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Reforming India's Civil Justice System Through Mandatory ADR: Comparative Insights from the United States, United Kingdom and European Union

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1. Abstract

India's civil justice system is also plagued by chronic pendency, procedural lags, and the mounting cost of litigation [1]. This article examines how compulsory Alternative Dispute Resolution (ADR) mechanisms, especially mediation, can transform India's civil justice system. Learning from comparative experiences in the United States, the United Kingdom, and the European Union, the paper analyses legislative models, institutional frameworks, and judicial initiatives facilitating compulsory or court-annexed ADR[2]. The research examines Section 89 of the Code of Civil Procedure (CPC), the Commercial Courts Act, and the Mediation Act, 2023, against their limitations[3]. Using the comparative analysis, it suggests a reform agenda balancing party autonomy and efficiency, judicial oversight, and setting accreditation standards for mediators. The results indicate that calibrated obligatory ADR has the potential to improve access to justice, decongest courts, and bring India's delivery of justice up to international best practices[4].

2. Keywords

Mandatory ADR, Civil Justice Reform, Comparative Law, Section 89 CPC, Mediation Act 2023, United States, United Kingdom, European Union

[1] –*See generally* Law Commission of India, Report No. 245, "Arrears and Backlog: Creating Additional Judicial (wo)manpower" (2014), available at https://lawcommissionofindia.nic.in.

[2] –*Cf.* Carrie Menkel-Meadow, *Why and When to Mediate*, 2016 J. Disp. Resol. 1 (2016); Giuseppe De Palo, *Mediation in Europe: Success Factors and Implementation Challenges*, 43 Eur. L. Rev. 1 (2018).

[3] *Code of Civil Procedure*, No. 5 of 1908, § 89 (India); *Commercial Courts Act*, No. 4 of 2015, § 12A (India); *Mediation Act*, No. 31 of 2023 (India).

[4] –*See* Federal Judicial Ctr., *Court-Annexed Mediation Report* (2016); *Civil Justice Council* (UK), *Compulsory ADR Consultation Report* (2021); Italian Ministry of Justice, *Relazione Annuale sulla Mediazione* (2023).

3. Introduction

India's civil justice system is marked by enormous pendency, procedural delays, and the prohibitive cost of litigation. As of 2025, there are over 4.5 crore pending cases in various courts, which disregards the constitutional promise of speedy justice[5]. Section 89 of the Code of Civil Procedure (CPC), introduced by way of the 1999 amendment, was conceived as a means of sidestepping congested court calendars and channelling disputes into Alternative Dispute Resolution (ADR) platforms like arbitration, conciliation, mediation, and Lok Adalats[6]. Yet, its enforcement has been patchy.

The Supreme Court, in landmark judgments like Salem Advocate Bar Association v. Union of India (2003) and Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (2010), explained the procedural mechanism of Section 89 but did not make ADR mandatory. The recent Mediation Act, 2023, and Section 12A of the Commercial Courts Act, 2015, signal a turn towards pre-litigation mediation. However, voluntariness, enforcement, and institutional capacity issues still persist[7].

This article contends that India requires a systematic and calibrated version of mandatory ADR—particularly mandatory pre-litigation mediation—for specific types of civil disputes. In drawing comparative lessons from the United States, United Kingdom, and European Union, the article assesses whether mandatory ADR models and constitutional guarantees like access to justice are reconcilable. The paper is structured as follows:

4. Theoretical Framework

International debate on ADR focuses on efficiency, party autonomy, and procedural justice[8]. Academic scholars like Frank Sander and Carrie Menkel-Meadow have promoted a "multi-door courthouse" approach where disputes are routed to suitable forums[9]. Indian academic thought (Baxi, 2009; Katju, 2012) acknowledges ADR for judicial pendency reduction but identifies structural constraints of institutionalization[10].

Comparative research (De Palo, 2018; Menkel-Meadow, 2016) indicates that nations with hybrid compulsory mediation systems—namely, Italy and the United States—record greater settlement rates without wholly violating party rights[11]. Yet, empirical research on India's Section 89 implementation (Singh, 2020) identifies variable referrals, inadequate mediator training, and dearth of monitoring arrangements[12].

