicable settlement of disputes. For example, if there is a matrimonial discord, then it

[25] Avatar Singh, Law of Arbitration and Conciliation, Eighth Edition, (Lucknow: Eastern Book Company) p. 25.
[26] Radha Kalyani, 'Arbitration: Foreign Awards', Icfai University Journal of Alternative Dispute Resolution, Vol. VII, No. 3, 2008, pp. 5 - 6 at p. 5.
[27] Ibid.
[28] Civil Appeal No(s). 1095 of 2008.

helps in a peaceful settlement where justice is meted out to both parties. Mediation helps to bring about harmony and restore relationships as it resolves conflicts from both ends by ending it on terms acceptable to both the disputing litigants without spoiling or distorting future relationships.

In Shakuntla Sawhney v. Kaushalaya Sawhney[29], the Supreme Court has observed that "Finest hour of justice is the hour of compromise when parties after burying the hatchet, re-unite by a reasonable and just compromise." Therefore, the attitude of lawyers must shift from traditional judicial procedures to alternative systems.[30]

Currently, in practice, mediation, with its moral dimensions, is yet to make a path-breaking appearance. The courts are inundated with the inflow of cases resulting in clogged dockets, delay in justice delivery, mob violence, and beyond the reach of the poor. Mediation with its moral dimensions can help reduce the burgeoning burden on Courts.

Although Mediation is a viable ADR mechanism in itself, it is not without downsides. It may cause injustice to a poor and oppressed class of the society due to the influence of external factors in ADR mechanisms ranging from political to economic. Access to justice in India has been a debatable issue, and unfair mediation simply adds to that controversy. This, however, can be largely mitigated by enhancing awareness among parties to the dispute. Besides this, increasing transparency in the entire process will likely to promote a strong corruption-free ADR system in general. Court referred mediation simply may thrive in such an environment.[31]

1.7 Duties of a Mediator to Enhance Communication Skills:

Followings are the duties of a mediator to enhance the communication skill:

[29] (1979) 3 SCR 232

[30] M. Jagannadha Rao, 'Law's Delays World Over - Need for a Change in Our Mindset - Towards Permanent Lok Adalats', Nyayadeep, Vol. 2, Issue 2, April - June 1999, pp. 23 - 30 at p. 24. Also see Vijay Kumar Aggarwal, 'Reaching the Goal of Lok Adalat', Nyayadeep, Vol. 2, Issue 1, January 1999, pp. 28 - 32 at p. 28.

[31] See Report on Alternative Dispute Resolution (ADR) Mechanism and Legal Aid in the Settlement of Disputes: A Case Study of State of West Bengal, File No. N-9/6/2014-NM, 2017.

1.7.1 Establishing Joint Communication:

Mediation restores communication between the parties in two important ways: First, the mediator brings the parties together, and in the first joint meeting, they listen to the different views of each other (usually their lawyers). Second, when the mediator enters the settlement or agreement stage from a private choice, the two parties often begin a direct dialogue. Joint communication is indeed no guarantee to settlement. Nonetheless, this can always dilute subjective hostility.[32]

1.7.2 Establishing Tone:[33]

An effective mediator establishes a positive tone and environment conducive to settlement by behaving professionally, confident, purposeful, open, constructive, and socially engaging. By way of example, the mediator can use body language and emotional tone to encourage expected behavior during the meeting. Again, this can negatively impact the more negative, insecure, closed-minded, destructive, and resistant behavior frequently encountered in adversaries.

1.7.3 Active Listening and Acknowledgement:[34]

Recognition can be the main tool to break the cycle of human conflict. Accepting someone's point of view does not mean making a judgment (positive or negative), but rather confirming that the point of view has been heard and understood. Meeting after the meeting (without apology) usually suppresses the conflict and makes the warring parties feel that their voices are being heard.

As a necessary tool for effective mediation and a way to understand the views of all parties, active listening is an important quality of a good mediator. It allows you to understand the dispute more clearly and distinguish which method is useful from irrelevant or useless comments, positions from interests, secondary interests of others with higher priority. Similarly, active listening sends a signal to all parties that what they are saying is important and encourages all parties to actively listen to each other.

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[32] See Supreme Court Of India, Mediation and Conciliation Project Committee Rules, 2013.
[33] Ibid.
[34] See Hiram E. Chodosh ,MEDIATING MEDIATION IN INDIA , Fulbright Senior Scholar, Indian Law Institute, New Delhi (2003)

1.7.4 Neutral Restatements, Summaries, and Word Changes:[35]

The mediator listens and uses language effectively to smooth out fleeting statements and words.[36] Again, by rephrasing more neutrally, the mediator defuses the language of its explosive impact without changing the core meaning. Doing so may encourage the parties by example to speak with fewer offensive phrases and words that put the other side on the defensive.

For example, the statement, "My husband is a pathological liar! I hate him!" The effective mediator may reframe the outburst as: "I can understand why you would be so angry if you feel that your husband was not truthful."[37] Here no judgment; only the acknowledgment is expressed neutrally, without losing what is claimed. A mediator should not give legal advice or legal opinion to a party in the mediation. The mediator is a facilitator, not a legal advisor. If the mediator evaluates a party's position from a legal angle or estimates the likely outcome of litigation or arbitration, it must be made clear to the parties that he is doing so only as a part of his job of making them look realistically at their position, and that he is not acting either as a judge or an advocate nor he is designated to give legal advice[38].

1.7.5 Preventing Abuse of the Process:

If the mediation is being used to further illegal motives or conduct or to achieve a goal that is contrary to the law or to delay justice, the mediator must take steps to prevent such abuse and Mediation should be terminated until parties alter their stand.

1.7.6 Power Imbalance:

It is the mediator's responsibility to ensure that the power imbalance does not result in the less powerful party being unable to participate in the mediation process fully or being unable to act in its interests. This can be done by giving equal time to both parties, preventing bad behavior or show of violence, and taking steps to mitigate it by suggesting parties get legal advice or have a friend or a family member present at

[35] Ibid.
[36] See Gregg. F. Relyea, The Critical Impact of Word Choice in Mediation, 16 Alternatives No. 9, 1 (Oct. 1998). The author is particularly grateful to Mr. Relyea for sharing his mediation materials prepared for Indian audiences.
[37] See Hiram E. Chodosh ,MEDIATING MEDIATION IN INDIA , Fulbright Senior Scholar, Indian Law Institute, New Delhi (2003)
[38] Mediation and Practice of Law, Sriram Panchu, 2nd Edition, 2019, Lexis Nexus.

the mediation. When both parties have resources and competent legal representation the mediator's concern for imbalance is mitigated.

1.7.7 Improving the Practice of Mediation:

An important duty of a mediator is to remain updated and to improve one's professional skills. Mediation is all about skills and their application. Some of it is taught. Most of it is learned on the job through hands-on practice. Another important duty of a mediator is to educate the public about mediation. In many jurisdictions, it is a new method of conflict resolution, which is in contrast with the adversarial system of a law which people are generally familiar with. Hence it is an urgent need to explain to people the concept and method of mediation so that more people can take advantage of it. This can be executed by mediators by speaking at public events and writing in the press. A radio or a television programme are also excellent ways of advancing public knowledge. Abuse of mediation must also be checked as the mediation is essentially based on trust in mediators and the process alike. If such trust is damaged due to wrongdoing on the part of a mediator, it will defeat the entire publicity of the process. The ultimate safeguard of mediation is the voluntariness of this technique which must be protected at all costs.

1.8 Structure of the Mediation Process:[39]

The framework creates an effective agreement that allows mediators and parties to perform multiple iterations. However, it may be helpful to outline the main stages of the mediation process (regardless of the order or division): preparation, introduction, joint meetings; closed-door meetings; and the agreement phase.

1.8.1 Preparation:

In the preparation phase, the mediator is selected (either by the court as part of an additional procedure involving a suitable set of neutrals or by the parties themselves). In some mediation cases, the parties will draft a short statement or memorandum or provide important documents to the mediator to save time by handing the case to a neutral person.

[39] Ibid.

1.8.2 Introduction:

In the first session, the mediator tried to create a positive tone, a relaxed atmosphere, the basic structure and basic rules of the mediation. Neutrality usually begins with a self-description of experience and authority in mediation. Both the client and the lawyer are represented. Explain the process, the limited role of neutrals, explain confidentiality restrictions, resolve all administrative issues, and ask the parties before proceeding.

1.8.3 Joint Sessions:

The joint meeting explicitly discusses the parties' contributions (and their lawyers) to the nature of the dispute and seeks to explore the primary method of resolving the dispute. The parties often tell their stories (and may hear each other's voices for the first time after the conflict breaks out). Lawyers can discuss how they view the case from a standpoint. The mediator can use a variety of communication methods (rethinking, setting the agenda) to confirm the understanding of the parties' factual and legal basis and emotional positions.

1.8.4 Private Session:

In a closed meeting, the mediator can usually get a deeper understanding of the problem. Both parties can more freely discuss their views candidly, share information that they will not pass to other parties in the process, recognize the weaknesses of their legal status, and determine and prioritize their best interests. Also, explore comparative opportunities that are difficult to negotiate directly with each other. Mediators can also use ATNA (alternative to a negotiated agreement) or BATNA (Best Alternative to a negotiated agreement) strategies to conduct reality checks and gain a more rational view of how to resolve conflicts.

1.8.5 Agreement:

Assuming that the two parties reach an agreement in a subsequent private meeting or joint meeting, the mediator will enter the negotiation stage. The terms of the contract will be further elaborated and stipulated. If necessary, the mediator will assist in drafting the agreement and transfer the work of review and rejection of claims simultaneously to minimize the risk of breaching the agreed agreement. The mediator may also be interested in learning about any future communications required by the agreement, such as transferring a child from one spouse to another under guardianship.

1.9 Critical Factors:

1.9.1 Referral Judges:

Referral judges may find that mediation may weaken their authority to make public judgments and regulatory statements. For example, judges may feel that if the case is resolved, they will lose their professional satisfaction with case law, or they may judge based on the number of "law" clauses they have reached rather than settle. However, judges quickly see that effective mediation depends on (while complementing) the core function of adjudication. Without normative standards, negotiation between parties is more difficult according to their alternatives (ATNA), so mediation alone is difficult to comply with the rule of law. In addition to formal procedures, mediation can reduce the burden on the court, more effectively pass the rules to the society, improve compliance with the law, and prevent parties from pursuing extra-legal strategies (i.e., crimes) to resolve their disputes. It improves the communication skills used within the courts. In addition, many judges will be content to resolve complex cases even more, especially in a way that both parties (rather than one party in the litigation) are satisfied.

1.9.2 How will Mediation Help a Judge?

Sitting judges quite obviously cannot have a private mediation practice. The issue here is with sitting judges doubling up as mediators under court-referred mediation schemes. There are jurisdictions where they act as mediators, with the safeguard that the mediator will not thereafter hear the parties as a judge. The statistics show that a fair percentage of cases have been resolved by them.

First, our judicial system presents the picture of harassed judges working overtime to unsuccessfully contain the mass of litigation that pours in. a method that relieves the load of the docket and eases the pressure on the courts would be welcome. Working knowledge of mediation would help them here. Third, proper and adequate referrals are a key factor for the success of mediation programs. Fourth, the role of the judge is paramount when it comes to the promotion of mediation, the implementation of agreements reached therein, and in the court-referred mediation scheme. Fifth, a mediation practice is an attractive post-retirement option for judges, provided they can make the shift from decider to the facilitator.

1.9.3 Lawyers:

Lawyers worry that mediation will threaten their survival because it will reduce the number of cases they handle or the fees they charge, which is understandable. If more disputes need to be resolved, lawyers can view ADR as an "astounding decline in income."

Just as better roads allow more cars to enter the city, better dispute resolution processes will lead to greater demand for legal services, even if they do not require litigation. In addition, legal mediation is another place where you can provide legal services to litigants, providing new opportunities for legal practice and lawyers to act as neutral parties.

Finally, after initial adjustments, lawyers can easily adjust their representation methods and find a wider range of skills to meet their needs when they participate in the mediation process with their own practices and specific incentives. They hope to provide valuable services to clients outside of the formal courts.

1.9.4 Importance of the Role of a Lawyer in Mediation:

Lawyers need to know that there are varied advantages of mediation as an ADR method. It finds solutions to disputes that are workable and practical. It is speedy, less expensive, and respects relationships. Lawyers must understand that clients will want to get their dispute resolved through mediation, once they are made aware of its advantages.

Lawyers need to respect and acknowledge the fact that, mediation adds a new dimension to law practice. It is more an opportunity than a threat which is commonly observed. Lawyers need to know that when they are representing clients in mediation, they are rendering professional assistance for which they are entitled to be paid professional fees.

Taking a cue from other countries, we can also expect lawyers to build a professional practice in representing clients in mediation. In more complex cases, clients will want their lawyers to play key negotiating roles. All this calls for advocacy of a different kind – persuading all at the table including the opposite side, being conciliatory is an essential requirement.

It is a professional service that lawyers render - preparing clients for the mediation, appearing in the sessions along with the client, advising them, and being involved in the drafting of the agreement and implementation. Lawyers are entitled to charge their professional fees for such services. Indeed, our study has shown (depicted below in the presentation of data) that clients are willing to pay these fees since they can see for themselves some progress in the matter, and the possibility of the dispute being resolved soon. Lawyers can charge fees per session or a consolidated fee, consistent with the local codes of ethics and agreement with clients can be entitled to receive such fees or a portion thereof, on the successful outcome of the mediation.

Some lawyers think that their role in mediation is a limited because mediation is focused on the parties, their participation, and solutions that are workable for them. Some clients also get into the similar mindset. This can be a costly mistake.[40] The lawyer has an important role in making the mediation work constructively and creatively. He guides the parties in getting a workable and productive result. However, the lawyer must not see his role as the dominant one, as it is in litigation. If he does that, he will underplay the client's input. Further, his skills at impassioned advocacy which are important in court are not of as much use here, since the mediator has no power to decide.

1.9.5 Mediators should Avoid Coercive Techniques:

Mediators should not use coercive, authoritative, and intimidating techniques that untrained mediators use. Some judges use authoritative influence in judicial settlements, and it is therefore opined in some quarters that judges do not make good mediators. However, there could be more public acceptance of retired judges acting as mediators in India because of their multiple years of judicial experience. Suppose such retired judges can be invited to be on the panel of the court referred mediators in India with minimum basic training to change their mindset for their intended role of mediators. In that case, their services can be utilized with advantage.

[40] Sriram Panchu, MEDIATION AND LAW, 2nd Edition, 2019, Lexis Nexus.

1.9.6 Mediator's Role, Behaviour, and Traits: Building blocks in Mediation:[41]

A mediator must adhere to the following points while dealing with clients:

- He must listen carefully
- He must make clear and unambiguous communication
- He must ascertain the facts properly
- He must come up with the critical issues quickly
- His attitude should be pragmatic
- He must seek viable alternatives
- His focus should be on the solution-based approach

1.9.7 Key Mediator Competencies:[42]

The key competencies a mediator should have include:

- Capability of planning and organization
- Process Management skill
- Proficiency in communication
- Creativity
- Facilitating attitude

1.9.8 Good Mediator Behaviour:

A mediator should:

- Work to create trust
- Have enough patience
- Be aware of body language
- Rephrasing to cast facts and issues in more neutral language
- Emphasize on agreement while minimizing disagreements

[41] The importance of each will be discussed throughout this paper.
[42] Jon Lang, a CEDR accredited independent commercial mediator.

- Be confident and optimistic
- Keep it moving (long periods of standoff or being locked in private sessions is a bad sign)
- Avoid being judgmental or argumentative, refraining from openly agreeing with one party's views or stand.

1.9.9 The Eight Ps for a Mediator:

The quintessential eight Ps for a mediator are:

- Perspective - giving parties a better view of the dispute.
- Patience - essential requirement when you can only guide, and not decide.
- Perseverance - often all the difference between those who succeed and those who do not.
- Preparation - proper planning bring clarity towards the goal. The mediator should make time for it well ahead of the mediation session.
- Practice - experience is the best teacher
- Pondering - reflect and learn from experience and reading
- Pragmatic - a mediator should always be an agent of realism and practicalities.
- Peacemaker - that is what a mediator is entitled to bring about and be one.

1.9.10 Classic Mediator Roles:[43]

Classic mediator roles include:

- Providing an opportunity to all to speak
- Moving participants to long-term interests from their positions
- Making parties examine their alternatives to settling
- Acting as an agent of reality and analyzer of risk
- Aiding creative options and solutions
- Earning trust for confidential information

[43] Linda Singer, an internationally known class action neutral. She served as a special master to the U.S. District Court, S.D.N.Y., and has been appointed as a mediator by numerous federal and state courts.

- Enabling communications between parties
- Soothing ruffled feelings
- Securing third-party expert opinion
- Keeping the negotiation going
- Playing Devil's Advocate when necessary.

1.9.11 What are the Qualities a Mediator should Possess?[44]

In jest, but only partly so, a mediator should devised the following:

- Patience at work (the Biblical Figure)
- Sincerity and characteristics of English Bulldogs
- Irish ingenuity
- Marathoners' physical endurance
- Football players' agility and speed
- Machiavelli's cunning
- Research Skills of an excellent psychiatrist
- The confidence-retaining characteristics of a mute
- The hide of a rhinoceros
- Solomon's wisdom

1.10 Need for Mediation in India:

Little wonder therefore that mediation is called the sleeping giant among all ADRs. Indeed, the process of consensual resolution is hardly new to us. India had its *Panchayat* System essentially village and community-based, which served as the hub of dispute resolution between members of the communities. To some extent this represented mediation. They aimed to forge a consensus between the disputants. Apart from the benefits to the parties by such resolution, the elders were also concerned for the larger interests of the community which would be affected by the continuance of disputes. However, other aspects would set it apart from mediation as

[44] William E. Simkin and Nicholas A. Fidandis, *Mediation and the Dynamics of Collective Bargaining*, New York, BNA 1986.

it is known today. Diktat would follow where consensus eluded parties. Voluntariness was absent since the non-attendance of disputants could be visited with punitive action. Confidentiality was usually missing. This indigenous practice faded out on its pre-dominance after the advent of British rule and the introduction and expanded use of the Anglo-Saxon adversarial legal system. It is only now that the traditional practice is being revived and relived in a modern sophisticated format and structure.

An attractive point about mediation is that it can be used for disputes which are already in court. One reason for such success is the fatigue of litigation.[45] Parties refer to a court in anger, to vindicate their stand and to teach the other a lesson. Traversing the litigation road with exposure to the wearying process of the system can serve to change feelings from belligerence against the opponent to frustration with the court. A victory in the first court cannot assure final success. Predicting the result of litigation in appellate courts is no less hazardous than in the first one. Another reason is that initially one justifies all one's actions and negates those on the other side. Over a period of time such certainty may wane somewhat. All these factors make parties more receptive to the idea of an acceptable settlement.

The question that often arises is how to promote mediation in India to make it more successful. For successful implementation, the following form can be used in its promotion as an alternative to litigation:

- Comprehensive Plan: - First, a comprehensive plan for the infrastructure required for the normal operation of these media must be developed.
- Awareness: - To increase awareness of arbitration and mediation, appropriate seminars, training courses, etc., should be held, and a comprehensive literacy plan should be implemented. Through these projects, people can understand the benefits of such amicable conflict resolution.
- Informed Choice: - Each mediator shall conduct a mediation in accordance with the principle of self-determination and informed decision of the parties. The mediator will explain to the participants that if they participate in the mediation process with an open mind, they can increase the likelihood of success. The

[45] Ibid.

mediator will respect, value and cultivate the ability of each participant to make personal decisions. Participants should have the right to choose their own dispute resolution method, and the mediator should encourage them to make their own decisions on any matter. However, mediators may have to weigh this choice against their responsibility for carrying out the quality process according to these standards. Although the mediator cannot guarantee that participants will make informed and voluntary decisions, they should help participants understand the process, issues, options and encourage participants to make informed and voluntary decisions. Mediators should promote honesty and candidness throughout the process. Mediators should respect the participants' culture, beliefs, rights, and autonomy and should defer their views to those of the participants, recognizing that the interaction between the participants is often the key to resolution. Mediators should encourage participants to consider the benefits of participation in mediation and agreement, as well as the consequences of non-participation and non-agreement. Participation in mediation is usually a voluntary process. Even when mediation is "mandatory", participants who are unable or unwilling to participate effectively in the mediation process should be free to suspend or withdraw from mediation.

- Impartiality: - All Mediators shall demonstrate impartiality throughout the mediation process by conducting mediations fairly, diligently, even- handily, and with no personal stake in the outcome Mediators shall impartially conduct mediation and avoid conduct that gives the appearance of partiality. Mediators should carry out an assessment, based upon practice context, to decide whether there are facts that a reasonable person would consider likely to create a potential or actual conflict of interest. Mediators should not act with partiality or prejudice based on any participant's characteristics, background, values, beliefs, performance at a mediation, or any other reason. Mediators should neither give nor accept a gift, favor, loan, or other valuable items that raise a question as to the mediator's impartiality. Mediators shall disclose, as soon as practicable, all actual and potential conflicts of interests that are reasonably known to them and could reasonably be seen as raising a question about the mediator's impartiality. After disclosure, if all parties agree, the mediator may proceed with the mediation.
- Confidentiality: - All Mediators shall discuss confidentiality issues as soon as practical and before anyone provides confidential information. Mediators shall

maintain the confidentiality of all information obtained by them during the process of mediation unless otherwise agreed to by the parties. Mediators should not communicate to any non-participant information about how the parties acted in the mediation. Otherwise, it threatens party autonomy in the process of problem-solving loophole of court-referred mediation and 'decision instead of mediation'. Mediators may report, if required, whether parties appeared at a scheduled mediation and whether or not the parties reached a resolution. A mediator who meets with an individual during mediation shall not convey any information that was obtained directly or indirectly to any other person during that private session without the consent of the disclosing person. Mediators shall promote understanding among the parties of the need to maintain the confidentiality of information they obtain in mediation.

- Attitude: The Indian law favors mediation, but the disputants' attitude towards such means is not good. So, the change in the attitude of the disputants is necessary by making them aware of the benefits of mediation.
- Role of Lawyers: - The Lawyers must try to settle the disputes in amicable ways. They do not have to take control over the matters and not earn money from their clients by the increasing dispute. They have to consider ethics and try to use friendly solutions.
- Legal Education: - The basic legal education regarding modes of dispute settlement must have been provided to the students so that they can make aware of the people nearby them. The students must have to be trained appropriately and make them clear regarding the important keys of such ways.
- Proper Training: - Proper training to mediators, referral Judges have to be provided so that they would be able to resolve the disputes and help in the promotion of such a friendly solution to the dispute. Training may also be given to welfare experts, family counselors, mediators, etc., to promote these means.
- Participation: - For the promotion of mediation, the active participation of lawyers, judges, law students, and volunteers is necessary. The lawyers must suggest the disputants seek the method of mediation to resolve the dispute.
- Creating options: - Brain Storming is a technique used to generate options for agreement. Parties are encouraged to freely create possible options for agreement. Options that appear to be unworkable and impractical are also included. The mediator reserves judgment on any option generated, allowing the parties to break

free from a fixed mindset. It encourages creativity at parties. The mediator refrains from evaluating each option and instead attempts to develop as many ideas for settlement as possible. All ideas are written down so that they can be systematically examined later.

- Evaluating options: - After inventing options, the next stage is to evaluate each of the options generated. The objective in this stage is not to criticize any idea but to understand what the parties find acceptable and not acceptable about each option. In this process of examining each option with the parties, more information about the parties' underlying interests is obtained. This information further helps to find terms that are mutually acceptable to both parties. Brainstorming requires lateral thinking more than linear thinking.
- Lateral thinking: - Lateral thinking is creative, innovative, and intuitive. It is non-linear and non-traditional. Mediators use lateral thinking to generate options for agreement.
- Linear thinking: Linear thinking is logical, traditional, rational, and fact-based. Mediators use linear thinking to analyze facts, do reality testing, and understand the position of parties.
- Role of NGOs: - The participation of the NGO in the promotion of these means is highly required as they may also make aware the people to adopt such friendly means, to sum up their disputes. They may have to conduct such programs to make the public aware of the benefits of arbitration and mediation.

There is an abnormal growth in the cases at the court, so the cases' disposal may be delayed. But by adopting mediation for the settlement of the dispute may decrease the number of cases speedily pending in the courts. The Supreme Court started using various directions to see that the PSU's of central government and their counterpart in states should not fight their litigations in court by spending money on counsels' fees, etc. Once it is understood that mediation is intended to complement the judicial process and is an alternative to litigation, it may be used in a large number to dispose of the cases.

1.11 Nature of cases that can be referred to mediation:

Almost all commercial and trade disputes, labor disputes, housing and property disputes, family disputes, technology and copyright disputes, disputes between companies and shareholders, sports and property law disputes use mediation.

Mediation is suited for disputes related to banking and insurance, construction and development, consumer and credit winding up of companies, admiralty and aviation, dissolution of partnerships, medical, negligence, national and transnational disputes which have the added complication of choice of jurisdiction, choice of law, and problems in enforcement. Wider conflict can also be addressed by this method like environment, development, and planning community conflict, investor-state disagreement, etc.

As contrasted to litigation which deals with problems when they are full-blown, mediation can be deployed even at a nascent stage. Using the example of a commercial contract, it can be seen that mediation can overcome differences at the stage of drafting the contract, disputes arising during the performance of the agreement, and those coming up after completion, and mediation can be used before going to court, while in court, and even after the conclusion of a court case if the underlying problem persists.

The Supreme Court of India in *Afcons Infrastructure Ltd. and Anr. v. Cherian Varkey Construction Co. Pvt. Ltd. and Ors. (2010) 8 SCC 24,* held that the following categories of cases/disputes are normally considered unsuitable for the ADR process:

(i) Representative suits involving public interest
(ii) Election to public offices
(iii) Suits for grant of probate or letters of administration
(iv) Allegations of fraud, fabrication of documents, forgery, etc
(v) Protection of courts (claims against minors, deities, and mentally challenged)
(vi) Suits for declaration of title against the Government
(vii) Cases involving prosecution for criminal offenses.

