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**INTERNATIONAL JOURNAL FOR
DISPUTE RESOLUTION**

ISSN NO.: 2583-8989

VOLUME 1 ISSUE 3

2023

BENEATH THE BANYAN TREE: MEDIATION TALES IN BANGALORE

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Strolling through the tales of mediation under the banyan tree, Bangalore isn't just a city—it's like a character in a love story, embracing mediation despite challenges. Like any growing relationship, Bangalore and mediation find a way to work well together. In this story of how mediation is changing in Bangalore—from new ways of doing things by private groups to making mediation more professional—the city is making some big changes.

It's not just about laws; it's about stories and how the city is changing and making room for a new way of solving problems. So, here's a question: Could the way Bangalore is using mediation show us a different way of dealing with problems in our changing legal world?

This essay endeavors to unravel the significance and relevance of mediation by weaving its narrative with childhood stories. It addresses pertinent issues in the field while providing substantial recommendations. In essence, it navigates the reader through the enchanting world of mediation, connecting it with familiar childhood tales, and offering insights and solutions for a more harmonious legal landscape.

Keywords: *Bangalore, Mediation, Alternate dispute resolution, Bangalore Mediation Centre, Conflict resolution*

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INTRODUCTION:

“To make the idea of access to justice effective, and user-centric, the need of the hour is the popularisation of mediation” as stated by the infamous N.V Ramana³. Mediation, a highly adaptable form of Alternative Dispute Resolution (ADR), has experienced notable growth, particularly in Delhi and Bengaluru⁴. Despite this momentum, there remains a challenge in diverting disputants away from traditional litigation. In essence, mediation is a voluntary and binding process where an impartial mediator facilitates parties in settling. The mediator doesn't impose solutions but creates a conducive environment for parties to resolve their disputes⁵. This method is gaining prominence due to its informality, voluntariness, and participant-centric nature. It lacks strict rules, ensuring confidential one-to-one interactions and granting disputing parties control over the resolution process. Mediation is gaining growing importance in the legal system as it is an informal and voluntary process that stands out for its flexibility and participant-centric nature. With no strict rules, it ensures confidential, one-to-one interactions, allowing disputing parties to control the dispute settlement process. This cost-effective and swift mode prioritizes interests over rights, empowering parties to autonomously craft agreements. Mediation's significance lies in providing a confidential, adaptable, and collaborative environment, fostering efficient, participant-driven resolutions to conflicts.

*Why Tales under a Banyan Tree one might ask? From listening and talking right under those trees we've come a long way. Yet, the roots and essence of mediation go way back to **echoes from the cradle, where parental mediation soothes a child's cries**. Here we have tried to bring upon a correlation as to our dearest childhood books and movies to the concept in itself.*

³ Indian Institute of Corporate Affairs, (Nov.25, 2023, 4:45 PM) <https://iica.nic.in/mediation/>

⁴ Alok Prasanna Kumar, Ameen Jauhar, Kritika Vohra, Ishana Tripathi, “*Strengthening Mediation in India*”, Vidhi Legal Policy (Nov.25, 2023, 5:45 PM).

https://vidhilegalpolicy.in/wp-content/uploads/2019/05/26122016_StrengtheningMediationinIndia_FinalReport.pdf

⁵ “*Mediation and Conciliation Project Committee*”, Supreme Court of India, (Nov.25, 2023, 5:00 PM). <https://main.sci.gov.in/pdf/mediation/Brochure%20-%20MCPC.pdf>

Hakuna Matata: The Existing Lion Kings Framework

When 'Hakuna Matata' simply translates to 'no worries,' it seems like we've got a king-like framework for Alternative Dispute Resolutions (ADR). Despite the strong framework, seemingly set in stone. But is it really worry-free?