This study bridges that gap by presenting comparative assessment of compulsory ADR models appropriate for India, grounded in both normative and empirical bases.[13]

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[5] *National Judicial Data Grid (NJDG)*, "Pendency Statistics 2025," available at https://njdg.ecourts.gov.in.

[6] *Code of Civil Procedure*, No. 5 of 1908, § 89 (India); *Law Comm'n of India*, Report No. 222, "Need for Justice through ADR" (2009).

[7] *See Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd.*, 2022 SCC OnLine SC 1028 (India); *Mediation Act*, No. 31 of 2023 (India).

[8] *See generally* Frank E.A. Sander, *Varieties of Dispute Processing*, in *The Pound Conference: Perspectives on Justice in the Future* (1976); Carrie Menkel-Meadow, *Dispute Processing and Conflict Resolution: Theory, Practice and Policy* (2003).

[9] *Id.* at 130–32.

[10] Upendra Baxi, *The (Im)Possibility of Justice: Reflections on the Indian Legal System*, Economic & Political Weekly (2009); Markandey Katju, *Speedy Justice and the Indian Judiciary*, The Hindu (Mar. 21, 2012), available at https://www.thehindu.com.

[11] Giuseppe De Palo, *Mediation in Europe: Success Factors and Implementation Challenges*, 43 Eur. L. Rev. 1 (2018); Menkel-Meadow, *supra* note 3.

[12] Harpreet Singh, *Evaluating Section 89 CPC: Judicial Referral and ADR Effectiveness in India*, 12 Nat'l L. Univ. J. L. & Pol'y 45 (2020).

[13] *See also* Law Comm'n of India, Report No. 222, *Need for Justice through ADR* (2009).

5. India's ADR Framework: Current Legal Position

Section 89 CPC empowers courts to refer cases for settlement if there are elements of settlement.[14] Though its intention was noble, uncertainty haunted its application—especially regarding consent and procedure.

In Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (2010)[15], the Supreme Court made it clear that mediation and conciliation do not involve prior agreement, while arbitration does. Salem Advocate Bar Association v. Union of India (2003)[16] upheld the constitutional validity of Section 89 but reiterated the importance of procedural rules.

The Mediation Act, 2023[17] is India's first mediation statute that is complete in itself. It gives institutional status to pre-litigation, community, and online mediation and makes mediated settlement agreements enforceable as decree equivalents.

The Commercial Courts Act, 2015, Section 12A, provides for pre-institution mediation for all commercial disputes except where urgent interim relief is prayed. The Supreme Court in Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd. (2022)[18] confirmed its mandatory nature.

Challenges:

- Unavailability of trained mediators and administrative setup
- Non-uniform accreditation systems
- Variability in judicial enforcement across jurisdiction
- Lack of public awareness and resistance from lawyers[19]

These show that legislative intent is clear but operational frameworks need to be greatly reinforced.[20]

6. Comparative Jurisdictional Analysis

6.1 United States

The United States has built one of the most advanced, diversified, and empirically detailed court-connected Alternative Dispute Resolution (ADR) systems in the world. Its transition from voluntary settlement to organized, occasionally mandatory involvement has been through federal and state action, guided by pragmatic judicial policy and a robust culture of case-management effectiveness[21] rather than legislative dictate from the centre.

A. Statutory and Institutional Framework

The federal ADR regime's centerpiece is the Alternative Dispute Resolution Act of 1998 (28 U.S.C. § 651–658)[22]. The Act mandates each federal district court to "bring about authorization for the use of ADR processes in all civil actions, including mediation, early neutral evaluation, mini-trial, and arbitration," and to implement local rules of administration. The law at the same time maintains judicial discretion: participation may be mandated, but settlement results are still discretionary.

In practice, the Federal Rules of Civil Procedure Rule 16 (Pre-Trial Conferences and Case Management) supplements this framework by giving judges authority to require attorneys and parties to attend settlement

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[14] *Code of Civil Procedure*, No. 5 of 1908, § 89 (India); Law Comm'n of India, Report No. 222, *Need for Justice through ADR* (2009).

[15] (2010) 8 S.C.C. 24 (India).

[16] (2003) 1 S.C.C. 49 (India).