The following categories of cases (whether pending in civil courts or other special tribunals/forums) are normally suitable for ADR processes:

(i) Trade, commerce, contracts, corporations, property, construction, banking/financial, shipping, and real estate;

(ii) Matrimonial disputes, custody cases, maintenance, partition, or division of family property;

(iii) Disputes between neighbors, employers, and employees;

(iv) All cases relating to tortious liability;

(v) All consumer disputes

The above categorization of cases as "suitable" and "unsuitable" is not exhaustive or rigid. They are illustrative in referring a dispute/case to an ADR process.

The committee headed by Mr. Justice Jagannadha Rao appointed by the Supreme Court in the *Salem Bae Association (II) v. Union of India*,[46] formulated Model Rules to implement Section 89 – Model Civil Procedure ADR and Mediation Rules, 2003. The Supreme Court recommended these Model Rules to the High Courts for making rules under section 125 of CPC to regulate the working of section 89 of CPC. The Supreme Court clarified that the High Courts could modify the Model Rules as they deemed fit. These have been adopted by various High Courts, with some or nil modification. Part I of these rules deals with different ADR processes; Part II deals specifically with Court-Referred Mediation.[47]

1.12 Relevant Provisions in the Civil Procedure Code, 1908:

Order X Rules 1, 1A, 1B and 1C:

Rule 1 provides that at the first hearing of the suit the court is to ascertain from each party as to whether the allegations in the pleadings are admitted or denied. The other Rules, which were introduced in 1999, provide further that the court "shall" direct the parties to opt for either mode of settlement as specified in Section 89 (). The parties are required to appear before such a forum. If the form is satisfied that it would not be

[46] AIR 2005 SC 3353 : (2005) 6 SCC 344.
[47] See Annexure 1.

proper in the interest of justice to proceed with the matter any further, it shall refer the matter back to court.

Order XXIII 3, 3A, and 3B:

Order XXIII Rule deals with the compromise of suits. Where such compromise is entered into in writing and signed by the parties, the court shall record the same and pass a decree in accordance therewith. It clarifies that the matter should relate to the parties to the suit, but the subject matter of the agreement of compromise need not be the same as the subject matter of the suit. Where such agreement or compromise is void or voidable under the Indian Contract Act, 1872, it is not to be lawful under this rule.

Under Order XXIII Rule 3A no suit shall lie to set aside a decree on the ground that the compromise on which the decree is made is not lawful.

Rule 3B provides that agreements in representative suits (on behalf of the public or numerous parties or a Hindu Undivided Family) can be entered into only with the leave of court.

Order XXVII, Rule 5B:

Order XXVII Rule 5B states that where the government is a party to the suit or proceedings, the court should make every endeavor to assist the parties at arriving at a settlement.

Order XXXIIA, Rule 3:

Order XXIIA Rule 3 provides that in every suit or proceedings relating to matters concerning the family (matrimonial, custody, succession, etc.), the court should endeavor to assist the parties to arrive at a settlement.

1.13 At What Stage Can Reference be Made by the Court to Mediation?[48]

Reference to mediation by the court is a possibility at virtually every stage of litigation, including:

[48] MEDIATION AND LAW, 2nd Edition, 2019, Lexis Nexus, 2019, Lexis Nexus.

(i) After filing of papers by the plaintiff/petitioner. Parties can be informed that they can try mediation before the case is processed for litigation.

(ii) When a matter comes up for interim orders, if necessary, suitable interim orders can be made, and the case referred then to mediation.

(iii) At the stage of framing issues.[49]

(iv) At the trial stage

(v) At the appellate stage

It is also possible for the court to take cases pending in the list of long causes (which take several years to come up for trial) and send them off to mediation.

1.14 How mediation reference can be effectively made by the courts?

The courts may have to depend upon Mediators or Legal Services Authority in providing mediation services, if at all available. However, till mediation is popularized in the country as an accepted dispute resolution mechanism, litigants will be slow to accept private mediators. The questions are - where and to whom the court will refer the cases for mediation? Are there persons equipped, trained, or experienced enough to handle complex civil and commercial disputes? How the courts will be able to monitor the cases sent to mediation? Suppose appropriate machinery for providing mediation services is not made available. In that case, the moot question the administration will have to answer is – Are the ADR provisions introduced in legislation to remain in the statute books?

The answer can be found by learning from the experience and application of such regulations in other countries that have achieved successful results. In the USA, the number of cases where the parties choose to go to mediation has shot up much higher in percentage than the ratio of disposal by the courts. However, after nearly 20 years of hard work, experimentation, and research, the United States introduced court-annexed mediation into its system. Their reward is that the parties are happier, the court burden is lighter, and cases that should be tried in court are skipped, and the system becomes profitable. In many countries, court-related programs have become a hotbed of unsolicited mediation practices that deviate from the mandatory regulations of many

[49] According to the field survey done for our study, it shows most stakeholders choosing "at the stage of framing issues" most favourable for referring to the case for mediation.

countries[50]. For example, in the United States, courts have upheld programs where parties may be required to participate in mediation[51] . In contrast, England has adopted a more indirect approach through the imposition of costs[52].

The court recommended mediation center is the leading mediation agency in India. In the Supreme Court, almost all 24 high courts and district courts in India have mediation centers. These courts exercise the jurisdiction of the court of the first instance and the court of appeal for all legal disputes. In 2005, the Madras High Court opened a mediation center. Other high courts and institutionalized mediation quickly imitated this model through training, certification, and referral.[53]

It can be stated in brief that for a large number of disputes that are filed in the civil courts, which include property cases, monetary claims, commercial issues, family disputes, a consensual process can be more appropriate for adjudication. The main exceptions being – when the direction of the court is required, when the interpretation of a statute is necessary or a precedent has to be established.

1.15 Supreme Court's view on Mandatory Mediation:

The inclusion of Section 89 was part of various amendments to the CPC and these were challenged before the Supreme Court in the *Salem Bar case*.[54] The court upheld the validity of Section 89, and with reference to its ADR provisions held as follows:

It is quite obvious that the reason why Section 89 has been inserted is to try and see that all the cases which are filed in court need not necessarily be decided by the court itself. Keeping in mind the law's delays and the limited numbers of judges available, it has now become imperative that resort should be had to ADR mechanisms with a

[50] See, e.g., Timothy K. Kuhner, Court-Connected Mediation Compared: The Cases of Argentina and the United States, 11 ILSA J. INT'L & COMP. L. 519 (2005); Marcello Marinari, Italy, in EU MEDIATION: LAW AND PRACTICE 193 (Giuseppe De Palo & Mary B. Trevor eds., 2012) (refers to Italy's practice of mandating pre-trial mediation of some domestic civil and commercial disputes). See NADJA ALEXANDER, INTERNATIONAL AND COMPARATIVE MEDIATION: LEGAL PERSPECTIVES 154–69 (2009). See also Julia Ann Gold, ADR Through a Cultural Lens: How Cultural Values Shape Our Disputing Processes, 2005 J. DISP. RESOL. 289, 316–17.

[51] Halsey v. Milton Keynes General NHS Trust [2004] EWCA Civ. 576.

[52] This has resulted in much litigation with parties challenging the validity of their consent to participate in mediation. See Jacqueline M. Nolan-Haley, Mediation Exceptionality, 78 FORDHAM. L. REV. 1247, 1256 (2009); Jacqueline M. Nolan-Haley, Is Europe Headed Down the Primrose Path with Mandatory Mediation? 37 N.C.J. INT'L L. & COM. REG. 981, 999–03 (2012).

[53] https://www.livelaw.in/see-court-see-court-burdened-judicial-system-can-adr-system-answer-part-iii/

[54] Salem Bar Association v. Union Of India, AIR 2003 SC 189 : (2003) 1 SCC 49.

view to bringing an end to litigation between parties at an early date. The ADR mechanism as contemplated by Section 89 is arbitration or conciliation or judicial settlement, including settlement through Lok Adalat or Mediation.

Section 89 empowers the judge to refer cases for Mediation where it appears to him that a settlement between parties is possible, and therefore it is termed as Court-Referred Mediation.

The Supreme Court judge also ruled that the reference to mediation, arbitration, and arbitration in litigation is mandatory, which will help to accept compulsory mediation as a way to solve problems in our legal system. This case, which interpreted and practically rewrote key portions of Section 89 of the CPC, is a landmark decision for Mediation in India. Below are the salient features of the judgment:

- The court clarified that the terms 'mediation' and conciliation' are synonymous.
- It looked at the definitions of 'mediation' and 'judicial settlement' in section 89(2)(c) and (d) and held that to interpret the section correctly, and the two definitions had to be interchanged.
- It is stated that the section as it was drafted requiring the court to formulate terms of settlement before the reference to ADR was the equivalent of putting the cart before the horse. It is clarified that formulating and reformulating the terms of the settlement were tasks to be undertaken during the appropriate ADR process.
- The court recognized that the procedure for the application of the section i.e., for reference of a case to ADR was missing. It clarified that all courts needed to consider each case that comes before them to check if it was suitable for reference to ADR.
- It held that for a case other than arbitration or conciliation, other methods of ADR could be referred by court order without the consent of parties.
- It specified the nature of cases best suited for ADR and provided a list of cases that are not suitable for ADR and must be decided by the court.[55]

It is submitted that this ruling of the Supreme Court, if applied to the full extent, will change the character of civil litigation in India. Considering ADR is mandatory, and

[55] Already discussed in detail above.

reference to ADR in all but the excluded category is a must. The result would be a huge outflow of cases from litigation to ADR. The referable category as per *Afcons* will easily be a majority of civil litigation, vast numbers of cases will land upon the mediation tables with the strict observance of Section 89 and Order X Rule 1A and 1B.

Marriage mediation has many advantages: confidentiality, profitability, informal procedures, control, complete freedom for the parties to reject the outcome, reciprocity, etc. The most attractive and irreplaceable feature is that it follows the principle of timely justice.

The main reason for the judicial delay is the number of judges in India. According to the Law Commission's report, there are only 17 judges per million people, compared with 107 judges per million people in the United States. Justice V.V. Rao stated, "It would take 320 years for the Indian judiciary to clear millions of pending cases." Given the current situation in Indian courts, it can be rightly assumed that alternative dispute resolution forums such as mediation may be a more viable option for parties seeking legal remedies.

With reference to domestic violence cases, Section 12 of the Protection of Women from Domestic Violence Act, 2005 lays down that a magistrate must dispose of a case under this Act within 60 days. However, this provision is rarely complied with. Section 498-A of the Penal Code, 1860 (IPC) deals with matters of domestic violence. Under Section 320 of the Code of Criminal Procedure (CrPC) this is a non-compoundable offense where no compromise is allowed to be made. This type of crime is so serious that even the courts cannot make them worse. However, in India, the courts repeatedly require parties to mediate in marital disputes, regardless of the nature of the crime. In 2013, the Supreme Court authorized all criminal courts to mediate in cases that fall under Section 498A of the IPC.[56]

The judiciary has not shown its unwillingness to use mediation to resolve marital disputes, including criminal cases. In *Mohd. Mushtaq Ahmad v. State*, (2015), the wife filed a divorce petition alongside an FIR against the husband under Section 498A IPC after disputes arose between the couple after the birth of a girl child. The High Court of

[56] *K. Srinivas Rao v. D.A. Deepa*, 22 February, 2013

Karnataka ordered the parties to mediate in accordance with section 89 of the CPC. The case was settled amicably through mediation, after which the wife decided to abolish the FIR. The Court allowed this by stating:

"The court in the exercise of its inherent powers can quash the criminal proceedings or FIR or complaint in appropriate cases in order to meet the ends of justice."

1.16 Mediation can protect relationships:

Order 32A of the Code of Civil Procedure recommends mediation in family/personal relationships because ordinary court procedures are not ideal for sensitive areas of personal relationships. In legal proceedings, one person has often declared the winner and the other as the loser, leading to long-term resentment. Therefore, mandatory mediation before a court trial may help immensely in order to protect the relationships.

Mediation has emerged as the most widely accepted dispute resolution mechanism for settling matrimonial disputes. The problem arises when these include cases of domestic violence. While using mediation to resolve disputes of such nature, two opposing ideologies exist in society. The advocates of mediation hold mediation to be a favorable mechanism. It safeguards family relationships, specifically children from having to experience the severities of the traumatic process ordinarily attached to a typical divorce and provides speedy justice. In contrast, the mediation critics hold mediation ineffective as the wrongdoer escapes without being punished through the State's orderly penal apparatus.

Advocating mediation is not to trash the adversarial system, which has been built up over centuries and is premised on logic, argument, impartiality, consistency, and appellate coercive opportunities. For a large body of cases, we need that standard format of litigation lawyering with its substantive laws and procedural rules and the final decisional authority vested in its Judges. Those that need constitutional law development, legal interpretation, declaration of rights can and must only go to our Courts. Severe imbalance in the power equation in the parties, lack of bona fides, presence of fraud, misuse of authority, arbitrary and unreasonable official action call for the judiciary to intervene. Judicial review is the business of courts and judges. Dealing with egregious behavior and gross negligence, enforcement of statutes, and punishment for breaches thereof are matters for the Court, as are social changes

through the law.

However, many cases are not about rights or injustice, though we portray them in those terms so that a court may take cognizance of the dispute. These cases are about parties who have fallen into conflict, which is a common phenomenon for humankind. What parties need is to be brought out of conflict – speedily and with less cost and no further damage. The best result is a mutual agreement which ends the conflict. This can lead to the restoration of the relationship or parting as amicably as possible.

Hon'ble Shri Justice Dipak Misra, the then Chief Justice of India deliberated on the concept of 'case and court management system', 'methods of promoting Alternative Dispute Resolution', 'greater use of technology to endeavour to plug the gaps in justice delivery' by taking immediate appropriate measures of identifying the cases which need urgent attention and quick disposal and suggested to strive for more alternative methods of dispute resolution in various forms like arbitration, mediation, pre-litigation mediation, negotiation, Lok Adalats, etc., and employ ADR methods through courts as courts are empowered to do so under section 89 of Civil Procedure Code, 1908 and urged the judicial officers to interact with the parties diligently to explore the possibility of ADR, wherever possible and advocated that subordinate judiciary should be trained on these aspects during their induction training days itself and highlighted that ADR mechanism can be taken online via use of technology in making justice dispensation system more efficient and fast.

S. No	**Point of Difference**	**Litigation**	**Arbitration**	**Mediation**
1	Neutral's Role	Decision maker	Decision maker	Guide
2	Nature of Process	Adversarial	Adversarial	Consensual
3	Legal Rules of Procedure	Court	Arbitrator	Parties
4	Legal Rules of Procedure	Apply in full	Apply through less formally	Don't Apply
5	Lawyer's Role	Advocacy	Advocacy	Advisor participation

6	Focus	Past acts and establishing liability	Past acts and establishing liability	Present and future, finding solutions
7	Time	Substantial Delay	Some delay; more in cases of challenge	Quick
8	Confidentiality	Public record	Confidential Save when challenged in court	Confidential
9	Confidentiality	Public Record	Confidential save when challenged in court	Confidential
10	Result	Judgment-appealable	Award-restricted challenge	Agreement or failure to agree
11	Control	Controlled by judge	Greater control with arbitrator some control	Parties control decision–making; the Mediator controls the process
12	Cost	Potentially expensive	Potentially expensive	Reasonable
13	Privacy	In the public courtroom, save for in-camera proceedings	Private	Private
14	Satisfaction	Low satisfaction	Low satisfaction	High satisfaction
15	Choice of a neutral person	No	Partial	Total
16	How a decision is enforced	Court enforcement of judgment	Awards can be enforced through a legal process	Can be enforced as an arbitral award if required
17	Termination	By judgment	By award	On successful completion or termination by

				either party or meditator
18	Creative solutions	Unlikely	Less likely	Possible and desirable
19	Flexibility of procedure	Limited	Possible	Very high
20	Effect on relationships	Likely to cause deterioration	Not helpful	May be positive unlikely to harm
21	Creating precedent	Absolute	Limited to parties	Nil
22	Regulations of practitioners	Considerable	Only in institutional arbitration	At present only in court-annexed schemes
23	Urgent/Interim Relief	Possible expeditiously	Possible, with some delay	No possible
24	Deciding/interpreting questions of law	Complete determination possible	Determination inter parties	Does not
25	Costs of parties	Can award costs to successful parties	Can award to a successful party	Usually equally borne

1.17 Conclusion:

Mediation can bring joy to the parties. All we need is to renew our faith in the process. As long as the value of consent remains a fictitious part of the mediation process, this will not happen. Quite simply, even the commitment toward mediation, a pre-litigation allows for a pause and exhale, which in itself triggers a creative process for solutions. A new dawn will arise when consent in mediation is for real.

This step is a way forward to help and create a more positive culture for Mediation as an alternate mode of dispute resolution. With minimal judicial intervention, the judgment aims to resolve legal issues quickly and economically. In India, according to the 129th report of the Law Commission, deliberate measures have been taken to allow courts to submit cases through alternative dispute resolution. Since then, India has chosen to appreciate and use other options to quickly dispose of cases. However, there

are some questions that need to be answered. Overburdened courts, lack of adequate staff and resources, rigid procedures, and lack of participatory roles continue to be challenges facing the Indian judiciary. Therefore, the judicial system is under great pressure, and the flow of cases cannot be stopped, nor can we stop it, because the door of justice can never be closed, so the number of outflows must continue to increase, which requires additional outlets. Obviously, India is working hard to promote various forms of ADR in India under the Arbitration and Conciliation Act of 1996 and the Legal Services Authorities Act of 1987. Unfortunately, there is no specific law on Mediation which is why there have been no prescribed amendments to defend the required disabilities to encourage mediation.

Chapter 2: PRE-INSTITUTION MEDIATION UNDER THE COMMERCIAL COURTS ACT, 2015

2.1 An Introduction to Pre-institution Mediation:

In India, there has always been a cry to reduce the burden of judiciary. Eventually, the commercial courts have been set up with the vision for faster resolution of commercial disputes. The prior name of the Act was quite a spectacle - Commercial Courts, Commercial Division, and Commercial Appellate Division of High Courts Act, 2015. Unsurprisingly, it created confusion as to whether these courts were merely a separate division of the High Courts or new ones. Therefore, its name was changed to a rather simple Commercial Courts Act, 2015 just to clarify the fact that they are separate courts with different procedures for resolving commercial disputes.

Further, the Central Government, on 3rd July 2018 notified Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018 for standardizing the mediation processes envisaged under the Act.[57] This Amendment and the subsequent notification of the Rules are welcome steps since they are in tandem with the original aim of the Act *i.e.,* to reduce the delay in adjudication process.

The Law Commission of India in its 253rd Report predicted litigation culture as an impediment to implementing procedural reforms including the ones being proposed in the Act. However, while stipulating this challenge the Law Commission of India worked within its remit of reviewing and revising the 2009 Bill and did not make recommendations for improving the litigation culture. Rather, it was focused on the political optics of doing well on the World Bank's index.

Overall, the Commercial Courts Act lays down a streamlined procedure for quick resolution of high stake disputes of a commercial nature with strict timelines for filing of pleadings, discovery, and procedure for grant of summary judgments.

[57]Ministry of Law and Justice (Department of Legal Affairs), Notice No. G.S.R. 606(E), dated July 3, 2018, published in the Gazette of India, Extra., Part II, Section 3(i), 3rd July 2018.

2.2 What is pre-institution Mediation?

Under the Commercial Courts (Pre-Institution Mediation and Settlement) Rules in 2018, the plaintiff must apply with the State Legal Services Authority or the District Legal Services Authority constituted under the Legal Services Authorities Act, 1987 (Authority) to initiate a mediation. The other party has to respond within 10 days, if not, the authority will give the other party another two chances to appear.[58] When both the parties agree to appear, proceedings are initiated. The rules have also prescribed fees depending upon the pecuniary value of the case.[59]

Pre-institution mediation initiated under the Commercial Courts Act must be completed within three months from the date of application made by the plaintiff, with a possible extension of two months with the consent of the parties. The time-bound process saves time and costs incurred by the parties involved.

In 2018, an Ordinance was passed the Commercial Courts, Commercial Division and Commercial Appellate Division of High Court (Amendment) Ordinance of 2018[60], which amended Section 12A of the Commercial Courts Act. The Section now reads as:

A suit which does not contemplate any urgent relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of pre-institution mediation and settlement in accordance with such manner and procedure as may be prescribed by rules made by the central government.

Section 12A of the act has mandated that every suit before being filled at any commercial court should necessarily go through mediation. But this does not apply to arbitration matters. However, if the two parties reach an agreement through mediation, the agreement has the same status and effect as the arbitration award under Article 30(4) of the Arbitration and Mediation Act of 1996.

In *D.M. Corporation Pvt. Ltd. v. The State of Maharashtra and Ors.*,[61] it was held that:

[58] S.3, Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018.
[59] S.11, Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018.
[60] See http://legalaffairs.gov.in/sites/default/files/The%20Commercial%20Courts%2ct%2C%202018.pdf.
[61] 2018(4) MHLJ 457

"If the subject matter of arbitration is a 'commercial dispute' of a 'specified value', it has to be held that, Commercial Court will alone have the jurisdiction to entertain an application under Sec. 9 of the Arbitration Act."

The definition of "commercial disputes" in Article 2 (c) of the Act is broad, which generally includes commercial transactions as well as disputes caused by intellectual property rights. After the change in 2018, all commercial disputes exceeded 300,000 Indian rupees. (Approximately USD 4,338) is governed by the provisions of the Act.

The Act further states that the period during which the parties remain occupied with the pre-institution mediation, such period shall not be computed for the purpose of limitation under the Limitation Act, 1963. If the dispute is resolved, the parties shall have the settlement reduced into writing and shall be signed by the parties to the dispute and the mediator. The Rules prescribe for a one-time mediation fee shared equally by the parties, which is determined as per the claim made by the plaintiff made in the suit.

2.3 'Urgent interim relief' under Sec. 12(A) of Commercial Courts (Amendment) Act 2018:

According to Article 12A, paragraph 1, if the request for "urgent interim relief" is preferred in addition to the request, the mandatory mention of mediation can be avoided. In this case, the reference to mediation can be approved and the result is suspicious 'Urgent' interim relief is now being filed through commercial claims, even if the circumstances of the case are not worthwhile.

It should be noted that Section 12A provides not only interim relief but also "urgent" interim relief. The term "interim relief" was agreed upon. Because only in this way can it truly reflect the will of the legislature. It is also common for legislators not to waste language, so any attempt to argue that the word "urgent" is outdated is futile.

The intention of the legislature when coining the expression "urgent precautionary measures" is better reflected in the debate about the amendment to the law itself. Therefore, the obligation to avoid the reference to mediation may only be issued if the proposed precautionary measure has a defined urgency so that this urgency of the precautionary measures must be asserted, proven and justified in the first instance at the time the action is brought before the court.

If the court finds that the plaintiff has failed to prove that the requested injunction is "urgent" or the reason for the injunction is unreasonable, the court will abstain from issuing summons Prohibited by CPC Directive VII Rule 11 (d) (due to the prohibition in Article 12A), and at the same time refuse the parties to reach an agreement through the use of mediation. In this case, if the issue is not resolved during the mediation process, the injunction under Article 12A will be canceled and the plaintiff can resubmit the claim.

If the court also realizes that the application for urgent interim relief is not in good faith, but merely to circumvent the improper attempt of Article 12A, the court may also consider issuing a warning together with the reimbursement.

2.4 Significance of Pre-Institution Mediation:

Perhaps one of the greatest misfortunes of our time is that despite the recent high rate of dispute resolution, most lawyers are skeptical of mediation. No one seems to be eager for mediation. This kind of mediation is worthy of an effective dispute resolution mechanism. It involves a small number of litigants (and lawyers) who use mediation as a delay strategy and drag the other party down by extending mediation. Even if a constructive solution is not tried, the review of the claim is postponed.

The whole process of pre-institution mediation is made highly organized with the authority and the Mediator being required to process several forms prescribed. Across the globe enjoy of such pre-organization mediation, provisions were tremendous. Thus, the organization of this provision is extraordinarily commendable. However, a tradition of creating tremendous use of such mediation and right infrastructure with skilled mediators wishes to be evolved for making sure that the cause at the back of such provision is met.[62]

A party to a commercial dispute can appear before the authorities/mediator in person or through a duly authorized representative/lawyer. The rules ensure that the mediator respects the maximum possible confidentiality during the mediation process and does not allow transcription/audio/video recording of the mediation settings. The rules also

[62] For example, Lithuania, Luxembourg, United Kingdom, Ireland also use this model for a certain category of disputes. This process of pre-institutional mediation gives the parties a chance to see whether they would like to give a try to mediate and settle the matter collaboratively.

stipulate that the authorities and the mediator shall not share printed/electronic copies of documents exchanged by the parties or submitted to the mediator, or notes made by the rules for a single mediation fee, and shall be equally distributed between the parties. According to the plaintiff's application.[63].

In order to effectively implement pre-institution mediation in India, there may be major obstacles that need to be removed. In fact, one week after the rules were implemented, the Delhi Supreme Court filed a request for the constitutional validity of the introduction of Article 12A of the Commercial court law. The petitioner's complaint is that there is currently no effective pre-compulsory mediation mechanism, which prevents a large number of victims from appealing. Effective implementation of mandatory pre-institution mediation in India. In doing so, it should be understood that although mediation is informal, it requires a certain amount of experience to succeed.

Article 12A stipulates the mandatory obligation of the plaintiff to initiate mediation; however, the rules give the opposing party the right to refuse to participate in the mediation process; the absence of the other party will also lead to consideration of the mediation process, so this optional procedure can exclude this condition.

Sometimes, the ADR mechanism has inherent loopholes, which in turn prevents people from building trust in their minds. In addition to arbitration, the biggest disadvantage of ADR is that it cannot execute the decision/recommendation of an arbitrator, mediator or negotiator by execution.[64] If the parties refuse to comply with the decision/recommendation of the mediator, mediator or negotiator, this will eventually force people to go to court, so in this case, the entire ADR process will be a waste of time and money.[65].

