

## The Role of Mediation as a Tool for Corporate Conflict Resolution

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*“To make the idea of access to justice effective, and user-centric, the need of the hour is the popularization of mediation<sup>3</sup>.”*

*- N V Ramana*

*Former Chief Justice of India*

*Journey through the corridors of Indian corporate governance, where ancient traditions meet modern challenges. The article tries to explore the rich tapestry of mediation, woven into the fabric of Indian society since time immemorial, as a beacon of hope in resolving disputes effectively. Delve into the nuanced landscape of conflict culture, where collaborative spirits clash with dominating forces and avoidant tendencies.*

*Amidst scandals and legal hurdles, discover how alternative dispute resolution is gaining ground. Follow the twists and turns of corporate clashes, from boardroom disputes to shareholder showdowns, all guided by the light of mediation. Unravel the mysteries of India's legal maze, where confusion reigns and mediation's potential is often overlooked. Yet, amidst the chaos, find glimmers of hope in laws evolving and the promise of mandatory mediation. Embark on a journey of transformation, where disputes aren't just solved but smoothed over, where ancient wisdom dances with modern solutions. Welcome to the colorful world of mediation in Indian business.*

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<sup>3</sup> Indian Institute of Corporate Affairs, <https://iica.nic.in/mediation/>, last visited 20th April'2024)

**INTRODUCTION:**

The move away from traditional litigation and government agency conflict resolution in favor of alternative dispute resolution (ADR) systems has been one of the major developments in foreign states during the 1990s. It can be said that Alternative Dispute Resolution has been established for a sufficient amount of time to enable evaluations of its impacts, including whether it has led to systematic shifts in the resolution of disputes both within and between organizations.

Mediation has deep historical roots in Indian society, with origins tracing back to ancient times. An illustrative example is found in the narrative of Lord Krishna, who can be assumed with the role of a mediator in attempting to resolve the conflict between the Gauravas and Pandavas. Further echoing this tradition is the age-old institution of the panchayat system, where disputes are brought before a council of elders or community leaders for resolution. Here, the impartial wisdom of these intermediaries serves as a beacon of hope, guiding disputants towards harmony and understanding. Therefore, the essence of mediation transcends mere abstraction, representing a vibrant heritage deeply ingrained in the collective minds of the Indian population. It stands as a testament to the enduring efficacy of empathy, and mutual regard in navigating the intricacies of human discord.

In numerous countries, particularly those in the developing world, the enforcement of judicial decisions remains deficient. Despite efforts to improve awareness and refine regulations and processes governing corporate governance, progress is significantly hampered by ineffective enforcement mechanisms. These shortcomings arise from inadequate funding, a lack of skilled personnel, and widespread corruption within the system. In response to the lax enforcement of corporate governance regulations, ownership concentration often becomes the preferred strategy. Even in countries with well-established legal systems, legal proceedings and alternative dispute resolution methods like arbitration can be drawn-out and expensive. Moreover, in certain countries, the sheer number of cases overwhelms the capacity of the judicial system, leading to inadequate handling of each case.

Furthermore, conventional court systems might not adequately uphold the quality and intent of corporate governance standards and principles. Given the widespread adoption of national corporate governance codes, overseeing the interpretation and compliance with these codes exceeds the capabilities of traditional court systems<sup>4</sup>.

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<sup>4</sup> Eric M. Runesson and Marie-Laurence Guy, *Mediating Corporate Governance conflicts and Dispute*, <https://www.ifc.org/content/dam/ifc/doc/mgrt-pub/focus4-mediation-12.pdf> (last visited 20th April 2024)

## **INTERPRETING THE MEANING OF MEDIATION:**

Mediation, an increasingly popular alternative dispute resolution method, entails a neutral third party assisting conflicting parties in reaching a mutually acceptable resolution. It is utilized in various realms including law, diplomacy, and workplace conflicts, offering a structured, confidential process that regular negotiations lack. In international law, mediation is recognized as a tool for fostering peace between nations. The term Mediation is now internationally accepted. Recently, there has been a shift away from referring to mediation as an "alternative" dispute resolution method, with it now being recognized as "effective dispute resolution" instead.