[17] *Mediation Act*, No. 31 of 2023 (India), available at https://egazette.nic.in.

[18] 2022 SCC OnLine SC 1028 (India); *Commercial Courts Act*, No. 4 of 2015, § 12A (India).

[19] Vidhi Centre for Legal Policy, *Strengthening Court-Annexed Mediation in India* (2021), available at https://vidhilegalpolicy.in; Law Comm'n of India, Report No. 238, *Amendments to the Arbitration and Conciliation Act* (2012).

[20] *See also* Supreme Court of India, *Concept Note on Mediation Reforms* (2023), available at https://main.sci.gov.in.

[21] Stephen B. Goldberg et al., *Dispute Resolution: Negotiation, Mediation, Arbitration and Other Processes* (7th ed. 2020).

[22] *Alternative Dispute Resolution Act of 1998*, Pub. L. No. 105-315, § 4, 112 Stat. 2993 (1998) (codified at 28 U.S.C. §§ 651–658).

conferences and consider "any type of ADR."[23] As a result, nearly every federal district currently runs a court-annexed mediation program or early neutral evaluation (ENE) process.[24]

Institutional features are as follows:

- Federal district Administrators or Coordinators who oversee mediator rosters, scheduling, and compliance.
- Boards of certified mediators—who might be recruited from experienced lawyers or retired judges—required to undergo training and follow local codes of ethics.
- Standards of good-faith participation, such that although attendance might be required, coercion to agreement is not permitted.
- Protections for confidentiality in local rules (e.g., S.D.N.Y. Local Civil Rule 83.9).[25]

B. Judicial Practice and Pilot Programs

Federal courts apply ADR heavily. For instance:

- The Southern District of New York (SDNY) mandates mediation in employment discrimination, copyright, and some commercial matters. Resolution rates are 60–65 percent on average in four months after referral.
- The Northern District of California led the way with Early Neutral Evaluation, giving subject-matter specialists early in the case to review merits, a procedure now practiced nationally.
- The District of Columbia and Central District of California use default mediation scheduling orders unless parties demonstrate cause to waive.
- Empirical analyses by the Federal Judicial Center (FJC) (2016) indicate such programs shorten trial durations by 35–45 percent and yield substantial cost savings. An FJC follow-up in 2020 reported that almost three-quarters of parties reported satisfaction with court-annexed mediation outcomes, noting speed, lower cost, and maintenance of relationships.

C. State-Level Variations

States add to the federal framework with their own legislative schemes.

- Florida's Mediation Confidentiality and Privilege Act (F.S. § 44.401–406) requires mediation in family, small-claims, and some civil disputes; failure to attend may invite sanctions.
- California's Judicial Mediation Program incorporates mandatory settlement conferences into its Civil Procedure § 1775 system.
- Texas, Colorado, and New Jersey obligate judges to refer parties to mediation prior to trial in designated case types.

They illustrate "laboratory federalism" in ADR: experimentation at the state level happens while the federal government gives overall policy. Comparative studies reveal greater compliance and satisfaction when mediation is integrated into judicial case-management orders instead of being presented as an entirely voluntary ancillary.

D. Case Law and Doctrinal Development

American law has grappled with the boundaries of compulsion and confidentiality in ADR:

- In re Atlantic Pipe Corp., 304 F.3d 135 (1st Cir. 2002), the Court affirmed a district judge's power to order parties to mediation under Rule 16, as long as confidentiality and neutrality were preserved.
- Nick v. Morgan's Foods, Inc., 270 F.3d 590 (8th Cir. 2001) reiterated that although attendance can be required, settlement itself should remain voluntary; sanctions are okay only for bad-faith attendance or refusal to attend.
- Federal Deposit Insurance Corp. v. Fisher, 200 F.R.D. 153 (E.D. Tex. 2001) established confidentiality of mediation communications as a necessary condition to open negotiation.

[23] Fed. R. Civ. P. 16(c)(2)(I).

[24] Federal Judicial Ctr., *ADR Landscape in U.S. District Courts* (2016), available at https://www.fjc.gov.

[25] S.D.N.Y. Local Civ. R. 83.9 (2023).