The Legal Services Agency (LSA) was established to "provide free and professional legal services to the weakest parts of society." To achieve the grand goal of providing free legal aid to those in need. It is inappropriate and impractical to extend the scope to include commercial brokerage business. Commercial disputes under the Commercial

[63] See http://legalaffairs.gov.in/ 2018AmendmentAct.pdf.
[64] J. C. Goldsmith, Arnold Ingen-Housz and Gerald H. Pointon, ADR in Business, (Netherlands: Kluwer Law International, 2006) p. 39.
[65] Ibid.

Court Act require a completely different method and technique than expected according to LSA.

In addition, in Article 22A of Chapter VIA, LSA refers to the pre-judicial arbitration and settlement of permanent Lok Adalat, which is mainly for utility companies. The permanent members of Adalat are a judge and 2 members with minimal business experience. Dispute resolution, and then permanent local decision within the LSA, is very different from mediation. Permanent Lok Adalat formulated the contract terms after listening to the opinions of all parties, and then forwarded them to the relevant parties for review. In the settlement, the permanent Lok Adalat decided the dispute by a majority vote. The "mediation process" implemented by Lok Adalat within the LSA endangers the right to self-determination and the voluntary elements of mediation.

The authorities under the LSA are not suitable jurisdictions for providing mediation services under the Commercial Court Act. The participation of experienced and well-trained mediation professionals who can effectively resolve commercial disputes is critical to the success of this regulation.

It must be noted that the Italian Law that successfully executed the mandatory 'opt-out' model for a certain category of commercial cases authorized a large number of service providers including Chambers of Commerce as institutions where parties can access mediation services**.** The Italian Model has proven to be highly effective with 50% of the mediations that were mandated under the Law resulting in a settlement. 1800,000 cases were referred to mediation in 2017 under the Opt-out Category. For starters, this list must be included under Section 12A (2) to expand the scope of mediation service providers under this Ordinance.

There is not much relaxation in payment when it comes to choosing mediation over court proceedings. The parties are bound to pay a bounty for choosing mediation[66]. Therefore there should be a relief where Parties will pay a nominal fee for this Mandatory Mediation meeting to ensure minimum barriers to access this requirement of the law. If after this initial mandatory mediation meeting, parties choose to proceed with the mediation, the mediator should be free to charge a reasonable professional fee.

[66] Sec.11, Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018

Even if no agreement is reached, one of the main benefits of mediation is that the parties usually have a better understanding of the issues in their case and the other party at the end of the mediation. Mediation can also give insight into the business and legal issues of both parties. This may explain why many cases that were not resolved during the day were resolved soon after.

2.6 Present Scenario:

Joseph Grynbaum, a renowned mediator, once said that *'*(a)n ounce of mediation is equal to a pound of arbitration and a ton of litigation*'*. To ensure the success of such initiatives, effective mediation policies must be formulated to ensure that the parties do not bear undue burdens or delays in legal proceedings. In order for a good proportion of mediation to reach a friendly solution, an environment conducive to mediation must be created.

Perhaps one of the greatest misfortunes of our time is that despite the recent high rate of dispute resolution, most lawyers are skeptical of mediation. No one seems to mediate at the speed that a dispute settlement mechanism should have. This is because a small number of litigants (and lawyers) use mediation as a delaying strategy, trying to irritate the other party by delaying mediation, and even fail to make a meaningful decision, so claims are delayed. One consequence of the lack of trust in mediation is that the unproven "urgent" temporary injunction application is made for commercial claims, even if the circumstances of the case do not justify this.

We have to consider that the legislature has tried to resolve this issue and limited the time limit for mediation, which must be completed within three months from the date of the petitioner's request, after which the time limit can only be extended to the choice of both parties. This is not an endless process. The law itself provides procedural safeguards to prevent abuse.

2.10 Conclusion:

The government's initiative to relieve pending proceedings in the commercial courts is commendable, but efforts must be made in due course to remove the existing barriers

and recognize external mediation bodies, otherwise the identified authorities would suffer the same fate as the courts in the early stages.

With our Courts and our institutions repeatedly letting us down with their continued inefficiency and delay, the status quo doesn't seem likely to change and people need to resort to other viable options. Quite simply, even the commitment toward mediation a pre-litigation allows for a pause and exhale, which in itself triggers a creative process for solutions.

In addition, quality control mechanisms should be put in place to regulate the behavior of mediators; otherwise the parties would lose confidence in the credibility of the mediators. Improving the mediation infrastructure would also help reduce the time it takes to complete the mediation process.

In addition, there is an urgent need to raise awareness of mediation between commercial actors in the market in order to achieve the desired objective.

Justice Soumen Sen of the Calcutta Supreme Court said the parties could either appoint a mediator by mutual agreement or go to the higher court, which has set up a body of mediators. Justice Sen said mediation is a new concept in India but recent legislation makes it mandatory before you proceed. with legal action. "Mediation is a new concept in India, but in the United States since 1976, in European countries since the 1980s," said the judge, adding that while there was a feeling in the industry that the government was unwilling to act Mediation amendments to the Commercial Court Act have forced the injured party to attempt mediation before taking legal action.

Lawyers appearing in commercial disputes said that thousands of such cases were pending in Indian courts. Also, the tendency of judges to push commercial disputes to mediation is likely to face opposition from lawyers, and reasons for such resistance are unknown. It is true that if mediation was that successful then parties wouldn't have approached the National Company Law Tribunal.

"Mediation is the cheaper and faster method of dispute resolution. Mediation leads to the certainty that arbitration cannot. Once in mediation, a settlement is reached it is final," Justice Sen assumed. In arbitration, the arbitrator passes an order and anyone party is likely to approach a higher court if it feels aggrieved. But in the case of

mediation, a settlement is reached only after all parties agree to it. So the chances of approaching a higher court after settlement through mediation are very few. Justice Sen further commented that there had been instances where the parties were happy with mediation and did not approach courts subsequently. He also cited some other merits of mediation. ‘Confidentiality is an important factor of mediation,’ he said.

This proposition needs to be viewed from a different perspective: the "exhaustion principle of relief" has become the subject of many judgments of the Supreme Court of India, and therefore it is now an integral part of our case law. The court does not exercise the power of judicial review unless the complainant has exhausted other prescribed legal remedies.

High court judges have advised infrastructure companies and other industrialists to go for mediation in case of commercial disputes as it was a faster and cheaper way of dispute resolution. Unfortunately, there have been a negligible number of commercial disputes going for Mediation after the passing of the Commercial Courts (Amendment) Act 2018. The reason behind such low confidence in Mediation in commercial disputes needs to be found out. The delay stands out in this age of instant communication and demands to be resolved.

However, as pointed out by the Law Commission of India, these procedural reforms will prove to be ineffective and superficial changes if they are not supplemented by long-term reforms to improve Indian litigation culture. The government has not considered it in its policy and legal reforms. He also emphasized that the process of policy formulation and agenda setting is not completely rational and evidence-based in practice.

Chapter 3: International Position of 'Court-Referred Mediation'

3.1 Introduction:

In most of the developed countries, the Bar plays a proactive role in not only popularising ADR but also building confidence among the people.[67] In those countries, the Bar is divided into litigating and non-litigating lawyers, with the high percentage of lawyers in the latter category to settle the disputes amicably through ADR.[68] No consensus has emerged in the law, research, or commentary as to those mediators' qualifications that will best produce effectiveness or fairness.

3.2 Some guidelines from UN Mediation Guidelines:[69]

The following UN Mediation Guidelines are noteworthy in this context:

- Reinforcement of the mediator by a team of specialists, in particular experts in the design of mediation procedures, country / regional specialists and legal advisors, as well as logistical, administrative and security support. Subject experts should be deployed as needed.
- Conflict analysis and regular internal process assessments are carried out to adjust mediation strategies if necessary.
- Choose a competent mediator with experience, skills, knowledge and cultural background for each conflict situation.
- Including the ratio of men to women in the mediation team, this also sends a positive message to all parties about the composition of their delegations.
- Provide appropriate training, induction and training for mediators and their teams. All team members need to understand the gender dimension in their field of expertise.
- Reach a consensus, create space for mediation and fully understand mediation.

[67] See Report on Alternative Dispute Resolution (ADR) Mechanism and Legal Aid in the Settlement of Disputes: A Case Study of State of West Bengal, File No. N-9/6/2014-NM, 2017.
[68] The percentage of non-litigating lawyers in the developed world is much higher than the developing countries like India. They are well acquainted with the ADR techniques due to the specialized training. See Dilip. B. Bhosale, 'An Assessment of A.D.R. in India, Nyaya Deep, Vol. VII, Issue 4, October 2005, pp. 57 - 72 at p. 68.
[69] United Nations Guidance for Effective Mediation, Ban Ki-moon, Secretary-General, United Nations, September 2012

- Maintain consistency, transparency and fairness in the management of mediation, and respect confidentiality.
- Regularly assess whether the process has received sufficient consent and prepare for changes to the agreement throughout the mediation process.
- Determine the level of commitment required to initiate mediation and achieve a lasting peace that meets the needs of all those affected by the conflict.
- While solutions cannot be imposed, mediators can help generate ideas to resolve conflict issues.
- Consult the parties to the conflict carefully on the structure of the mediation process. Guide and help the parties to the conflict to form ideas for discussion, and ensure that they agree with the agreement reached.

3.3 Mediation: A Global Perspective:

Mediation is not a panacea or miraculous solution to overcome the institutional problems of the country's judicial system. However, like other alternative dispute resolution methods, it provides many features that differ from the formal European judicial system that affects major dispute resolution mechanisms around the world. In this sense, mediation strengthens and diversifies society's ability to resolve conflicts. In addition to many precautions and exceptions, the European Court of Justice (common law, Anglo-Saxon law and their continental counterparts in continental Europe) is a government agency responsible for conducting public and formal procedures involving literacy and involving parties in litigation, retrospective, and the introductory stance leads to a dual win-win-the leading win-win solution, which is then applied through social control of the loser. Other negotiated dispute resolution procedures (not including bit rate) are a private, informal, oral, collaborative, challenging, forward-looking and interest-based process, which leads all parties to a calibrated, multi-dimensional and mutually beneficial remedies. Because all parties agree on the result, it is more lasting.

Reformers are increasingly interested in restoring or expanding traditional forms of dispute resolution (such as the Sulka process in the Middle East or the traditional panchayats method in India) and incorporating them into the formal litigation system; a unique form of mediation for Chinese mediation, known as tiajoe; for example, Egypt

now requires retired judges to mediate in any case brought by private groups against the government.[70]

Throughout Europe, mediation is seen as a potentially promising mechanism for resolving simple and complex disputes. The Norwegian Mediation Council (Forliksradene) is an example of a wide range of comparative interest and international research. In 1995, France expanded the legal framework of judicial arbitration, and countries such as Tanzania and Ukraine carried out mediation reforms in response to modern demands. In many of these jurisdictions, mediation is not only seen as suitable for small claims, car accidents, family disputes, and court violations that are discouraged by modern documents, but also as an alternative dispute resolution tool for more complex issues. Environmental disputes (such as water rights) and knowledge disputes (such as patents) that were previously considered incompatible. The emerging global market is putting increasing pressure on corporate interests, requiring them to resolve disputes in a fast, cheap, peaceful, constructive and creative way to maximize long-term benefits and maintain continuous business relationships.

In particular, mediation may serve to relieve some of the pressures currently impeding the performance of Indian court systems. The European-style courts in contrast have a lot to impart. First, mediation can have a moderate impact on the political influence of the court. By placing the control of dispute resolution in the hands of the parties, the state has less power to intervene in the settlement of private disputes and to remove them. Second, mediation reduces the motivation for corruption because a neutral third party has no authority. Forcing the parties to make a result. The lack of power over the parties (and the court's lack of a monopoly on dispute resolution) makes it more difficult for civil servants to impose rents from litigants. Finally, in addition to the more controversial role of plea negotiation in criminal proceedings, mediation is also used to reduce delays and delays in court. Finding paper cleaning equipment is the first motivation for mediation reform; however, the connection between mediation and legal delays is more complicated than what opponents or supporters want to admit (*e.g.*, in

[70] See Hiram E. Chodosh, Stephen A. Mayo, Fathi Naguib, & Ali El Sadek, Egyptian Civil Justice Process Modernization: A Functional and Systemic Approach, 17 MICH. J. INT'L L. 865, 895 (1996). This study conducted by the Institute for the Study and Development of Legal Systems led to new legislation requiring suits against the government to be mediated by retired judges. See Law No. 7/2000, Concerning The Establishment Of Conciliation Committees In Certain Litigations To Which The Ministries And Juridical Persons Are Parties (Egypt).

the internalization of the communication and negotiation techniques within the legal process and broader society).

The following sections discuss the process of mediation in four major countries.

(a) Australia

Australia's experience shows that as long as the result is voluntary, it doesn't matter if the process is mandatory. This is the famous view of the late and well-loved Harvard professor Frank E.A. reflect. Sander: "*There is a difference between coercion into mediation and coercion in mediation"*. This difference is important.

Mandatory Mediation has been in Australia for over 20 years.[71] This right has been effectively used to break the deadlock between the opposing parties, otherwise they would not consider mediation as an option. However, recent legislative developments have gone further, trying to create a culture of pre-trial mediation for all civil disputes.

Australia has a variety of Judicial and quasi-judicial venues and the path of mediation is very active. The Civil Dispute Resolution Act was enacted in 2011[72], in the federal jurisdiction. The Act requires applicants to demonstrate that they have taken 'genuine steps' to resolve their dispute at the time that they initiate proceedings.[73] The genuine steps include making of ADR mechanisms and reaching a fruitful conclusion.

A failure to file a genuine steps statement does not invalidate an application to commence proceedings, a response to that application, or the proceedings themselves.[74] The Court may also have regard to a lawyer's failure to inform a client of a requirement to file a genuine steps statement and may also make an order that the lawyer bear costs personally[75] Outside of commercial settings, mandatory mediation may be offered in the areas of family provision[76] and family disputes regarding children[77] and financial matters.

[71] §18, The Law and Justice Legislation Amendment Act 1997.
[72]Civil Dispute Resolution Act 2011, Act No. 17 of 2011.
[73] S. 6, id.
[74] CDRA, s 10(2)
[75] CDRA, s 12(2)-(3); Superior IP International Pty Ltd v Ahern Fox Patent and Trade Mark Attorneys [2012] FCA 282.
[76] S. 98(2), Succession Act 2006 (NSW).
[77] S.601, Family Law Act 1975.

Insofar as the efficient administration of justice is concerned, all Australian jurisdictions authorize their courts to refer proceedings to mediation without the parties' consent.[78] Family dispute has been regularly been referred for mediation.

For example, New South Wales had referred 933 cases from 2010 to 2011 and 531 of them had been settled within a year.[79] Part 2A of the Civil Procedure Law of 2005 stipulates certain "pre-litigation requirements", including litigants taking "reasonable steps" to resolve disputes or "resolving and describing disputes" before proceeding.[80] Similar to the CDRA's true steps statement, CPA requires the parties to submit a dispute resolution statement listing the steps they took to meet these requirements before the lawsuit, or explaining why no such steps have been taken.[81] The law also requires legal representatives to inform their clients about claims before legal proceedings, and to advise them on alternatives at the beginning of civil proceedings.[82] Like CDRA, failure to meet the prerequisites or submit a dispute resolution request will not affect the validity of the procedure; however, here, the court can also consider the refusal of one of the parties to the pre-litigation requirements in making any costs order against that party[83], or against their legal representatives under S.99 of the CPA.[84]

In New South Wales, it is eligible for compulsory pre-trial mediation for wills and family members' requests for continued transfer of the deceased's estate.[85] On the one hand, one difference between CDRA and the repealed Victorian regulations and New South Wales laws is the pre-legal standard of conduct. The CDRA requires both parties to take "practical steps" to resolve disputes, and legislators in both countries have chosen the "reasonable steps" approach.[86]

In Australia, private mediation is usually conducted by former court officials, lawyers and other professionals with expertise in the nature of the dispute. Usually, the court

[78]Vicki Waye, Mandatory mediation in Australia's civil justice system, Common Law World Review, Vol. 45(2-3) 214–235 (2016).
[79]Justice P A Bergin, 'Judicial Mediation: Problems and Solutions', 'The Objectives, Scope and Focus of Mediation Legislation in Australia', Mediate First Conference, (Hong Kong International Arbitration Centre and The Hong Kong Mediation Council, 11 May 2012) available at: http://www.supremecourt.justice.nsw.gov.au/
[80] CPA, s 18E
[81] CPA, s 18G
[82] CPA, s 18J(1).
[83] CPA, ss 18J and 18M.
[84] Civil Procedure and Legal Profession Amendments Act 2011 (Vic).
[85] PA Bergin, "Judicial mediation: problems and solutions" (2011) 10 TJR 305 at 308.
[86] CPA, s 18E(1); Civil Procedure Act 2010 (Vic), s 34(1) (repealed).

staff (registrar or commissioner) is responsible for out-of-court mediation. However, in some jurisdictions, judges act as mediators (judicial mediation).[87]

In Australia, the more important mediation principle is confidentiality.[88] The law expressly prohibits the parties from providing evidence of any communication or documents related to an attempt to conclude a contract.[89] The willingness of the parties to resolve their differences voluntarily through mediation depends to a large extent on the confidentiality of the procedure.

Accreditation to mediators is not necessary for Australia. A voluntary system referred to as the National negotiant enfranchisement System (NMAS) has been in operation. this method has become the first supply of mediator standards in Australia.[90] These standards cover a variety of topics, including establishing a recognized mediation certification body (RMAB) to manage the certification process, and setting approval requirements and current certification requirements for intermediaries.

If an applicant does not have sufficient mediation experience, a 38-hour workshop must be completed that includes at least nine simulated mediation sessions.[91] After accreditation, a mediator must also complete at least 25 hours of mediation and attend 20 hours of advanced training courses every two years.[92]

In Australia, mediators enjoy extensive protection from civil proceedings through a rather fragmented immunity system, which is predominantly provided for by law and supplemented by exclusions or restrictions contractually agreed between the mediation parties on an ad hoc basis. They are provided from three main sources: common law, statutory provisions, and contract. The most common requirements are that a mediator

[87] See also Practice Note 2 2012, "Judicial Mediator Guidelines Supreme Court of Victoria", 30 March 2012; Nickless R, "Victoria allows Judge mediators", Australian Financial Review, 13 April 2012.
[88] CPA, s 31
[89] Evidence Act 1995 (NSW), s 131.
[90] The system is provided for by two main documents known collectively as the "Australian National Mediator Standards". The first is "Approval Standards for Mediators Seeking Approval under the National Mediator Accreditation System" (September 2007). The second is "Practice Standards For Mediators Operating under the National Mediator Accreditation System" (September 2007).
[91] Australian National Mediator Standards, "Approval Standards for Mediators Seeking Approval under the National Mediator Accreditation System" (2007), 5(3).
[92] Australian National Mediator Standards, "Approval Standards for Mediators Seeking Approval under the National Mediator Accreditation System" (2007), 1(3).

must prove that he acted in good faith or without fraud or that he met the legal objectives of the Immunity Act.[93]

Although the courts did not fully examine the legal immunity of mediators in Australia, the Queensland Court of Appeal examined the matter in *Von Schultz v. Attorney-General.*[94]. This case involves multiple allegations of misconduct by the mediator, including allegations that the mediator erroneously signed the mediation agreement to prove that the two parties have reached a mediation agreement. In rejecting the motion to appeal, the Court of Appeal applied Section 113 (1) of the Queensland Supreme Court Act 1991, which grants the mediator immunity from judicial proceedings equivalent to that of a judge.[95] NMAS accredited mediators must now have liability insurance. Given the increasing use of such systems, it remains to be seen whether the Australian mediation system will continue to rely on and guarantee broad legal immunity.[96]

Gone are the days when mediation could be described as "alternative dispute resolution." The new law, which has become an integral part of Australia's civil justice system, goes one step further, requiring civil procedures to always take reasonable and honest actions to resolve their dispute (including through mediation) before filing a lawsuit. It is critical to monitor whether this major change supports the positive impact that ADR has had on Australian civil justice.

(b) United States:

History of commercial mediation in US jurisdiction and mediation models:

In the United States, the form of mediation can be traced back to the earliest history of the country, and it can be traced back to the dispute resolution method used by Native American society. The concept of court-based mediation was developed by early English settlers.

[93] Boule L, Mediation: Principles, Process, Practice (3rd ed, 2011) at 740.
[94] [2000] QCA 406.
[95] Ibid.
[96] Boule L, Mediation: Principles, Process, Practice (3rd ed, 2011) at 754; Australian National Mediator Standards, "Approval Standards for Mediators Seeking Approval under the National Mediator Accreditation System" (2007), 3(1)(c).

In the early 1900s, mediation was expanded in response to destructive labor disputes. Mediation is used to prevent strikes and interruptions when the dialogue between workers and management is interrupted. The end of the seventies-the beginning of the eighties.

mediation is now widely used in civil and administrative litigation, often used to reduce the burden of courts, and as a means to resolve disputes between parties more economically than litigation. They are important in court documents. Mediation also reduces the cost of dispute resolution because mediation is cheaper than the high cost of litigation.

How the United States is adapting to diversity to promote Court-Referred Mediation?

The Civil Justice Reform Act of 1990 also required every federal district court to consider court-sponsored ADR.[97] The Alternative Dispute Resolution Act of 1998 also required federal trial courts to make ADR programs available to litigants. In 2002, the Uniform Mediation Act was enacted.[98] The UMA was drafted to create a minimum uniformity of protection for confidentiality and seeks to guarantee a level of protection in those states that hardly protect confidentiality. It strikes an 'appropriate balance' between an absolute exception for parties and a permissive exception for mediators.

There is no uniform set standard for mediation in the US. Each state may have its laws on the training of Mediators. In the United States there are a number of professional mediator bodies. The American Arbitration Association, the Federal Mediation and Conciliation Service, the Nation Mediation Board, the Civil Mediation Council, the Chartered Institute of Arbitrators, the United Nations Department of Political Affairs, and the Judicial Arbitration and Mediation Services are among these organisations.

States have developed their own guidelines and requirements for those interested in pursuing a career in mediation. A mediator can also work in private settings without being licenced, certified, or listed in any state. [99]

[97] S. 471-482, Civil Justice Reform Act, 1990, 28 U.S.C.
[98] Uniform Mediation Act (Feb. 4, 2002), available at: http://www.law.upenn.edu/bll/ulc/ulcframe.html
[99] See Mediation in USA, Polsinelli PC, published on Sep. 9, 2019.

Some court-appointed mediators must meet higher standards before they can engage in mediation work. Some states require mediation candidates to obtain a law degree from a recognized law school and pass the state bar exam.[100] Others accept mediators with their professional degrees, such as providing a master's degree in social work for mediators engaged in family mediation. Some states accept relevant work experience in lieu of title requirements. The states have also issued court orders or case law. Create immunity for the mediator. This exemption protects the mediator from most civil liabilities due to misconduct in the mediation process.[101]

If mediation is deemed appropriate and the parties agree to mediation, the court will refer the parties to an approved mediator. The court usually provides the parties with a list of mediators that meet the basic standards and requirements. The parties then choose the mediator they think is most suitable to Convey their problem.[102]

In the United States, the number of cases in which parties tend to mediate has risen sharply than the proportion of injunctions; however, it has taken nearly 20 years for the United States to introduce extrajudicial mediation into its system due to continuous efforts, experiments, and research. In India, the creation of Lok Adalat and its implementation management mechanism also took nearly 20 years.

American public policy is conducive to mediation. Mediation encourages the community to resolve disputes, maintain the relationship between the parties after the dispute occurs, and provide remedies that are more appropriate than court orders. Some states require mediation in certain disputes, require mediation in accordance with state law, or require the parties to seek help from government agencies. The court also encouraged mediation by enacting laws to protect the confidentiality of mediation procedures.[103]

Most court-ordered mediations require the parties to be present with power of attorney to reach an agreement, to submit a memorandum of their position prior to mediation, and to participate in good faith. Although court-ordered mediation does not require an

[100] Ibid
[101] Ibid
[102] See https://legalstudiesms.com/learning/court-certified-mediator-qualification-requirements/
[103] See Sarah R Cole at al, Mediation: Law, Policy & Practice app. A (2013-2014 ed. 2013)

agreement, sanctions can be imposed if a court determines that the mediation was not conducted in good faith.[104]

The Federal Code of Civil Procedure contains a provision that specifies the possible sanctions in the event of non-participation in arbitration conferences in good faith. A large percentage of states also have statutory requirements of good faith. For example, under the California Fire and Marine Insurance Mediation Code, Chapter 8.9, Section 10089.81, parties to mediation must negotiate in good faith and "have the power to resolve claims promptly." Require good faith participation in mediation. The blatant disregard of court orders is defined as bad faith involvement.[105]

Due to the confidential nature of mediation, there are few sample reports that compare commercial mediation with litigation; however, due to the strengthening of state and federal laws and the promotion of mediation through regulation, commercial mediation has developed. Use mandatory mediation clauses in private contracts. The court encourages mediation to reduce the size of its documents, but also because mediation is cheaper and more effective, and allows parties to develop unique solutions to their disputes. Therefore, states such as Florida require most parties to resolve their disputes in court in order to include them in their docket.[106]

In the US reward is that the parties are happier, the courts have a lighter burden, avoid worthy cases, and the system is profitable.

(c) United Kingdom:

There are no mandatory provisions applicable to mediation in the UK. The Civil Procedure Rules and the Family Procedure Rules have provisions for mediation. The UK has the concept of Mediation Information and Assessment Meeting (MIAM)**.**

Followings are the court's duty to consider non-court dispute resolution.

1. At each stage of the litigation, the court must review the adequacy of out-of-court dispute resolution.

[104] See Edward F Sherman, Court-Mandated Alternative Dispute Resolution: What Form of Participation Should Be Required? SMU L. Rev. 2079, 2090-91 (1993)
[105] Ibid.
[106] Ibid.

