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# *Mediation Matters!*

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## Finland: Small Country, Big Mediation Culture

by Mari Niemi



**Mari Niemi**

*Finland, a small Nordic nation with a population similar to that of Scotland, has a well-established mediation culture and infrastructure. Every year, between 12,000 and 14,000 criminal and civil cases are referred to mediation under the law. Victim-Offender Mediation (VOM) is the most prevalent form of mediation. With a strong restorative justice focus, VOM is a widely practised component of the criminal justice system. Successive governments, regardless of their political makeup, have supported the growth of mediation, and the field continues to develop. However, the mediation community faces its own issues. In particular, the question of whether violence in close relationships should be mediated has recently divided scholars, practitioners and politicians, leading to a decision to cease that practice from the beginning of 2025.*

### Mediation on offer nationwide – for free

In Finland, the basis of the nationwide mediation service was established about forty years ago. In the 1980s and 1990s, municipalities and NGOs established mediation services, leading to a range of practices. One key goal was addressing youth crime in a non-punitive manner. The move towards

mediation and restorative justice was driven by a desire to reduce imprisonment and seek alternatives to punishment. However, concerns emerged that the fundamental rule-of-law principle of ‘equality before the law’ might be compromised due to inconsistent practices and disparities in access. It became evident that legislation was necessary to ensure uniformity and quality in mediation, and access to it throughout Finland. The Act on Conciliation in Criminal and Certain Civil Cases (1015/2005) responded to those needs.

Today, Finland has 17 mediation offices nationwide, staffed by approximately 100 employees and 1,400 volunteers providing services. Provincial governments are required to ensure access to mediation when both parties wish to utilise it. The Ministry of Social Welfare and Health supervises their activities. For participants, this form of mediation is free of charge.

The service offered in both criminal and civil cases is Victim-Offender Mediation, which, as a practice, falls under the umbrella of restorative justice. The key difference compared with conventional mediation is that the parties join the VOM in the roles of an offender and a victim. Mediation is facilitated by trained mediators with the primary purpose of repairing harm and restoring relationships. Although VOM does not replace formal prosecution in all cases, it often influences criminal procedures (e.g. dropping charges, reducing sanctions).

While VOM is by far the most common form of mediation in Finland, it is worth noting that it does not show the full picture. Additionally, about 2,400 court-mediated cases occur each

year, including family or employment-related issues. Mediation in its various forms (whether conventional or based on restorative justice) is also carried out separately in schools, neighbourhoods, workplaces and commercial settings.

### Most cases mediated involve violence

According to data from the Finnish Institute for Health and Welfare (THL), in 2024, a total of 10,604 mediation initiatives were referred nationwide to criminal and civil mediation provided by mediation offices under the Mediation Act. These initiatives comprised a total of 14,546 cases (13,986 criminal cases and 560 civil cases).

Of all criminal and civil cases referred to mediation, more than half were violent offences (7,944). Notably, a total of 2,606 cases of intimate partner violence were referred, accounting for nearly 18 per cent of all matters.

Despite its popularity among service users, mediation of intimate partner violence has for decades been a controversial area among scholars, professionals and politicians. Disagreements centred on its appropriateness for mediation have sparked heated debates since the early 1990s.

According to Honkatukia (2015), the central tension has been between the mediation movement, to whom VOM is an arena for addressing conflict and finding solutions, and the women's rights NGOs, who believe that mediation invalidates domestic violence as a criminal offence, weakens victims' protection and may empower the perpetrators. After the lengthy dispute, the practice was discontinued from January 2025.

### How successful is mediation in Finland?

*'The mediation service provided by Finnish mediation offices is, even by international standards, a success story and a model, and it has established its position as part of the broader framework through which we respond to crimes, disputes, and conflicts in general.'*  
(Peltonen et al. 2022)

The quote above is from a report analysing the state and future possibilities of mediation in Finland. Perhaps somewhat un-Finnish in its open self-satisfaction, the authors celebrate both the quality and quantity of mediation provided in Finland. According to the report, the current phase is still characterised by pending expectations: much has been achieved, but the full potential has yet to be realised.

