# The Indian Journal for Research in Law and Management

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Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896



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## FROM NEGOTIATED PEACE TO BINDING AWARD: THE JURISPRUDENTIAL DIVIDE BETWEEN MEDIATION AND ARBITRATION


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### Abstract

In the contemporary Indian legal framework, Alternate Dispute Resolution (ADR) has emerged as a vital mechanism to address the mounting backlog of cases and ensure timely justice. Among its diverse forms, mediation and arbitration stand out as the most prominent, yet they embody fundamentally distinct jurisprudential philosophies. Arbitration, codified under the Arbitration and Conciliation Act, 1996, reflects an adjudicatory tradition where authority and finality are paramount, with arbitral awards carrying the same enforceability as court decrees. Mediation, recently institutionalized through the Mediation Act, 2023, privileges party autonomy, dialogue, and voluntary settlement, emphasizing reconciliation and the preservation of relationships. This paper explores the historical roots, statutory frameworks, and judicial endorsements that have shaped both mechanisms, while highlighting the jurisprudential tension between consent and authority. It further examines contemporary challenges such as enforcement delays, institutional infrastructure, and global integration, particularly India's evolving position in relation to the Singapore Convention on Mediation. By understanding the complementary yet distinct roles of mediation and arbitration, the study underscores their significance as twin pillars of India's ADR landscape where one fostering social harmony through consensual resolution, the other ensuring commercial certainty through binding adjudication. Together, they represent a balanced approach to justice that is both humane and enforceable, flexible yet final


### Introduction

In the current contemporary legal system, Alternate Dispute Resolution (ADR) mechanisms have emerged as indispensable instrument for resolving conflicts in an efficient manner. ADR mechanisms have managed to sidestep the protracted timelines and high costs of conventional litigation. The significance of ADR in India's legal landscape cannot be overstated. As cases continue to mount in Indian courts, ADR mechanisms have proven to be viable alternatives that reduce court backlogs ensuring speedy dispensation of justice and maintain social harmony. By diverting disputes from the traditional courtroom, ADR helps alleviate the burden on the Indian judiciary while providing litigants with settlements that preserve business and personal relationships. The Indian legal system has long recognized the value of resolving disputes outside formal courtroom proceedings. *The Legal Service Authorities Act 1987* [1]was enacted to encourage out-of-court settlements which was followed by the comprehensive *Arbitration and Conciliation Act 1996.* [2] Very recently, *The Mediation Act 2023* was introduced to provide a dedicated statutory framework for mediation in India. [3] *Section 89(1) of the Code of Civil Procedure (CPC)* further empowers courts to refer disputes to arbitration, conciliation, mediation, or judicial settlement when elements of settlement appear acceptable to the parties. [4] Judicial pronouncements have reinforced this statutory framework with the Supreme Court emphasizing ADR's role in reducing backlog and encouraging settlements.

Among the ADR mechanisms, **arbitration** and **mediation** stand out as the most widely utilized mechanisms in contemporary Indian practice. **Arbitration** is one of the most popular ADR modes in India which is conducted in pursuant to the *Arbitration and Conciliation Act 1996*. This mechanism involves a neutral third party called an **arbitrator** who hears evidence and arguments from both parties and renders a binding decision known as an award. Arbitration is characterized by its **adversarial nature**, distinguishing it from other ADR mechanisms. The process requires a prior agreement between parties to submit their dispute to arbitration which is typically documented in an arbitration clause within a contract or a separate arbitration agreement. Once parties agree to arbitration, they are bound by this commitment, and the arbitrator's decision is final and binding on both parties.

**Mediation** represents a fundamentally different approach to dispute resolution often characterized by its **non-adversarial and informal nature**. In mediation, a neutral third party

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[1] The Legal Services Authorities Act, No. 39 of 1987, § 19, INDIA CODE (1987) (providing for Lok Adalats and promoting settlement of disputes outside courts)
[2] The Arbitration and Conciliation Act, No. 26 of 1996, INDIA CODE (1996).
[3] The Mediation Act, No. 32 of 2023, INDIA CODE (2023).
[4] Code of Civil Procedure, No. 5 of 1908, § 89, INDIA CODE (amended 1999).

called a **mediator** facilitates dialogue between disputing parties but does not impose a binding decision. The mediator's role is limited to improving communication and helping parties explore mutually acceptable solutions.

This article raises some critical questions: Is justice best served when parties reconcile on their own terms, or when a neutral authority delivers a definitive resolution? Does the legitimacy of dispute resolution lie in mutual consent or in enforceable adjudication? Exploring this divide illuminates not only the contrasting philosophies of mediation and arbitration but also the broader tension between autonomy and authority in modern legal systems.

