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ARBITRATION AND MEDIATION

~Anshika Singh

ABSTRACT

Arbitration and mediation have emerged as key alternative dispute resolution mechanisms in India, offering efficient, flexible, and cost-effective alternatives to traditional litigation. This paper examines the legal and policy framework governing arbitration and mediation in India, with particular reference to the Arbitration and Conciliation Act, 1996 and the Mediation Act, 2023. It highlights the role of constitutional principles of access to justice and judicial support in promoting these mechanisms. The paper further analyzes recent legislative reforms aimed at institutionalization, professionalization, and reduced court intervention, while identifying persistent challenges such as high costs, delays, and limited awareness. It concludes by emphasizing the importance of effective implementation to strengthen dispute resolution in India.

In India, arbitration and mediation are increasingly significant methods of resolving disputes and have emerged as the foundation of a more balanced approach to resolving disputes through both the courts and out-of-court processes. Both methods offer parties faster and more flexible remedies and, for many businesses, discretion, which is critical to resolving disputes given India's court system's burden of enormous backlogs and expense to initiate litigation. Legislative reforms and court rulings over the past thirty years have attempted to position India as an attractive destination

for international commercial arbitrations, and as a growing respect for the Legal Profession and Mediation in domestic and cross-border commercial disputes.¹

The policy foundation of mediation and arbitration is set out principally in the Preamble and Articles 14 and 21 of the Constitution. These articles establish the principles of fair, reasonable, and non-arbitrary methods of administering justice.² The Supreme Court has consistently recognised that a delay or excessive cost in accessing the courts may be seen as a denial of "access to justice" and therefore has a significant policy impact on both the systems used to remove court congestion and the design of the process for resolving disputes by the parties involved.³

On the policy side, the Government of India has publicly committed to making India a global centre for arbitration, particularly following liberalization of the Indian economy, and the increased development of complex commercial transactions.⁴

The Arbitration and Conciliation Act of 1996 ("1996 Act") is the main source for regulating arbitration in India. The 1996 Act consolidates various earlier legislation into a single Act and is based on the UN Model law on arbitration.⁵

Under the 1996 Act, the parties involved in arbitration have complete control over how many arbitrators will decide the case, how they will be appointed, what law will apply to their cases, how the arbitration process will be conducted, where the proceedings will be held, and what languages will be used in the arbitration proceedings.⁶ The 1996 Act encourages the courts to support the arbitration process rather than interfere with it. An arbitral award is final and binding and cannot be overturned unless there are very limited grounds for doing so, such as incapacity,

¹ MINISTRY OF LAW & JUSTICE, *New India as an Arbitration Hub*, <https://lawmin.gov.in> (last visited Dec. 23, 2025).

² INDIA CONST. arts. 14, 21.

³ *Hussainara Khatoon v. State of Bihar*, A.I.R. 1979 S.C. 1369.

⁴ PRESS INFORMATION BUREAU, Cabinet Approves Arbitration and Conciliation (Amendment) Bill, <https://pib.gov.in> (last visited Dec. 23, 2025).

⁵ Arbitration & Conciliation Act, 1996, § 2, No. 26, Acts of Parliament, 1996 (India).

⁶ Arbitration & Conciliation Act, 1996, §§ 10–20, No. 26, Acts of Parliament, 1996 (India).

void or voidable agreement, failure to provide adequate notice, award more than the arbitrator's jurisdiction or violation of public policy in India.⁷

The revisions made to the Law in 2015, particularly in 2019, have been viewed as being aimed at addressing some of the shortcomings of the initial Law.⁸ The amendments impose stricter deadlines for award issuance, establish fast-track methods for awarding arbitration-related pleadings, create a narrower definition of the public policy test regarding the setting aside of awards, provide a means for promoting institutional arbitration through designated arbitration institutions, and create a fee schedule for the payment of arbitration fees.⁹ Collectively, these amendments represent a transition away from the traditional method of arbitration (i.e., ad hoc arbitration) and reliance on the courts towards an efficient and consistent method of arbitration that is more professionalized.

The historical development of mediation in India is via increment, utilizing many different methods and adapting through growth within the Judicial System. The Code of Civil Procedure of 1908 allows the Court to refer parties to a process (alternative ways of resolving disputes) when there is a defined possibility that they can agree to settle a dispute.¹⁰ Several Statutes that are specific to Industry (the Industrial Dispute Act 1947) and new businesses (The Commercial Courts Act 2015), have not only encouraged but require mediation for resolution prior to litigation being filed.¹¹

⁷ Arbitration & Conciliation Act, 1996, § 34(2), No. 26, Acts of Parliament, 1996 (India).