Mediation can be initiated through various means, including one party's suggestion, mutual agreement, or at the suggestion of a judge during litigation. Conversely, it can end through mutual agreement or the mediator's determination of unsuccessful outcomes. Two primary methods of initiating mediation are through private agreement or court-annexed mediation. In private agreement, parties opt for mediation either before or during a dispute, suspending legal proceedings if necessary. In court-annexed mediation, the judge actively participates by proposing mediation during court proceedings. If parties agree, the court suspends legal proceedings, and if successful, the case concludes with a mediated agreement. Failure leads to the resumption of court proceedings under civil procedure rules.

The growing importance of mediation as a means of resolving disputes is clear from its inclusion in various commercial dispute resolution laws, such as Section 442 of the Companies Act, 2013, and the Consumer Protection Act, 2019. Further it can be said that, India's ratification of the United Nations Convention on International Settlement Agreements resulting from Mediation, commonly referred to as the 'Singapore Convention,' demonstrates its dedication to promoting mediation on a global level<sup>5</sup>. The recent enactment of the Mediation Act 2023 symbolizes the government's dedication in promoting alternative dispute resolution mechanisms. From the below table<sup>6</sup> released by the Supreme Court Legal Services Committee, it is evident that the number of cases received over the period of time for the purpose of Mediation has increased significantly over the years, which internally means that the idea of mediation among people's minds has been increasing over the years.

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<sup>5</sup> Indian Institute of Corporate Affairs, <https://iica.nic.in/mediation/>, last visited 20th April'2024)

<sup>6</sup> SUPREME COURT LEGAL SERVICES COMMITTEE, <https://sclsc.gov.in/Mediation-Center> (last visited 20th April 2024)

Year	No. of Cases Received	No. of Cases Settled	No. of Cases Unsettled	Percentage of settled cases
2009	28	10	18	35.7%
2010	196	60	136	30.06%
2011	256	65	150	25.3%
2012	322	83	191	25.7%
2013	420	124	218	29.5%
2014	437	108	222	24.7%
2015	416	102	235	24.5%
2016	314	92	190	29.2%
2017	312	68	202	21.7%
2018	307	76	196	24.7%
2019	539	141	304	26.1%
2020	220	60	124	27.2%
2021	276	63	156	22.8%
2022	891	242	625	27.16%
2023	1163	222	840	20.90%

### **THE LIMITS OF JUDICIARY ENFORCEMENT:**

The enforcement of court rulings is still inadequate in many nations, especially developing nations. Insufficient regulatory and judicial enforcement mechanisms pose a substantial obstacle to the advancement of corporate governance norms and procedures, even with efforts to raise awareness and improve them. These restrictions are the result of systematic corruption, a lack of skilled staff, and inadequate budget. Concentration of ownership is frequently the most practicable solution to lax implementation of corporate governance regulations.

Even in nations with well-established legal systems, court cases and other alternative modes of resolution, including arbitration, are frequently drawn out and expensive. Furthermore, in certain countries, the sheer number of cases exceeds the capacity of the judiciary, making it impossible to handle each case in-depth.

Furthermore, it's possible that conventional judicial systems are unable to protect corporate governance rules and principles' intent and quality. The number of national corporate governance

codes has increased, making it more difficult for traditional court systems to supervise interpretation and compliance<sup>7</sup>.