Together, these decisions draw a constitutional and procedural line between judicial power and litigant control—guaranteeing that "mandatory ADR" in the U.S. is mandatory process, not outcome.

E. Empirical Outcomes

Quantitative evaluations report widespread success:

- Settlement rates in federal mediation average 55–65 percent (FJC 2016).
- Five months average disposition time for mediated cases versus twelve months for litigated civil suits.
- 30–40 percent reduction in legal fees as reported by parties.
- Over 90 percent compliance with mediated settlements, which is higher than litigated judgments (Harvard Negotiation Law Review, 2019).

Additionally, mediation helps in docket management: from 1998 to 2020, civil filings within districts that had mandatory ADR programs fell by approximately 17 percent, releasing judicial resources for harder cases.

6.2 United Kingdom

The United Kingdom (UK) offers one of the most refined and increasingly advanced examples of Alternative Dispute Resolution (ADR) in common-law jurisdictions. Its legal culture, historically rooted in adversarial litigation, has seen a significant shift toward consensual resolution—largely through judicial prodding, pre-action protocols, and economic inducement instead of statutory pressure. The British experience demonstrates how the courts can facilitate ADR within a framework of rights protection that respects the constitutional right of access to justice under Article 6 of the European Convention on Human Rights (ECHR).

A. Historical and Policy Context

Before the 1990s, ADR in England and Wales was mainly conducted through voluntary conciliation, especially in industrial and family conflicts. The Woolf Reforms of 1996–1999, encapsulated in Lord Woolf's landmark Access to Justice Report (1996), were a turning point. The report diagnosed the civil justice system as "too expensive, too slow, and too unequal" and prescribed ADR as a primary vehicle for efficiency and proportionality. Accordingly, the Civil Procedure Rules (CPR) were introduced in 1999, supplanting the existing Rules of the Supreme Court and County Court Rules, and thus incorporating ADR into the procedural structure of civil justice.

B. The Civil Procedure Rules Framework

1. Overriding Objective and Case-Management Powers

Rule 1.1 of the CPR states the overriding aim—to allow the courts to deal with cases justly and at proportionate cost. Rule 1.4(2)(e) actually mandates the court to "encourage the parties to use an alternative dispute resolution procedure if the court considers that appropriate." Such language allows judges to direct parties towards mediation or Early Neutral Evaluation (ENE) as part of active case management.

2. Pre-Action Protocols and Practice Directions

The Pre-Action Practice Direction and Protocols (most recently updated in 2023) requires parties to share information and consider settlement or ADR prior to issuing proceedings. Non-compliance is punishable by cost orders or procedural delays. In some fields—construction, clinical negligence, housing, and defamation—special pre-action protocols render mediation a standard step.

These principles do not render mediation obligatory in and of themselves but leave powerful procedural and economic incentives. Empirical evidence from the Ministry of Justice (MoJ 2022) indicate that more than 80 percent of commercial litigants participate in some manner of ADR before trial, illustrating the system's behavioural influence.

C. Judicial Jurisprudence: From Encouragement to Conditional Compulsion

1. Halsey v. Milton Keynes NHS Trust [2004] EWCA Civ 576

The Halsey decision continues to be the foundation of UK ADR jurisprudence. The Court of Appeal, presided over by Dyson LJ, held that courts must firmly encourage mediation but cannot force reluctant parties to mediate since forcing them could infringe the right to a fair hearing in accordance with Article 6 ECHR. The Court did,

however, rule that unreasonable refusal to mediate can lead to adverse cost orders even where the party who refused to mediate succeeds in the case.

The ruling created a six-factor test to ascertain unreasonableness:

1. Nature of the dispute
2. Merits of the case
3. Degree to which other methods of settlement were tried
4. Mediation costs in comparison to litigation costs
5. Possible postponement of trial
6. Prospects of a successful mediation

This structure formalized a doctrine of constructive coercion: parties are always free to litigate but at risk of cost sanction for refusing mediation without good reason.

2. Post-Halsey Developments and Lomax v. Lomax [2019] EWCA Civ 1467

Later cases have moved progressively away from Halsey's absolute approach to compulsion. In Lomax, the Court of Appeal affirmed a judge's ruling that directed Early Neutral Evaluation (ENE) without consent by the parties. The Court made a distinction between mediation (a confidential process that needs consent) and ENE (a judicial role intended to promote settlement), thus establishing that the courts have inherent power to order non-consensual ENE when necessary.

