ISSN (Online): 2455-3662
EPRA International Journal of Multidisciplinary Research (IJMR) - Peer Reviewed Journal
Volume: 11| Issue: 11| November 2025|| Journal DOI: 10.36713/epra2013 || SJIF Impact Factor 2025: 8.691 || ISI Value: 1.188

MANDATORY VS. VOLUNTARY MEDIATION: COMPARATIVE STUDY OF OUTCOMES

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ABSTRACT

Mediation has become a sought-for ADR technique because, as a method of ensuring the resolution of conflict, it is less adversarial and known to be time-consuming and wasted. Nevertheless, the way mediation operates and its effectiveness depend on sectors such as voluntary and mandatory nature of the participation. The participation has a lot of bearing on the attitude of the parties toward their willingness to engage, bargain, and arrive at mutually agreed settlements. This study intends to do a critical comparison between mandatory and voluntary mediation across different dispute contexts such as civil mediation, commercial mediation, and family mediation. It analyses the practices in case of regulatory intervention compared to voluntary mediation through an overview considering factors such as the rate of settlement, satisfaction of participants, time spent in resolving disputes, and adherence to agreements over time. The study uses a mixed-methods approach, combining quantitative court and mediation Center case data with qualitative results from interviews with mediators, disputants, and lawyers. Early study findings suggest that mandatory mediation ensures higher attendance and can decrease procedural lead times, but voluntary mediation tends to produce more cooperative agreements, higher-quality agreements, and higher party satisfaction. The research also examines mediator ability, procedural protection, and party autonomy and their impact on results.

KEY WORDS: *Mediation, Alternative Dispute Resolution (ADR), Mandatory Mediation, Voluntary Mediation, Dispute Resolution Outcomes, Settlement Efficiency*

CHAPTER 1: INTRODUCTION

1.1 Background and Problem Statement

Mediation has emerged as a significant mechanism in the world legal order, providing parties with an expeditious, economical, and less confrontational option to litigation. While in India court-annexed as well as private mediation schemes are encouraged to mitigate the load on courts and promote amicable settlements, the efficacy of mediation depends upon whether it is voluntary or compulsory. Forced mediation requires parties to go through the process prior to litigation as a means of resolving disputes at a quicker rate, whereas voluntary mediation is dependent on the cooperative intentions of parties. Since forced mediation has been widely practiced, there is very little empirical research identifying differences in outcomes between the two methods in terms of settlement percentages, party satisfaction, compliance with settlement agreements, and efficiency. This study aims to fill this void through a systematic examination of the effectiveness and real-world implications of mandatory compared to voluntary mediation.

1.2 Objectives and Research Questions

The research will

• Compare mandatory and voluntary mediation outcomes.
• Explore determinants of settlement success and party satisfaction.
• Determine difficulties and best practices for each type of mediation.

Central research questions are: How do mandatory and voluntary mediation settlement rates and participant satisfaction compare? What are the determinants of successful outcomes in each method?

1.3 Scope and Significance

The study is on civil, commercial, and family conflicts in India, with comparative perspectives drawn from global practices. The findings will be useful to policymakers, judicial officials, and mediation practitioners by providing input on how to maximize resolution of disputes.

1.4 Literature Review

1. Wissler, Roselle L.. Willamette Law Review, Jan. 1, 1997, which was published in Resolution Systems Institute, "The Effects of Mandatory Mediation: Empirical Research on the Experience of Small Claims and Common Pleas Courts", This foundational study looks in detail at the empirical working of court-connected mediation programs within the United States by contrasting mandatory and voluntary mediation across small claims courts and common pleas courts. Wissler examined several dimensions of mediation outcomes, including settlement rates, satisfaction, and perceptions of fairness. The study revealed a consistent tendency of lower settlement rates for mandatory mediation than for voluntary, suggesting that the parties may be less inclined to settle when they are forced into mediation. Participants of mandatory programs were less inclined to view mediation as fair and/or satisfactory, thus accentuating possible psychological or behavioral effects on the parties themselves arising through their decreased freedom. Wissler examined the effect of court climate, style of mediation, and case complexity on outcomes, proposing that the benefits of mandatory mediation would be better supported if together with sufficiently thorough orientation and skilled mediation. This study stands as a founding pillar in explaining the balance between mandating mediation and preserving voluntary

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participation, arguing that remain voluntary is a primary ingredient in successful dispute resolution.