### **CONFLICT CULTURE:**

Due in large part to high-profile corporate scandals, there has been a great deal of attention lately regarding the degree of faith that is placed in big businesses. This has highlighted how important it is to have strong and effective corporate governance structures. The established institutions and laws play a major role in determining the efficacy of governance. Consequently, investors are now more inclined to evaluate the corporate governance frameworks of countries and the individual practices of companies before making investment decisions. This assessment includes a review of current laws, the effectiveness of enforcement protocols, and the dispute resolution strategies used by businesses<sup>8</sup>. There is a direct correlation between the effectiveness of corporate governance with a reduction in disputes within companies. However, conflicts are inevitable and rules may not always be adhered to. Therefore, as part of a robust corporate governance framework, it is essential for investors to have access to a suitable mechanism for addressing and resolving disputes promptly and cost-effectively. A well-designed framework necessitates reliable avenues for resolving both emerging and existing disputes. According to the OECD<sup>9</sup>, efficient mechanisms for dispute resolution are a crucial prerequisite for effective enforcement. These procedures include a range of choices, including panel judgements, arbitration, mediation, regulatory agencies, specialised courts, and the general court system<sup>10</sup>.

Ideally, regulatory bodies should be adequately staffed and funded to effectively fulfill their duties. Courts should aim to resolve cases within a one-year timeframe. Independent arbitration panels, composed of recognized market specialists, should be established to address conflicts between non-controlling and controlling shareholders and promote market-oriented, self-regulatory resolutions. Drawing from successful implementations in Brazil and Jordan, these panels should

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<sup>7</sup> Eric M. Runesson and Marie-Laurence Guy, Mediating Corporate Governance conflicts and Dispute, <https://www.ifc.org/content/dam/ifc/doc/mgrt-pub/focus4-mediation-12.pdf> (last visited 20th April 2024)

<sup>8</sup> *Ibid*

<sup>9</sup> L. Bouchez and A. Karpf, "Exploratory Meeting on Resolution of Corporate Governance Related Disputes," Stockholm, March 2006, OECD

<sup>10</sup> Eric M. Runesson and Marie-Laurence Guy, Mediating Corporate Governance conflicts and Dispute, <https://www.ifc.org/content/dam/ifc/doc/mgrt-pub/focus4-mediation-12.pdf> (last visited 20th April 2024)

strive to reach decisions within three months, thereby alleviating courts from unnecessary caseloads that could be resolved directly between parties<sup>11</sup>.

Conflict culture refers to the prevailing attitudes, beliefs, and norms within an organization regarding how conflicts are perceived, addressed, and managed<sup>12</sup>. It reflects the organization's overall approach to handling conflicts and can significantly influence the outcomes of conflict resolution processes. There are majorly identified three main types of conflict cultures<sup>13</sup>:

1. *Collaborative Conflict Culture*: In this type of culture, organizations encourage open communication, constructive conversation, negotiation, and joint problem-solving when conflicts arise. Conflict is viewed as a natural part of organizational life and an opportunity for growth and innovation. Members are encouraged to address conflicts directly and work together to find mutually beneficial solutions. This type of culture fosters healthier, more productive, and more innovative organizations.

2. *Dominating Conflict Culture*: Dominating conflict cultures are characterized by a competitive approach to conflict resolution, where organizational members seek to assert power and control over others. Conflicts are often viewed as opportunities to blow out opponents and achieve victory. This culture may lead to win-lose outcomes and undermine cooperation and collaboration within the organization.

3. *Avoidant Conflict Culture*: Organizations that have an avoidant conflict culture typically suppress or downplay disagreements instead of confronting them head-on. To keep peace and prevent disturbance, members can back off and leave confrontational situations. Unresolved disputes, however, have the potential to worsen and worsen over time, creating stress and decreasing output.