Subsequently, in Churchill v. Mersey Care NHS Foundation Trust [2023] EWCA Civ 1375, the Court categorically acknowledged that requiring parties to try non-court ADR is not necessarily a violation of Article 6, as long as the order is proportionate and does not interfere with the substance of the right to a judicial hearing. This ruling practically qualifies Halsey and indicates a policy trend toward tempered mandatoriness.

D. Institutional and Empirical Landscape

The Civil Mediation Council (CMC), a non-statutory organisation approved by the MoJ, accredits mediators, has ethical standards, and provides best-practice guidance. Mediation can be accessed through CMC-certified providers, HM Courts & Tribunals Service (HMCTS) small-claims pilot schemes, and private centres like the Centre for Effective Dispute Resolution (CEDR).

The British ADR model illustrates that coercion by expense is as effective as mandatory legislation. By the Civil Procedure Rules and judicial guidance, the UK has developed a culture in which ADR is the rule, not the exception. Its development—from Halsey's tentative encouragement to Churchill's indulgent compulsion—is indicative of a path that charts judicial efficiency against litigant control.

For India, the British approach highlights that reform cannot always be dependent on legislative change; serious judicial case-management, pre-action protocols, and legitimate mediation framework can slowly incorporate ADR as a normal part of the civil justice process.

6.3 European Union (Case Study: Italy & Germany)

The European Union (EU) is a front-runner regional model for encouraging mediation and other alternative dispute resolution (ADR) techniques in civil and commercial disputes. Contrary to the United States or United Kingdom model, which is founded upon domestic law and judicial discretion, the EU takes a supranational harmonization approach, setting minimum standards for mediation procedures, accreditation of mediators, and enforceability of agreements between member states. This concerted action is motivated by a need to encourage cross-border trade, alleviate judicial workload, and promote access to justice pursuant to Article 47 of the European Union's Charter of Fundamental Rights.

A. Legal Framework: The EU Directive on Mediation (2008/52/EC)

The anchor of EU ADR policy is Directive 2008/52/EC of 21 May 2008 on certain aspects of mediation in civil and commercial matters (hereinafter, "the Mediation Directive"). The Directive covers cross-border disputes in the EU, incentivizing mediation but leaving room for national autonomy to roll out its application to domestic disputes.

1. Objectives of the Directive

The Mediation Directive has three main aims:

1. Encouraging voluntary mediation as an effective alternative to litigation.
2. Ensuring enforceability of mediated settlement agreements within member states.
3. Protecting confidentiality and impartiality of the mediator to induce open participation.

The Directive actively allows member states to make mediation compulsory or contingent upon incentives or penalties, as long as such practices avoid excluding parties from access to the courts (Article 1, Recital 14). This provision provides the legal basis for the varied methods taken throughout Europe.

2. Key Provisions

- Article 3: Provides exhaustive definition of "mediation" and "mediator", including court-annexed mediation.
- Article 5: Invites courts to encourage parties to use mediation where suitable.
- Article 6: Facilitates enforceability of agreed settlements through court or notarial process.
- Article 7: Safeguards confidentiality of mediation proceedings.
- Article 8: Stays limitation periods during mediation, averting loss of claims.

By establishing a harmonized procedural foundation, the Directive acts as a spur for member states to embed mediation nationally.

B. Implementation and Diversity Across Member States

Implementation of the Directive has been uneven, mirroring differences in legal culture, judicial mindset, and infrastructure for ADR. Some states—e.g., Italy—welcomed compulsory mediation, while others—e.g., Germany and France—opted for voluntary or semi-voluntary approaches with firm judicial push.

The 2020 European Commission Report on the Implementation of the Mediation Directive concluded that, although all member states transposed the Directive, only a few of them reached considerable case numbers. Italy and Slovenia are at the forefront of mediation usage, with Germany, Austria, and France exhibiting gradual increases in voluntary schemes.