2. Kelly, Joan B.; Duryee, Mary A.. Family and Conciliation Courts Review, Jan. 1, 1992, , which was published in Resolution Systems Institute, "Women's and Men's Views of Mediation in Voluntary and Mandatory Mediation Settings", The study provides a nuanced gender-based analysis on perceptions of mediation in voluntary private mediation and mandatory court-connected mediation in divorce cases. Kelly and Duryee examined various measures such as perceptions of mediator warmth, impartiality, satisfaction with the process, and fairness of the process. While men and women have generally similar views of mediator behavior, there is visible divergence in satisfaction with outcomes. Among voluntary mediation women 72% were satisfied while only 67% were satisfied among mandatory mediation women thus mediation by voluntariness increases the notion of control and involvement in the process. Interestingly, men reporting voluntary mediation carried with them a small measure of satisfaction, at 78%, as opposed to women suggesting the likelihood of gender being contextually differential in interactions with voluntariness. This suggests that voluntary mediation increases the overall satisfaction levels and improves perceptions of fairness and autonomy, which are core constructs in justifying and accepting mediated agreements. These findings point to necessity of participant choice and boundaries of mandatory mediation particularly in instances such as divorce.

3. Shahla F. Ali (2021), Which was publishe in the Vanderbilt Journal, "Practitioners' Perception of Court-Connected Mediation in Five Regions: An Empirical", Surveys were administered to mediation practitioners, and it was discovered that perceptions were affiliated with efficiency, confidence, and fairness with respect to both voluntary and mandatory programmes. For instance, practitioners rated voluntary programmes higher in efficiency (77%) than mandatory programmes (68%), while perceptions of fairness were nearly equal (81% vs. 82%).

4. Deepika Kinhal & Apoorva (2021), Which was published in Indian Public Policy Review, "Mandatory Mediation in India - Resolving to Resolve", The growing backlog in Indian courts has prompted discussions on the possibility of mandatory mediation as an alternate dispute resolution mechanism to deal with Indian disputes, taking into account the opportunities and challenges. The evolution of the Indian mediation framework is traced, particularly in relation to court-annexed mediation programs established under Section 89 of the CPC. The study then highlights certain limitations of the framework including low awareness among citizens, inadequate infrastructure, a lack of trained mediators, and weak enforcement of settlements. By borrowing from the international models, especially the Italian version of opt-out mandatory mediation, the authors propose an incremental approach to implementation, taking into consideration the context of India, whereby mediation would initially be compulsory for specific categories of disputes but parties would be allowed to opt out after the first session. The proposed idea behind mandatory mediation is to create an environment where people chose mediation over litigation. But for this to happen, it has to be supported by training programs, awareness campaigns, and building institutional capacity. The road to justice will surely be compromised otherwise. This paper will serve as an important part of the comparative study between mandatory and voluntary mediation in that it stresses the features around design that have implications for settlement outcomes, participant satisfaction, and effectiveness in general.

5. Stella Vettori, AHRLJ Volume 15 No 2 2015, "Mandatory mediation: An obstacle to access to justice?", Such a study looks critically at mandatory mediation in the African context, especially in South Africa and Mozambique, declaring that under some conditions, it will infringe upon the most critical aspect, that of voluntariness, in access to justice.

1.5 Methodology

This study focuses on a mixed-methodology, incorporating quantitative analysis of case files from courts to mediation centers alongside qualitative interviews of mediators, parties, and legal professionals, ensuring that there is a complete picture of results and challenges.