**Historical and Jurisprudential Foundations**

The evolution of Alternate Dispute Resolution (ADR) in India reflects a gradual but deliberate shift from rigid conventional courtroom adjudication to a more flexible, participatory mechanisms of conflict resolution. Mediation and Arbitration, though often grouped under the umbrella of ADR, embody distinct historical trajectories and jurisprudential philosophies that illuminate the divide between consensual reconciliation and binding adjudication.

**Early Roots of ADR in India**

India's legal culture has long valued negotiated settlements. Traditional village panchayats and community councils functioned as informal mediators thereby emphasizing compromise and social harmony over adversarial confrontation. [5] This indigenous ethos of conciliation laid the groundwork for statutory recognition of ADR in the modern era. The Legal Services Authorities Act of 1987 institutionalized Lok Adalats thus providing a forum for amicable settlement outside the courts. Lok Adalats embodied mediation-like principles, prioritizing dialogue and compromise while reducing the burden on the judiciary.

Arbitration, however, entered Indian jurisprudence through colonial influence. The Arbitration Act of 1940, based on English law, presented a formalized mechanism where disputes could be referred to "arbitrators" whose decisions carried binding force. This adversarial yet private adjudication mirrored the conventional courtroom process but promised more efficiency and finality. The Arbitration and Conciliation Act of 1996 modernized this framework, aligning it with the UNCITRAL Model Law and reinforcing arbitration's role as a quasi-judicial process.[6]

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[5] S.B. Shah, *Traditional Dispute Resolution Mechanisms in India*, 12 Indian J. Soc'y & L. 45, 48–50 (2010) (discussing the historical role of *Panchayats* and *Nyaya Panchayats* in pre-colonial dispute resolution).

[6] UNCITRAL Model Law on International Commercial Arbitration (1985).

**Statutory Recognition of Mediation and Arbitration**

The statutory divide between mediation and arbitration reflects their fundamentally different jurisprudential foundations and purposes within the dispute resolution framework. Arbitration, in particular is comprehensively codified under the Arbitration and Conciliation Act of 1996. The Act provides a thorough legislative scheme governing the conduct of arbitral proceedings, the appointment of arbitrators, and the enforceability of arbitral awards. One of the most significant features of this Act is that it accords arbitral awards the same enforceability as decrees of a civil court, thereby ensuring that arbitration is not merely a consensual process but one that carries binding legal authority. This statutory backing underscores arbitration's adjudicatory nature, where the arbitrator effectively steps into the shoes of the court, exercising quasi-judicial powers to render a final and binding decision on the merits of the dispute. In this sense, arbitration substitutes the authority of the judiciary with that of a private tribunal, while still maintaining the coercive enforceability of its outcomes through the machinery of the state.

Mediation, by contrast, lacked a dedicated statutory framework until the enactment of the Mediation Act, 2023. Prior to this, mediation was largely facilitated under Section 89 of the Code of Civil Procedure, 1908, which empowered courts to refer disputes to mediation when settlement appeared possible. Judicial pronouncements such as *Salem Advocate Bar Ass'n v. Union of India* [7]and *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co.* [8]clarified the scope of Section 89, putting emphasis on mediation's consensual character. The Mediation Act of 2023, now provides a comprehensive framework, thus institutionalizing mediation centers and reinforcing its voluntary, non-binding ethos. Section 61 of the Arbitration and Conciliation Act ,1996 as per the 2023 amendment, states that disputes needing resolution through Conciliation in accordance with the provisions of the Act, shall be considered as reference to mediation as provided under the Mediation Act, 2023.[9]

Thus, the statutory divide between the two processes is not merely procedural but reflects deeper jurisprudential commitments. Arbitration embodies the adjudicatory tradition, borrowing the authority and enforceability of the courts, while mediation embodies the consensual tradition, privileging dialogue and voluntary settlement. Together, they represent complementary but distinct pillars of India's evolving alternative dispute resolution landscape.

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[7] *Salem Advocate Bar Ass'n v. Union of India*, (2005) 6 SCC 344.

[8]*Afcons Infrastructure Ltd v Cherian Varkey Construction Co (2010) 8 SCC 24*.

[9] The Arbitration and Conciliation Act, No. 26 of 1996, § 61(India) (amended, 2023)

**Jurisprudential Divide: Consent vs. Authority**

At the very heart of the distinction between mediation and arbitration lies a profound jurisprudential tension between autonomy and authority. The two competing philosophies of justice governing these two processes. Mediation is firmly rooted in the principle of party autonomy, where disputants retain control not only over the process but also over the eventual outcome. The mediator's role is facilitative rather than adjudicatory. The Mediator encourages dialogue, foster cooperation, and help the parties explore creative solutions but without imposing a resolution. The legitimacy of mediation stems entirely from mutual consent. The voluntary agreement of the parties to resolve their dispute on terms they themselves craft showcases party autonomy. This reflects a jurisprudential philosophy that justice is best served when individuals reconcile on their own terms, preserving relationships and ensuring that the resolution is both acceptable and sustainable. Consent, is thus the cornerstone of mediation, and without it, the process collapses.