These are the majorly identified Conflict cultures that exist in an organization that helps us in determining the Corporate attitude that is prevailing in this phase of Corporate governance. Each type of conflict culture has its own implications for organizational dynamics and effectiveness. Collaborative conflict cultures tend to promote positive outcomes and organizational growth,

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<sup>11</sup> Christian Strenger, "Dealing with Non-Controlling Shareholders: Issues and Best Practice," Private Sector Opinion – Issue 1, IFC 2006. Available at: <http://www.gcgf.org>

<sup>12</sup> Tjosvold, D., Wong, A. S. H., & Chen, N. Y. F. (2014), Constructively managing conflicts in organizations, *The Annual Review of Organizational Psychology and Organizational Behavior*, <https://doi.org/10.1146/annurev-orgpsych-031413-091306>

<sup>13</sup> Gelfand, M. J., Leslie, L. M., Keller, K., & De Dreu, C. K. W. (2012). Conflict cultures in organizations: How leaders shape conflict cultures and their organizational-level consequences. *Journal of Applied Psychology* <https://doi.org/10.1037/a0029993>

while dominating and avoidant conflict cultures may hinder collaboration and innovation. Understanding and actively shaping the conflict culture within an organization can help managers in creating a conducive environment for constructive conflict resolution and organizational success. In cultures that effectively harness the creative potential of conflicts while mitigating their destructive impacts, mediation thrives as a crucial tool. This extends to various conflict scenarios, whether within the organization, involving lateral or hierarchical relations, or disputes with external stakeholders like suppliers, clients, or governments<sup>14</sup>. Mediators play a vital role in managing escalated collective confrontations between management and workers, as well as in resolving day-to-day conflicts between individual employees.

### **WHAT AMOUNTS TO CORPORATE GOVERNANCE DISPUTES:**

Disputes categorized as corporate governance disputes, directly linked to a company's governance, typically involve shareholders, board members, and senior executives. While these disputes are of utmost concern to the board, conflicts involving non-executive employees traditionally fall under the domain of labor disputes, while those involving external stakeholders like customers and suppliers are typically considered commercial disputes.

Corporate governance disputes encompass a range of issues, including conflicts of interest among board members or executives, board and executive appointments, compensation and bonuses, removal of individual board members or executives, share valuation, terms of takeovers, and acquisition or disposal of company assets<sup>15</sup>. Between 2001 and 2006, corporate governance-related disputes accounted for 20% of company law-related disputes settled by the International Chamber of Commerce. These disputes covered a variety of issues, such as share valuation, shareholder disagreements, board compensation, bankruptcy-related matters, shareholder involvement in decision-making, and takeover disputes<sup>16</sup>. As evidenced by examples compiled by the OECD, the term "corporate governance disputes" encompasses a diverse range of disputes, each with its unique dynamics and focus<sup>17</sup>.

<sup>14</sup> Bollen, K., Euwema, M. C., & Munduate, L.(2016). Promoting effective workplace mediation: Advancing workplace mediation through integration of theory and practice

<sup>15</sup> See research conducted by Thomas Walde, "Mediation / Alternative Dispute Resolution in Oil, Gas and Energy," CEPMLP Journal ( 2005): <https://www.ogel.org/journal-author-articles.asp?key=6>

<sup>16</sup> L. Bouchez and A Karpf, "Exploratory Meeting on Resolution of Corporate Governance-Related Disputes,"OECD,Stockholm;

<https://www.oecd.org/corporate/ca/corporategovernanceprinciples/37188704.pdf>

<sup>17</sup> <https://www.ifc.org/content/dam/ifc/doc/mgrt-pub/focus4-mediation-12.pdf>

### **THE INCREASED USE OF MEDIATION IN CORPORATE GOVERNANCE:**

While effective conflict management can help identify and address important issues, full-fledged disputes spell trouble for companies. They can lead to diminished performance, deter investors, result in resource wastage, divert attention from core operations, diminish share values, and sometimes even cripple a company entirely. Consequently, many corporate conflicts are resolved outside of traditional courtrooms<sup>18</sup>, with companies increasingly turning to Alternative Dispute Resolution (ADR) methods. Corporations have progressively embraced alternative dispute resolution as a response to various challenges, including weak enforcement mechanisms, lack of trust in the judiciary, exorbitant costs and delays associated with trials, difficulties in enforcing non-binding standards, and reputational risks. The establishment of the Center for Public Resources (CPR) in 1979 marked a significant milestone in this regard, bringing together corporate counsels from Fortune 500 companies and leading law firm partners to develop commercially oriented dispute resolution platforms.