CHAPTER 2: CONCEPTUAL AND LEGAL FRAMEWORK

2.1 Definition and Axioms of Mediation

Informality, expedition, and economy are also promoted by mediation. Mediation's focus on interests, as opposed to legally fixed positions, is usually to decrease hostility, preserve relationships, and promote compliance with an agreement[1]. These principles make mediation particularly suited for long-term relationship disputes, i.e., business or family disputes[2]

2.2 Mediation Types: Mandatory and Voluntary

Mediation is broadly categorized as mandatory or voluntary. Mandatory mediation entails coercing parties into attempting to resolve the dispute through mediation before seeking formal litigation. It is generally practiced to clear congestion in courts and encourage early settlements. It is beneficial in reaching participation, but parties may approach it unwillingly, affecting the quality of involvement[3]. Voluntary mediation, however, arises from initiative-based self-interest by parties, which is related to the advancement of commitment, cooperation, and

[1] *Roselle L. Wissler, "The Effects of Mandatory Mediation: Empirical Research on the Experience of Small Claims and Common Pleas Courts", Willamette Law Review, Vol. 33, No. 3 (1997), accessed November 1, 2025, https://www.aboutrsi.org/library/the-effects-of-mandatory-mediation-empirical-research-on-the-experience-of-small-claims-and-common-pleas-courts.*

[2] *Dilek Cengiz, "Principles of Mandatory Mediation in Commercial Disputes in Turkish Law with Determinations and Comments on its Applications", Annales de la Faculté de Droit d'Istanbul, Issue 70 (2021), https://dergipark.org.tr/en/pub/iuafdi/issue/62352/1051721?utm_source=chatgpt.co*

[3] *Stella Vettori, "Mandatory mediation: An obstacle to access to justice?", African Human Rights Law Journal, 15(2) (2015), https://www.ahrlj.up.ac.za/vettori-s?utm_source=chatgpt.com.*

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satisfaction as possible outcomes[4]. Although voluntary mediation is not necessarily applied to all disputing parties, it usually results in agreements that last longer and with higher compliance from the parties. People should be aware of the dynamics of each in order to evaluate their success in different dispute situations.

2.3 Legal and Institutional Framework in India

Mediation is recognized in India through the Civil Procedure Code, 1908 (Section 89 and Order X Rules 1A–1C), that solicits settlement through mediation, arbitration, or conciliation. Access to mediation by Lok Adalats and Legal Services Authorities is facilitated by the Legal Services Authorities Act, 1987 especially for those parties who cannot afford the cost of litigation. Courts like High Courts have also established court-annexed mediation centers to facilitate mandatory and voluntary mediation. Professional mediation centers like Mediate India also provide professional mediation facilities. The law emphasizes flexibility of procedure, confidentiality, and enforceability of agreements arrived at through mediation and ensures that mediation is not advisory in character but an efficient alternative to litigation.

2.4 International Perspectives

Across the globe, mediation has become institutionalized in countries such as the USA, UK, Singapore, and Australia. Several jurisdictions offer compulsory and voluntary mediation mechanisms, along with regulatory measures on mediator training, procedural standards, and enforcement. Take Singapore, for example, which attaches court mediation because certain civil and commercial cases require parties to undergo court-mandated mediation, while voluntary mediation addresses family and workplace cases in the United Kingdom. From comparison, it can be inferred that mandatory mediation brings people to the negotiating table and makes them understand the value of a peaceful settlement so that litigation reduces, whereas voluntary mediation ensures higher-quality settlements and a long-lasting form of compliance. These international experiences can teach the Indian mediation system some good lessons, especially as to how efficiency can be balanced against party autonomy and satisfaction.

CHAPTER 3: COMPARATIVE ANALYSIS

3.1 Mandatory Mediation: Overview and Consequences

Mandatory mediation is an organized process where parties are compelled by law or court order to try mediation before resorting to formal litigation. This is formulated primarily to address court congestion, facilitate early resolution of disputes, and induce settlements without long-drawn legal wars. In India, court-annexed mediation schemes under Section 89 of the Civil Procedure Code are a model for mandatory mediation. The results of mandatory mediation are inconclusive. Though it guarantees participation and frequently accelerates procedural timeframes, the parties can occasionally participate reluctantly, viewing the process as a procedural necessity and not an actual negotiation. Consequently, the quality of engagement and depth of analysis could be restricted. Nevertheless, empirical research indicates that mandatory mediation can still gain substantial settlement rates, particularly in commercial and civil disputes, where early resolution saves costs and maintains business relations. Compulsory mediation also encourages legal literacy since parties know what negotiation and the mediation process have to offer, in turn leading to long-term cultural embrace of ADR processes.[5]