2. When assessing the suitability of out-of-court dispute resolution in litigation procedures initiated at the request of family members, the court should consider the following factors:

   (i) whether a MIAM took place;

   (ii) whether a valid MIAM exemption was claimed or mediator's exemption was confirmed; and

   (iii) whether the parties attempted mediation or another form of non-court dispute resolution and the outcome of that process.[107]

Mediation under all of the above schemes remains voluntary, but parties may be required to justify to the court their decision not to attempt mediation at subsequent court hearings, particularly at the stage when the court is determining the question of costs.

Although the parties are strongly encouraged to conduct mediation, they should not be forced to do so, because the success of mediation depends to a large extent on the willingness of the parties to cooperate and compromise: if the parties are unwilling, but are forced to the negotiating table, mediation is less likely to succeed. In November 2018, the Civil Justice Commission Working Group released a report on the role of ADR in the civil justice system in England and Wales. The report does not support the introduction of mandatory alternative dispute resolution or mediation.

Commercial Mediation has been used to resolve as the name suggests British trade disputes over the years; however, this was a radical reform in 1999 (known as the "Wolf Reform" since then), and all parties to the dispute must be at the beginning of the dispute and throughout the course of the dispute. Consider ADR. The party does not have the broad powers of the court to impose all or part of the opponent’s legal costs on that party. The cost has nothing to do with whether the main claim has been successfully satisfied. The use of ADR, especially mediation, is common, and mediation is expected to be more popular today than ever.

[107]http://www.justice.gov.uk/courts/procedure-rules/family/parts/part_03

The most common form of mediation in the UK is mediation. The mediator cooperates with the parties to reach an agreement between the parties, but does not have the power to enforce the decision (evaluative mediation).[108]

Instead, the legal framework of mediation has been developed in a piecemeal manner through several sectorial legal instruments and judicial decisions in individual cases. The government's view is that the courts should focus on adjudicating particularly complex or legal issues.

The Civil Procedure Rules and the Family Procedure Rules have provisions for mediation. CPR is the main source of national laws. Parties to domestic disputes should refer to the CPR Preliminary Action Agreement, which outlines the steps the parties should take before initiating legal proceedings. They clearly require both parties to first try to resolve the dispute without going to court. And is considering ADR including mediation. The CPR Practice Council, pre-litigation behavior and agreement clearly stipulate that litigation should be the last resort. If a lawsuit is filed, the court may require the parties to provide evidence to prove that the lawsuit has started.

CPR also contains domestic regulations for cross-border mediation, which belongs to the EU Mediation Directive (2008/52/EC). The "Mediation Directive" aims to promote and facilitate the settlement of cross-border disputes through mediation, and is applicable to most cross-border civil and commercial disputes. If one party resides in the United Kingdom and the other party resides in another EU member state, according to the 2011 Civil Procedure Law Amendment, which was incorporated into English law on March 6, 2011, the amendment only takes effect for such situations. Cross-border mediation in April 2011 and the 2011 Cross-border Mediation Regulations (EU Directives) (SI 2011/1133) came into effect on May 20, 2011. 78.23–78.28, supervisory procedures:

- Make the mediation agreement enforceable;
- Disclosure and review of evidence; and

[108] See Report on Mediation in the United Kingdom, Penningtons Manches Cooper LLP, published on Sep. 9, 2019, https://www.lexology.com/library/detail.aspx?g=02ee5416-79ba-484b-bd62-eb26318d330b , last visited on Nov. 29, 2019.

- Obtain mediation evidence through subpoenas and cross-examination of witnesses.

No distinction is made between disputes in which both parties invoke jurisdiction and disputes with cross-border implications that are not subject to the Mediation Directive, are subject to domestic laws such as domestic mediation.

If one of the parties refuses to mediate, if they ignore a mediation request or if they thwart the mediation process, there is a risk that they will be penalized in the form of an unfavorable cost arrangement, which could possibly be considerable. , it is at the discretion of the court whether the costs are to be paid by one party to the other, in what amount and at what time. In deciding whether to exercise this discretion, the court will take into account (among other things) the behavior of the parties, including with regard to mediation.

In *Halsey v. Milton Keynes General NHS Trust*, [2004] (EWCA Civ 576) the court wondered whether it should use its discretion under CPR 44.2 to impose cost penalties on the victorious party for refusing to mediate. It has been found that the court has the power to remove all or part of the costs of a winning party on this basis, but the burden of proof for the repeal of the normal rule rests on the losing party. In order to justify such a deviation, it must be demonstrated that the prevailing party inappropriately refused mediation (or ADR in general) on the basis of the considerations set out therein.

Thakkar v. Patel, [2017] (EWCA Civ 117) is an example of one party obstructing the mediation process. The plaintiff tried to mediate, but the defendant delayed so long that the plaintiff lost confidence in the mediation process. The defendant believed that this was unfounded and therefore issued a huge cost decision to him.

Commercial mediation is common and is usually part of preliminary procedures or dispute resolution discussions. The CEDR audit of mediation in July 2018 showed that since the last audit in 2016, 12,000 trade intermediaries (excluding small claims) have conducted approximately 11.5 billion mediations in the past 12 months. An increase of 5% since 2014 means) and an increase of 500% since the first CEDR exam in 2003. Therefore pictures are becoming more and more popular.

In the UK, mediation is largely unregulated by law. There is no central professional organization and no special certification is required to use the title of "mediator". However, private institutions provide individuals with voluntary training and standards of practice. Many ADR organizations will also have their own training and certification systems. Intermediaries who are not affiliated with reputable suppliers can practice for free, but they may not find a job in the real world.

There is no legal requirement for parties and mediators to sign a written mediation agreement, but it is common practice to sign a written agreement before mediation. Many mediation providers have their own standard models of mediation agreements. Contract documents that define the legal basis for mediation.

In most cases, mediators are appointed by agreement between the parties; if the parties cannot reach an agreement, they can ask a third party (such as a mediation provider) to make an appointment with them. Since certain mediation rules apply to mediation (for example, the mediation rules of the London Court of International Arbitration, the mediation rules of the International Chamber of Commerce), mediators are appointed according to these rules.

If the mediation is organized through the judicial mediation service, the mediator shall be appointed according to a certain plan.

The impartiality of the mediator is a fundamental aspect of mediation. Anything that raises suspicion should be disclosed so that all parties can make an informed decision on whether to continue the appointment.

Its internal position is that the initiation of mediation will not interrupt the statute of limitations for litigation or arbitration. If the parties to the dispute wish to suspend the statute of limitations for attempted mediation, they may make a corresponding agreement. The suspension agreement prohibits or extends the statutory or contract statute of limitations. Alternatively, the plaintiff can file a defense before the statute of limitations expires and then request the immediate suspension (ie suspension or suspension) of the proceedings to authorize mediation.

According to the EU Mediation Directive (2008/52/EC), the situation of cross-border disputes is different. In the case of these disputes, if the cross-border mediation is

initiated before the expiry of the applicable limitation period, the limitation period can be extended under certain circumstances (in accordance with 1980 Article 33A paragraph 2 limitation period).

The enforceability of the mediation clause does not need to meet special conditions; on the contrary, the clause must meet the usual requirements of British contract law, that is, the clause must be strong enough to be enforceable (d Arbitration). This means that each process step must be clearly defined within a specific time frame.

In *Ohpen Operations UK Limited v. Invesco Fund Managers Limited,* [2019] EWHC 2246 (TCCThe High Court of England stipulates the factors that the court will consider when deciding whether to suspend the proceedings and maintain the dispute resolution clause. These included that:

- The agreement must stipulate the obligations of all parties to participate in ADR;
- It must be clearly stated that the obligation is a prerequisite for litigation or arbitration;
- Although the dispute resolution procedure to be followed is not formal, it needs to be clearly and reasonably determined with reference to objective standards, including a mechanism for determining the steps required in the procedure (such as appointing a mediator) without the need for further agreement between the parties. The court may decide to suspend the violation at its discretion Enforceable litigation procedures for dispute settlement cases.

(d) Singapore:

Since its launch in Singapore in the 1990s, it has developed into a unique and diverse ecosystem. Today, mediation is an integral part of the Singapore court system to resolve private sector disputes and resolve community disputes.[109]

Singapore's judiciary is one of the pioneers of the mediation movement. As they seek to establish a world-class rule of law that maintains the rule of law and manages the public justice system, there must be an effective civil justice system that includes

[109] See Report on EXPANDING THE SCOPE OF DISPUTE RESOLUTION AND ACCESS TO JUSTICE: THE USE OF MEDIATION WITHIN THE COURTS, The Honourable Justice Belinda Ang Saw Ean Judge of the Supreme Court of Singapore.

alternative dispute resolution as part of the dispute settlement process. In the 2018 World Justice Project Rule of Law Rankings, Singapore ranks 13th among 113 countries in the world, and is the best country in Asia.[110]

The State Courts began offering mediation services in 1994. At the State Courts, between 2012 and 2017, 6,700 cases were mediated annually[111], and settlement rates were maintained at above 85%.[112] A 2015 survey of court users found that 98% of respondents agreed that the dispute resolution services provided by the court met their expectations for satisfactory dispute resolution.[113]

On the other hand, the Supreme Court often submits cases to the Singapore Mediation Center (SMC), Singapore's first private mediation center, because it does not provide mediation services comparable to those provided by government courts. The court was the brainchild of the then Minister of Justice, Mr. Zhang Xiqiang, who first raised this issue at the beginning of the law in 1996.[114] The integration of mediation into the dispute settlement system was slow at first because the parties to the dispute were slow to think about mediation. In 2017, SMC accepted 538 mediation cases with an amount exceeding US$2.7 billion, a record high; more than half of the mediation cases were submitted to the Supreme Court.[115] With the passage of the 2017 Mediation Law (Act No. 1 of 2017), under this law, unsecured arbitration agreements can be registered with the consent of all parties, and the importance of private mediation has increased significantly just like a court order.[116]

State courts can also file ADR cases at any stage of the litigation. For example, if the plaintiff (the person who brought the lawsuit) has filed a subpoena request instruction, the parties and their attorneys must fill out and submit an ADR form before the hearing.

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[110] See http://www.straitstimes.com/singapore/spore-top-asian-nation-in-rule-of-law-ranking-and-13th-globally, last visited on 7 December 2019.

[111] This excludes cases that are disposed of via other avenues such as judgment in default, summary judgment, automatic discontinuance as well as discontinuance by parties, etc: information from State Courts Centre for Dispute Resolution

[112] Civil suits comprise approximately 95%, while the remaining 5% were Magistrate's Complaints, Protection from Harassment Act and Community Disputes Resolution Tribunal cases

[113] From early surveys conducted in 1997, there was an overwhelming preference for District Judges to act as mediators because of the public confidence and respect they command, as well as the convenience enjoyed by parties who were able to directly enforce a court-mediated settlement by means of a court order (Jonathan Lock v Jesseline Goh [2008] 2 SLR 455 at [28])

[114] Chan Sek Keong, former Attorney General, "Speech delivered at the Opening of the Legal Year" (6 January 1996).

[115] Statistics provided by SMC online.

[116] If criteria in s 12(3) of Mediation Act 2017 is met.

After being asked for instructions, the judge can refer your case for mediation after reviewing the ADR forms of the parties and discussing with the lawyer.

The Court Mediation Centres, now known as the Primary Dispute Resolution Centres (PDRCs) which are now called the State Court's Centre for Dispute Resolution. The Community Mediation Centre Act was enacted in 1997 to govern such disputes, which dealt with community mediation centres.[117]

The State Dispute Resolution Judicial Center (SCCDR) provides ADR services for local and district court cases and adopts a holistic approach to resolve disputes that affect different aspects of the law and even cut across the civil/criminal divide. The SCCDR[118] had 'settlement judges' initially who were judges of the court and then eventually it included legally trained, accredited from recognised institutions as well as volunteer mediators. In order to promote the ideal of access to justice and spread the concept of mediation among the parties, the dispute resolution service of the Supreme Court is basically free; however, since mediation has been approved by court users, civil cases under the jurisdiction of the district courts will be available from May 1, 2015 Court fees of S$250 per party will be incurred.[119]

To simplify litigation, SCT has introduced an electronic system to file and manage cases since 2017. The system has been expanded to Community Dispute Resolution Tribunals (CDRT)[120] and soon to the Labor Court (ECT). Mediate until CDRT or ECT is reached. Disputes between communities are first resolved in the community mediation center.[121] If unsuccessful, the case will be referred to a Judge who may refer the case for further mediation at SCCDR. If the problem is still not resolved, the case will be submitted to the CDRT.[122]

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[117] Community Mediation Centres Act (CHAPTER 49A) (Original Enactment: Act 10 of 1997).
[118] Established on 4 March 2015.
[119] See O 90A r 5A of the Rules of Court (Cap 322, R5, 2006 Rev Ed) and State Courts Practice Directions 35(7), however, this excludes motor accident, personal injury, and harassment claims.
[120] On 5 February 2018.
[121] Under s 12 of the Community Mediation Centres Act (Cap 49A), mediations are voluntary and parties cannot be compelled to attend. S 13 states that only settlement agreements reduced to writing and signed by parties will be binding.
[122] Established pursuant to the Community Disputes Resolution Act 2015 (Act No 7 of 2015), it is part of the Community Justice and Tribunals Division established on 24 April 2015. The Small Claims Tribunals fall within the purview of this Division too: See Kee Oon JC, Presiding Judge of the State Courts, Address at the Launch of the Community Justice and Tribunals Division (24 April 2015) at para 5.

ECT[123] is a new facility that provides a fast and cheap forum for employees[124] and employers to resolve wage disputes.[125]

The FJC[126] is committed to "making justice accessible to families and youth through effective counseling, mediation, and adjudication."[127] Lawyers now accept mediation as the first step in divorce matters.[128] Even if the parties have filed legal proceedings, there is always the possibility of mediation or out-of-court settlement at all stages of the divorce proceedings.[129] Compulsory mediation was introduced to effectively resolve group and low-value cases. In the field of family justice, it protects the interests of children by promoting peaceful resolution.

In order to improve its ability to provide mediation services and involve the community in resolving community and family disputes, the state court and FJC mediator team has been expanded[130] to include voluntary mediators, most of whom are legally qualified and have completed at least three years of training. Experience in SMC training. Social workers, court interpreters and other non-professionals trained as consultants or mediators are also part of the group and share their experience in family, criminal and family disputes. [131]

In the case of state courts, SCT and ECT require mediation. State courts have established various policies and procedures to assist in mediation.

In 2012, the ADR presumption was introduced into the state courts and has since been extended to all civil litigation.[132] Under this assumption, unless the parties decide not to participate, the court will refer related matters to ADR.[133] It additionally brought

[123] Established on 1 April 2017 under the Employment Claims Act 2016 (Act 21 of 2016).
[124] Professionals, Managers, and Executives (PMEs) who earn more than S$4,500 per month and are currently beyond the coverage of the Employment Act.
[125] See https://www.statecourts.gov.sg/ECT/Pages/An-Overview-of-the-Employment-Claims-Tribunals-(ECT).aspx, last visited on 5 Dec 2019.
[126] The Family Court (formerly the Family Court of the original lower court) was established as an independent judicial institution in October 2014, consisting of the Family Affairs Department of the Supreme Court, the Family Court and the Juvenile Court.
[127] Kevin Ng "Family Mediation – The Perspective of the Family Court" in Mediation in Singapore: A Practical Guide (Sweet & Maxwell, 2017) at [13.011].
[128] Kevin Ng, "Family Mediation – The Perspective of the Family Court" in Mediation in Singapore: A Practical Guide (Sweet & Maxwell, 2017) at [13.010]
[129] "More divorces being settled by mediation", Straits Times (1 March 2018).
[130] Debbie Ong J, Opening Address at the Family Justice Courts Workplan 2018 (28 February 2018).
[131] Ibid.
[132] State Courts Practice Directions 35(9).
[133] Ibid.

Skype mediations to facilitate the decision of disputes wherein one celebration is overseas.[134] Referral of the case to mediation as soon as possible is essential to curb the rise in litigation costs and prevent the parties from becoming too entangled.

The ADR procedure was implemented in the High Court in 2014.[135] When the parties expressed interest in mediation in the High Court, the court first ordered the parties to submit and serve their respective ADR forms, because this formally confirmed the parties' intentions. Promote mediation, such as setting a deadline for litigation so that the parties can start and end mediation.[136] Although mediation may be tried at any time at some stage in the litigation process, the two maximum appropriate intervening durations to strive mediation could be on the near of pleadings or after general discovery.

To take a look at the misuse of the ADR Offer system for mediation, in 2017, the Legal Profession (Professional Conduct) Rules have been amended to make certain that mediations proceeded in true religion and court cases have been now no longer abused[137] via way of means of legal professionals fishing for facts and files for later use at trial.

There also are numerous measures in area to make sure the best of the mediation offerings offered, with attorneys being expressly recognized as gambling a essential and essential position to advocate their customers approximately mediation and different ADR options. By supplying no or low-price mediation offerings previous to the adjudication of disputes, the State Courts, wherein maximum disputants first meet the judicial system, growth get admission to to justice with the aid of using permitting the events to attain a decision in their dispute extra speedy and cost effectively as compared to if the most effective adjudication changed into offered.

[134] Ibid., 35(22)
[135] A party receiving an ADR Offer has 14 days to file a Response to an ADR Offer stating whether or not the party was agreeable to ADR, or to otherwise state reasons for their unwillingness or make counter-proposals (Supreme Court Practice Directions 35B, 35C, Forms 28 and 29). An ADR Offer could be made by any party at any time of the proceedings (Part IIIA Supreme Court Practice Directions 35C(3)).
[136] Part IIIA Supreme Court Practice Directions 35C(4).
[137] Rule 8A.

3.4 Conclusion:

Pessimists may see that there are many obstacles to the implementation of the mediation plan mentioned by the court, and may believe that there is a lack of funds to introduce such a mechanism into the country. When dealing with recent criminal cases, it is not impossible to allocate budget allocations to charities, which can ultimately solve one of the most serious problems in a rapidly developing country.

If the court mediation plan can be implemented purposefully, it will enable the country to serve important legislative purposes and inspire the country to develop its commercial, industrial and global interests. A new solution to the problem of court delays.

Mediators should not use coercive, authoritarian and intimidating methods used by untrained mediators. Some judges have authoritarian influence on court agreements, which is why they are not considered good mediators in certain circles. Due to the long-term experience of retired judges in the judiciary, the public accepts them more as mediators. If these retired judges can be recruited for mediators in the Indian Judicial Court and receive a minimum of basic training to change their attitudes according to their expected role as mediators, their services can be well utilized.

The current delay in resolving cases is increasing exponentially and may lead to a crisis of confidence. Therefore, a firm determination and willingness to introduce judicial mediation into the Indian legal system in the early 21st century is required. century. Mediation will help bridge the gap between practical ethics, legal values, and public policy requirements.

In developing countries like India, where most people choose to resolve disputes, the courts are overloaded with a large number of outstanding cases on the agenda, which ultimately makes people feel dissatisfied with the judicial system and its ability to deliver justice. What William E. Gladstone said is right, "justice delayed is justice denied". This problem is widespread in the Indian judicial system, which has accumulated nearly 27 million outstanding cases, of which approximately 55,000 are related to divorce disputes. This obstacle to timely justice has led to alternative dispute resolution mechanisms such as negotiation, mediation, arbitration, and arbitration. These mechanisms have become popular due to the rapid resolution of disputes.

It is always easy to state the rule, yet so difficult to put it into practice. The mediator is a harbinger of peace. Giving back to society is a gesture which is fulfilling and self-satisfactory. The profession of law gives a lot to a lawyer and therefore it demands from a mediator or a lawyer to depart something valuable to the society in return. Mediation is the best platform to settle the dispute amicably as it aids the litigants to pen down their destiny and leads to satisfaction between conflicting parties. It creates a win-win situation. The task is not easy but neither impossible.

Chapter 4: Presentation of Data Analysis

The findings of the study can be broadly categorized into two components - one is generic in nature and the other being state-specific. Therefore, interventions to follow need to be made at both these levels. Improving legal literacy and awareness of the laws can be righteously made more perceptible by taking into account various customary laws and traditions of the states and that will be the right path to follow.

Below we have presented a road map of how efforts have been taken and what was found in the due course of our field visit. Along with it we have presented our reasons for the extension to carry out this project in a sustainable way with meaningful developments and concluded with recommendations.

Part of the field visit for both the states of West Bengal and Jharkhand has been commenced. We have come across various barriers to Mediation which have been listed below.

We have had completed the data collection towards the end of January 2020 from SLSA West Bengal and proceeded towards visiting various favourable districts. The rationale behind listing the most favourable districts from the two States has been attached below as Annexure – 1. 7 districts have been listed to be surveyed in West Bengal and 10 districts which are to be surveyed in Jharkhand and the analysis of logic behind such selection has been attached below for your kind perusal.

Please find below the list of districts that have been identified to be surveyed in West Bengal and Jharkhand and also the districts that have been already surveyed successfully in these two concerned States.

4.1 West Bengal:

Districts that are listed to be surveyed in this State are:

1. Kolkata
2. Burdwan
3. Coochbehar
4. Jalpaiguri
5. Darjeeling

6. Paschim Medinipur
7. Purba Medinipur

4.2 Jharkhand

Districts that are listed to be surveyed in this State are:

1. Ranchi
2. Dhanbad
3. Giridih
4. Jamshedpur
5. Deoghar
6. Bokaro
7. Garhwa
8. Seraikella
9. Khunti
10. Chaibasa

We have visualized relationships between two quantitative variables (total pending cases and total referral cases) using scatterplots and described the overall pattern of a relationship by considering its direction, form, and strength. In this part, we will restrict our attention to the special case of relationships that have a linear form, since they are quite common and relatively simple to detect.

Primary Data Analysis

A Data Source:

The analyses reported here were based on a primary data survey of the Jharkhand and West Bengal in 2019. 344 lawyers, 330 litigants, and 81 mediators were participated in the survey and provided data. Sample of litigants collected data on socio-demographic characteristics, including age, gender, ethnicity, region, marital status, and education, as well as annual household income. Sample of lawyers collected data based on gender, age, and professional year of the respondent. All data collected based on the structural questionnaire.

B Districts Selection and Sampling:

10 districts in Jharkhand and 6 districts in West Bengal (Table 2A & 2B) were selected based on the following factors. The number of cases referred for mediation in 2019, the number of cases settled/unsettled through mediation in 2019, the success rate of the cases through mediation in 2019, and the location of the litigant based on geographical factors.

However, 10 districts in Jharkhand and 6 Districts in West Bengal were selected based on the following factors.

i. The number of cases referred for mediation in 2019.
ii. The number of cases settled/unsettled through mediation in 2019.
iii. Success Rate of the cases through mediation in 2019.
iv. Location of litigant based on geographical factors.

However, District selection was to some degree opportunistic with interests and opportunities. We assert that our sample is representative of a high and low level of referral cases with moderate-to-high access to total cases. Also, we assessed the overall representativeness of the study sites at two scales. We first compared the regions from which cases were selected using administrative jurisdictions equivalent to the "province" level.

We assume areas/districts with a higher number of cases tend to have a higher success rate of the mediation system. Districts with a higher population tend to have many cases and a higher number of cases tend to more and more cases referred to mediation. As expected, we observe a positive correlation between the total number of cases and the success rate of the mediation center.

After districts were selected, we were surveying on four types of stakeholders: Judges, Lawyers, Litigants, and Mediators. All mediators survey on the selected district. Minimum twenty lawyers were sampled randomly from each district based on their experience (profession years).

The size of the litigants determines based on this method.

Sample sizes determine a method of the litigants: Total Cases (N)/ Standard Error (SE).

Standard Error (SE): Standard Deviation/ √n,

Where, N is the total district in each state (24 districts in Jharkhand, 19 districts in West Bengal due to availability of data)

The above method applying to the secondary data of settled cases and unsettled cases in the Jharkhand and West Bengal. The total sample of litigants is 204 in the Jharkhand and 155 in West Bengal (Table 1A).

Table 1A: Sample Size of Litigants, Jharkhand

	Jharkhand		***West Bengal***	
	Settled cases	***Unsettled cases***	***Settled cases***	***Unsettled cases***
Number (N)	***7076***	***4003***	***3319***	***6088***
Standard Deviation	***336.2***	***194.7***	***331.2***	***238.1***
Standard Error (SE)	***68.6***	***39.7***	***75.9***	***54.6***
Sample Size	***103***	***101***	***44***	***111***

Source: Own estimation

After determining the sample size we randomly surveyed litigants based on the weight of the cases in the selected district (Table 2A and 2B).

Table 2A: Sample Allocation of Litigants, Jharkhand

Litigants, [settled cases: 103, Unsettled Cases: 101]			
Settled cases	***Sample Size***	***Unsettled cases***	***Sample Size***
Ranchi, Dhanbad, Bokaro and Jamshedpur	***14*4=56***	***Dhanbad, Bokaro Deoghar and Garhwa***	***14*4=56***

Giridih , Deoghar and Garhwa	***10*3=30***	***Jamshedpur, Giridih and Ranchi***	***9*3=27***
Seraikella, Chaibasa and Khunti	***6*3=18***	***Seraikella, Chaibasa and Khunti***	***6*3=18***

Source: Own estimation

Table 2B: Sample Allocation of Litigants, West Bengal

Litigants, [settled cases: 44, Unsettled Cases: 111]			
Settled cases	***Sample Size***	***Unsettled cases***	***Sample Size***
Paschim Medinipur, Burdwan	***9*2=18***	***Paschim Medinipur***	***27***
Coochbehar, Jalpaiguri, Darjeeling	***7*3=21***	***Burdwan, Coochbehar, Jalpaiguri***	***20*3=60***
Kolkata	***5*1=5***	***Darjeeling, Kolkata***	***12*2=24***

Source: Own estimation

Cleaning and aggregating data for this study was a significant endeavor. Before starting the data analyzing we have used data cleaning and quality control processes to identify missing data, inconsistencies, and outliers. So, we have collected data more than the targeted sample size.

Finally, we collected data from 81 mediators, 330 litigants, and 344 lawyers (Table 3A).