⁸ Arbitration & Conciliation (Amendment) Act, 2015, No. 3, Acts of Parliament, 2015 (India); Arbitration & Conciliation (Amendment) Act, 2019, No. 33, Acts of Parliament, 2019 (India).

⁹ LAW COMMISSION OF INDIA, REPORT NO. 246: Amendments to the Arbitration and Conciliation Act, 1996 (2014), <https://lawcommission.gov.in>.

¹⁰ Code of Civil Procedure, 1908, § 89, No. 5, Acts of Parliament, 1908 (India).

¹¹ Industrial Disputes Act, 1947, §§ 4–6, No. 14, Acts of Parliament, 1947 (India); Commercial Courts Act, 2015, § 12A, No. 4, Acts of Parliament, 2016 (India).

Court Conjoined Mediation Centers (Family Matters or Commercial Matters) have helped to support the idea of using mediation within the term scope of mediating as a Confidential, Interest-Based Process with the support of a Neutral Third Party.¹² The introduction of the Mediation Act of 2023 has moved the mediation process forward significantly to include an established statutory framework for all aspects of Mediation including International Commercial Mediations, and created a foundation for mediated settlement agreements.¹³ With the introduction of the Mediation Council of India, it will provide a method to formally recognize Mediators and Mediating Services; and to establish training and Ethical Standards for Mediators and to create a Digital Repository of settlements, this will help to institutionalize Mediation like the ever-increasing trends of arbitration.¹⁴

The current framework of arbitration and mediation in India is significantly hindered by serious issues regarding actual practice in these areas. There are still widespread concerns over the lack of consistent quality of Arbitrators across the board, high levels of Fees in many cases, and delays that occur when Awards are appealed in Court.¹⁵ Additionally, there are numerous issues regarding Neutrality/Repeat-party bias and the lack of participation by Women and Young Professionals in Arbitrator appointments leading to questions regarding Fairness (particularly where there are disproportionate levels of Bargaining Power). Therefore, many people have this adverse view regarding the level of autonomy afforded to the parties involved.¹⁶

Although Mediation has become increasingly accepted, it continues to suffer from limited awareness of Mediation available outside of Urban Areas, a lack of standardization in Training Quality and the perception that it is just a "soft" or insubstantial step to "real litigation".¹⁷ As a

¹² Delhi High Court Mediation & Conciliation Rules, 2004, <https://delhihighcourt.nic.in> (last visited Dec. 23, 2025).

¹³ Mediation Act, 2023, §§ 2, 5, No. 45, Acts of Parliament, 2023 (India).

¹⁴ India Law LLP, *Framework of the Mediation Act, 2023*, <https://indialaw.in> (last visited Dec. 23, 2025).

¹⁵ Study IQ, Arbitration and Conciliation Act, 1996 – Overview, Key Provisions and Issues, STUDY IQ (Dec. 2025), <https://studyiq.com>.

¹⁶ VIA Mediation Centre, *Landmark Judgments in Arbitration by Supreme Court*, VIA MEDIATION CENTRE (2024), <https://viamediationcentre.org>.

¹⁷ VIA Mediation Centre, *Statutory Provisions Relating to Mediation in India*, VIA MEDIATION CENTRE (2024), <https://viamediationcentre.org>.

result, many Parties and Lawyers remain hesitant to participate in fully interest-based negotiations out of fear that doing so will indicate a lack of strength or that it may disclose Strategic Information.

The reform initiatives outlined here focus on three primary goals:

- 1) strengthening institutionalization of arbitration by ensuring that institutions are legitimate with established standards
- 2) professionalizing mediation through a formal accreditation process, regulation of professional conduct and continuing education under the Mediation Act of 2023 (enacted), and the Mediation Council, and
- 3) Using technology, such as e-filing and video conferencing, to increase the ability of small and medium enterprises (SEMs) and individuals to access dispute resolution services.

When properly executed, these changes will create an environment that promotes the use of both arbitration and mediation to provide a fair, efficient, and dignified form of justice that is complementary to Court processes.¹⁸

¹⁸ INDIA CONST. arts. 14, 21.