Even after swaying from the traditional courtroom setting and going towards consensual resolution, there are some problems surrounding that area of law. Mediation and its thought of mutual consent is not always the strait jacket rule, neither the statutes nor the judiciary has proved otherwise. Currently in India, there are three avenues for commencing mediation. First, parties may incorporate mediation clauses in contracts, opting for either institutional or ad-hoc mediation. Second, the court, under Section 89 of the Code of Civil Procedure, 1908 (CPC), or specific legislations like Section 37 of the Consumer Protection Act, 2019, can refer cases to mediation after their initiation in the courts. Third, mandatory pre-litigation mediation is mandated by Section 12A of the Commercial Courts Act⁶. The below ground breaking moments shaped the legal framework of mediation:

- a. There has been a landmark case that have not only interpreted S.89 in an expanding manner but rather a committee was formed to develop case management procedures and rules for ADR under Section 89, emphasizing High Courts' role in rule-making and seeking input from legal stakeholders⁷.
- b. In further advancement to the objective of ADR, the Supreme Court clarified Section 89 anomalies, interchanging "Mediation" and "Judicial Settlement" definitions. It emphasized that Section 89 doesn't mandate specific settlement terms, offering flexibility⁸.
- c. The Mediation and Conciliation Project Committee (MCPC) Report, which was constituted in 2005, initiated a pilot project on Judicial Mediation in Tis Hazari Courts, Delhi. Trained judicial officers began formal mediation in 2005⁹.

⁶ Vidhi Centre for Legal Policy, "ODR, The Future of Dispute Resolution", Vidhi Legal Policy (Nov.25, 2023, 4:45 PM). https://vidhilegalpolicy.in/wp-content/uploads/2020/07/200727_The-future-of-dispute-resolution-in-India_Final-Version.pdf

⁷ Salem Advocate Bar Assn v. Union of India (2005) 6 SCC 344.

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

⁹ "Mediation Training Manual for Referral Judges", Government of India, (Nov.26 2023, 8:45 PM). <https://main.sci.gov.in/pdf/mediation/Mediation%20Training%20Manual%20for%20Referral%20Judges.pdf>

Some might argue, does a framework really need anything more? It's got laws, and that's practically a mandate, especially in certain legal domains. But, does this provide a snug fit, or does it limit the system's flexibility, making us wonder – is it truly worry-free? Let's dive into this exploration from the perspective of a city that began its journey modestly and has traversed a considerable distance - ***Bangalore: The Silicon Valley of India.***

Bangalore's Beauty and Mediation's Beast: A Love Story Unraveled

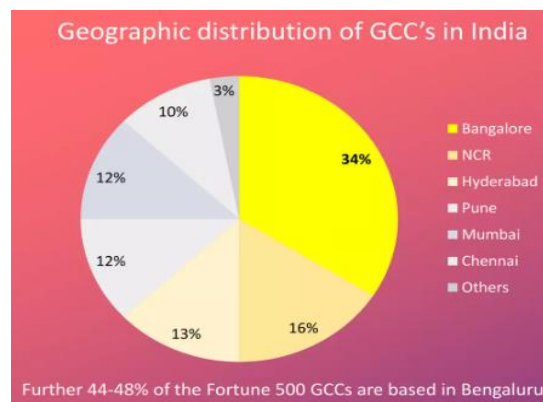
Just as Beauty and the Beast's story began with difficulties but blossomed into love, Bangalore and Mediation faced initial challenges. Like perfect puzzle pieces, they eventually embraced each other. Despite a rough start, they found harmony through understanding and acceptance.

Over the last decade, Bengaluru has undergone a significant transformation, evolving from a BPO center to the Silicon Valley of India. Numerous reports and studies underscore its position as the prime choice for homegrown startups and venture capital investments¹⁰. The city boasts a substantial number of tech companies and IT professionals, fostering a unique culture of mentorship and networking. In 2010, startups in Bangalore raised \$30.57 billion, and \$20.1 billion accumulated in the past four years. India is recognized as a favored Global Capacity Centre (GCC) with participation from Fortune 500 companies. However, Bangalore stands out as the top location, hosting 34% of all GCC operations¹¹. Therefore, as development increases, so do the challenges and the need for quicker and easier solutions.

¹⁰ Debojyoti Ghosh, Anshul Dhamija, "Bengaluru: Climbing up the innovation ladder", Forbes India (Jan 5, 2016 05:45 PM).

