



C L I F F O R D
C H A N C E

International Mediation Guide
Second Edition



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** This section has been provided by Nishith Desai Associates*

India

Mediation culture	In India, mediation has historical roots and gained popularity during pre-British Rule. The efforts to popularise mediation have recently gained significance as the judiciary is taking the lead step in encouraging its use. Mediation centres have been established in many districts and High Courts in India. The Mediation and Conciliation Project Committee (“ MCPC ”) consisting of Supreme Court and High Court Judges and Senior Advocates is taking the lead in evolving policy matters relating to the mediation. However, India is yet to enact a law which specifically deals with mediation.
Legal and regulatory framework	Section 89 and Order X Rule 1A of the Code of Civil Procedure, 1908 (“ CPC ”) empowers judges to refer a matter to mediation, conciliation or arbitration. Court-annexed Mediation and Conciliation centres have now been established at several courts in India and the courts have started referring cases to such centres. It is noteworthy that the Arbitration and Conciliation Act, 1996, the principal act for ADR in India, deals with conciliation but does not deal specifically with mediation.
Infrastructure	The MCPC requires that 40 hours of training and 10 hours of actual mediation be undertaken in order for a mediator to be able to be entrusted with the task of mediating disputes. The MCPC organises mediation training programmes, awareness programmes and training of trainers programmes regularly. Court annexed mediation centres and various private institutions such as LCIA-India also provide mediation services.
Judicial support	The judiciary has taken the lead role in popularising mediation. Mediation has a legal affirmation now and it is seen in an increasing number of cases. The Supreme Court of India has held that judicial referral to mediation, conciliation and arbitration is mandatory. This has made the mediation process speedier and more harmonized. In order to prevent misuse of such proceedings, the judge, when referring the matter, lists the case for further proceedings on a specific date and grants time to complete the mediation process as considered necessary.
Effectiveness and enforceability of contractual provisions	The court will ordinarily recognise an agreement to mediate under Section 89 of the CPC since it evidences elements of settlement which may be acceptable to parties. Any settlement reached in a case that is referred for mediation during the course of litigation is required to be in writing, signed by the concerned parties and filed in court for the passing of an appropriate order. Mediation is also used as the first recourse in a multi-layered dispute resolution clause in most of the transaction documents and agreements, failing which the dispute is referred to arbitration.
How is mediation likely to develop in this jurisdiction in the medium term?	Mediation is in the process of becoming well established in India. The judiciary’s support in giving the system legitimacy and increased acceptability by public are the primary reasons for growth of mediation in India. Considering the backlog of cases in India, mediation and other ADR mechanisms are expected to develop rapidly in near future.