In the United States, around 800 companies, including prominent names like Time Warner, UPS, General Electric, Prudential, and Coca-Cola, have committed to exploring ADR options before pursuing litigation with similarly pledged companies<sup>19</sup>. Similarly, in Colombia, more than half of the 97 companies that have adopted their own corporate governance codes have included dispute resolution clauses promoting ADR, with arbitration being the most commonly mentioned method, followed by mediation<sup>20</sup>. Judicial bodies and judges themselves are increasingly recognizing the benefits of mediation and are establishing court-annexed mediation centers. Countries such as Uganda, Bosnia-Herzegovina, and Pakistan have implemented these centers to promote ADR approaches for court-filed cases, facilitating resolution either before or during litigation proceedings.

### **THE USE OF MEDIATION IN CORPORATE GOVERNANCE:**

It's important to distinguish between workplace mediation, which takes place inside businesses, and mediation that's carried out in certain situations, like labour mediation, or through external

<sup>18</sup> <https://www.ifc.org/content/dam/ifc/doc/mgrt-pub/focus4-mediation-12.pdf>

<sup>19</sup> Unpublished. Available at: <http://www.gcgf.org>

<sup>20</sup> Rafael Guillermo Bernal,. "Arbitration Mediation in Corporate Governance Disputes: The Experience of the Bogota Chamber for Arbitration and Conciliation" Paris, February 2007. Available at <http://www.gcgf.org>



organisations like SIMA in Spain or SIMC in Singapore. A third party steps in to mediate conflicts between workers and their employers, whether they be individual or collective, in both labour and workplace mediation. Both forms of mediation deal with continuous conflicts amongst stakeholders in organisations, and after mediation is over, the parties usually keep in touch. But there's a big difference between the two, and that is: While labour mediation operates within a controlled framework with legal oversight, workplace mediation frequently takes place in an unregulated atmosphere<sup>21</sup>.

The term "labor mediation" specifically refers to formal external mediation processes that usually precede legal actions or events such as strikes<sup>22</sup>. Mediation entails a process wherein a third party facilitates constructive communication among disputants, aiding in decision-making, problem-solving, and negotiation to achieve a mutually acceptable resolution. The mediator assumes the role of process guardian, refraining from evaluating the case or steering parties toward a specific settlement<sup>23</sup>. Instead, the mediator's primary role is to assist disputants in comprehending each other's concerns and interests.

### **THE PROBLEMS FACED WITH THE EXISTING REGULATORY FRAMEWORK:**

Although mediation offers advantages such as speed, cost-effectiveness, and the potential to maintain relationships between parties, India's current mediation framework has not fully realized its potential. The Supreme Court identified drafting errors in Section 89<sup>24</sup> of the Afcons Infrastructure Ltd. case<sup>25</sup>, highlighting the lack of clarity in the referral procedure for mediation. Despite recommendations from the Law Commission of India to amend Section 89, these proposals have not been implemented. Data from mediation centers in India indicates underutilization of Section 89 referrals by judges. Challenges include a lack of tracking of Section 89 referrals in the National Judicial Data Grid, judges' preference for adjudicatory processes, and

<sup>21</sup> Euwema, M. C., Medina, F. J., Garcia, A. B., & Pender, E. R. (Eds.) (2019). Mediation in collective labor conflicts. Springer International Publishing. <https://doi.org/10.1007/978-3-319-92531-8>

<sup>22</sup> Lourdes Munduate, Francisco J. Medina and Martin C. Euwema, *Mediation: Understanding a Constructive Conflict Management Tool in the Workplace*, Redalyc Organisation, <https://www.redalyc.org/journal/2313/231374563003/html/#B76>