<https://www.forbesindia.com/article/forbes-india-ceo-dialogues/bengaluru-climbing-up-the-innovation-ladder/41845/1>

¹¹ "Bengaluru Innovation Report 2019", SlideShare (Dec 18, 2019).
<https://www.slideshare.net/W-3one4/banglore-innovation-report-2019>

Table 1: Nasscom Report¹²¹³

India is grappling with a severe backlog of over 40 million court cases¹⁴, costing citizens and businesses a staggering \$56 billion, equivalent to 1.8% of the GDP. Acknowledging the urgency for a solution, ADR and Online Dispute Resolution (Hereinafter ‘ODR’) have emerged as sustainable alternatives. The number of ODR startups has surged by over 350% from 2018 to 2021¹⁵, indicating a growing recognition of their efficacy. Notably, the Bangalore Mediation Centre (BMC), established in 2007 to alleviate the backlog, has achieved a remarkable 63% success rate, resolving 3,301 cases in the last two years¹⁶. The BMC's success serves as a model for other states. In Gujarat, a concern arises from a lower success rate, settling only 16% of cases referred for mediation. Meanwhile, DMC (Delhi Mediation Centre) have seen substantial success, with a total of 102,279 cases resolved successfully out of 258,267 referred cases, emphasizing the positive impact of mediation in expediting dispute resolution¹⁷. The data underscores the pivotal

¹² “GCC 4.0 | India Redefining The Globalization Blueprint”, Nasscom, (Nov.26, 2023, 9:00 PM).

<https://nasscom.in/knowledge-center/publications/gcc-40-india-redefining-globalization-blueprint>

¹³ “Retail India is a Preferred GCC Hub and 80% of Top 100 Global Retail/CPG Companies will Set Up GCCs in India by 2022: NASSCOM-ANSR Report”, ANSR, (Nov.26, 2023, 9:10 PM).

<https://ansr.com/india-is-a-preferred-gcc-hub-and-80-of-top-100-global-retail-cpg-companies-will-set-up-gccs-in-india-by-2022-nasscom-ansr-report>

¹⁴ BQ Desk, “India’s Pending Court Cases On The Rise: In Charts”, BQ Prime (Sep.29, 2020, 8:10 PM)

<https://www.bqprime.com/law-and-policy/indias-pending-court-cases-on-the-rise-in-charts>.

¹⁵ Pitamber Yadav, “Mediation In India”, Camp Mediation, (Nov.25, 2023, 7:00 PM)

<https://campmediation.in/mediation-in-india-to/#:~:text=The%20dispute%20resolution%20cost%20to,26%20billion%20dollars%20each%20year>.

¹⁶ Srikanth Hunasavadi, “Mediation succeeds where courts don’t”, DNA India, (Nov.25, 2023, 3:00 PM)

<https://www.dnaindia.com/bangalore/report-mediation-succeeds-where-courts-don-t-1222745>.

¹⁷ Statement Showing the Details of the Matters to All ADR/Mediation Centers in <https://gujarathighcourt.nic.in/mcstatistics>

role of ADR and ODR in addressing India's justice challenges, offering efficient alternatives to conventional court proceedings.

Figure 1: Cases referred at the BMC

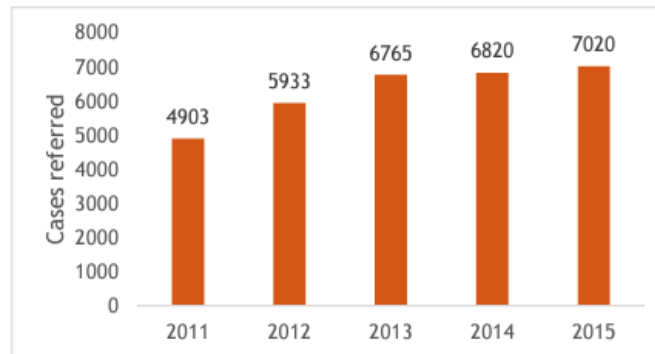


Table 2¹⁸

Among the BMC, DMC and GMC (Gujarat Mediation Centre), only BMC has consistently witnessed a rise in referred cases each year throughout the research period. In the year 2011 to 2013, 3,301 cases have been solved in the mediation centre, of which 435 were partition suits, 1,390 divorce cases and 195 cheque bounce cases¹⁹. Thereby, leaving us with the notion that Bangalore has the highest number of cases referred to it for the purpose of mediation.