C. Italy: A Case Study in Mandatory Mediation

Italy is the EU's most far-reaching experiment in mandatory mediation. The nation's endemic civil case backlog—over 5 million outstanding cases in the early 2000s—was the catalyst for legislative action.

1. Legislative Decree No. 28/2010

Enacted under the Mediation Directive, Legislative Decree No. 28 of 4 March 2010 created a national system of mediation in civil and commercial cases. The decree originally required mediation as a prerequisite before a lawsuit could be filed in certain categories, such as:

- Condominium and real property disputes
- Inheritance and family property disputes
- Insurance, bank, and financial contracts
- Medical malpractice and professional negligence

Failure to pursue mediation makes the court filing inadmissible and forces parties to have a first meeting with a certified mediator.

2. Judicial Review and Constitutional Validation

The decree was immediately constitutionally challenged. In Judgment No. 272/2012, the Italian Constitutional Court affirmed the legislation but struck down some procedural aspects because of the lack of adequate delegation of legislative powers. Mandatory mediation was reinstated by the government through Decree-Law No. 69/2013 (the "Decreto del Fare"), correcting the procedural flaws.

In its ruling, the Court asserted that obligatory mediation does not infringe on the right to judicial protection according to Article 24 of the Italian Constitution, on condition that:

- Mediation is limited in duration (90 days),
- Participation is procedural rather than result-oriented, and
- Judicial access is still accessible after the attempt fails.

This equilibrium is a reflection of the European Court of Justice's position in Menini and Rampanelli v. Banco Populaire Società Cooperativa (Case C-75/16, 2017), which held that compulsory mediation pursuant to Italian law was in line with EU law, since it did not interfere with access to justice.

3. Institutional Infrastructure

Mediation in Italy is carried out by accredited "Mediation Bodies" enrolled in the Ministry of Justice. As of 2024, there are over 950 authorized centers across the country with over 10,000 trained mediators working for one of them. The bodies have digital platforms, tariff lists, and quality controls.

4. Impact and Statistics

The Italian Ministry of Justice's Relazione Annuale sulla Mediazione (2023) states:

- 46% rate of settlements in mandatory mediation cases.
- Average length: 85 days.
- Cost savings: 50–60% compared to litigation.
- Compliance rate: over 90% for mediated settlements.

These results indicate that properly administered compulsory mediation can significantly lower court caseloads and improve the efficiency of dispute resolution.

D. Germany: Voluntary and Court-Encouraged Mediation

Germany, on the other hand, has taken a voluntary but court-based model. The Mediationsgesetz (Federal Mediation Act), which was introduced in 2012 to implement the EU Directive, offers a single legal framework for both court-annexed and private mediation.

1. Legal Features

- Section 1 provides a definition of mediation as a confidential and organized process conducted by an impartial third party.
- Section 2 permits judges to refer cases for mediation and stay proceedings pending ADR.
- Section 5 mandates that mediators exercise neutrality and confidentiality.
- Section 9 obliges the government to evaluate mediation development on a periodic basis.

Mediation is not compulsory, but German civil procedure encourages it by means of judicial referral programs (gerichtsnahe Mediation) and conciliation judges (Güterichter)—judges specifically qualified to mediate conflicts during court proceedings.

2. Implementation and Results

The Federal Ministry of Justice (2022) states that some 25,000 cases annually are disposed of via court-annexed mediation. Satisfaction among participants is reportedly 75%, while judicial backing is high in favor of extending mediation in family and small-claims cases. Despite this, the take-up of mediation is low (less than 2% of all civil filings) because of Germany's already effective court system as well as robust judicial control.

The EU model thus demonstrates that mandatory mediation can coexist with voluntariness when designed with procedural safeguards and limited scope.

D. Lessons for India

India's hybrid federal legal system with high case pendency can draw a few lessons from the EU experience:

1. Statutory Harmonization:

Just like the EU Directive, India can pass national guidelines under the Mediation Act, 2023, so that High Courts can issue region-specific procedural rules.

2. Mandatory Categories:

Emulating Italy's model, compulsory pre-litigation mediation can first be made applicable to specified civil categories—property, contract, and employment disputes—prior to its extension.

3. Judicial Oversight:

Similar to Germany's Güterichter, Indian judges may serve as "mediation judges" monitoring compliance without shaping results.