Table 3A: Sample Size

States	*Districts*	*Mediators (N=81)*	*Lawyers (N=344)*	*Litigants*		
				Success (N=147)	*Unsuccessful (M=183)*	*Total (N=330)*
Jharkhand	*Bokaro*	*8*	*23*	*14*	*14*	*28*
	Chaibasa	*4*	*21*	*6*	*6*	*12*
	Deoghar	*5*	*23*	*10*	*14*	*24*
	Dhanbad	*9*	*22*	*14*	*14*	*28*
	Garhwa	*4*	*21*	*10*	*14*	*24*
	Giridih	*6*	*21*	*10*	*10*	*20*
	Jamshedpur	*8*	*22*	*14*	*10*	*24*
	Khunti	*2*	*20*	*5*	*5*	*10*
	Ranchi	*7*	*23*	*14*	*9*	*23*
	Seraikella	*4*	*20*	*6*	*6*	*12*
	Total	*57*	*216*	*103*	*102*	*205*
West Bengal	*Burdwan*	*4*	*21*	*9*	*18*	*27*
	Darjeeling	*4*	*18*	*7*	*12*	*19*
	Jalpaiguri	*4*	*20*	*7*	*20*	*27*
	Kolkata	*6*	*23*	*5*	*12*	*17*
	Coochbehar	*4*	*20*	*7*	*12*	*19*

	Paschim Medinipur	***2***	***26***	***9***	***7***	***16***
	Total	***24***	***128***	***44***	***81***	***125***

Source: Primary data

C Statistical Methodology:

In the judicial system, the life and future outbreaks of the meditation process are described in detail, such as the details of the meditation, the reason for the use, and the outcome of the meditation process. Results were reported as means and as standard deviations, weighted frequencies, and distributions as eligible.

They have been compared to socio-demographic characteristics who settled their litigation through the mediation process and who did not settle the case through the mediation process. We did the 'ANOVA test' for a test of the significant difference between groups and also we are using 'chi-square tests' due to measures that how expectations compare to actual observed data.

ANOVA is used to compare two means from two independent (unrelated) groups using the F-distribution. The null hypothesis for the test is that the two means are equal. Therefore, a significant result means that the two means are unequal. The Chi-Square statistic was used for testing relationships between categorical variables. The null hypothesis of the Chi-Square test is that no relationship exists on the categorical variables in the population; they are independent. The formula of Chi-Square statistic is $\chi = \sum(f_o - f_e)^2/f_e$. Where f_o = the observed frequency and f_e = the expected frequency if NO relationship existed between the variables. As depicted in the formula, the Chi-Square statistic is based on the difference between what is actually observed in the data and what would be expected if there was truly no relationship between the variables.

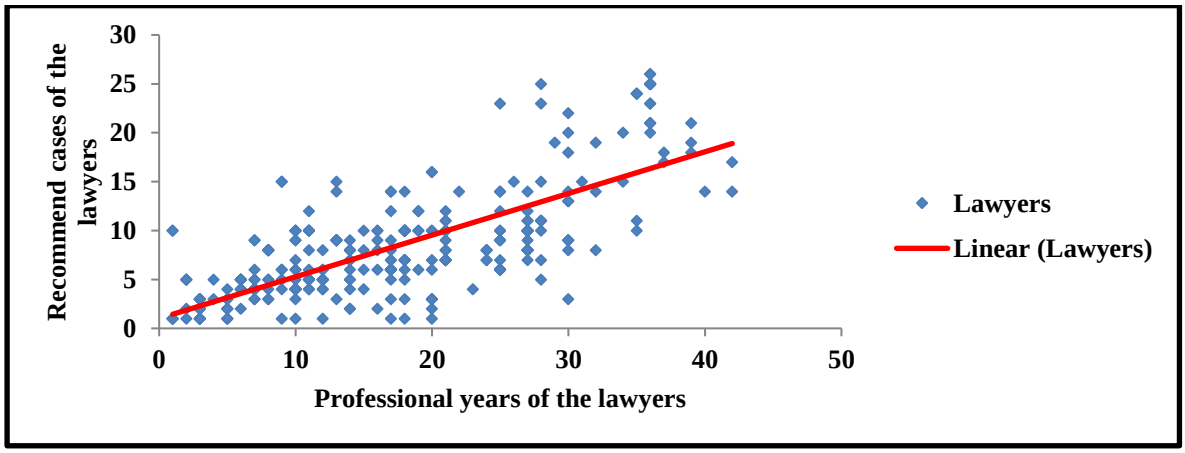
The following are considered socio-demographic features in the litigants: age (categories: 18–35; 36-50; 51-65 and above 65 year age), gender (categories: female; male), religion (categories: Hindu; Muslim; other), caste (categories: general; Schedule caste; schedule tribe; other backward castes), an education level (categories: completed

class 4th; completed class 12th; graduate; postgraduate or professional), and income level. The litigant's features of the case were: nature of the litigants (categories: plaintiff; defendant), familiar with mediation process of before legal proceedings (categories: yes; no), age of the cases (categories: below 2 years; 2-5 years; above 5 years), type of the cases (categories: matrimonial; civil; criminal).

1. Analysis of the data as offered by the lawyers

We have visualized relationships between two quantitative variables (professional years of the lawyers and recommend cases of the lawyers) using scatterplots and described the overall pattern of a relationship by considering its direction, form, and strength. In this part, we will restrict our attention to the special case of relationships that have a linear form, since they are quite common and relatively simple to detect. Figure 1.1 shows that there is a positive linear relationship between the absolute number of professional years of the lawyers and recommend cases of the lawyers to the mediation center. This means that a positive change in professional years of the lawyers is associated with a positive change in recommend cases of the lawyers to the mediation center. Therefore, we can conclude that as the age/professional age of the lawyers increases, they will send more and more cases to the arbitration center. It is important to remember that not every relationship between the two quantitative variables has a linear form, yet from this position, we have just focused on the linear relationship.

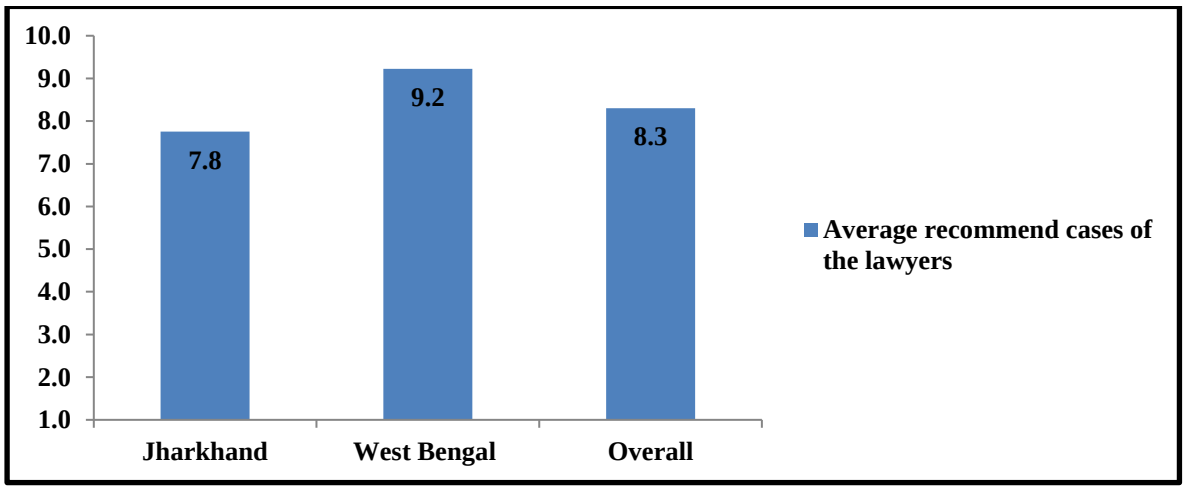
Figure 1.1: Absolute relation between professional years of the lawyers and recommend cases of the lawyers to the mediation center



Source: Primary data

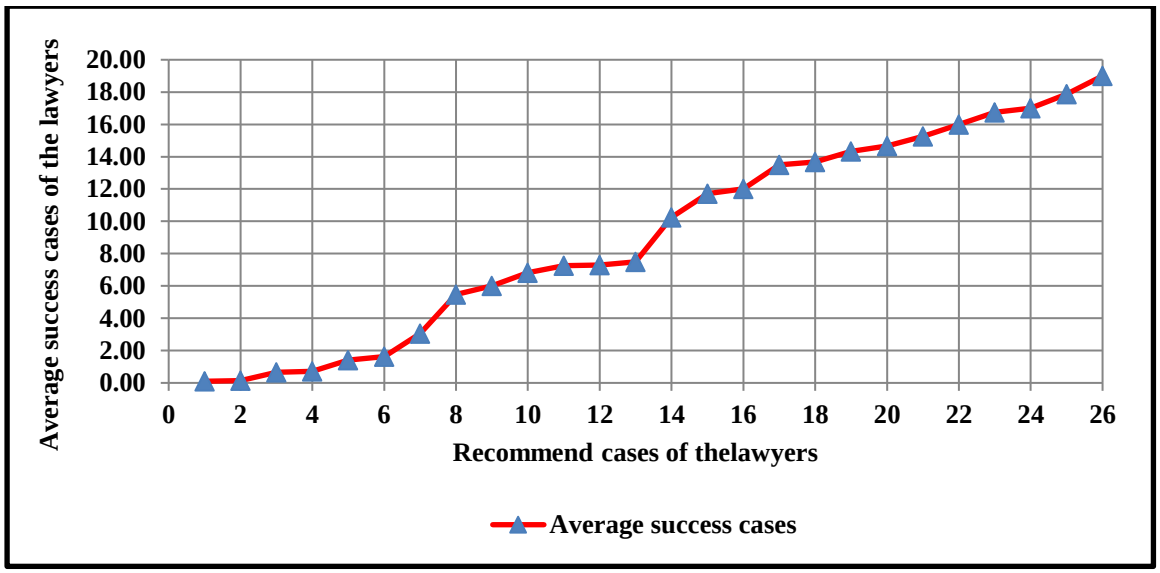
Figure 1.2 shows comparative data on average recommends cases (absolute value) of the lawyers of two states. This picture shows that a lawyer in West Bengal sends an average of more than 9 cases a year to the mediation center, while a lawyer in Jharkhand sends about 8 cases a year to the mediation center. West Bengal comparatively higher value than Jharkhand.

Figure 1.2: Average recommends cases (absolute value) of the lawyers



Source: Primary data

Figure 1.3: Average settled/success cases (absolute value) of the lawyers



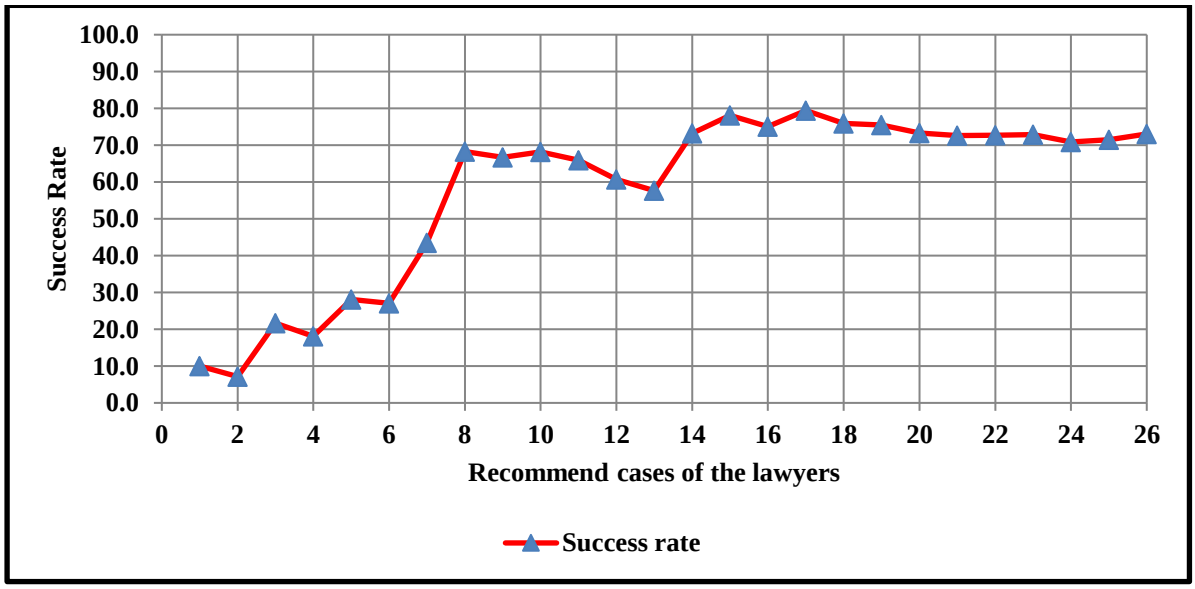
Source: Primary data

We have visualized relationships (figure 1.3) between two quantitative variables using scatterplots with trends. Two quantitative variables are recommended cases of the

lawyers and average settled/success cases of the lawyers. This uptrend line has a continuously positive slope compare to every low point. Uptrend lines act as support and indicate that average settled cases of the lawyers are increasing even as the recommended cases of the lawyers. Recommended cases of the lawyers with increasing average settled cases of the lawyers are very realistic and a strong determination on the part of the success rate of the recommended cases.

The success rate is a degree or percentage of settled cases compare to the referral cases. Figure 1.4 shows that there is a positive linear relationship between the percentage of settled cases and recommend cases of the lawyers to the mediation center. Only focus on scatterplots, we can see that, when the number of recommended cases is above 13, the success rate is higher near about 75% and the number of recommended cases is below 5, the success rate is near about 20%, that is very low. The number of recommended cases is 5 to 7 then the success rate is near about 30% and when the number of recommended cases is 8 to 13 then the success rate is near about 65%.

Figure 1.4: The success rate of the lawyers



Source: Primary data

We have determined the cluster of the number of recommending cases only based on the success rate. Based on Hierarchical Cluster Analysis we found four groups, the first group sent case number range from 1 to 4, the second group sent case number range from 5 to 7, the third group sent case number range from 8 to 13 and the fourth group

sent case number range from 14 to 26. Cluster Analysis is a technique to group similar observations into several clusters based on the observed values of several variables for each individual. Hierarchical Cluster Analysis based on the degree of similarity, or dissimilarity, between observations. Hierarchical Cluster Analysis starts with each case as a separate cluster (i.e., there are as many clusters as cases), and then combines the clusters sequentially, reducing the number of clusters at each step until only one cluster is left. As can be seen from Table 1.1, the highest number of lawyers is in the third group whose number of sent cases ranges from 8 to 13 and their combined sent case number is 1041, out of which 696 cases have been successful through mediation center and the success rate is 66.9.

We can see from Tables 1.1 and 1.2 that the range of cases sent by the second cluster is the smallest (5 to 7) and most lawyers are concentrated in this group, which means a total of 91 lawyers exist in the recommended case number 5, 6 and 7. The total number of cases sent by this group is 531 out of which 171 cases have been successful (success rate is 32 percent). The average age of lawyers in this group is 46 and the average professional year is 15.

Table 1.1: Summary of clusters of *recommending* cases

Clusters	***No. of lawyers***	***Total recommend cases***	***Total success cases***	***Success rate***
Below 5	***90***	***252***	***43***	***17.1***
5 to 7	***91***	***531***	***171***	***32.2***
8 to 13	***109***	***1041***	***696***	***66.9***
Above 13	***54***	***1032***	***760***	***73.6***
Overall	***344***	***2856***	***1670***	***58.5***

Source: Primary data

Therefore, we can conclude that if the awareness of lower middle-aged lawyers on the subject of mediation can be increased or the importance of mediation in terms of socialization can be realized, then the value of success can be greatly enhanced.

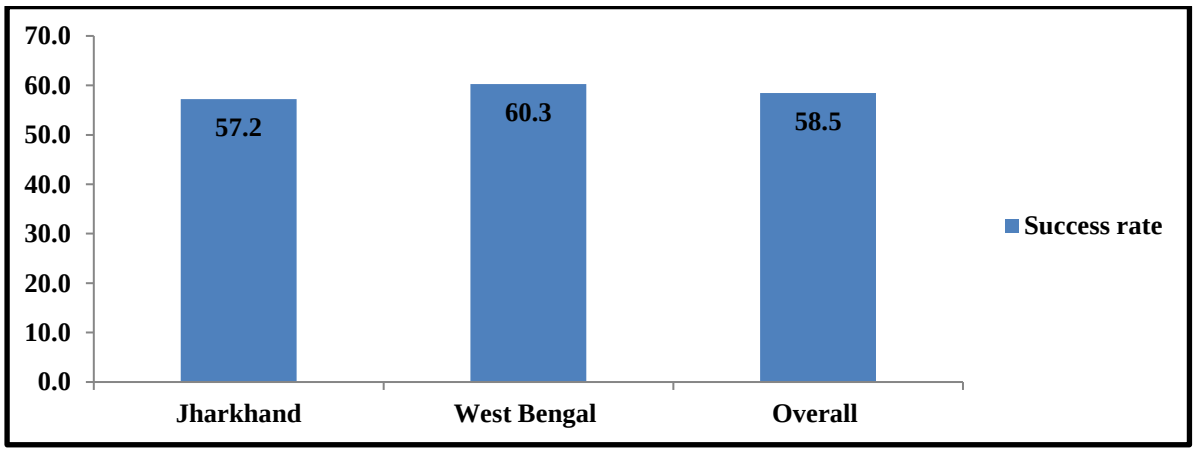
Table1.2: Clusters-wise summary of lawyers' age and professional year

Clusters	*Average age of the lawyers*	*Average professional year of the lawyers*
Below 5	***39***	***8***
5 to 7	***46***	***15***
8 to 13	***50***	***19***
above 13	***61***	***30***
Overall	***48***	***17***

Source: Primary data

Figure 1.5 shows that, success rate not significantly different between the state of Jharkhand and West Bengal. The overall success rate is 58.5%.

Figure 1.5: State-wise success rate



Source: Primary data

Based on this primary data the success rate of mediations in last year 58% and we are assuming that success is measured on the basis that a settlement was reached. So whilst collectively 38% of disputes no resolution at the mediation.

We have consulted with lawyers on whether the experience of the mediation process has actually reached a settlement during the mediation. Needless to say, some lawyers have fully participated in this opinion and some have not fully participated. It is very difficult to exclude a clear picture because in any one year a lawyer can send a very small number or a very large number of cases mediated, it can never be a high volume of activity. The perception of results can be colored by a recent experience of mediation rather than being representative of actual trends. Whatever the mediation process's true picture here we have summarized some of the reasons for the failure or success of the mediation process based on the opinion of the lawyers. Success is never be guaranteed, but focusing on these issues as much as possible can increase the success rate of the mediation process. Some important reasons for the success and failure of Tables 1.3 and 1.4 are mentioned.

Table 1.3: Lawyers perception on the rank of some major reasons for the success of cases through the mediation process

Reasons	***Score***	***Rank***
The success of timing exercise	***3.25***	***I***
Trained mediator	***2.83***	***II***
Strategic or tactical success	***2.66***	***III***
Attitude of the client	***2.57***	***IV***
Low expensive and short time	***0.92***	***V***

Source: Primary data

Table 1.4: Lawyers perception on the rank of some major reasons to failure of cases through the mediation process

Reasons	***Score***	***Rank***
Failure of preparation approach	***2.87***	***I***
Failure of timing exercise	***2.59***	***II***

Strategic or tactical failure	***2.34***	***III***
Attitude of client	***2.22***	***IV***
Lack of engagements	***2.01***	***V***
Wrong choice of mediator	***1.07***	***VI***

Source: Primary data

Success or failure factors have been analyzed using the 'perception method' of all sampled lawyers. The 'five-point scale method' has been used to determine the score of the perception method. Where '4' means a very high impact on success or failure of the cases, '1' means low impact, and '0' means no impact. Basic on 'score value', 'failure of the preparation approach' is the most important reason for the failure of cases through the mediation process, and 'success of timing exercise' is the most important reason for the success of cases through the mediation process. There are many reasons why mediation can fail/success, even if all parties are well represented and generally inclined to participate in good faith. The following are some of the more common reasons for failure/success.

Preparation approach: Thorough preparation of a parties' case for mediation is crucial. This extends not only to the facts and legal principles at play but also to the tactical and strategic approach to settlement to be taken. A clear rationale why a particular position is being adopted or why an offer is made in those terms will increase the prospects that the opponent will engage with it.

Timing exercise: The timing of the mediation in the life of the dispute is an important element in the process of securing a resolution. Too early and a party may feel they don't know enough to make decisions on a settlement – too late and there will be the investment that has already been put into the claim to handle. This has to be considered on a case-by-case basis. It is not a one-time fit for all exercises.

Strategic/tactical: There are always difficult opponents from time to time (parties and their lawyers) – mediation is no exception. Those that view the mediation process as an opportunity to play games or simply as a fishing expedition will make settlement an uphill struggle. It is essential to be well prepared for this type of opponent and have

thought through in advance the strategies to be deployed. The appropriate approach by the mediator will again be essential.

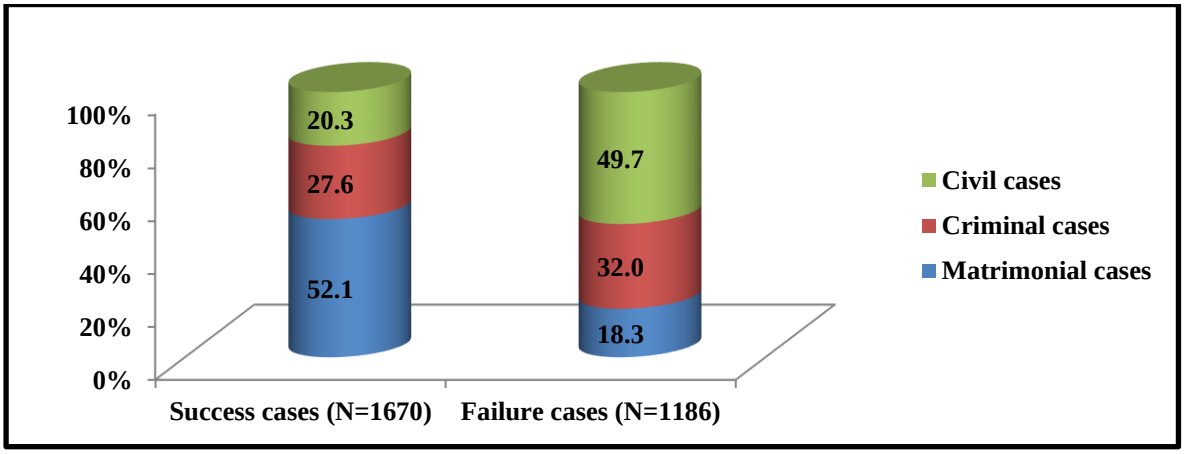
Lack of engagements: A claim is more likely to settle where the parties are committed to and engaged with the process. The making of orders by the court that encourage ADR including mediation together with the potential for adverse cost consequences of refusing to mediate can mean that a recalcitrant party simply views mediation as a "tick box" exercise. This can be difficult to address and the expertise of the mediator to draw the party to the table will be crucial.

Mediator: The mediator has to have the right mix of legal, technical, and interpersonal skills for the dispute at hand. He/she will need to secure the trust and respect of the parties quickly and build rapport. To be impartial is essential (both real and perceived) and to have the ability to conduct shuttle diplomacy and the skill to unlock impasse is key. Time spent on making the right choice is likely to pay dividends.

Attitude of client*:* The effective representation of a client in mediation is a departure from the traditional approach to negotiation with its adversarial ethic. It requires self-awareness and collaborative and problem-solving orientation. It is possible to increase the success rate if the key points of this effort can be balanced by recognizing the biases of the litigants and using the techniques of perseverance and empathy.

Figure 1.6 shows that the matrimonial cases (52%) have had the most success and the civil cases (50%) have failed the most through the mediation process in 2019 (period- 1st January to 30th September).

Figure 1.6: Cases-wise percentage of success and failure cases of the lawyers through the mediation process



Source: Primary data

Table 1.5 replicated that the answers relating to the questionnaire for lawyers, 344 lawyers provided their answers to the various questions to the questionnaire. Regarding the number of cases recommended for mediation, it was found that in the range of 1 to 26. Out of it, the settled cases were in the range of 0 to 19 and the average success rate is 58.5%.

Regarding the question of the presence of lawyers affect the course of the mediation process, 54.7% replied it as favorable, 10.5% as adverse, and 34.9% thereof replied that it no effect on the mediation process. Statements of clients generally report a better outcome as a result of mediation than they do from a lawsuit, 47.4% of lawyers have agreed that statement, 31.1% have disagreed and 21.5% of lawyers are no arguments about this. Regarding the question of the opinions made by lawyers in the mediation process given priority, 93.6% of lawyers replied it as yes. Regarding the question of the referral of cases by the Court/ Judges for Mediation is satisfactory, 89% of lawyers replied it as yes. Regarding the question of any need for the Refresher Training Programme for the trained mediators, 89.5% of lawyers replied it as yes. Regarding the question of the process of mediation in Court-referred mediation be used for better implementation of Alternative Dispute Resolution, 79.9% of lawyers replied it as yes. Regarding the question of the provide relevant legal assistance to the defendant/respondent who helped in relevant outcome in the mediation process, 94.5% of lawyers replied as yes. Regarding the question of the informality of mediation allows

the parties to be more engaged, 83.7% of lawyers replied it as yes. Regarding the question of the need to incorporate mediation as a special subject to be included in the syllabus at the graduate level in law and/or postgraduate level in law, 92.4% of lawyers replied it as yes.