Considering the economic growth and increased use of ADR in Bangalore, the authors, drawing from their professional experience, have made an intriguing observation. As modernization sweeps across the globe, Bangalore, being a hub of IT, experiences an even more rapid pace of change. With a diverse influx of people from various cultures, the traditional concept of marriage in the city has taken a new direction, blending ideas from different corners of the world. Bangalore is swiftly emerging as the divorce hub of India, with approximately 300 out of every 1,000 married couples opting for separation. The family court in the city receives an average of 40 divorce cases daily, and each case takes a minimum of three to five years for resolution. Table 3 is a vivid representation of how people engaged in the IT sector are filing for divorce²⁰.

¹⁸ *Id.* at 2.

¹⁹ *Id.* at 14.

²⁰ Vinodh Kumar G.C, "Information Technology Professionals and Family Disorganization: With Special Reference to Bangalore City", Volume 2 Issue 11, International Journal of Humanities and Social Science Invention, 67, (2013) [https://www.ijhssi.org/papers/v2\(11\)/Version-3/M021103067072.pdf](https://www.ijhssi.org/papers/v2(11)/Version-3/M021103067072.pdf)

Fig: 03: PERCENTAGE OF DIVORCE CASES FILED BY ITIANS FROM 2003 TO 2006

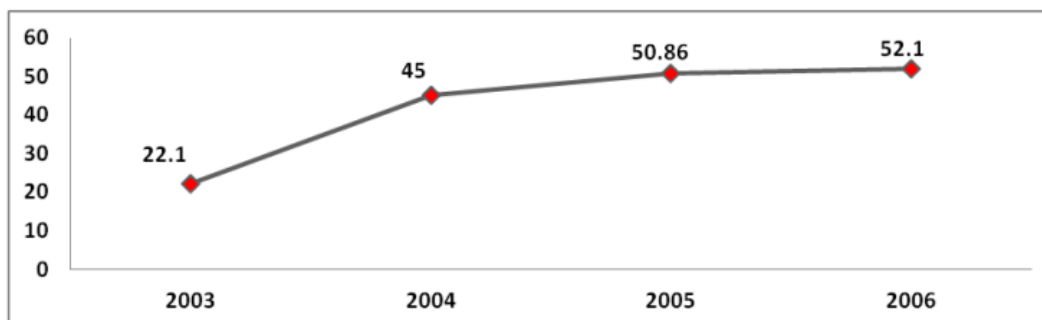
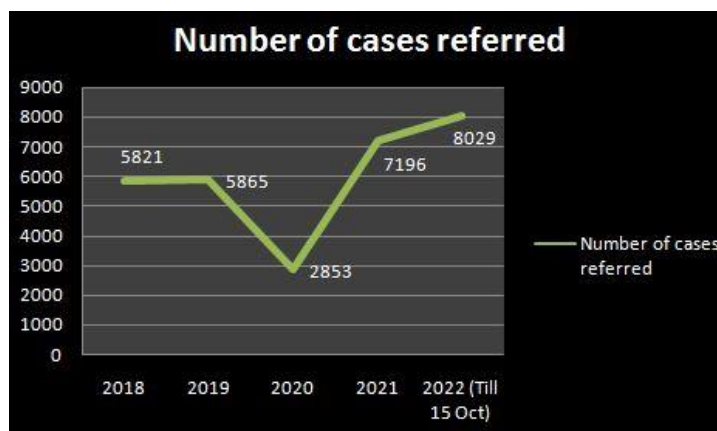


Table 3

However, Covid-19 and closed doors was a game changer, Table was a clear cut representation of the same. *So can we say, doom unveiled, gloom unmasked in shadows of a disease?*

Table 4²¹

Experts say that mediation as a conflict resolution mechanism in divorce cases is highly prevalent and that a true utterly delightful closure can be attained within two hours in a mediation session²². *Is the split and divorce scene the latest trend in the biz? They say happy endings are lasting, but can two hours truly capture it all?*