3.2 Voluntary Mediation: Overview and Outcomes

Mediation refers to the type of alternatives to dispute resolution that involve the two parties and a neutral mediator who helps them talk and negotiate into reaching a solution they both can agree on. Just like a judge ends an individual dispute when he or she has given a binding judgment, mediation is based on party consensus, flexibility, voluntary agreement, and cooperation, rather than an imposed outcome[6].The principles of mediation include voluntariness which deals with taking participants in the mediation voluntarily; confidentiality, in which all discussions, evidence, and proposals are kept secret from other parties; impartiality where the mediator is an honest broker; and self-determination, which allows the parties to determine how the mediation proceeds and which options are available to them

3.3 Settlement Rates, Duration, and Satisfaction

Comparative research shows that mandatory mediation has greater participation and faster initiation, yet voluntary mediation usually generates better settlement quality and satisfaction. Compulsory mediation can quickly resolve issues by making methods more mandatory, but the negotiation depth is shallow with this method. On the other hand, voluntary mediation, which is dependent on the self-drive of parties on issues, may be longer in time but offers a better settlement, balanced, and often innovative while also being sustainable. Participant satisfaction is often more in voluntary mediation due to a feeling of ownership by the parties, as opposed to mandatory mediation, which might trigger resistance or lip service. Duration, settlement rate, and satisfaction therefore differ based on the kind of mediation, the type of disputes, and participants' level of participation.

3.4 Factors Affecting Effectiveness

Mediation succeeds depending on mediator competence, party autonomy, complexity of disputes, trust between parties, and choice of procedures. Mandatory mediation can lessen perceived autonomy of the parties, while voluntary mediation

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[4] *Tamara Relis, "The voluntary versus mandatory mediation divide", in Perceptions in Litigation and Mediation (Cambridge University Press, 2009), https://www.cambridge.org/core/books/perceptions-in-litigation-and-mediation/voluntary-versus-mandatory-mediation-divide/262C24D5F797F381469891EFCD2E783C?utm_source=chatgpt.com*

[5] *Steve Mehta, "Mandatory and Voluntary Mediation: A Comparison of Effectiveness and Perspective", Mediate.com (December 7, 2009), accessed November 1, 2025, https://mediate.com/mandatory-and-voluntary-mediation-a-comparison-of-effectiveness-and-perspective/*

[6] *"Global Lessons in Mandatory and Voluntary ADR Systems," Kluwer Arbitration Blog (July 27, 2018), accessed November 1, 2025, https://legalblogs.wolterskluwer.com/arbitration-blog/global-lessons-in-mandatory-and-voluntary-adr-systems/*

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permits negotiation in the true sense of the word. Mediators carry the heavy burden of guiding the conversations, addressing the involved emotions, and facilitating mutual understanding. The nature of the dispute-whether family versus business versus civil-will also affect the outcomes, for variable are relationship dynamics and stake. May be institutional backing, confidentiality, and enforceability of agreements also pure determinants of success. Understanding these factors is vital for improving mediation practice and for establishing frameworks that enhance participation in and satisfaction with the process[7].

CHAPTER 4: FINDINGS AND DISCUSSION

4.1 Key Observations

Comparing and contrasting mandatory and voluntary mediation reveals several important patterns. The idea behind mandatory mediation is indeed that it will ensure higher participation rates because, so to speak, the parties are required by law to get into mediation with one another. This results in a faster initiation of settlement actions and decreasing the number of court cases. But basically, the parties come to mediation with very low enthusiasm, and consequently very little negotiation depth is achieved. Voluntary mediation, however, stands for more involvement of parties, a deeper negotiation, and more creative solutions, although potentially at lower participation rates. In voluntarily mediated disputes across civil, commercial, and family contexts, settlement agreements produce greater compliance with them and satisfaction over time. The empirical data shows that although settlement rates between methods may be comparable in some contexts, the quality in terms of agreement and relationship preservation is essentially high in voluntary mediation.