Table1.5: Analysis of the opinions as offered by the lawyers

Statements/questions	***Opinions***	***No. of lawyers***	***Percent age***
Does the presence of lawyers affect the course of the mediation?	***Favorably***	***188***	***54.7***
	Adversely	***36***	***10.5***
	No effect	***120***	***34.9***
Parties generally report a better outcome as a result of mediation than they do from a lawsuit	***Agree***	***163***	***47.4***
	Disagree	***107***	***31.1***
	Neutral	***74***	***21.5***
Are the opinions made by lawyers in the mediation process given priority?	***Yes***	***322***	***93.6***
	No	***22***	***6.4***
Whether the Referral of cases by the Court/ Judges for Mediation is satisfactory?	***Yes***	***306***	***89.0***
	No	***38***	***11.0***
Is there any need for Refresher Training Programme for the trained mediators?	***Yes***	***308***	***89.5***
	No	***36***	***10.5***
Can the process of mediation in Court-referred mediation be used for better implementation of Alternative Dispute Resolution?	***Yes***	***275***	***79.9***
	No	***69***	***20.1***
	Yes	***325***	***94.5***

Did you provide relevant legal assistance to the defendant/respondent who helped in relevant outcomes in the mediation process?	***No***	***19***	***5.5***
The informality of mediation allows the parties to be more engaged.	***Yes***	***288***	***83.7***
	No	***56***	***16.3***
Whether there is a need to incorporate mediation as a special subject to be included in the syllabus at the graduate level in law and/or postgraduate level in law?	***Yes***	***318***	***92.4***
	No	***26***	***7.6***

Source: Primary data

2 Analysis of the data as offered by the mediators:

The mediator/mediation center in the study area receives all cases of court-referred cases for mediation in 2019. The mediators have handled 9212 out of the total 12020 cases received (Table 2.1). Handled cases = (total number of receive cases─the total number of 'Non-Starter cases' in a given duration time) or (total number of success cases + the total number of failure cases). Receive cases = (total number of success cases + the total number of failure cases + the total number of 'Non-Starter cases'). Reverted cases = (total number of failure cases + the total number of 'Non-Starter cases'). Success means the litigants have settled their cases through the mediation process. failure means, litigants have tried to settled their cases through the mediation process but unfortunately, he/she failed.

Table 2.1: Status of the court referred cases to the mediation center in 2019 (absolute value)

Status of the cases	***Jharkhand***	***West Bengal***	***Overall***
Receive cases	***9386***	***2634***	***12020***
Handled cases	***6847***	***2365***	***9212***

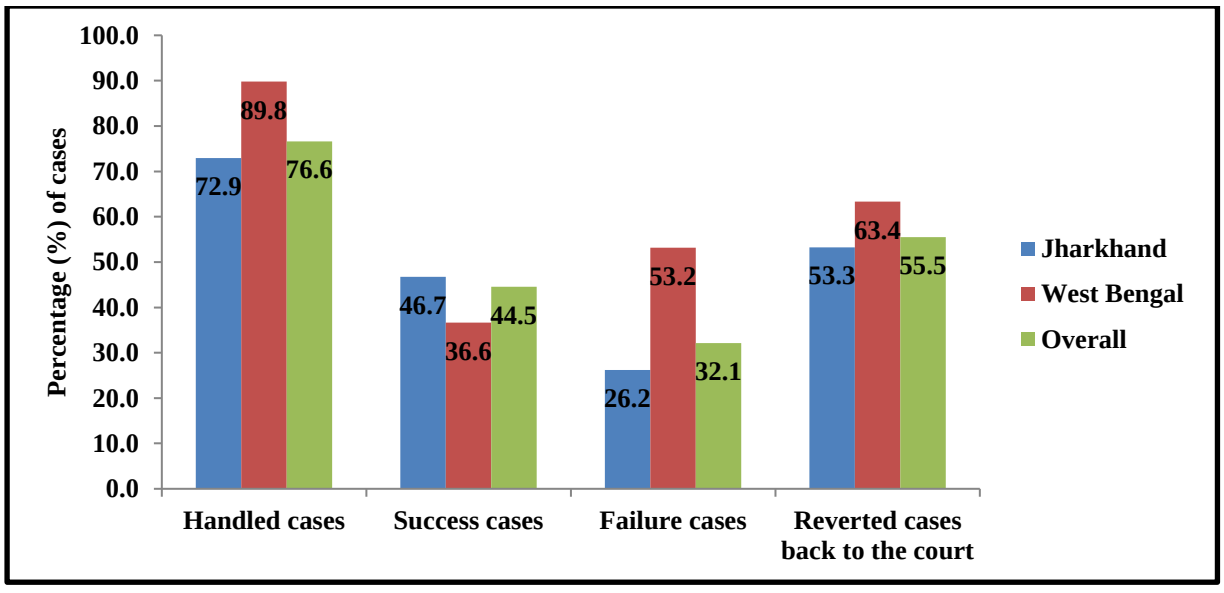
Success cases	***4387***	***965***	***5352***
Failure cases	***2460***	***1400***	***3860***
Non-Starter cases	***2539***	***269***	***2808***
Reverted cases back to the court	***4999***	***1669***	***6668***

Source: Primary data

****Note: 2019- 1st January to 30th September***

As can be seen from Figure 2.1, out of the total cases (12020) accepted in this study area, the success rate was 44.5%, the failure rate was 32.1% and 55.5% cases were returned to the court. In the case of Jharkhand, the success rate was 46.7%, the failure rate was 26.2% and 53.3% were returned to the court. On the other hand, in the case of West Bengal, 63.4% of the total cases (2634) have been returned to the court and the success rate is lower than Jharkhand and the failure rate is very much higher than Jharkhand. Therefore, we can say that Jharkhand is better than West Bengal in terms of mediation results.

Figure 2.1: Status of the court referred cases to the mediation center in 2019 (relative value)

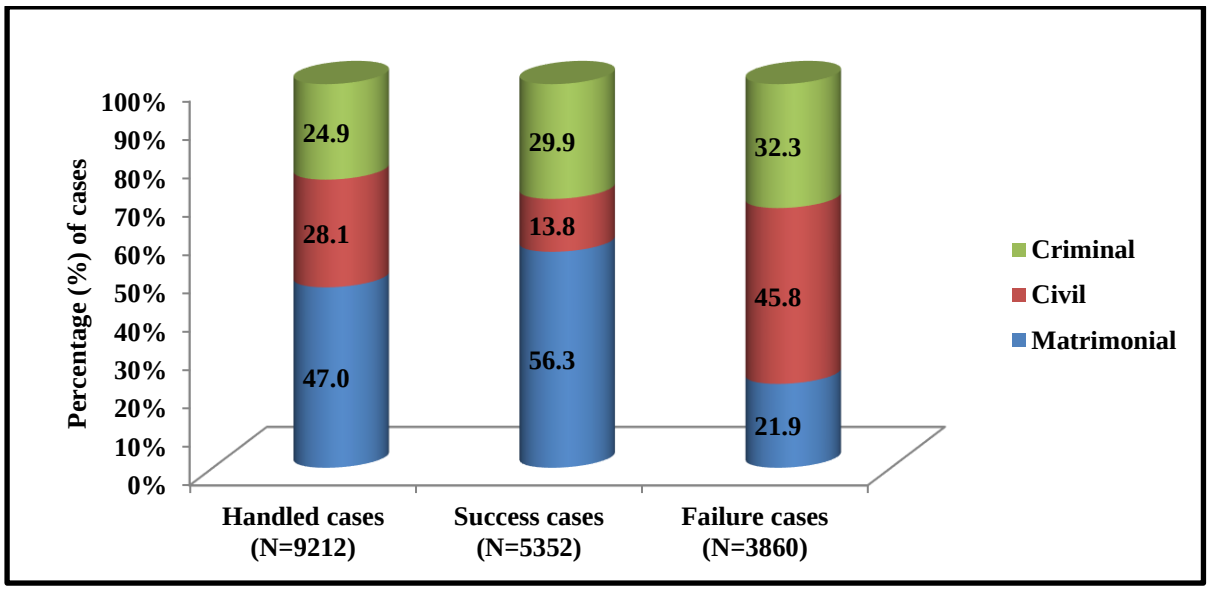


Source: Primary data

****Note: 2019- 1st January to 30th September***

Figure 2.2 shows that the matrimonial cases (56%) have had the most success and the civil cases (47%) have failed the most through the mediation process in 2019 (period- 1st January to 30th September). Out of the total 12020 receive cases, 9212 cases have been handled at the mediation center which is 76.6% of the received cases. Of the total cases handled, 47% are matrimonial cases, 28% are civil cases and 25% are criminal cases.

Figure 2.2: Types of cases handled successfully for mediation in 2019 (relative value)



Source: Primary data

Note: 2019- 1st January to 30th September

Tables 2.2 and 2.3 replicated that the answers relating to the questionnaire for a mediator, 81 mediators provided their answers to the various questions to the questionnaire. Each mediator received an average of 148 cases out of which 114 cases were handled and 82 cases went back to the court. Of the managed cases, an average of 66 cases have been successful and 44 cases have been unsuccessful. If we compare the two states based on these keys, then Jharkhand looks better than West Bengal in all respects.

Table 2.2: Average number of cases per mediator in 2019

Status of the cases	*Jharkhand*	*West Bengal*	*Overall*
Number of mediators	***57***	***24***	***81***
Average receive cases	***165***	***110***	***148***
Average handled cases	***120***	***99***	***114***
Average success cases	***77***	***40***	***66***
Average failure cases	***43***	***58***	***48***
Average non-starter cases	***45***	***11***	***35***
Averager reverted cases to the court	***88***	***70***	***82***

Source: Primary data

Note: 2019- 1st January to 30th September

Regarding the question of any need for the Refresher Training Programme for the mediators every year, 93% of the mediator replied to it as yes. Regarding the question of any need for institutionalization of Mediation, 84% of the mediator replied it as yes. Regarding the question of any need for an Awareness Programme on Mediation for the lawyers, judges, and litigants, 99% of the mediator replied it as yes. Regarding the question of any need to incorporate mediation as a special subject to be included in the syllabus at the graduate level in law and/or postgraduate level in law, 88% of the mediator replied it as yes. Statement of mediation in Court-referred mediation be used for better implementation of Alternative Dispute Resolution, 93% of mediator replied it as yes. Regarding the question of litigants are satisfied after their conflicts have been resolved, 72% of mediators replied it as yes in most cases. Regarding the availability of adequate staff for the mediation center, 40.1% replied in a positive tone and 59.9 replied in negative. The question relating to opinion as to the response of staff manning the mediation center, 6.2% mediator graded it as excellent, 16% as very good, 38.3% as good, and 27.2% as average. Regarding the infrastructure facility at the mediation center, 4.9% of mediators replied as excellent, 8.6% as very good 39.5% as good, 34.6% as average, and 12.8% as poor. Regarding the question of the response of parties during

mediation, 40.7% of mediators replied it as good and 27.2% thereof replied that it was average. Regarding the question of the response of advocates of the parties during the mediation process, 2.5% of mediators replied it as excellent, 16% as very good, 37% good, 39.5% as average, and 5% shown it as poor.

Table 2.3: Analysis of the opinions as offered by the mediator

Statements/questions	***Opinions***	***Number***	***%***
Is there any need for Refresher Training Programme every year?	***Yes***	***75***	***92.6***
	No	***6***	***7.4***
Whether there is any need for institutionalization of Mediation	***Yes***	***68***	***84.0***
	No	***13***	***16.0***
Is there any need for Awareness Programme on Mediation for the Lawyers, Judges, and Litigants	***Yes***	***80***	***98.8***
	No	***1***	***1.2***
Whether there is a need to incorporate mediation as a special subject to be included in the syllabus at the graduate level in law and/or postgraduate level in law	***Yes***	***71***	***87.7***
	No	***10***	***12.3***
Can the process of mediation in Court-referred mediation be used for better implementation of ADR	***Yes***	***75***	***92.6***
	No	***6***	***7.4***
Are conflicting partners satisfied after their conflicts have been resolved	***Yes always***	***15***	***18.5***
	Yes in most cases	***58***	***71.6***
	yes in some cases	***8***	***9.9***

Are adequate staffs available for the mediation center?	***Yes***	***33***	***40.1***
	No	***48***	***59.9***
Opinion regarding the staff manning the mediation center.	***Excellent***	***5***	***6.2***
	Very good	***13***	***16.0***
	Good	***31***	***38.3***
	Average	***22***	***27.2***
	Poor	***10***	***12.3***
Opinion regarding the infrastructure facility at the Mediation center	***Excellent***	***4***	***4.9***
	Very good	***7***	***8.6***
	Good	***32***	***39.5***
	Average	***28***	***34.6***
	Poor	***10***	***12.3***
The response of parties during mediation	***Excellent***	***6***	***7.4***
	Very good	***15***	***18.5***
	Good	***33***	***40.7***
	Average	***22***	***27.2***
	Poor	***5***	***6.2***
Highly engaged of parties during mediation	***Yes***	***48***	***59.2***
	No	***31***	***40.8***
Parties are following strategy/tactics	***Yes***	***35***	***43.2***
	No	***46***	***56.8***
Parties are extremely time conscious	***Yes***	***26***	***32.1***

	No	***55***	***67.9***
Responses of the advocate of the parties during the mediation process	***Excellent***	***2***	***2.5***
	Very good	***13***	***16.0***
	Good	***30***	***37.0***
	Average	***32***	***39.5***
	Poor	***4***	***4.9***

Source: Primary data

3 Analysis of the data as offered by the litigants:

Socio-demographics are nothing more than the characteristics of a population. Characteristics such as age, gender, ethnicity, education level, income, type of client, years of experience of the lawyers, location, etc. are being considered as socio-demographics in this section. Our survey targets litigants in this section. Socio-demographics characteristics show whether we are actually reaching our target litigation and whether we are effectively collecting the information we are searching for. Sample sizes are large enough, so we've divided them into different subgroups. This segmentation can offer insights that we cannot offer/conclusion just by looking at the overall data. There are also reasons to ask about the segmentation of socio-demographics. We need the segmentation of a substantial sample to draw any statistically meaningful conclusions. That's why we determined the most important socio-demographics for the study and only asked about them during the survey.

It has been shown in various scientific disciplines that opinions on a vast number of topics differ between different age groups and education levels. Therefore, age and education level is a very important socio-demographic feature. Segmentation of socio-demographic features located in table no 3.1.

We can see that in table number 3.1, the male and female respondents of litigants are almost equal. However, there is an unequal distribution between success and failure litigants. The maximum respondents' (145) age is between 35 to 50 years and the second-highest respondent (92) age is between 51 to 65 years. In the case of failure

litigants, the maximum respondents (81) age is between 35 to 50 years but the second-highest respondent's (52) age is between 18 to 35 years. Maximum number (253 out of 330 litigants) Hindu litigants participated in the survey. A very good number of Scheduled Castes (44) and Scheduled Tribes (89) population participated in the survey. Education level is low in the sample because a huge number of respondents (194 out of 330) have not completed the 12th standard. We can conclude based on the Chi-Square test that the variables are not independent of each other (except religion and caste) and that there is a statistical relationship between the categorical variables because of the p-value (Sig.) less than 0.05.

Table 3.1: Socio-demographic features of the litigants

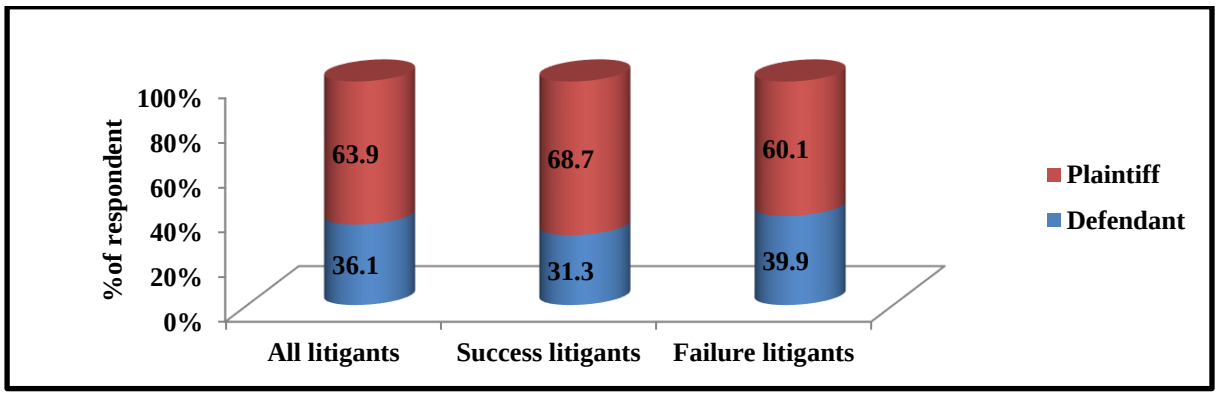
		[Observed value (Expected value)]			*Chi-Square test*	
		All litigants	*Success litigants*	*Unsuccessful litigants*	*Value*	*Sig.*
Gender of the litigants	***Male***	***164***	***88(73.1)***	***76(90.9)***	***10.96***	***0.001***
	Female	***166***	***59(73.9)***	***107(92.1)***		
Age of the litigants	***18 to 35 yrs. age***	***74***	***22(33.0)***	***52(41.0)***	***11.98***	***0.007***
	36 to 50 yrs. age	***145***	***64(64.6)***	***81(80.4)***		
	51 to 65 yrs. age	***92***	***52(41.0)***	***40(51.0)***		
	Above 65 yrs. age	***19***	***9(8.5)***	***10(10.5)***		
Religion of the litigants	***Hindu***	***253***	***115(112.7)***	***138(140.3)***	***1.76***	***0.414***
	Muslim	***76***	***31(33.9)***	***45(42.1)***		
	Others	***1***	***1(0.4)***	***0(0.6)***		
Caste of the litigants	***General***	***140***	***71(62.4)***	***69(77.6)***	***5.41***	***0.144***
	SC	***44***	***16(19.6)***	***28(24.4)***		
	ST	***89***	***40(39.6)***	***49(49.4)***		
	OBC	***57***	***20(39.6)***	***37(31.6)***		
Income level of the litigants	***APL***	***178***	***70(79.3)***	***108(98.7)***	***4.26***	***0.039***
	BPL	***152***	***77(67.7)***	***75(84.3)***		
Education level of the litigants	***Below 4th class***	***79***	***30(35.2)***	***49(43.8)***	***31.41***	***0.000***
	4th class completed	***115***	***64(51.2)***	***51(63.8)***		
	12th class completed	***41***	***21(18.3)***	***20(22.7)***		
	Graduate	***52***	***7(23.2)***	***45(28.8)***		
	Postgraduate and above	***43***	***25(19.2)***	***18(23.8)***		

Source: Primary data

The person or entity that files the lawsuit is called the plaintiff. The person or entity being sued is called the defendant. Figure 3.1 shows that, overall plaintiff respondents

(63.9%) almost twice the defendant (36.1%). in the case of success litigant, plaintiff respondents (68.7%) more than double the defendant (31.3%).

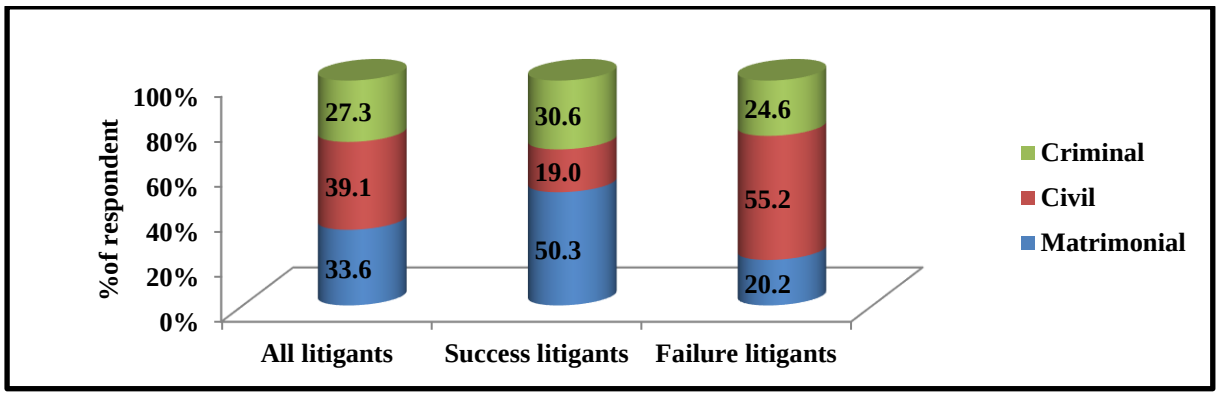
Figure 3.1: Percentage of plaintiff and defendant respondents



Source: Primary data

Figure 3.2 shows that, overall, almost equal respondents were found in civil, criminal and matrimonial cases. In the case of success litigant, the highest numbers of respondents were found in matrimonial cases (50.3%) and the lowest number of respondents was found in civil cases (19%). In the case of failure litigants, the highest numbers of respondents were found in civil cases (55.2%) and the lowest number of respondents was found in matrimonial cases (20.2%).

Figure 3.2: Case-wise percentage of respondents

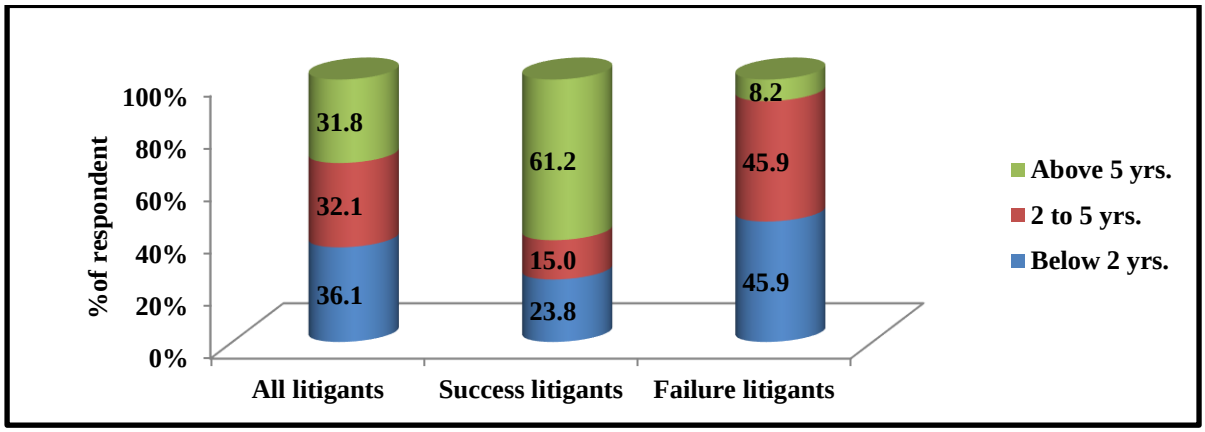


Source: Primary data

We have divided the age of the case into three parts. The parts are below 2 years, 2 to 5 years and above 5 years. Figure 3.3 shows that one-third of the respondents located each category age of the cases. 61.2% of success litigants located in the category of

'above 5 years' age and almost 90% of failure litigants located in ‘below 5 years’ age of the cases.

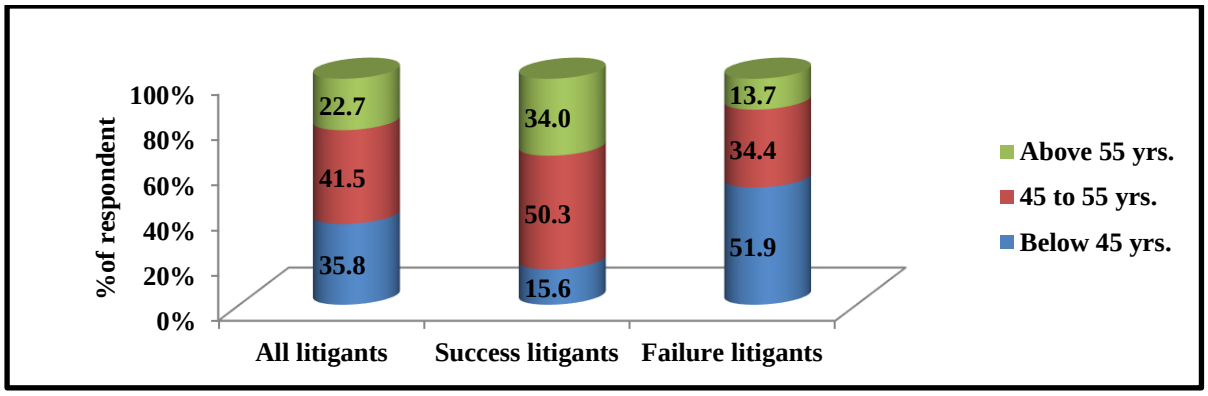
Figure 3.3: Lifespan of the case of the respondents



Source: Primary data

We have divided the age of the litigant’s lawyers into three parts. The parts are ‘below 45 years’ 45 to 55 years and ‘above 55 years’. Figure 3.4 shows that 50.3% of success litigants are located in the category of '45 to 55 years' and 34% of success litigants are located in the category of 'above 55 years' age of the lawyers. In the case of failure litigants, 51.9 % of respondents located in the category of 'below 45 years' age of the lawyers.

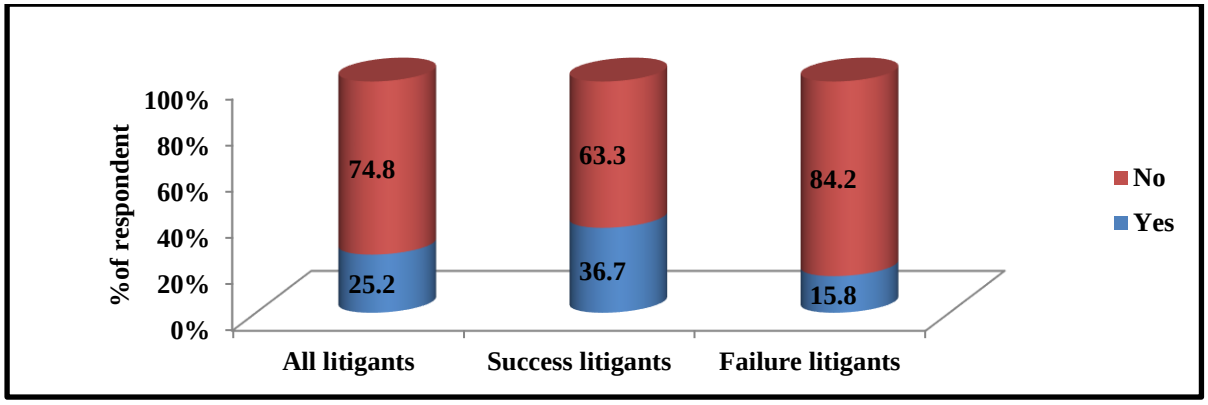
Figure 3.4: Age of the litigant’s lawyers



Source: Primary data

Figure 3.5 shows that before commenced the legal proceedings most of the respondents (74.8%) unfamiliar with mediation.