4.Accreditation and Monitoring:

EU's focus on mediator accreditation and training must inform India's National Mediation Accreditation Authority (NMAA).

5.Enforceability and Confidentiality:

Articles 6–7 of the Directive may be used to develop India's procedural rules to provide enforceability of settlement agreements without compromising confidentiality.

6.Digital Integration:

The EU's direction towards digital mediation (backed by the 2021 e-Justice Strategy) provides useful lessons for India's ODR (Online Dispute Resolution) platforms.

G. Conclusion

The European Union model shows that standardized rules, combined with national discretion, can establish a credible and effective mediation culture. Italy's success with compulsory mediation shows the transformative promise of organized compulsion backed by institutional ability and judicial support. Germany's approach emphasizes the value of voluntary engagement in a regulated environment that maintains party autonomy.

For India, a hybrid adoption—compulsory effort, voluntary compromise, and court-monitored enforcement—may deliver the best possible outcomes. Through the blending of EU's legislative sharpness, Italy's operational rigor, and Germany's judicial self-restraint, India can design a top-notch mediation system which reconciles efficiency, justice, and constitutional integrity.

7. Comparative Discussion

The three models unveil a continuum:

- US: mandatory participation strong procedural discretion
- UK: encouragement with economic sanction
- EU (Italy): statutory mandatoriness for specific disputes

The comparative study of the United States, the United Kingdom, and the European Union identifies diverging yet convergent paths in the institutionalization of ADR—specifically mediation—as a core part of civil justice. While each system developed out of different socio-legal frameworks, there is a common goal among them: easing judicial congestion without undermining procedural fairness and party autonomy.

The conclusions drawn from these jurisdictions illustrate that success in ADR reform does not hinge on one compulsion or voluntariness model, but on institutional design, judicial culture, and available procedural safeguards ensuring access to justice. This section describes comparative parallels and divergences under thematic headings and relates them to India's existing reform context.

A. Comparative Overview: Structural and Policy Parallels

Throughout the three jurisdictions, ADR reform began not so much as an alternative but as a complementary system to the courts.

•In the United States, the Federal ADR Act 1998 formalized mediation by local judicial schemes, facilitating participation without sacrificing voluntariness.

•The United Kingdom, with the Civil Procedure Rules 1999, followed a managerial strategy—judicial encouragement supplemented by economic incentives and cost sanctions.

• The European Union, in Directive 2008/52/EC, chased harmonization, offering flexibility to members like Italy (mandatory pre-litigation mediation) and Germany (voluntary, court-linked mediation).

Judiciaries in both instances have the role of gatekeepers, assuring proportionality and equity and encouraging settlement as an integral part of the delivery of justice. This coordination of the powers of the courts and ADR procedures presents a template for India's future procedural reform under the Mediation Act 2023.

B. The Spectrum of Mandatoriness

The comparative study reveals a continuum of compulsion:

Jurisdiction	Level of Compulsion	Nature of Obligation	Enforcement Mechanism
United States	High procedural compulsion	Mandatory attendance; voluntary outcome	Court orders under ADR Act 1998 and Rule 16 FRCP
United Kingdom	Moderate or soft compulsion	Strong encouragement; cost sanctions	Civil Procedure Rules; *Halsey, Lomax, Churchill*
Italy (EU)	Categorical compulsion	Mandatory pre-litigation mediation in select sectors	Legislative Decree 28/2010
Germany (EU)	Voluntary but integrated	Judicial suggestion and referral	Mediation Act 2012, *Güterichter* model

On the one end is the U.S. procedural mandatoriness, mandating good-faith participation but maintaining the option not to settle. On the other end is Italy's legislative compulsion, wherein mediation is a statutory condition precedent to litigation. The middle ground is the U.K. model using economic deterrence instead of procedural exclusion. This comparative spectrum dictates that India adopt a calibrated approach—mandatory attempt but voluntary outcome—albeit resembling the U.S. and U.K. models, with increasingly broader application as institutional capacity matures.

C. Balancing Efficiency with Access to Justice

One ongoing policy issue is whether compulsory ADR compels infringement on the constitutional or human-rights-based right of access to justice.