²¹Mansi Arora, "Mediation cases: 38 percent surge in last 5 years", The Soft Copy, (Nov.27, 2023, 10:30 PM) <http://thesoftcopy.in/2022/11/10/mediation-cases-38-percent-surge-in-last-5-years/>

²² P Vasanth Kumar, "Mediation Gives Happy Endings in 2 Hours", Times of India (May 21, 2011, 06:14 PM), <https://timesofindia.indiatimes.com/city/bengaluru/mediation-gives-happy-endings-in-2-hours/articleshow/8474377.cms>

Finding Nemo: Navigating Bangalore Legal Waters through Mediation

In the notorious saga of Nemo and his dad losing their way in the vast sea, they eventually navigated through the chaos. Similarly, for Bangalore and Mediation to reunite, a journey of navigation and analysis through all the obstructions becomes imperative. Just like Nemo's daring adventure, finding the path amidst the complexities is the key to their reunion.

A. In the Heart of Home: Mediation's Spotlight on Bangalore's Families:

“Family is a Conflict and its something that we all relate to” is the infamous saying, growing up we must've witnessed so many fights within home. Bangalore is home to many, and it does use mediation to reconcile all the broken homes. Table 5 portrays the rampant usage of this tool in matrimonial cases as compared to any other dispute.

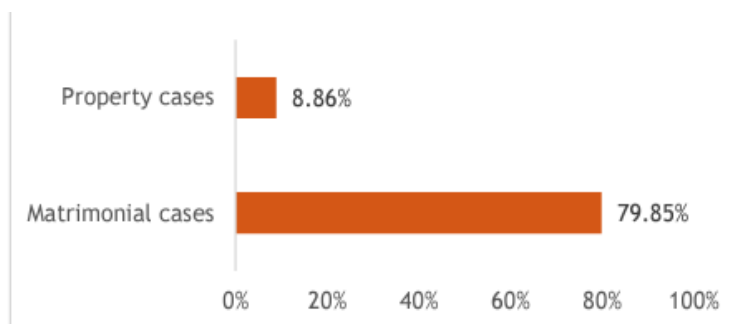


Table 5²³

Hence, the specificity of mediation to one particular area of law is quoted as the problem. Even though this is the result of Section 9 of the Family Courts Act, 1984²⁴; which places upon discretion on the Family Courts to refer for settlement whenever there is the means, so does Section 12A of the Commercial Courts Act, 2015²⁵. Rather, the latter provides for a mandated provision of a pre-litigation mediation. Understanding this divide can be a bit tricky, and a few reasons contribute to it. Firstly, many commercial contracts already include clauses encouraging parties to settle

²³ *Id.* at 2.

²⁴ Family Courts Act, 1984, § 9, No. 66, Acts of Parliament, 1984 (India).

²⁵ Commercial Courts Act, 2015, § 12A, No. 4, Acts of Parliament, 2016 (India).

disputes before going to court. This makes court-mandated mediation seem repetitive and unnecessary. Secondly, some litigants may not view mediation as a fair method of dispute resolution, especially those with less bargaining power or limited resources. Thirdly, the significant reluctance suggests that parties don't recognize the value of mediation, and the suggested monetary penalty is unlikely to discourage this behavior²⁶.

Achieving a delicate equilibrium between mandating mediation and upholding the principle of party autonomy is crucial. Mediation, recognized for its swiftness, flexibility, and cost-effectiveness, thrives when parties willingly engage. Firstly, balancing this requires raising *awareness* and offering reassurance about its inherent benefits. Secondly, designing the mediation programs that cater to the specific needs of every dispute. *Customized programs* have the potential to tackle issues associated with power imbalances and resource disparities, rendering mediation more attractive and equitable. Hence, in the words of Kiran Rijiju “*Mediation should be the preferred mode for litigation for commercial disputes, and this would not only lessen the burden of courts but also boost the confidence in the Indian legal system so that more investment can be attracted*”²⁷, shall be followed diligently.