Figure 3.5: Familiar with mediation



Source: Primary data

Patterns of Meditation Practice

Litigants collect mediation information in a variety of ways. We have divided the sources of information collection into three parts. The court or judge is the primary and first source of information on 55% of litigants, a lawyer (19%), and other litigants, family, friends & colleagues (26%) among other sources (Table 3.2).

Table 3.2: First Information source of the mediation process

Information sources	*All litigants [N=330(%)]*	*Success litigants [N=147(%)]*	*Unsuccessful litigants [N=183(%)]*	*ANOVA*	
				F value	*Sig.*
Through lawyers	*61(19)*	*39(27)*	*22(12)*	*11.72*	*0.001*
Through a judge/court	*182(55)*	*56(38)*	*126(69)*	*34.22*	*0.000*
Through other litigants, family/friends/colleagues	*87(26)*	*52(35)*	*35(19)*	*11.40*	*0.001*

Source: Primary data

As Table 3.2 shows, lawyers (27%) and opponent litigants (35%) send first information to success litigants, while lawyers (11%) and opponent litigants (19%) send first information to unsuccessful litigants. Therefore, we can conclude that lawyers and opponent litigants have an important role to play in resolving the dispute through the mediation process.

The key to success through mediating litigation is to be aware of the mediation process. To have success through the mediation process, a litigant can be aware of the various mediums adopted. We mentioned the five ways through Table 4 to be aware of the mediation process. Most of the litigants (68%) become aware through a judge/court & mediator. Lawyers (68%), other or opponent party (37%), press or media and professional literature (13%), family friends (6%) among the other way to be aware of the mediation process.

Table 3.3: Medium of awareness of the litigants

	Number (percentage)			*ANOVA*	
Medium of awareness	***All litigants***	***Success litigants***	***Unsuccessful litigants***	***F value***	***Sig.***
Through a Lawyer	***221(67)***	***125(85)***	***96(52)***	***44.09***	***0.000***
Through a judge/court & mediator	***224(68)***	***99(67)***	***125(68)***	***0.03***	***0.853***
Through other and opponent party	***123(37)***	***86(59)***	***37(20)***	***60.10***	***0.000***
Through press/media & professional literature	***42(13)***	***30(20)***	***12(7)***	***14.62***	***0.000***
Through family/friends/colleagues & work	***19(6)***	***8(5)***	***11(6)***	***0.05***	***0.826***

Source: Primary data

Creating awareness of the litigants is a very important responsibility of lawyers and courts. We can see from Table 3.3 that the mediation awareness of the litigants has been well maintained by the court, and the two types of litigants (success litigants 67% and unsuccessful litigants 68%) have been made aware by the court at almost the same rate. Therefore, an insignificant difference ($0.05 < 0.853$) between groups. The responsibility to raise awareness of the mediation of the litigants by the lawyers has been well maintained but the litigants did not benefit equally. Therefore, a significant difference ($0.05 > 0.000$) between groups (success litigants 85% and unsuccessful litigants 52%). Awareness by the opposing party and the educated person has been a positive impact on the success of cases through the mediation process.

Table 3.4: Reasons to come in the meditation process

	Number (percentage)			*ANOVA*	
Reasons	***All litigants***	***Success litigants***	***Unsuccessful litigants***	***F value***	***Sig.***
Case refer by judge/court	***305(92)***	***135(92)***	***170(93)***	***0.13***	***0.719***
Lawyers suggested	***192(58)***	***118(80)***	***74(40)***	***62.99***	***0.000***

Relief to the length of judicial process	***169(51)***	***108(73)***	***61(33)***	***62.13***	***0.000***
Own interested	***133(40)***	***84(57)***	***49(27)***	***34.30***	***0.000***
Other party proposed mediation	***144(44)***	***86(59)***	***58(32)***	***25.52***	***0.000***
Less expensive than a court proceeding	***142(43)***	***86(59)***	***56(31)***	***27.92***	***0.000***
Expected a better and quicker resolution	***102(31)***	***61(41)***	***41(22)***	***14.43***	***0.000***

Source: Primary data

A common citizen gets trapped in the years-long litigation process, which usually erodes the very purpose of our justice system. Considering the delay in court proceedings, Abraham Lincoln said *"Discourage litigation. Persuade your neighbours to compromise whenever you can point out to them how the nominal winner is often a real loser, in fees, expenses, and waste of time."*

In India, where most people opt for litigation to resolve disputes, there is excessive over-burdening of courts and a large number of pending cases on the docket, which has ultimately led to dissatisfaction among people regarding the judicial system and its ability to provide justice, often making true the popular belief, *"Justice delayed is justice denied*". Anyway, in this study area, litigants have come into the mediation process for various reasons. We have mentioned seven types of factors in Table 3.4.

92% percent of the litigants participated in the mediation process for the reasons being sent by the court. Also, litigants participate in the mediation process because of the suggestions made by lawyers (58%) and the relief from the length judicial process (51%). Due to the significantly less amount of time, 31% of litigants participate in the mediation process and can occur relatively early in the dispute, also helping the mediator to focus on the relevant issues and ignore the others. Due to less expensive than a court proceeding, little to less preparation, and less formal and complex than trial or arbitration the 43% of litigants participate in the mediation process. The opponent party proposed (44%) and own interested (40%) among the other factors. All of these factors (except court refer, $0.05<0.719$) play a key role in the successful or unsuccessful process of litigation through the mediation process.

Table 3.5 shows the answers relating to the questionnaire for litigants. 330 litigants (147 success litigants and 183 failure litigants) provided their answers to the various questions to the questionnaire.

Regarding the question as to the rating of their first impression of the mediators handling their case, overall 20.9% of litigants have rated it as unfavorable, 20.6% as neutral, and 58.6% as favourable. In the case of successful litigants, 11.6% have rated it as unfavourable and 60.5% have it favourable. On the other hand, in the case of unsuccessful litigants, 28.4% have rated it as unfavourable and 56.8% have it favourable.

The question as to the rating of the comfort and appropriateness of the physical setting arranged by the mediators, almost 50% has rated it as uncomfortable, 26.7% as neutral, and 28.8% as comfortable.

So far as the question as to how clear were the introductory remarks and explanation of the mediation process offered by the mediators, 13.6% expressed it as unclear, 27.0% as neutral, and 59.4% as clear.

Regarding the question as to how comfortable they were during the mediation session, overall 29.7% of litigants expressed their opinion as uncomfortable and 43.9% as comfortable. In the case of success litigants, 17.7% have rated it as uncomfortable, 18.4% as neutral, and 63.9% as comfortable. On the other hand, in the case of unsuccessful litigants, 39.3% have rated it as uncomfortable, 32.8% as neutral, and 27.9% as comfortable.

Regarding the question relating to their involvement in the problem-solving process, 9.4% expressed their opinion as not- involved, 27.3% as neutral, and 63.3% as involved.

The question as to how fair was the mediators to both sides, overall 24.5% of litigants opined it as unfair, 10.6% as neutral, and 64.8% as fair. In the case of success litigants, 5.4% of litigants expressed it as unfair, 15% as neutral, and 79.6% as fair. On the other hand, in the case of failure litigants, 39.9% of litigants opined it as unfair, 7.1% as neutral, and 53% as fair.

So far as the question as to rate their overall satisfaction with how the mediators conducted the mediation session, overall 29.4% litigants rated it as dissatisfied, 15.5% as neutral, and 55.2% as satisfied. In the case of success litigants, 7.5% litigants rated it as dissatisfied, 17% as neutral, and 75.5% as satisfied. On the other hand, in the case

of failure litigants, 47% of litigants rated it as dissatisfied, 14.2% as neutral, and 38.8% as satisfied.

So far as the question as to how well was the tone set for future problem solving with the other party, overall 17.3% litigants have expressed it as a neutral, 33.6% as negative tone, and 49.1% as positive tone. In the case of success litigants, 16.3% of litigants have expressed it as a negative tone, 15.6% as neutral, and 68% as a positive tone. On the other hand, in the case of failure litigants, 47.5% of litigants have expressed it as a negative tone, 18.6% as neutral, and 33.9% as a positive tone.

The question as to their satisfaction with the overall mediation, overall 39.4% litigants has expressed it as unsatisfied, 10% as neutral, and 50.6% as satisfied. In the case of success litigants, 15.6% of litigants have expressed it is unsatisfied, 14.3% as neutral, and 70.1% as satisfied. On the other hand, in the case of failure litigants. 58.5% of litigants have expressed it as unsatisfied, 6.6% as neutral, and 35% as satisfied.

Regarding the question as to whether the mediators give both parties an equal chance to explain their case, 64.5% overall litigants have replied it in affirmative, 76.9% success litigants it as yes and 54.6% failure litigants it as yes.

So far as the question as to whether the mediation process addresses the main issues of their dispute is concerned, 63% overall litigants replied it in affirmative and 23.3% in negative. In the case of success litigants, 72.8% litigants have replied it in affirmative and 23.1% in negative. On the other hand, in the case of failure litigants, 55.2% of litigants have replied it as yes and 23.5% as no.

The question as to whether the mediation ended successfully, 33.6% overall litigants have replies it as yes and 54.5% as no. In the case of the success of litigants, 59.2% litigants have replied it in affirmative and 27.2% litigants in negative.

Regarding the question as to if they reached an agreement, where the terms and conditions of the agreement clear to them, 78.8% replied it as clear and 9.7% as unclear.

Regarding the question of mediator, contribution affects the course of the mediation, overall 39.4% of litigants have replied to it as favourable, 38.2% as neutral, and 22.4% as adversely. In the case of success litigants, 73.5% of litigants have replied to it as

favourable, 17.7% as neutral, and 8.8% as adverse. On the other hand, 12% of failure litigants have replied it as favourable, 54.6% as neutral, and 33.3% as adverse.

Regarding the statements of mediators is efficient, 43.6% of litigants have replied it as yes and 24.8% as no.

Regarding the question as to whether they have enough time for the mediation, overall 46.4% of litigants have answered it in an affirmative, 38.5% as neutral and 15.2% have replied it in negative. In cases of success litigants, 53.1% of litigants have replied it as yes and 44.9% as neutral. On the other hand, 41% of litigants have replied to it as yes and 33.3% as neutral.

We can conclude from Table 3.6 that, the observed value (58.5%) of the 'first impression of the mediators' is behind the expected value (above 80%). So mediators need to be more careful about this issue so that more litigants can impress on the mediation issue in the first phase. Physical arrangements need to be made more acceptable through infrastructure development. The introduction and explanation of the mediation process provided by the mediators need to be more beautiful so that more and more litigants have a clear idea of mediation. The mediation session is very much needed to make it comfortable due to only 43.9% of litigants argued that comfortable. However, despite some limitations, mediation as a whole has been successful

Table 3.5: Analysis of the opinions as offered by the litigants

Statements/questions	***Opinions***	***% of litigants***		
		Success (N=147)	***Failure (N=183)***	***Overall (N=330)***
How would you rate your first impression of the mediators handling your case?	***Unfavourable***	***11.6***	***28.4***	***20.9***
	Neutral	***27.9***	***14.8***	***20.6***
	Favourable	***60.5***	***56.8***	***58.5***
How would you rate the comfort and appropriateness of the physical setting arranged by the mediators for your session?	***Uncomfortable***	***45.6***	***43.7***	***44.5***
	Neutral	***15.0***	***36.1***	***26.7***
	Comfortable	***39.5***	***20.2***	***28.8***
How clear were the introductory remarks and explanation of the mediation process offered by the mediators?	***Unclear***	***12.9***	***14.2***	***13.6***
	Neutral	***25.9***	***27.9***	***27.0***
	Clear	***61.2***	***57.9***	***59.4***
How comfortable were you during the mediation session?	***Uncomfortable***	***17.7***	***39.3***	***29.7***
	Neutral	***18.4***	***32.8***	***26.4***
	Comfortable	***63.9***	***27.9***	***43.9***
	Not Involved	***8.8***	***9.8***	***9.4***

How involved were you in the problem-solving process?	***Neutral***	***21.8***	***31.7***	***27.3***
	Involved	***69.4***	***58.5***	***63.3***
How fair was the mediator to both sides?	***Unfair***	***5.4***	***39.9***	***24.5***
	Neutral	***15.0***	***7.1***	***10.6***
	Fair	***79.6***	***53.0***	***64.8***
How would you rate your overall satisfaction with the manner in which the mediators conducted the mediation session?	***Dissatisfied***	***7.5***	***47.0***	***29.4***
	Neutral	***17.0***	***14.2***	***15.5***
	Satisfied	***75.5***	***38.8***	***55.2***
How satisfied were you with the overall mediation?	***Dissatisfied***	***15.6***	***58.5***	***39.4***
	Neutral	***14.3***	***6.6***	***10.0***
	Satisfied	***70.1***	***35.0***	***50.6***
How well was the tone set for future problem solving with the other party?	***Negative tone***	***16.3***	***47.5***	***33.6***
	Neutral	***15.6***	***18.6***	***17.3***
	Positive tone	***68.0***	***33.9***	***49.1***
Did the mediators give both parties an equal chance to explain their case?	***No***	***6.8***	***22.4***	***15.5***
	Neutral	***16.3***	***23.0***	***20.0***
	Yes	***76.9***	***54.6***	***64.5***
Did the mediation process address the main issues of your dispute?	***No***	***23.1***	***23.5***	***23.3***
	Neutral	***4.1***	***21.3***	***13.6***
	Yes	***72.8***	***55.2***	***63.0***
Did the mediation end successfully (i.e., with a mutually agreeable solution)?	***No***	***27.2***	***76.5***	***54.5***
	Neutral	***13.6***	***10.4***	***11.8***
	Yes	***59.2***	***13.1***	***33.6***
If you reached an agreement, were the terms and conditions of the agreement clear to you?	***Unclear***	***8.2***	***10.9***	***9.7***
	Neutral	***17.0***	***7.1***	***11.5***
	Clear	***74.8***	***82.0***	***78.8***
Does mediator contribution affect the course of the mediation?	***Adversely***	***8.8***	***33.3***	***22.4***
	No effect	***17.7***	***54.6***	***38.2***
	Favourably	***73.5***	***12.0***	***39.4***
Mediators are efficient.	***No***	***17.0***	***31.1***	***24.8***
	Neutral	***16.3***	***43.7***	***31.5***
	Yes	***66.7***	***25.1***	***43.6***
Did you have enough time for the mediation?	***No***	***2.0***	***25.7***	***15.2***
	Neutral	***44.9***	***33.3***	***38.5***
	Yes	***53.1***	***41.0***	***46.4***

Source: Primary data

Summary:

1. Success rate of mediation cases has been increasing. Awareness of lower-middle-aged group lawyers may stimulate the same.

2. The presence/ participation of lawyers is providing a positive impact.

3. As per the observation of lawyers, awareness of litigants is required.

4. Litigant's impression of success is positive. But, litigants are not comfortable with the physical arrangement in the process.

5. Matrimonial cases have been successfully addressed by the mediation process.

Chapter 5: Findings & Conclusion

Considering the different stakeholders in the process of mediation, the research project presents the implementable suggestions –

A For Advocates and Mediators:

1) Advocates are generally apprehensive of losing client on the reference of the litigation for mediation. Thus, they do not welcome the reference of the case for mediation and persuades the parties to not to support the mediation process.

   In this regard, it is advisable to work on incentive model for the advocates so that they can support the reference of the case for mediation.

2) i) Mediators are being paid differential sum based on success and failure of the mediation. The amount is paid by the Legal Services Authority. Generally, the quantum of honorarium paid to the mediator is not very attractive.

   In this regard, it is desirable that the honorarium/fee to the mediator to be paid by the client. The client also saves a considerable sum amount in mediation which otherwise would have been spent for hiring lawyers and the undue delay in disposal of cases in the court of law. The Legal Services Authority may come up with a formula on the payment of honorarium/fee to the mediators based on the monetary value involved in the litigation or time-line needed in the disposal of the case.

   ii) In addition to monetary incentive to mediators, it is advisable to develop 'reward-based system' to adequately commensurate the efforts of the mediators in their professional career.

   In this regard, it is suggested to give due consideration in the appointment of commissioner or amicus by the court to the mediator-cum-advocate. Also, some weightage can be given while considering the name for judgeship in the higher courts. Bar may come up with necessary criteria.

3) There is a need to have timely release of funds to these State and District Legal Services Authority for more effective implementation. Many mediators mostly in

the sub-division have not received their mediation fees for years and it slacks the encouragement to do quality work.

4) At present there is a requirement of three years practice for being certified mediators. It certainly refrains the new-entrants in the profession to stay away from this mode of dispensation of justice.

   With a robust and renewed programme on mediation in the law colleges/universities, the newly graduated may equipped with necessary skill to participate in the mediation after undergoing the training prescribed by the competent authority.

5) Research indicates that lack of competent mediator with the experience, skills, knowledge and cultural sensitivity for the specific conflict situation. There is a requirement of male and female in mediation process specially in family matter. Hence, the followings may be considered.

   a. Involvement of retired judges in mediation process following Australian Model

   b. Training of Mediator through Academy

   c. Encouragement of lawyers and or resource person in mediation process

   d. Design of incentive mechanism such as monetary, promotional reward or both.

   e. Development mediators and subsequently roaster based on language, culture and demography

   f. Immunity to protect mediators from civil liability for misconduct during a mediation process.

B For Referral Judges:

1) Sensitisation programme to referral judges should be based on the cases which are being more successful in mediation process in a given region.

2) For the service record, the reference alone should not be considered but it should be supplemented with the referred cases successfully mediated in the mediation process.

It will encourage the referral judges to play proactive role in convincing the advocates and the parties to agree for mediation in the interest of justice.

3) Robust use of technology to track the process of mediation is needed. At present the digital monitoring of the progress of mediation takes place, it is advisable to make e-system more dynamics so that the non-starter cases should be red-flagged and the referral judges take immediate note and corrective steps. If timely intervention of the referral judges is ensured then the dilatory tactics of the advocates could be avoided in the interest of justice.

4) The referral judges should be bound to pass the judgment aligned with the terms agreed in mediation. The successful mediation should become the part of the judgment by suitably amending the relevant law.

C For Parties – Awareness and Incentives

1. The use of audio-visual aids would be more helpful in making lot of things understand easily and attract local populace towards utilizing the benefits of mediation.

2. The awareness programme should focus on females as they are less aware about the benefits of mediation.

3. There is lack of awareness in rural areas among local/common people, as most of them are illiterate or neo-literates.

4. Provision of Wall writing, Banners, Road shows, Hoarding will help in creating awareness.

5. In awareness programme, trained mediators are to be encouraged to participate. Law Collegs/Universities should be involved to intensify awareness programme.

6. Parties are to be incentivized to resolve the cases through mediation by paying discounted court-fee in case of successful mediation.

D Role of District Legal Services Authority

1. There is also a need to increase mediators at some backward districts and sub-divisional level. The number of Mediators to the incoming cases is extremely poor in such backward districts.

2. Most sub-divisional courts had no mediators and they need to travel from the district courts which create inconvenience and delay in justice dispensation.

3. Adequate training to mediators at the local level (Sub-Divisional Court/Tahsil) will enhance the confidence of the parties in the participation of mediation process.

4. Instead of holding one training session over a few hours, training can be spread over a week covering different issues on different days to maximize retaining and learning output. Further, training sessions should be followed by follow up sessions on a regular basis to ensure optimum success.

5. At least one local resource person should be included who could address the local queries of the citizens during mediation awareness week.

6. The DSLA are already burdened with multiple task assigned under the Legal Services Authority Act. Thus, it is advisable to create professional wing to institutionalize mediation programme. The professional wing with trained and skilled manpower will be responsible for generating the awareness amongst community and upgrading the skill of the mediators.

7. Mediation Centres need to be revamped and made more technology friendly. Computers and other devices should be installed at every Mediation Centre for ease of business.

8. There should be multiple designated Mediation Rooms in the Mediation Centre which does not exist in the districts. There should be adequate infrastructure and staff.

9. Use different forms of media, including social media and opinion polls, to expand participation, inform and engage the public and identify potential points of contention.

10. The allotment of mediators at the Teshsil level may be done with the support of third-tier government. The parties need not travel to the Office of District Legal Services Authority to initiate the process of mediation after referral of cases. It would ensure the justice delivery process moving closer to the litigants.

General Suggestions

***1 Mediation Curbs Future Litigation*:**

For many people, ending a dispute is as important as the outcome. Thus being able to bring a matter to a sensible conclusion without the time, stress, possible publicity, management cost, opportunity cost, reputational risk and loss of morale entailed in long, drawn out conflict is a real advantage. The vast majority of matters dealt with by mediation are resolved quickly and effectively.

***2 Mediation brings Certainty*:**

Allied to closure and control is the knowledge of an agreed outcome and avoidance of the risk and uncertainty inherent in handing over dispute resolution to third parties. Being a consensual process, mediation has a remarkably high success and implementation rate.

***3 Parties Retain Control over Outcome*:**

The parties retain control over the outcome rather than handing it over to lawyers or a judge or other third party adjudicator. Lawyers are often involved in mediation as advisers, advocates and confidantes but one of its defining features is party autonomy.

***4 Challenges to Mediation**:*

The concept of the mediation, as a part of judicial system is comparatively a new idea recently introduced in India. The introduction of Court referred mediation may look difficult in this vast country. A pessimist may see many obstacles in the implementation

of the court referred mediation programme and may imagine the unavailability of sufficient funds to introduce the machinery in the country. However, for a country which provided large priority funds for establishing fast track courts for expeditious disposal of criminal cases in the recent past, it is not impossible to make budgetary provisions for a beneficial cause, which, in the long run, can solve one of the naughtiest problems of a fast developing country. If court annexed mediation programme can be implemented with a determination, it will enable the country to carry out a major legislative intent and provide to the nation a stimulant for the growth of its commerce, industry and global interests. It will provide a new and fresh solution to the ailing problem of delays in the court. The present delay in disposal of the cases is mounting in a geometrical proportion and likely to create a crisis of confidence and therefore, it requires a resolute determination and strong will to introduce the court annexed mediation in the Indian legal system at the beginning of twenty-first century. The task is not easy but not impossible.

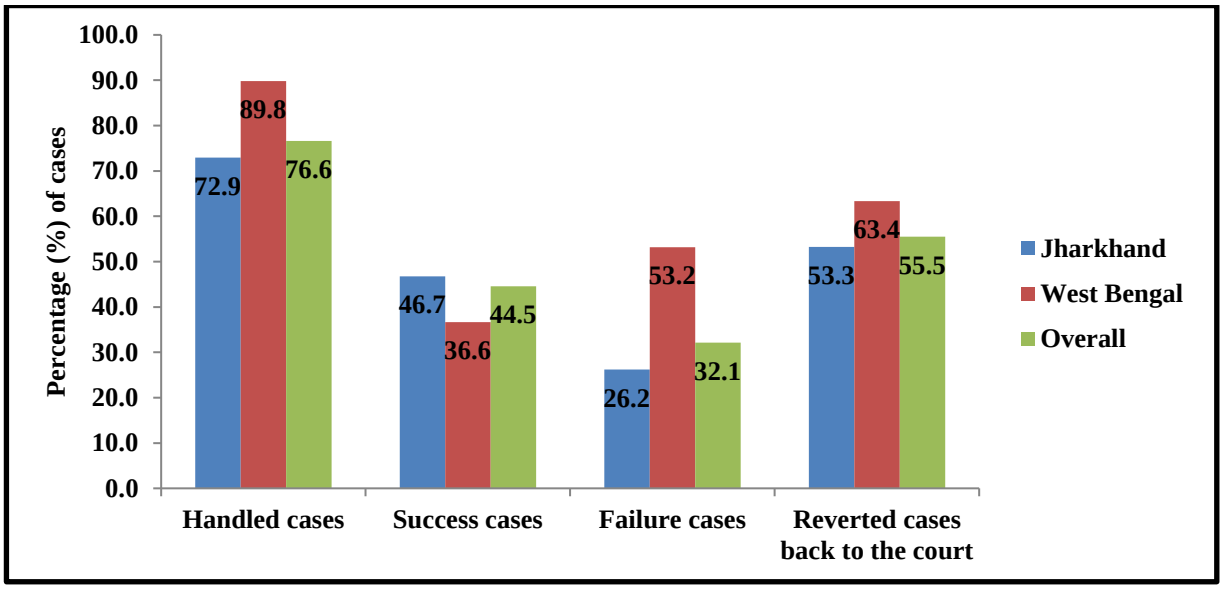
The challenges faced by the current regulatory framework governing training of Mediators by MCPC (Mediation and Conciliation Project Committee), and the potential issues arising there-from, as discussed in the previous chapter, indicate that there is a need to re-assess the extant framework. In this regard, certain measures may be contemplated in order to address growing unawareness of mediation, and to consequently strengthen mediation standards in India. Therefore, protection of party interests and enhancing transparency and accountability, are particularly critical in the Indian context. The role played by referral judges, in being the custodians of these functions and to maintain checks and balances, is crucial. However, the analysis of the regulatory framework in this report demonstrates that there is a glaring disconnect between responsibilities and liabilities. Evidently, the current framework merits serious consideration. Set out below are certain broad recommendations aimed at reforming the current framework and ultimately ensuring better compliance with Mediation.

Training to Mediators would be the necessary strategic reform to popularize Mediation and to elicit positive public consent.

From our study we find that even at High Court level in the State of West Bengal and Jharkhand Mediation activities are recorded at a very rare interval. There is no uniform set standard for mediation. Therefore there has to be legislation to guide mediation

process and to arrive at solid conclusions.

Status of the court referred cases to the mediation center in 2019 (relative value)[138]



5 Poor Mediator to Incoming Cases Ratio:

The current crop of mediators can handle only a fraction of the load on the courts. Our study has shown the unavailability of mediators being a major concern presently which is directly proportional to poor rate of incoming cases for mediation. A major reason can be unawareness originating from low literacy rate, mediation viewed as something complex and considered still in its nascent stage and maybe a lack of enthusiasm among stakeholders to promote it. The figure below is to solicit the view that there is a poor rate of incoming cases to mediators.