Arbitration in comparision derives its legitimacy from authority. Once parties agree to submit their dispute to arbitration, they effectively surrender their autonomy to the arbitrator.[10] The arbitrator assumes a quasi-judicial role, empowered to hear evidence, apply law, and render a binding award. Unlike mediation, the arbitral award is not dependent on continued consent. An arbitral award is enforceable under the Arbitration and Conciliation Act of 1996 with the same force as a court decree. In a leading judgement of 1977, it was observed that "arbitration is a domestic forum. It is a forum other than a Court of law for determination of dispute and differences, after hearing both the sides, in a judicial manner." [11] The statutory backing underscores arbitration's adjudicatory nature, where the arbitrator substitutes the authority of the court and delivers a final resolution. The jurisprudential foundation here is that justice requires an authoritative determination, even if one party remains dissatisfied. Authority, rather than consent, ensures finality, certainty, and enforceability that the law prioritises when disputes cannot be resolved through voluntary agreement.

Thus, the divide between mediation and arbitration is not merely procedural but deeply philosophical. Mediation privileges consent, emphasizing flexibility, reconciliation, and the preservation of autonomy. Arbitration privileges authority, emphasizing finality, certainty, and the coercive power of law. Together, they embody two distinct visions of justice: one that trusts

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[10] Arbitration and Conciliation Act, No. 26 of 1996, § 7 (India)
[11] *Union of India v. D.P. Wadia & Sons*, AIR 1977 Bom 10 (Bom. HC).

in the capacity of parties to resolve disputes through dialogue, and another that insists on authoritative resolution to secure closure and enforceability. The jurisprudential tension between consent and authority is therefore the defining feature of the statutory and conceptual divide between these two pillars of alternative dispute resolution.

**Judicial Endorsement and Policy Objectives**

Indian courts have consistently endorsed ADR as a means to reduce backlog and promote efficiency. The Supreme Court has emphasized ADR's role in fostering settlements and preserving relationships. Yet, judicial attitudes reveal the jurisprudential divide: arbitration is treated as a substitute for litigation, while mediation is encouraged as a consensual alternative.

This duality reflects broader policy objectives. Arbitration serves commercial certainty, ensuring enforceable outcomes in business disputes. Mediation serves social harmony, encouraging compromise in personal, family, and community conflicts. Together, they embody the Indian judiciary's attempt to balance efficiency with equity, authority with autonomy.

**Contemporary Challenges**

Despite the statutory consolidation of mediation and arbitration, several challenges continue to shape their effectiveness in India. These challenges highlight the jurisprudential divide between consent and authority, and raise questions about whether the current framework adequately balances flexibility with enforceability.

1. Enforcement and Legitimacy

- Arbitration enjoys a strong statutory backing. Section 36 of the *Arbitration and Conciliation Act, 1996* provides that arbitral awards shall be enforced in the same manner as a decree of the court. Yet, enforcement delays persist due to frequent challenges under Section 34 thus undermining arbitration's promise of finality.[12]
- Mediation, under Section 19 of the *Mediation Act, 2023*, produces a "mediated settlement agreement" authenticated by the mediator. Section 27 further provides for enforcement of such agreements as if they were court decrees. However, mediation's legitimacy still hinges on voluntary consent, and the absence of coercive authority makes its enforceability less straightforward compared to arbitration.[13]

[12] Arbitration and Conciliation Act, No. 26 of 1996, §§ 34, 36, INDIA CODE (1996).
[13] Mediation Act, No. 32 of 2023, §§ 19, 27, INDIA CODE (2023).

2. Institutional Infrastructure

- Arbitration has benefited from institutional support, with provisions under Part IA of the *Arbitration and Conciliation Act, 1996* establishing the Arbitration Council of India (Sections 43B–43M)[14]. This framework aims to grade arbitral institutions and accredit arbitrators.
- Mediation, by contrast is only beginning to develop institutional strength. The *Mediation Act, 2023* establishes the Mediation Council of India (Section 31) and recognizes mediation service providers (Section 40). [15] Yet, practical implementation like training mediators, ensuring neutrality, and building trust remains a challenge.

3. Global Integration

- Arbitration in India is harmonized with international standards through the UNCITRAL Model Law, explicitly referenced in the Preamble of the *Arbitration and Conciliation Act, 1996*.
- Mediation, however, lags behind. While the *Mediation Act, 2023* recognizes international mediation (Section 3(g))[16], India has yet to fully integrate the Singapore Convention on Mediation (2019) which provides cross-border enforceability of mediated settlements. Without this, India risks falling behind in global commercial mediation.