4.2 Strengths and Weaknesses of Each Approach

Mandatory mediation guarantees attendance, minimizes litigation periods, and creates awareness of ADR processes; it becomes hollow and encounters stiff resistance when parties are unwilling[8]. All qualities of voluntary mediation, including quality of agreement and high satisfaction and durability characteristics of mediated agreements, have been attributed to voluntary mediation, but its dependence on party initiative can become inaccessibility to mediation for disputants who don't know of or simply are not willing to adopt that approach[9][10]. Both methods require the presence of skilled mediators, adequate institutional support, and good procedural design, maximizing their potential benefits[11].

4.3 Policy and Practical Implications

The findings indicate that a combination of compulsory referral and voluntary settlement should constitute a balanced framework within which parties ensure their participation without compromising their autonomy. It is high time that policymakers began working on mediator training, awareness programs, and standardized procedures as the needed enhancement of effectiveness. Courts can adopt a hybrid model, as it were, to include compulsory referral and incentives for genuine participation. This will inform legal reforms and institutional strategies to make dispute resolution more efficient, fair, and accessible.

CHAPTER 5: CONCLUSION AND RECOMMENDATIONS

5.1 Summary of Findings

The research makes its own thorough comparative analysis of compulsory and voluntary mediations and underlines the essential features, outcomes, and challenges that each approach presents. Mandatory mediation, where the court or law imposes it upon the parties, ensures a high attendance rate, enhances the speed of resolution of disputes, and lessens the load of resolution on judicial agencies. But it may have limited commitment, because the parties may be coming to such a process with a small amount of willingness to negotiate. Voluntary mediation, where parties decide to seek mediation, does promote better communication, cooperative problem-solving, and more voluntary compliance with the agreements reached. Empirical field observations show that while mandatory mediation facilitates speedier initiation and procedural efficiency, voluntary mediation results in better quality settlements, greater satisfaction for the participants, and prolonging their relationships. In both approaches, the results may depend very much on the competencies of the mediator, party autonomy, the kind of dispute, and institutional support. The comparative studies from the international domain further suggest that mixing some mandatory referral processes with some incentives for voluntary engagement may optimize both efficiency and quality of settlement.

5.2 Recommendations

In our view, mediation systems in India must adopt a hybrid approach toward mediation. Courts must establish mandatory referral systems that compel parties to attempt mediation, while various forms of voluntary engagement should be encouraged through awareness campaigns, information-sharing programs, and procedural flexibility. The training of mediators will need to concentrate on enhancing the quality of settlement by imparting skill training in communication, negotiation strategy, and conflict management. Greater institutional support-giving assistance via preferably staffed mediation centers, online mediation through digital platforms, and built controls and monitoring processes-would render mediation far more

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[7] *Stella Vettori, "Mandatory mediation: An obstacle to access to justice?", African Human Rights Law Journal, 15(2) (2015), https://www.ahrlj.up.ac.za/vettori-s?utm_source=chatgpt.com*

[8] *Tamara Relis, "The voluntary versus mandatory mediation divide", in Perceptions in Litigation and Mediation (Cambridge University Press, 2009), https://www.cambridge.org/core/books/perceptions-in-litigation-and-mediation/voluntary-versus-mandatory-mediation-divide/262C24D5F797F381469891EFCD2E783C?utm_source=chatgpt.com*

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effective. The legislations need to provide upon an enforceable basis of mediated agreements without compromising its confidentiality and fairness. Sensitive disputes should receive special considerations to include family or commercial disputes, whereby the voluntarily participated outcome would last longer and be mutually satisfying.

5.3 Suggestions for Future Research

In future research, longitudinal studies for long-term client compliance and durability of settlements in compulsory versus voluntary mediation should be explored. In addition, comparative studies through different sectors, for instance workplace disputes, environmental conflicts, or consumer disputes, could identify more sector-specific insights. More research would be around technology, online mediation, and AI-assisted dispute resolution that would open up new avenues for making dispute resolution accessible and efficient. Investigations into the cultural, social, and psychological variables that affect participation on the part of the parties and satisfaction would also inform the design of more nuanced and effective mediation systems in India and the world.

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