<sup>23</sup> Wall, J. A., Stark, J. B., & Standifer, R. L. (2001). Mediation: A current review and theory development. *The Journal of Conflict Resolution* <https://doi.org/10.1177/0022002701045003006>

<sup>24</sup> Code of Civil Procedure, 1908, S.89

<sup>25</sup> Afcons Infrastructure Limited v. Cherian Varkey Construction Company Private Limited, (2010) 8 SCC 24

inadequate training on mediation benefits. Surveys gauging lawyers' perceptions of mediation often depict a legal community that generally appreciates the concept, at least in theory. However, this positive sentiment has not always resulted in a significant increase in voluntary participation in the mediation process. The pace of mediation development has been uneven across different countries and specific dispute areas within each jurisdiction. Despite extensive promotion and publicity spanning several decades, the practice of mediation, as well as lawyers' engagement with it, continues to be a subject of debate in many nations<sup>26</sup>.

Another obstacle to mediation's effectiveness in India is the uncertainty surrounding enforceability of mediation outcomes. Although the Supreme Court clarified the enforcement process, issues persist, discouraging lawyers from recommending mediation to clients. Moreover, the Commercial Courts Act of 2015<sup>27</sup>, while promising, faces challenges in mediator appointment and reporting procedures, hindering its effectiveness in commercial dispute resolution. Clarity is also lacking regarding the enforceability of cross-border mediation settlements, despite India's signing of the Singapore Convention on Mediation. Awareness and understanding of mediation remain low among the public, compounded by myths associating mediation with weakness or inferior justice compared to litigation.

Introducing mandatory mediation in a phased manner could address some of these challenges, providing incentives to the judges and lawyers to promote mediation and fostering a mediation culture. However, legislative efforts are needed to establish a comprehensive framework for mediation governance, akin to the Arbitration and Conciliation Act, 1996<sup>28</sup>, to ensure enforceability of mediation agreements. However, the initiation of the new Mediation Act<sup>29</sup> represents a significant milestone in India's legal landscape, providing a structured framework for the effective resolution of disputes through mediation. By delineating clear guidelines and procedures, the Act aims to streamline the mediation process, ensuring fairness, efficiency, and enforceability of mediated agreements<sup>30</sup>. Therefore, it is a significant step towards fostering a

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<sup>26</sup> Clark Bryan, *Lawyers and Mediation*, Springer, New York, NY, USA, 2012

<https://link.springer.com/content/pdf/10.1007/978-3-642-23474-3.pdf>

<sup>27</sup> The Commercial Courts Act of 2015, Act No.4, Acts of Parliament, 2015, India.

<sup>28</sup> The Arbitration and Conciliation Act, 1996, Act No.26, Acts of Parliament, 1996, India.

<sup>29</sup> The Mediation Act, 2023. Act No. 32, Acts of Parliament, 2023, India.

<sup>30</sup> Deepika Kinhal and Apoorva, *Mandatory Mediation in India - Resolving to Resolve*, Indian Public Policy Review 2020, 2(2): 49-69 <https://vidhilegalpolicy.in/wp-content/uploads/2021/03/Mandatory-Mediation-in-India-Resolving-to-Resolve.pdf>

culture of mediation in India, empowering parties to actively participate in the resolution of their disputes while alleviating strain on the judicial system.

## CONCLUSION:

To achieve economic development and enhance national growth, it is essential to restructure the conflict management framework in India. Effective dispute resolution serves as the triggers for attracting investment, and establishing a robust dispute resolution ecosystem will support India's goal of becoming a business and investment-friendly jurisdiction by providing more avenues for resolving conflicts between parties<sup>31</sup>.