One way to measure the success of mediation in Finland could be by its widespread use and accessibility. As a practice, VOM has gained broad acceptance and become an institutionalised part of the criminal justice system. Other suitable indicators could include examining how often mediation results in an agreement and how satisfied participants are.

Of the concluded criminal mediation processes, 78.6% (5,512) resulted in an agreement. For civil mediation processes, the figure was slightly lower: 66.8% (151) resulted in settlement. The total monetary value of all agreements reached through mediation was approximately 2.7 million euros. Additionally, mediation is, of course, a cost-effective way to resolve cases that would otherwise go to court.

Generally, the parties are satisfied with the process, as it promotes fairness by giving everyone a chance to be heard. For victims, this can be more meaningful than seeking punishment. Many participants also value

resolving the issue and moving forward. Participant satisfaction is measured through annual surveys. In a recent 2024 study, most respondents reported feeling listened to during mediation, having the opportunity to express themselves, and being able to influence the mediation outcome. Nearly 80 per cent would recommend mediation to others. Participants also reported high satisfaction with staff and volunteer mediators, with agreement rates ranging from 82 to 88 per cent across survey items assessing staff competence, kindness, respectfulness and impartiality.

However, an interview study carried out by Honkatukia (2015), specifically among victims of intimate partner violence, offers a more nuanced perspective on the VOM's success. While engaging in mediation was advantageous for many, it was detrimental for some, including cases of re-victimisation. The lesson here is that, in addition to surveys, regular interviews with participants would be beneficial.

### Future of mediation in Finland

Over the past 15 years, Finnish coalition governments have generally supported increasing the use of mediation. In government programmes, this has been justified by concerns about efficiency: quick processes and low costs.

However, 2024 was indeed the final year in which the mediation offices handled cases of intimate partner violence. From 1 January 2025 onwards, the Mediation Act restricts mediation in these cases. Since they accounted for approximately 18% of all mediated cases, we are likely to see a decrease in overall mediation numbers.

Other plans of the current PM Petteri Orpo's coalition government include developing court

mediation, enhancing the role of communities in mediation, increasing the use of alternative dispute resolution methods, improving access to legal aid, and promoting the utilisation of legal assistance in mediation.

It is expected that mediation will remain an active topic of political debate and development in Finland. However, there are conflicting pressures to consider. In a country where financial pressures are related to an ageing population, mediation might continue to grow in importance as a cost-effective approach. Conversely, the current political climate leans towards a more punitive stance, which is also evident in the approach towards young people – a key group initially targeted by mediation in Finland.

Despite some disputes surrounding the practice, there is a strong commitment to mediation within Finnish society, and ongoing efforts to develop criminal justice mediation. Therefore, VOM is very likely to remain an evolving and well-regarded, yet also contested, part of the Finnish criminal justice system, regardless of which parties form the government.

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## Mandatory Mediation in South Africa by Ettian Raubenheimer



**Ettian  
Raubenheimer**

The primary modes of dispute resolution in South Africa are litigation and arbitration, each of which is regulated by its own statutory instrument. Domestic arbitration is regulated by the Arbitration Act, Act 42 of 1965, and International Arbitration by the International Arbitration Act, Act 15 of 2017. Litigation in the High Courts is regulated by the Superior Courts Act, Act 10 of 2013 and the rules promulgated in terms thereof, and in the Lower Courts by the Magistrates' Courts Act, Act 32 of 1944.

Mediation is not regulated by general statute and is primarily reserved for labour-related matters in terms of the Labour Relations Act, Act 66 of 1995.

### The movement towards mediation

#### Legislative initiatives

1. Legislative innovation in South Africa is primarily driven by the South African Law Reform Commission (SALRC). In terms of section 4 of the South African Law Reform Commission Act, Act 19 of 1973 the purpose of the Commission is the conduct of research, study and investigation of all branches of the law in South Africa, and the

making of recommendations for the development, improvement, modernisation or reform of the law.