B. Sailing the Legal Waves: The Anchor of Mediation Act, 2023

The Mediation Act 2023 is not merely a well-drafted piece of legislation but a need of the hour. The Act marks progress in promoting business ease in India and relieving the burden on the judiciary. Despite the lawmakers' good intentions in enacting the Act, some intricacies remain unaddressed. Some of which require attention include specifying exceptional circumstances for seeking interim relief, establishing criteria for appointing Mediation Council of India members, extending coverage to non-commercial disputes involving government entities, and ensuring the enforcement of settlement agreements from mediations conducted outside India.

Upon scrutinizing certain challenges within the act, it appears that effective implementation could address these issues. The act not only introduces a mechanism for overseeing institutionalized

²⁶ Pavithra Manivannan, “*Why Mandating Mediation Will Not Be Effective For Litigants In Commercial Disputes*”, BQ Prime (Nov.29, 2023, 12:30 PM), <https://www.bqprime.com/opinion/why-mandating-mediation-will-not-be-effective-for-litigants-in-commercial-disputes>

²⁷ *Id.* at 1.

mediation but also aims to boost people's confidence in the process. In regards to upcoming policies and amendments in mediation, Bangalore is the right place to give it a trial on, due to the foundation and structure of mediation that already pre-exists in the place.

C. Tiny Ripples, Mighty Currents: Change from Home to the Horizon

The authors propose additional suggestions and recommendations based on the idea that all change commences on a small scale, emphasizing Bangalore's potential to pave the way for such transformations.

The surge in *private mediation* service providers in India over the last five years has debunked the perception of mediation solely as a pro bono service for matrimonial disputes. Additionally, there is a gradual professionalization of mediation, as more clients express readiness to remunerate mediators possessing specialized skills for navigating intricate disputes. The thorough convening and subsequent follow-up conducted by adept mediators in private institutions lead to an exceptionally high settlement rate. This mirrors the consistent success observed by proficient mediators on a global scale.

While various guidelines and legislations address the qualifications of a mediator, it is essential to consider mandating the involvement of an *expert mediator* with specialized experience in the specific field relevant to the dispute. This ensures that the mediator possesses not only the foundational qualifications but also a nuanced understanding of the intricacies associated with the subject matter at hand. Such expertise contributes to more effective and informed mediation processes, aligning the mediator's skills closely with the nature of the dispute for a more tailored and successful resolution.

Internationally, the establishment of mediation centers with *robust infrastructure*, encompassing case managers and pre-conferencing facilities, has been pivotal for the advancement of mediation practices. In the Indian context, this aspect, crucially examined through the lenses of backlog and pendency, mediator proficiency, and case allocation, underscores the necessity for widespread availability. It is imperative not only in urban settings but also in rural areas, akin to the panchayat system. Additionally, there is a need to foster awareness of these processes in local communities.

From Hoax to Hope: The Journey to a True Happily Ever After

As we come to an end to our exploration of mediation tales beneath the banyan tree in Bangalore, a profound realization emerges, every change begins small, and Bangalore stands as a testament to this axiom. Indeed, ADR is experiencing a surge in popularity, and at the epicenter of this transformation lies Bangalore, where numerous trials and errors have paved the way. Despite facing several setbacks and failures in the initial attempts to implement mediation, Bangalore has emerged resilient. The city's notable success in handling family disputes through mediation serves as a beacon for the entire nation. The lessons learned achieved in this specific domain should be extrapolated and applied across various facets of legal practice throughout India. The journey of Bangalore in embracing and refining ADR, particularly in the intricate realm of family law, showcases the potential for widespread adoption and success.

As we reflect on the above tales, the conclusion crystallizes, change starts from humble origins. Bangalore's journey with mediation, reminiscent of childhood tales, offers inspiration. Drawing from the simplicity of parental mediation during childhood disputes, we find a blueprint for resolving complex legal conflicts. The answers, it seems, lie not just in the future but in the echoes of the past, under the timeless banyan tree. Mediation, a dream well-drafted, emerges as the compass guiding Bangalore towards a future where conflicts find resolution, and justice prevails in the embrace of the banyan's stories.