4. Policy Objectives and Overlap

- Section 61 of the *Arbitration and Conciliation Act, 1996* (as amended in 2023) clarifies that conciliation proceedings under the Act shall now be treated as mediation under the *Mediation Act, 2023*. This harmonization creates an overlap and potential confusion between conciliation and mediation. Clearer statutory demarcation is needed to prevent duplication and ensure that parties understand the distinct jurisprudential foundations of consent (mediation) and authority (arbitration).

**Conclusion**

[14] Arbitration and Conciliation Act, No. 26 of 1996, §§ 43B–43M, INDIA CODE (1996).
[15] Mediation Act, No. 32 of 2023, §§ 31, 40, INDIA CODE (2023).
[16] Mediation Act, No. 32 of 2023, § 3(g), INDIA CODE (2023).

The jurisprudential divide between mediation and arbitration is not a mere technical distinction but a reflection of two fundamentally different visions of justice. Mediation, grounded in party autonomy, privileges dialogue, reconciliation, and the preservation of relationships. It embodies the belief that justice is most legitimate when disputants themselves craft the terms of resolution, ensuring sustainability and mutual acceptance. Arbitration, conversely, derives its legitimacy from authority, offering finality, certainty, and enforceability through a quasi-judicial process. By substituting the authority of the court with that of a private tribunal, arbitration ensures closure even in the face of dissent, reflecting the law's prioritization of authoritative adjudication over voluntary compromise.

India's statutory framework illustrates this duality with remarkable clarity. The Arbitration and Conciliation Act, 1996, harmonized with international standards, provides arbitration with binding force equivalent to court decrees, thereby securing its role in commercial certainty and global integration. The Mediation Act, 2023, meanwhile, institutionalizes mediation centers and reinforces its voluntary ethos, potraying a legislative commitment to consensual justice and social harmony. Together, these statutes embody a deliberate policy choices: to balance efficiency with equity, authority with autonomy, and commercial enforceability with community reconciliation.

Yet, challenges persist. Arbitration continues to grapple with enforcement delays and frequent challenges under Section 34, undermining its promise of swift finality. Mediation, despite statutory recognition, faces hurdles in institutional infrastructure, training, and global harmonization, particularly in the absence of India's full integration into the Singapore Convention on Mediation. The overlap between conciliation and mediation further complicates clarity, demanding sharper statutory demarcation to preserve the distinct jurisprudential foundations of consent and authority.

Ultimately, the coexistence of mediation and arbitration is not a contradiction but a complementarity. Each mechanism serves a distinct policy objective—arbitration securing commercial certainty and enforceable adjudication, mediation fostering social harmony and voluntary compromise. The Indian judiciary's consistent endorsement of both reflects a broader vision: justice must be accessible, efficient, and equitable, while also responsive to the diverse nature of disputes.

In this light, the tension between consent and authority should not be seen as a weakness but as a defining strength of India's ADR framework. It offers disputants a spectrum of choices,

acknowledging that human conflict is multifaceted and cannot be resolved by a single model of justice. Mediation and arbitration, therefore, stand as twin pillars of modern dispute resolution where is one rooted in autonomy, while the other in authority. This duality is the hallmark of India's evolving legal landscape, ensuring that ADR remains not just an alternative, but an indispensable instrument of justice in the twenty-first century.

**References:**


- Legal Services Authorities Act, No. 39 of 1987, § 19, INDIA CODE (1987).
- Arbitration and Conciliation Act, No. 26 of 1996, INDIA CODE (1996).
- Mediation Act, No. 32 of 2023, INDIA CODE (2023).
- Code of Civil Procedure, No. 5 of 1908, § 89, INDIA CODE (amended 1999).
- S.B. Shah, *Traditional Dispute Resolution Mechanisms in India*, 12 Indian J. Soc'y & L. 45, 48–50 (2010).
- UNCITRAL Model Law on International Commercial Arbitration (1985).
- Salem Advocate Bar Ass'n v. Union of India, (2005) 6 SCC 344.
- Afcons Infrastructure Ltd. v. Cherian Varkey Constr. Co., (2010) 8 SCC 24.
- Arbitration and Conciliation Act, No. 26 of 1996, § 61 (India) (amended 2023).
- Arbitration and Conciliation Act, No. 26 of 1996, § 7 (India).
- Union of India v. D.P. Wadia & Sons, AIR 1977 Bom 10 (Bom. HC).
- Arbitration and Conciliation Act, No. 26 of 1996, §§ 34, 36, INDIA CODE (1996).
- Mediation Act, No. 32 of 2023, §§ 19, 27, INDIA CODE (2023).
- Arbitration and Conciliation Act, No. 26 of 1996, §§ 43B–43M, INDIA CODE (1996).
- Mediation Act, No. 32 of 2023, §§ 31, 40, INDIA CODE (2023).
- Mediation Act, No. 32 of 2023, § 3(g), INDIA CODE (2023).