2. The SALRC commenced with a project on mediation in July 1997 when it published the Issue Paper on Alternative Dispute Resolution (Project 94). The work on the draft General Mediation Bill dealing with commercial, civil and community disputes commenced in 2019, and the discussion paper containing the Bill was published in January 2025.
3. The SALRC also published a discussion paper on alternative dispute resolution in family matters in 2019.

#### Jurisprudential initiatives

Mediation has, since the promulgation of South Africa's Constitution in 1996, been inextricably linked to the guarantee of the right of access to justice as contained in section 34 thereof. The right of access to justice has been interpreted to encompass timely and affordable dispute resolution and the focus has shifted to substantive access which is not limited to mere access to courts but entails the dignified and effective resolution of disputes.

The seminal decision in this regard is the Constitutional Court decision in *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC), where the court stated that courts are duty bound to adjudicate conflict justly and equitably and that mediation provides for creative and flexible solutions to disputes, often not available to a judicial officer bound by rigid rules and principles. This possibility has the potential to go a long way in restoring and preserving the dignity of the disputants. The court ruled that courts could stay or adjourn

proceedings to permit mediation depending on the context.

### The evolution of mediation jurisprudence

The jurisprudential approach to mediation post-1994 can be loosely divided into the following waves:

#### *The Voluntary Wave (1994–2010)*

During the early post-apartheid era the judicial approach to mediation was viewed primarily as a voluntary, restorative tool for the resolution of disputes. High courts in the utilisation of their inherent powers in terms of section 173 of the Constitution, began to suggest mediation in social disputes. During this phase no formal procedural penalties for refusing to mediate existed. The *Port Elizabeth Municipality* case, discussed above, exemplifies this period of judicial encouragement.

#### *The Ethical Wave (2010–2020)*

A significant shift occurred in about 2010 where the focus moved to the professional responsibilities of legal practitioners.

- In *Brownlee v Brownlee* 2010 (3) SA 220 (GSJ), the court held that attorneys have a professional obligation to encourage clients to seek mediation before costly litigation, especially in family law. The court expressed displeasure with “scorched earth” litigation and penalised the successful party with capped legal costs for failing to investigate mediation.
- In the *MB v NB* 2010 (3) SA 220 (GSJ) matter, the court reinforced mediation as a critical tool for reducing the trauma of divorce. The judgment emphasised the cost-effectiveness and privacy of mediation. This judgment suggested that failure to mediate should have direct financial consequences for litigants and

legal representatives. It consequently laid the groundwork for future procedural rules.

- In the *MN v AJ* 2013 (3) SA 26 (WCC) matter, the court, in a parental rights dispute, criticised parties for using the court as a “battlefield”. The court further noted that the legal system is not designed, and consequently more often than not, ill-equipped for emotional nuances in domestic disputes. It reiterated that mediation allows for a “win-win” outcome.

#### *The Procedural Wave (2020–2025)*

Uniform Rule of Court 41A was enacted in March 2020. This constituted a definitive turning point which embedded mediation into the procedural lifecycle of High Court litigation. The effect of this rule is that disputing parties are required in every new action or application to file a “Rule 41A Notice” stating whether they agree to or oppose mediation and providing reasons for any opposition. Although the delivery of the Notice became mandatory, the process of mediation itself remained voluntary during this phase. As could be expected, the rule quickly attracted judicial attention.

- In *Koetsioe and Others v Minister of Defence and Military Veterans and Others* (12096/2021) [2021] ZAGPPHC 203 (6 April 2021), the court confirmed the mandatory nature of the rule and the requirement that the rule requires earnest consideration.
- In the matter of *MD v MD* [2023] ZAGPPHC 142, the court ruled that Rule 41A is not a mere formality and requires a genuine consideration of mediation. Any refusal to mediate must be based on reasonable and substantiated grounds. A

vague refusal to mediate due to mere animosity between the parties does not constitute grounds for refusal. The basis for this approach by the court is the rule to promote efficient and constructive dispute resolution. The judgment is a clear indication of the judiciary's increasing impatience with parties who attempt to circumvent mediation.