Given the detrimental impact conflicts can have on both organizations and individuals involved, effectively managing these conflicts is paramount<sup>32</sup>. Escalated conflicts can yield profoundly negative consequences for both the organization and its employees<sup>33</sup>. Employees often experience stress, anxiety, and depression as a result of conflict, with a significant portion reporting decreased motivation. Additionally, a notable percentage of employees choose to leave the organization due to conflict<sup>34</sup>. To mitigate the expenses, duration, and dissatisfaction associated with legal proceedings, mediation has gained traction worldwide<sup>35</sup>. Mediation, a form of Alternative Dispute Resolution (ADR), offers a non-judicial approach to resolving various types of Corporate conflicts. Presently, Corporate Governance through mediation is increasingly advocated as a constructive method for minimizing the considerable costs of workplace disputes, whether at a collective or interpersonal level<sup>36</sup>.

Clarity regarding the enforceability of cross-border settlements remains an issue, despite India's endorsement of the recent United Nations Convention on International Settlement Agreements resulting from Mediation (the Singapore Convention on Mediation), which aims to establish a

<sup>31</sup> Indian Institute of Corporate Affairs, <https://iica.nic.in/mediation/>, (last visited 20th April 2024)

<sup>32</sup> De Dreu, C. K. W., & Van de Vliert, E. (Eds.). (1997). *Using conflict in organizations*. Sage.

<sup>33</sup> De Dreu, C. K. W. (2008). The virtue and vice of workplace conflict: Food for (pessimistic) thought. *Journal of Organizational Behavior*, 29(1), <https://doi.org/10.1002/job.474>

<sup>34</sup> Saundry, R., & Urwin, P. (2021). *Estimating the costs of workplace conflict*. ACAS.

<sup>35</sup> Bollen, K., Euwema, M. C., & Munduate, L. (Eds.) (2016). *Promoting effective workplace mediation: Advancing workplace mediation through integration of theory and practice* (pp. 1-20). Springer Verlag.

<sup>36</sup> Lourdes Munduate, Francisco J. Medina and Martin C. Euwema, *Mediation: Understanding a Constructive Conflict Management Tool in the Workplace*, Redalyc Organisation, <https://www.redalyc.org/journal/2313/231374563003/html/#B76>

unified legal framework for invoking and enforcing such agreements<sup>37</sup>. Despite efforts to promote awareness of mediation, including its incorporation into legal education, there is still a widespread lack of understanding among the public<sup>38</sup>. Even when parties are aware of mediation, a significant challenge arises from the absence of incentives to pursue it. In India, misconceptions surrounding mediation, such as the perception of it as a sign of weakness or inferiority to litigation, hinder its adoption as a viable dispute resolution method<sup>39</sup>. These misconceptions stem from the unfamiliarity of mediation, leading to mistrust and avoidance among lawyers and clients. In some cases, clients' desire for retribution through litigation acts as a barrier to initiating mediation, making it difficult for lawyers to suggest it without risking the loss of clients to other legal representatives. Mandatory mediation could address many of these issues, including the lack of incentives for judges and lawyers to encourage mediation, reluctance among disputing parties to attempt it, and the overall absence of a mediation culture in India.

***“There is no advantage in having good governance if, when a dispute arises, you haven’t got a good method to resolve it. If it would take several years to bring a dispute to trial, it is vital that mediation mechanisms exist to achieve resolution in the kind of time frame that big business can live with<sup>40</sup>.”***

***- Mervyn King***

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<sup>37</sup> Deepika Kinhal and Apoorva, Mandatory Mediation in India - Resolving to Resolve, Indian Public Policy Review 2020, 2(2): 49-69 <https://vidhilegalpolicy.in/wp-content/uploads/2021/03/Mandatory-Mediation-in-India-Resolving-to-Resolve.pdf>

<sup>38</sup> *Ibid*

<sup>39</sup> Gupta, Juhi. 2018. “Bridge over Troubled Water: The Case for Private Commercial Mediation in India.” American Journal of Mediation 11: 59-88.

<sup>40</sup> Institute of Directors in Southern Africa, Bulletin, 1st Quarter 2007 <https://www.fsca.co.za/News%20Documents/2007%20FSB%20Bulletin%20First%20Quarter.pdf>