Average number of cases per mediator in 2019[139]

Status of the cases	*Jharkhand*	*West Bengal*	*Overall*
Number of mediator	*57*	*24*	*81*

[138] Please see Figure 2.1 in the chapter called "Presentation of Data Analysis" for detailed understanding.

[139] Please see Table 2.2 in the chapter called "Presentation of Data Analysis" for more detailed discussion.

Average receive cases	***165***	***110***	***148***
Average handled cases	***120***	***99***	***114***
Average success cases	***77***	***40***	***66***
Average failure cases	***43***	***58***	***48***
Average non-starter cases	***45***	***11***	***35***
Averager reverted cases to the court	***88***	***70***	***82***

Source: Primary data

Note: 2019- 1st January to 30th September

6 Focus points of Mediation:

There are many reasons why mediation can fail, even if both parties are well represented and generally inclined to participate in good faith. The following are some common reasons mentioned for mediation failure.

1. The first cause of failure can occur when the parties do not have the necessary commitment to participate and mediate. Not everyone enters the process voluntarily and they are not prepared to take the case forward through the mediation process. Mediator suggests for everyone needs to enter willingly into the process and they need to be prepared to take responsibility for finding a way forward. Therefore, no conflict can be successfully addressed unless the parties involved are themselves open to resolution and willing to work for it. If they enter the process passively, simply waiting for the mediator to "fix" the problem for them, success as defined above is a highly unlikely prospect. To maximize the chances of party commitment, it is preferable to meditate as early as possible. The longer the conflict has been left unattended, the greater the likelihood that the parties have become so entrenched and so despairing of their situation that they are unable to believe in the possibility of resolution.

2. Mediation easily fails if both parties have different understandings of the key issues to be resolved and both parties are rigid. Therefore, an experienced mediator should attempt to ascertain in advance whether the parties seem to have similar understandings of the issues to be mediated.

3. Mediation fails if the parties involved do not trust that confidentiality. If either party fears that what they say might be used outside the mediation context, either by the other party or the mediator, the conversation might never reach the depth required to build mutual understanding, and mediation will fail.

Lawyers perception on the rank of some major reasons to failure of cases through the mediation process:[140]

Reasons	***Score***	***Rank***
Failure of preparation approach	***2.87***	***I***
Failure of timing exercise	***2.59***	***II***
Strategic or tactical failure	***2.34***	***III***
Attitude of client	***2.22***	***IV***
Lack of engagements	***2.01***	***V***
Wrong choice of mediator	***1.07***	***VI***

Source: Primary data

7 Unavailability of Trained Mediators:

In the absence of adequate remuneration, lawyers cannot be expected to devote a large part of their time to mediation, let alone do the switch from litigator to full-time mediator. If we want to have a large pool of efficient mediators, there should be some incentive for encouraging mediators in development of a professional practice in mediation. Courts should encourage parties where there is a substantial chance to conduct private mediation. In court-referred mediation centres, pro bono must be

[140] See Table 1.4 in the chapter called "Presentation of Data Analysis" for detailed explanation.

expected from mediators for cases of underprivileged parties; in other cases where parties can afford to pay they should be made to pay in order to bear the costs of having a trained mediator to facilitate the dispute. In addition to adequate remuneration, the other aspects of professional functioning should be put in place; these are proper standards and method of getting the certificate, a code of ethics, removal from panel in case of misdemeanor or lack of integrity, or adequate cause, refresher course, trainings in shorter intervals and brushing up of skills, etc. if mediation can be propagated as a professional practice, it will also help in finding more skilled and interested mediators. It can make ADR an attractive career option for students, lawyers, retired judges and experts. These measures will bring viability and sustainability to ADR efforts so that they may achieve their potential, and bring the many benefits of consensual dispute resolutions to our legal system.

Sample Size[141]

States	***Districts***	***Mediators (N=81)***	***Lawyers (N=344)***	***Litigants***		
				Success (N=147)	***Unsuccessful (M=183)***	***Total (N=330)***
Jharkhand	***Bokaro***	***8***	***23***	***14***	***14***	***28***
	Chaibasa	***4***	***21***	***6***	***6***	***12***
	Deoghar	***5***	***23***	***10***	***14***	***24***
	Dhanbad	***9***	***22***	***14***	***14***	***28***
	Garhwa	***4***	***21***	***10***	***14***	***24***
	Giridih	***6***	***21***	***10***	***10***	***20***
	Jamshedpur	***8***	***22***	***14***	***10***	***24***
	Khunti	***2***	***20***	***5***	***5***	***10***
	Ranchi	***7***	***23***	***14***	***9***	***23***

[141] Please See Table 3A in the chapter called "Presentation of Data Analysis" for detailed explanation.

	Seraikella	***4***	***20***	***6***	***6***	***12***
	Total	***57***	***216***	***103***	***102***	***205***
West Bengal	***Burdwan***	***4***	***21***	***9***	***18***	***27***
	Darjeeling	***4***	***18***	***7***	***12***	***19***
	Jalpaiguri	***4***	***20***	***7***	***20***	***27***
	Kolkata	***6***	***23***	***5***	***12***	***17***
	Coochbehar	***4***	***20***	***7***	***12***	***19***
	Paschim Medinipur	***2***	***26***	***9***	***7***	***16***
	Total	***24***	***128***	***44***	***81***	***125***

Source: Primary data

Through this sample size we can see there is an unavailability of mediators when compared to the number of litigants and that of lawyers.

8 More Mediation Should be Encouraged:

Private mediation affords more flexibility and choice. Parties can choose their own mediator rather than have to accept one from the court roster. As seen during our study survey, the choice of mediator is crucial; in matters where the stakes are substantial, parties would prefer to choose the best mediator. When parties select their own mediators, the chances of success are high – they have full trust on the mediator's competence, integrity and qualification. Also they take the process seriously as it costs them money and for the same reason they will not adopt delaying tactics.

The court-referred mediation system should be made available for those litigants who cannot afford private mediation or unable to find a mediator of their choice or otherwise. Even, under court-referred mediation, a reasonable remuneration should be paid to the mediators. And then professional mediators can be asked to provide pro

bono services for court-referred mediations with a boost in the basic remuneration that is currently applicable for mediating cases.

Summary of clusters of recommending cases[142]

Clusters	*No. of lawyers*	*Total recommend cases*	*Total success cases*	*Success rate*
Below 5	*90*	*252*	*43*	*17.1*
5 to 7	*91*	*531*	*171*	*32.2*
8 to 13	*109*	*1041*	*696*	*66.9*
Above 13	*54*	*1032*	*760*	*73.6*
Overall	*344*	*2856*	*1670*	*58.5*

Source: Primary data

Therefore, we can conclude that if the awareness of lower middle-aged lawyers on the subject of mediation can be increased or the importance of mediation in terms of socialization can be realized, then the value of success can be greatly enhanced.

9 More Involvement of Retired Judges for Mediation:

The picture is completely different as far as retired judges are concerned. A retired judge carries with him the reverence attached to his office. The respect stems out of the attributes of fairness, sobriety and wisdom of the judges. All this induces trust. A respected judge commands an influence very naturally even after he demits office, exercising what may be called "benign authority".[143] That is because of the judicial office that requires and commands respects and obedience. The judge's word is law. With a change in attitude, a good judge can be a good mediator because they are the best listeners which are a quintessential pre-requisite of mediation.

[142] See Table 1.1 in the chapter "Presentation of Data Analysis"
[143] Mediation and Practice of Law, Sriram Panchu, 2nd Edition, 2019, Lexis Nexus.

10 Problems in Court-referred Mediation Scheme:

Inappropriate referrals are another bane. Judges need to be sensitized and must exercise right choices while referring cases to mediation. Most importantly, the competence and quality of mediator is the only yardstick to determine the quality of the service. Court schemes usually require a substantial number of mediators; a great deal of effort is required to select, train, equip and refresh them. Currently, the law does not protect the title 'mediator'. Mediators operating under the court mediation scheme are regulated by rules framed under CPC but there is no regulation of mediators outside of the court mediation scheme. These aspects are essential for the success of mediation.

The Model Civil Procedure Mediation Rules (which are the basis for the rules adopted by the High Courts) provide in Rule 22 that a mediator is protected from civil and criminal liability and from having to be summoned by the court to testify as regards the mediation proceedings. Similar protection is required under Arbitration and Conciliation Act, 1996.

Status of the court referred cases to the mediation center in 2019 (absolute value):[144]

Status of the cases	***Jharkhand***	***West Bengal***	***Overall***
Receive cases	***9386***	***2634***	***12020***
Handled cases	***6847***	***2365***	***9212***
Success cases	***4387***	***965***	***5352***
Failure cases	***2460***	***1400***	***3860***
Non-Starter cases	***2539***	***269***	***2808***
Reverted cases back to the court	***4999***	***1669***	***6668***

Source: Primary data

****Note: 2019- 1st January to 30th September***

[144] See Table 2.1 in the chapter "Presentation of Data Analysis" for detailed discussion.

Another frequent problem is mischief. The tendency to use referral to mediation as a means to delay court proceedings must not be encouraged and nipped in the bud in case revealed. The following case reflects that when a case has no meaning to be referred for mediation it shows such signs in the early stages of filing the case.

***11 Respecting indigenous Techniques*:**

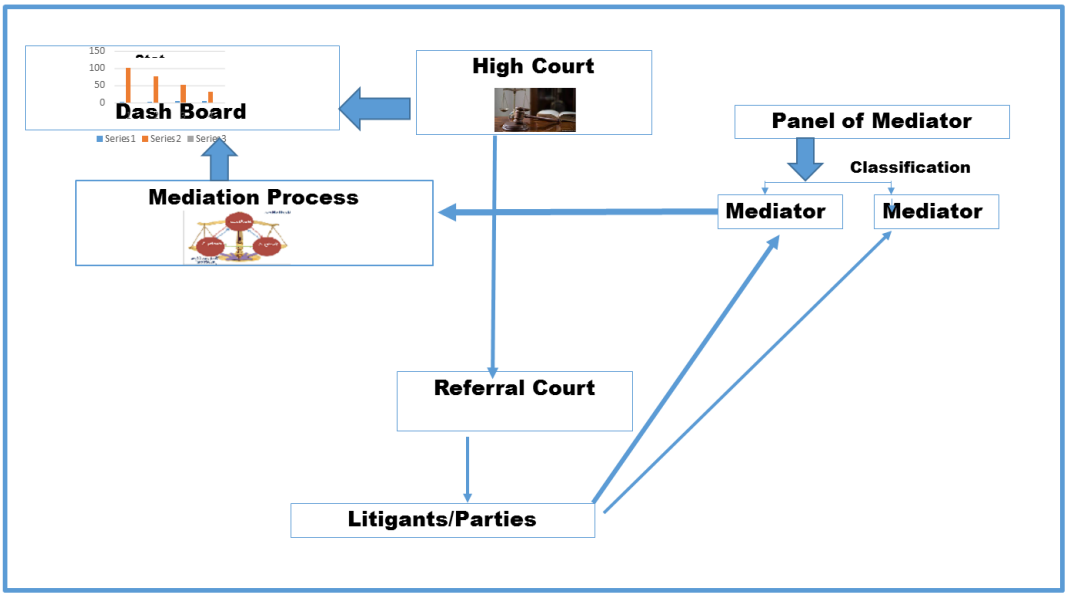
Be aware of the specific cultural approaches to negotiation and communication and leverage those approaches to the greatest advantage of the process; liaise with and ensure support for local peacemakers and, wherever appropriate, draw on indigenous forms of conflict management and dispute resolution.

***12 Need for National Legislation For Mediation*:**

There is a need to enact a comprehensive law on mediation. The law should encapsulate the entire process of mediation viz., the reference of the case for mediation, the processes of mediation, the role of the mediators, the legal basis of the terms of mediation and suitable necessary compensatory/incentive mechanism. It should provide for qualification, training standards, accreditation of mediators, continued education requirements, institutes for training mediators, basic and essential practice requirements such as disclosure of conflict of interests, ethics and confidentiality, decertification, liability etc.

13 Technological Intervention: Creation of the Real-Time Dash Board for monitoring the progress of mediation.

The dashboard may be considered the on-line monitoring of mediation related data as



well as process. This will decrease as whole transaction cost of the mediation process. The central server along with dashboard may be installed at High court to monitor through referral judge. This is actually a on-line management system to avoid delay in the process. The lower court having jurisdiction within that high court will be connected through the local server to centralized server that will maintain overall data and monitor the process. Further, there will be data of empaneled mediators in a server and or cloud. The data will be classified based on field, gender etc. Centrallized server data also will be classified based on process steps, and time frame i.e initiation etc. The data will be analyzed from time to time.

It is learnt that the system of online updation of the mediation process is in place in the High Courts. The use of technology facilitates the process and saves man-hour in monitoring the progress of the mediation. However, the application of technology can be scaled up to flag mediation which is a non-starter. If the mediation process fails to take off during the statutory time-line then it would be detrimental to the cause of justice. The technologically upgraded dash-board will help the judges to intervene at appropriate stages and to evaluate the causes of non-starter of the mediation process.

Future Scope of Work:

- Young lawyers can play a transforming role in popularizing mediation and making it more acceptable to the litigating parties. The mediation training programme needs to be designed to inculcate the interest in the young lawyers

so that mediation gets mainstreaming status in the lawyering profession. For, the mediation programme should be tailored considering the interest of young lawyers.

- Considering the region-wise success of mediation cases, it is desirable to customize the mediation programme to ensure better results. The category of successful cases in a particular region should be considered for preparing a better implementable strategy.

Impact due to Covid19:

Due to the unprecedented health crisis experienced in the midst of the research project, the data could not be collected from some of the districts. Though the data from the District Legal Services Authority helped in studying the pattern, the collection of primary data from the stakeholders would have given better perspective to analyse the pattern followed in the two states.

ANNEXURE:

Questionnaire for Judges

Name and Designation: (Optional)

1. At what stage do you refer the case for mediation? [put tick ✓]
   a. After filing of written statement by the other side.
   b. After framing of Issues.
   c. During recording of evidence.
   d. At the stage of arguments

2. Response of parties for mediation. [put tick ✓]
   a. Excellent
   b. Very Good
   c. Good
   d. Average
   e. Poor

3. Response of Advocates of the parties for mediation process. [put tick ✓]
   a. Excellent
   b. Very Good
   c. Good
   d. Average
   e. Poor

4. Response of Mediators in settlement of cases through mediation. [put tick ✓]
   a. Excellent
   b. Very Good
   c. Good
   d. Average
   e. Poor

5. Whether there are adequate staffs available for mediation centre? [put tick ✓]
   a. Yes b. No

6. Is there any need of Refresher Training Programme for the trained mediators? [put tick ✓]
   a. Yes b. No

7. Opinion in regard to the mediators who undertake the mediation process. [put tick ✓]
   a. Excellent
   b. Very Good
   c. Good
   d. Average
   e. Poor

8. What are some of the difficulties you have seen in a mediator in resolving conflicts? [put tick ✓]
   a. Lack of legal knowledge
   b. Weak communication skills
   a. Lack of ADR techniques
   b. Others (specify)……

9. Opinion regarding the infrastructure facility at the Mediation centre. [put tick ✓]
   a. Excellent
   b. Very Good
   c. Good
   d. Average
   e. Poor

10. Is there any need of Awareness Programme on Mediation for the Lawyers, Judges and Litigants? [put tick ✓]
    a. Yes b. No

11. Whether there is any need of institutionalization of Mediation? [put tick ✓]
    a. Yes b. No

12. Can the process of mediation in Court-referred mediation be used for better implementation of Alternative Dispute Resolution? [put tick ✓]
    a. Yes b. No

13. Whether there is need to incorporate mediation as a special subject to be included in syllabus at graduate level in law and/or post graduate level in law? [put tick ✓]
    a. Yes b. No

14. Difficulties, if any, faced while referring the case to the mediation process.

15. Suggestion and remarks for better improvement of mediation process.

INDIAN INSTITUTE OF TECHNLOGY KHARAGPUR

Project Titled

Court-Referred Mediation in the States of West Bengal and Jharkhand

Questionnaire for Lawyers

1. A Name (optional): **1.B** Age:

1.C How many years engaged with this profession?

1.D Are you engaged in another profession? [1. Yes; 2. No]

2. A Are the opinions made by you in the mediation process given priority? [put tick ✓] **1.** Yes **2.** No
2. B Did you recommend mediation to your client? [put tick ✓] **1.** Yes **2.** No
2. C How many cases recommend mediation last year?
2. D The success of how many cases through the mediation process?
2. E What type of cases more success through the mediation process? [please do ranking] **1.** **2.** **3.**
2. F What are the reasons behind the success of cases through the mediation process? [put tick ✓ and please do ranking] **1.** Trained mediators **2.** Low expensive than a typical lawsuit **3.** Strategic/tactical success **4.** The success of timing exercise **5.** Short time duration **6.** Others (specify)……
2.G What type of cases more failures through the mediation process? [please do ranking] **1.** **2.** **3.**
2. H What are the reasons behind the failure of cases through mediation process? [put tick ✓ and please do ranking] **1.** Lack of engagements **2.** Strategic/tactical failure **3.** Failure of timing exercise **4.** Wrong choice of mediator **5.** Failure of preparation approach **6.** Others (specify)……
2. I What are some of the difficulties you have seen in a mediator in resolving conflicts? [put tick ✓] **1.** Lack of legal knowledge **2.** Weak communication skills **3.** Lack of ADR techniques **4.** Others (specify)……

2. K Did you provide relevant legal assistance to the defendant/respondent who helped in relevant outcome in the mediation process? [put tick ✓]

1. Yes **2.** No

Put a value on your perception of the mediation process.

Statements	**Value**
3.A Referral of cases by the Court/ Judge for Mediation is satisfactory. # Code: excellent result> very good result> good result> average result> no result = 4>3>2>1>0	
3. B Very much needed of Refresher Training Programme for the trained mediators. # Code: obviously needed> very much needed> needed> prefer the existing system> no needed = 4>3.>2>1>0	
3.C The use of court-referenced mediation is essential to make alternative dispute resolution (ADR) more effective. #Code: that's the only way> very highly effective> highly effective> effective> no effective = 4>3>2>1>0	

Your perception of quality over mediating elements.

Components	**Score**
4. A Mediation typically only takes days or weeks (or in very complex cases possibly months).	
4. B Mediation is vastly less expensive than a typical lawsuit.	
4. C The informality of mediation allows the parties to be more engaged.	
4. D Mediation is typically confidential.	
4. E Mediation is that it can help preserve relationships.	
4. F Mediation is Greater Flexibility and Control.	
4. G Parties generally report a better outcome as a result of mediation than they do from a lawsuit.	
4. H Greater Compliance.	

Code: obviously> strongly agree> agree> neutral> disagree = 4>3>2>1>0

5. Whether there is need to incorporate meditation as a special subject to be included in syllabus at graduate level in law and/or postgraduate level in law? [put tick ✓]

1. Yes **2.** No

6. How often are Commercial cases referred for Pre-institution Mediation?

7. How successful are these commercial Cases through Pre-Institution Medition?

8. What kinds of contributions are made by a lawyer in the mediation process?

INDIAN INSTITUTE OF TECHNLOGY KHARAGPUR

Project Titled

Court-Referred Mediation in the States of West Bengal and Jharkhand

Questionnaire for Litigants

1. A Name (optional):

1. B Are you a Plaintiff or a Defendant?

1. C Age:

1. D Religion:

1. E Caste:

1. F Income level:

1. G Education Level:

1. H Type of case:

1. I Number of the mediator (s):

2. A At which year/month the mediation process begins:
2. B At which year/month the mediation process ends:
2. C Before you commenced the legal proceedings, were you familiar with mediation? [put tick √] **1.** Yes **2.** No
2. D How did you become aware of mediation? [put tick √ one or more than one] **1.** through a lawyer **4.** through the other party **2.** through a judge/court **5.** through family/friends/work/colleagues **3.** through the press/media/professional literature **6.** If other, specify
2. E Why did you come in the mediation process? **1.** Case refer by judge/court **5.** Less expensive than court proceedings **2.** Lawyer suggested **6.** Wanted to have control over the resolution **3.** Own interested **7.** The other party proposed mediation **4.** expected a better and quicker resolution than if the court decided the case **8.** If other, specify

Statements	**Value**
3. A How would you rate your first impression of the mediators handling your case? # Code: Happy> Highly Favourable> Favourable> Neutral> Unfavourable = 4>3>2>1>0	
3. B How would you rate the comfort and appropriateness of the physical setting arranged by the mediators for your session? # Code: Very Happy> Highly Comfortable> Comfortable> Neutral> Uncomfortable = 4>3>2>1>0	
3. C How clear were the introductory remarks and explanation of the mediation process offered by the mediators? # Code: Transparent> Full Clear> Clear > Neutral> Unclear = 4>3>2>1>0	
3. D How comfortable were you during the mediation session? # Code: Very Happy> Highly Comfortable> Comfortable> Neutral> Uncomfortable = 4>3>2>1>0	
3. E How involved were you in the problem-solving process? # Code: Implicated> Highly Involved> Involved> Neutral> Not Involved = 4>3>2>1>0	

3. F How fair was the mediators to both sides? # Code: Rightful> Highly Fair> Fair> Neutral> Unfair = 4>3>2>1>0	
3. G How would you rate your overall satisfaction with the manner in which the mediators conducted the mediation session? # Code: Satisfied with happy> Highly Satisfied> Satisfied> Neutral> Dissatisfied = 4>3>2>1>0	
3. H How satisfied were you with the overall mediation? # Code: Satisfied with happy> Highly Satisfied> Satisfied> Neutral> Dissatisfied = 4>3>2>1>0	
3. I How well was the tone set for future problem solving with the other party? # Code: Definitely Positive Tone> Highly positive tone> Positive tone> Neutral> Negative tone = 4>3>2>1>0	

Please indicate how important each of the statements

Statements	**Value**
4. A The mediators have given both parties an equal opportunity to explain their case.	
4. B The mediation process addressed the main points of your dispute.	
4. C Mediation end successfully and haply.	
4.D Reached an agreement, were the terms and conditions of the agreement clear to you.	
4. E Person's/mediator contribution affect the course of the mediation.	
4. F Mediators are efficient.	
4. G You have enough time for the mediation.	

Code: obviously> strongly agree> agree> neutral> disagree = 4>3>2>1>0

Your perception of quality over mediating elements.

Components	**Score**
5. A Mediation typically only takes days or weeks (or in very complex cases possibly months).	
5. B Mediation is vastly less expensive than a typical lawsuit.	
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Code: obviously> strongly agree> agree> neutral> disagree = 4>3>2>1>0

6. What are some of the difficulties you have faced with a mediator in resolving conflicts? [put tick √ one or more than one]

1. Lack of legal knowledge
2. Weak communication skills
3. Lack of ADR techniques
4. Others (specify)……

7. Are you willing to utilize mediation in the future? **1.** Yes **2.** No

8. Are you happy about the court order? **1.** Yes **2.** No

9. Do you have any other comments or suggestions?

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INDIAN INSTITUTE OF TECHNLOGY KHARAGPUR

Court-Referred Mediation in the States of West Bengal and Jharkhand

Questionnaire for Mediation Centre

1. A Name and occupation of the Mediator: (Optional)
1. B Particulars of training obtained.
1. C Since which year did you starts to cases settlement through mediation?
1. D How many conflicts have you resolved so far?

1. 1 – 10
2. 11 –20
3. 21– 30
4. 31-- 40
5. 41 –50
6. More than 50

1. E Number of cases handled for mediation in last year.
1. F Number of cases handled successfully for mediation in last year.
1. G How many cases are reverted back to the Court for adjudication?
1. H What kinds of cases are mostly dealt with?

1. Matrimonial Discord:
2. Civil Suit:
3. Motor Vehicle related cases:
4. Criminal cases:

1. I Average number of sitting required for mediation per annum.
1. J What is the average time period required (per annum) for completing the mediation process?
1. K What is the ratio of mediators available to number of incoming cases?
1. L Is there any need of Refresher Training Programme for the mediators?

1. Yes **2.** No

1. M Whether there is any need of institutionalization of Mediation?

1. Yes **2.** No

Statements	**Value**
2. A Opinion in regard to the adequate staff available for mediation centre.	
2. B Opinion in regard to the staff manning the mediation centre.	
2. C Opinion regarding the infrastructure facility at the Mediation centre.	
2. D Response of parties during mediation.	
2. E Highly engagement of parties during mediation.	
2. F Parties are following strategy/ tactic.	
2. G Parties are extremely time conscious.	
2. H Response of Advocates of the parties during mediation process.	

Code: Excellent> Very Good> Good> Average> Poor = 4>3>2>1>0

3. Is there any need of Awareness Programme on Mediation for the Lawyers, Judges and Litigants? [put tick √]

1. Yes **2.** No

4. Whether there is need to incorporate mediation as a special subject to be included in syllabus at graduate level in law and/or post graduate level in law? [put tick √]

1. Yes **2.** No

5. Can the process of mediation in Court-referred mediation be used for better implementation of Alternative Dispute Resolution? [put tick √]

1. Yes **2.** No

6. What are State recommended materials for mediation training? If there are training manuals for mediators to follow.

7. What are the problems during meditation?

1.
2.
3.
4.
5.

8. When there are difficulties in resolving conflict what do you resort to?

1.
2.
3.
4.

9. Difficulties faced during the mediation process and suggestion to rectify it.

1.
2.
3.
4.
5.

10. Are you having the chance to say what's important to you in order for you to present ideas and respond to comments and proposals from the other party? [put tick √]

1. Yes **2.** No

11. Are conflicting partners satisfied after their conflicts have been resolved? [put tick √]

1. Yes always
2. Yes in most cases
3. Yes in some cases
4. No

Your perception of quality over mediating elements.

Components	**Score**
12. A Mediation typically only takes days or weeks (or in very complex cases possibly months).	
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Code: obviously> strongly agree> agree> neutral> disagree = 4>3>2>1>0

13. How often are Commercial cases referred for Pre-institution Mediation?

14. How successful are these commercial Cases through Pre-Institution Medition?

15. Suggestion and remarks for better improvement of mediation process.