- In *Nsele v Road Accident Fund* (2023/023750) [2024] ZAGPJHC 793 (12 August 2024), the court considered whether one party could compel the other party to consider mediation, further reinforcing the judiciary's role in policing procedural compliance with Rule 41A.
- In *DD v IL and Another* (16939/2024) [2024] ZAWCHC 215 (20 August 2024), the High Court held that refusal to cooperate in mediation could lead to adverse cost considerations in family law matters.

#### *The Administrative Wave (2025–Present)*

This wave heralded the advent of Mandatory Mediation, when on 22 April 2025 the Gauteng Division of the High Court introduced the Revised Mediation Protocol by means of the Revised Directive Introducing Mandatory Mediation in the Gauteng Division. This directive primarily came about due to the extreme backlog in the awarding of trial dates. During 2024 trial dates were allocated as far ahead as 2031. The court leadership regarded this state of affairs as unacceptable and engaged in wide consultation with the legal profession as well as relevant stakeholders, such as mediation organisations and consumers of court services. After comprehensive consultations during the latter part of 2024 and the first part of 2025, the Directive was issued. The Directive transformed mediation from a procedural suggestion into a mandatory prerequisite for

trial in the Gauteng Division. The effect of this Directive is that no civil trial date will be allocated without a signed Mediator's Report. All trial dates from 1 January 2027, were summarily withdrawn, requiring re-enrolment only after mediation is attempted. Although the Directive was largely favourably received by the legal profession it has been subjected to critique from certain quarters. Initial challenges to the Directive were averted, but the possibility of a Constitutional Court challenge is still alive.

#### *A cursory look at the jurisprudence since the implementation of the Directive:*

- In *Brondani v Brondani* 2025 ZAGPJHC (17 November 2025), it was held that acrimony or a subjective belief that mediation is “futile” is not a valid reason to refuse a referral to mediation and can be considered delinquent. The court argued that extending trial backlogs to 2031 constitutes a de facto denial of access to justice, justifying mandatory mediation as a “reasonable and justifiable limitation” on the right to litigate.
- The judgment in *Mofiko v Mthophe and Others* (2024/044182) (2025) ZAGPJHC 772 (7 August 2025), lamented that the use of mediation as envisaged in Rule 41A would have resulted in time, money and anxiety being saved. Rule 41A is not regarded by courts as a mere rule but as a necessary and pragmatic tool to curb wasteful litigation.
- In *Malebane v Road Accident Fund* [2025] ZAGPPHC 1253 (11 November 2025), the court confirmed that the basis for the Mediation Protocol is Rule 41A. The court importantly held that the extreme backlogs constitute a de facto denial of justice under section 34 of the Constitution.

In other specialist courts mediation has been considered and it has been concluded that it is mandatory within the context of the particular legislative framework.

In the Land Claims Court judgment of *Marais NO and Another v Daniels and Others* [2025] ZALCC 38 (30 September 2025), the court confirmed that mediation is mandatory under the Extension of Security of Tenure Amendment Act, Act 2 of 2018 and that informal negotiation is insufficient.

### Legislative Roadmap and Future Trends

The closing date for comments on the SALRC Discussion Paper and draft Mediation Bill was May 2025 and the submissions are currently being processed, with the Bill being finalised for tabling in Parliament. The purpose of the Bill is to replace the fragmented rule-based approach with a generic statute for civil, commercial, and community mediation. It furthermore aims to integrate the Singapore Convention on Mediation, allowing international commercial mediated settlements to be enforced in South African courts. The Bill also envisions a “Mediation Council” to regulate and statutorily accredit mediators, ending the current era of voluntary accreditation.

### Conclusion

Since 1994, South African jurisprudence has successfully re-conceptualised mediation from a voluntary ‘alternative’ to a constitutional necessity and a fundamental component of the justice system. By rooting mediation in constitutional rights, the courts have ensured it serves not merely as a tool for efficiency but as a primary path for achieving substantive and restorative justice. As the legal framework continues to evolve, particularly with the implementation of mandatory directives and proposed legislation, mediation is set to become an even more integral ‘gatekeeper’ for civil disputes in South Africa, reflecting a legal system that increasingly prioritises harmony and efficient resolution over adversarialism.

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## From Village Halls to Virtual Rooms: How the Mediation Act 2023 is Shaping India's Culture of Conflict

by Deeraja



**Deeraja**

### Introduction: A Land of Uncontainable Realities

Across journals, letters and half-finished attempts to describe her, India repeatedly slips beyond the categories meant to contain it. In a country characterised by immense demographic scale and social plurality, rigid frameworks often struggle to capture lived realities. Difference is visible; nuance is not. Yet, it is within these less visible spaces that everyday negotiations of conflict and coexistence quietly unfold.

Within this social panorama, conflict is not a deviation. Disagreements within families, between neighbours, and among communities are part of everyday life, negotiated long before they are formalised. Conversations precede cases; intermediaries emerge before institutions intervene. These exchanges are informal and relational, shaped more by shared histories than by legal rights. Conflict here is managed through social negotiation

rather than being immediately translated into legal language.

### Mediation Before Formal Law

Informal mediation in India took various forms across different communities. Sometimes, it was a Panchayat, where village elders resolved disputes within the village; other times, tribal elders practiced Panchas to manage conflicts within the tribe; and occasionally, Mahajans combined arbitration and mediation to settle business disagreements.<sup>1</sup> These practices existed long before colonialism reached India. They relied on the authority of elders and the community's belief in the value of their experience and traditions. However, they were not free from the harsher social realities of their time.

Despite its long-standing historical presence, mediation in India remained largely informal, localised, and embedded within social or judicial frameworks. It was practiced but seldom theorised as an independent legal process. The shift toward recognising mediation as a standalone process, capable of operating beyond courts and across borders, occurred much later and became definitive with India's signing of the Singapore Convention on Mediation in 2019.<sup>2</sup>

### The Singapore Convention Catalyst: A Philosophical Mismatch

When the Singapore Convention was adopted in 2019, it articulated a specific conception of mediation: a voluntary, party-driven process in

<sup>1</sup> Anil Xavier, 'Mediation: Its Origin and Growth in India' (2006) 27 Hamline J Pub L & Pol'y 275.

<sup>2</sup> Press Information Bureau, 'Cabinet approves signing of the UN Convention on International Settlement Agreements resulting from mediation by India' (Press Information Bureau, 31 July 2019).

<https://www.pib.gov.in/PressReleaseIframePage.aspx?PRID=1580824> accessed 9 January 2026.

which the mediator holds no adjudicatory authority, and the settlement stands independently of courts or arbitral mechanisms.<sup>3</sup> The Convention's premise was straightforward: if parties voluntarily reach a mediated settlement, that agreement itself should be capable of recognition and enforcement, particularly in cross-border commercial disputes.

This understanding did not fully align with how mediation functioned in India. At the time, mediation was largely integrated within existing legal frameworks rather than operating as an independent process. Court-annexed mediation under Section 89 of the Civil Procedure Code produced settlements whose enforceability derived from court decrees, while conciliation under the Arbitration and Conciliation Act resulted in settlements treated as arbitral awards.<sup>4</sup> In both cases, the authority of the settlement stemmed from an external legal mechanism, not from mediation as a standalone process.

This distinction proved decisive. The Singapore Convention recognises only "pure" mediation settlements, those arising entirely from a voluntary mediation process without being integrated into judicial or arbitral frameworks. As a result, the predominant forms of mediation practiced in India fell outside its scope. This gap revealed a deeper philosophical divide: while some jurisdictions viewed enforceability as unnecessary for a

voluntary process, India adopted a more pragmatic stance, recognising that enforceability is often essential to ensure the durability of settlements. This mismatch highlighted the need for standalone mediation legislation. Therefore, the Mediation Act should be understood not as a sudden reform but as a response to an international framework that demands mediation be recognised as a process in its own right.

### The Mediation Act 2023: A Blueprint for a New Era

Although the Mediation Act 2023 has been enacted, it has not yet become fully operational. Several key provisions remain inoperative, and the Rules necessary to implement the Act are still awaited. Until these rules are framed, the Mediation Council of India cannot be constituted, and many of the Act's most progressive mechanisms remain theoretical. Nevertheless, even in this incomplete state, the Act signals a clear shift in how mediation is envisioned within India's justice framework.

### A Legislated Pause Before Litigation

One of the Act's most significant innovations is the introduction of pre-litigation mediation for civil and commercial disputes.<sup>5</sup> The intention is not to compel settlement but to require parties to attempt dialogue before resorting to litigation. Parties are expected to participate in at least two mediation sessions before

<sup>3</sup> United Nations, *United Nations Convention on International Settlement Agreements Resulting from Mediation* (adopted 20 December 2018, opened for signature 7 August 2019) [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXII-4&chapter=22](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXII-4&chapter=22) accessed 9 January 2026, art 3.

<sup>4</sup> The Arbitration and Conciliation Act 1996, ss 73–74.

<sup>5</sup> The Mediation Act 2023, s 5, "Pre-Litigation Mediation" India Code, available at [https://www.indiacode.nic.in/show-data?abv=CEN&statehandle=123456789/1362&actid=AC\\_CEN\\_3\\_46\\_00011\\_A2023-32\\_1697800640677&sectionId=80946&sectionno=5&orderno=5&orgactid=AC\\_CEN\\_3\\_46\\_00011\\_A2023-32\\_1697800640677](https://www.indiacode.nic.in/show-data?abv=CEN&statehandle=123456789/1362&actid=AC_CEN_3_46_00011_A2023-32_1697800640677&sectionId=80946&sectionno=5&orderno=5&orgactid=AC_CEN_3_46_00011_A2023-32_1697800640677)

approaching the courts, with the option to opt out thereafter. This design strikes a careful balance: mediation is made unavoidable at the entry point but never coercive in outcome. In a system burdened by chronic case backlogs, this provision functions as a legislated pause, encouraging dialogue without excluding legal remedies.

### Giving Legal Shape to Community Wisdom

The Mediation Act 2023 also turns its attention to community mediation, but in a way that feels both cautious and intentional. It recognises that disputes at the local level are often better addressed through conversation than coercion. Under the Act, community mediation is carried out by a panel of three mediators, creating space for dialogue that is grounded, familiar and responsive to local realities.

What stands out here is the purpose the law assigns to this process. Community mediation is not meant to produce legally enforceable outcomes. Instead, it is oriented towards restoring peace, harmony and a sense of balance within a neighbourhood or locality. Where parties do arrive at a settlement, it can be written down and authenticated by the mediators, offering clarity without the weight of a court decree. Where they do not, the process still leaves behind something valuable: the act of having engaged rather than escalated.<sup>6</sup>

This design choice is telling. By keeping community mediation outside the realm of enforceability, the Act avoids turning it into a parallel adjudicatory system. It acknowledges India's reliance on relational forms of dispute

resolution, while recognising that not every form of justice derives its meaning from enforcement.

### Expanding Mediation Beyond Physical Rooms

Equally forward-looking is the recognition of online mediation<sup>7</sup> and Online Dispute Resolution (ODR) platforms. By acknowledging digital mediation as a valid mode of dispute resolution, the Act aligns itself with evolving realities of access, geography, and efficiency. Platforms such as SAMA and Presolv 360, which already facilitate structured online mediation, now find themselves reflected within the statutory framework, even though the regulatory regime to govern them is still evolving.

### Building Trust Through Institutions

At the institutional level, the Mediation Council of India<sup>8</sup> is envisioned as the cornerstone of professional mediation in the country. Once established, it will be responsible for accrediting mediators, recognising training institutes, setting ethical standards, and ensuring quality control across a diverse and rapidly expanding mediation ecosystem. In a country as large and varied as India, such a body is not merely administrative; it is essential for consistency, credibility and public trust. The Act also introduces mechanisms such as the formal registration and identification of mediation settlement agreements,<sup>9</sup> reinforcing their enforceability while safeguarding against fraud and misuse.

The enforceability framework embodies a calibrated approach. Settlement agreements reached through mediation are granted the status of court decrees, while the grounds for

<sup>6</sup> The Mediation Act 2023, ss 43–44.

<sup>7</sup> The Mediation Act 2023, s 30

<sup>8</sup> The Mediation Act 2023, ch VIII.

<sup>9</sup> The Mediation Act 2023, s 20

challenging them are intentionally limited.<sup>10</sup> This ensures finality without compromising fairness, signalling that mediation is not a lenient alternative but a serious legal process with binding consequences.

### The Implementation Gap: Promise vs Pause

Despite the urgency that mediation promises to address, the implementation of the Act has progressed slowly. Court-annexed mediation, private mediation and online mediation continue to operate under existing legal frameworks; not because of the Act, but due to its absence. The delay in promulgating the Rules indicates that, although mediation is widely recognised as necessary, it has not yet achieved the legislative priority required for systemic reform. This gap between intent and execution remains one of the Act's most significant challenges.

### Where Rules Meet Relationships

Conversations with practicing mediators reveal that mediation resists a singular philosophy. One mediator described transformation as the quiet but essential endpoint of the process, where parties rediscover their capacity for self-determination and leave not merely with a settlement but with the confidence to resolve conflicts without external authority. Another emphasised something different yet equally powerful: the process itself. For them, mediation is revolutionary not because it guarantees resolution, but because it creates a space where people choose to sit together and speak. Even when outcomes remain unresolved, the act of dialogue continues its work beyond the room. This plurality of approaches is not a weakness; it is mediation's

strength. It reflects precisely what the Mediation Act and Rules seek to protect. As Anil Xavier<sup>11</sup> has observed, mediation encompasses both a science and an art.<sup>12</sup> The Act provides the scientific scaffolding through structure, enforceability and standards, while deliberately leaving room for the art to unfold. By protecting this flexibility through rules, we empower mediators to respond to context, culture and human complexity, rather than forcing disputes into a single procedural mould.

### Mediation in Motion: The Ripple Effect

Imagine if every civil dispute first passed through mediation. Beyond reducing the backlog of four million pending cases, mediation has the potential to transform India's approach to conflict itself. A skilled mediator doesn't just resolve a case; they guide parties toward understanding, compromise and restoration. Over time, this ripple effect could change the cultural narrative around disputes, fostering a society that values dialogue over contention.

Mediation in India, under the Mediation Act of 2023, introduces a framework that balances rigour with flexibility. The unique code assigned to each mediated settlement not only ensures legal validity but also anticipates future challenges, protecting parties from potential disputes or fraud. This scientific foundation, comprising codified rules, enforceable settlements, and the Mediation Council of India, provides the stability necessary for mediation to scale effectively across the country. Yet, the Act intentionally leaves room for the art of mediation: the

<sup>10</sup> The Mediation Act 2023, s 28

<sup>11</sup> International Mediation Institute (IMI), 'Anil Xavier' (IMI Mediation, 2024) <https://imimediation.org/member/anil-xavier/> accessed 9 January 2026.

<sup>12</sup> International Mediations Organisation, 'Mediation, the Indian way!! An analysis of the Mediation Act 2023' (YouTube, 7 August 2025) <https://www.youtube.com/watch?v=QUExXhtygRQ> accessed 9 January 2026.

creativity, empathy, and relational nuance that each mediator brings to the process. It is in this interplay between structure and artistry that mediation reveals its true potential.

If widely embraced, mediation could generate more than just efficiency within the judicial system; it could ignite a profound cultural transformation. A skilled mediator, through dialogue and empathy, can turn conflicts into opportunities for insight, compromise and restoration. In this way, mediation reflects the complexity of India itself, a society that cannot be neatly categorised, where history, relationships, and social realities intersect in ways that defy simple solutions. Each resolved dispute sends ripples through communities, influencing how people perceive conflict, collaboration and justice, quietly yet powerfully shaping societal norms.

Perhaps this is what visitors, scholars, and those who have tried to explain India have long sensed: a nation that refuses to be

confined, and a form of justice that cannot be limited to legal categories alone. Mediation is more than a mechanism to reduce court backlogs or formalise settlements; it is an opportunity to heal, to teach, and to transform. When approached wisely, gracefully, and inclusively, it can redefine India's understanding of conflict - not merely as something to be adjudicated, but as a human process capable of fostering understanding, resilience and community.

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