•In the United States, federal courts defend compulsory participation on the grounds of Rule 16's case-management authority, buttressed by due-process safeguards and judicial supervision.

•In the U.K., Halsey initially warned against Article 6 ECHR coercion, but Churchill (2023) made it clear that court-referred ADR is legal if proportionate and does not take away the right to trial.

•In Italy, both the Constitutional Court (Judgment No. 272/2012) and the Court of Justice of the EU (Menini & Rampanelli, C-75/16) confirmed compulsory mediation as in line with the right to judicial protection because the duty is procedural and temporary.

These judicial constructions meet on one doctrinal proposition: compulsion is legitimate as long as it pertains to process and not outcome and as long as litigants have an unimpaired right of adjudication once the attempt at mediation has been made. For India, that proposition is found in providing constitutional justification for enhancing mandatory pre-litigation mediation under Section 12A of the Commercial Courts Act and the Mediation Act 2023.

D. Institutional Design and Quality Control

Institutional maturity is what separates effective ADR regimes from poor ones.

•U.S. federal districts have administrative ADR offices, required mediator training, and regular program assessment by the Federal Judicial Center (FJC).

•The U.K. depends on the Civil Mediation Council (CMC) for accreditation and ethical regulation, underpinned by a strong market of private providers such as CEDR.

•Italy and Germany use Ministry-approved Mediation Bodies and judiciary-certified mediators to provide state supervision.

These systems prioritize professionalization, accreditation, and ongoing assessment. India's Mediation Act 2023 also envisions the creation of a Mediation Council of India (MCI), an initiative that is in line with EU and U.S. best practice. However, India needs to ensure that accreditation standards, confidentiality requirements, and performance indicators are strictly applied at the state level in order to prevent fragmentation.

E. Empirical Outcomes: Efficiency, Cost, and Compliance

Empirical evidence highlights the quantitative advantages of ADR:

•United States: 55–65 percent settlement rates, 40 percent decrease in average case duration, and 30–40 percent cost savings.

•United Kingdom: 93 percent success rate of mediations (CEDR Audit 2021), with a value of around £3 billion in savings per year.

•Italy: 46 percent mandatory case settlement rate and 90 percent adherence to mediated settlements (Italian MoJ 2023).

•Germany: 30–35 percent success rate of court-annexed mediation, with 75 percent satisfaction among participants.

These findings affirm that ADR is not only ideologically attractive but empirically efficient when backed by transparent procedural guidelines and institutional accountability. For India alone, with the National Judicial Data Grid having over 4.5 crore pending cases, even a small diversion of 10–15 percent via mediation could revolutionize the justice scene.

F. Comparative Strengths and Weaknesses

Parameter	United States	United Kingdom	European Union (Italy/Germany)	Observations for India
Legal Basis	ADR Act 1998; FRCP Rule 16	CPR 1999; Practice Directions	Directive 2008/52/EC; national laws	India's CPC §89 and Mediation Act 2023 provide similar foundation
Type of Compulsion	Mandatory attendance	Cost-based persuasion	Mandatory (Italy) / Voluntary (Germany)	India can adopt hybrid mandatoriness
Judicial Role	Active case management	Gatekeeping + cost sanctions	Supervisory and certification roles	High Court supervision feasible
Accreditation	Local federal rosters	Civil Mediation Council	Ministry-approved mediators	National Mediation Council proposed
Confidentiality	Strong under local rules	CMC Code + common law	Protected under Directive Art. 7	Codified under Mediation Act 2023
Enforcement	Court confirmation of settlements	Consent orders	Judicial decree or notarial execution	Needs clearer enforcement rules
Empirical Impact	35–45 % faster resolution	£3 billion saved annually	46 % success (Italy)	Potential for huge backlog reduction

G. Doctrinal and Policy Convergence

1. Mandatory Attempt, Voluntary Settlement:

All systems come together on this point, balancing efficiency with autonomy. It requires parties to cooperate in good faith but not to settle.

2. Judicial Gatekeeping:

Courts serve as control officers of procedure, guaranteeing proportionality, equity, and conformity—following the "managerial judging" ideal under Rule 16 (FRCP) and CPR

3. Economic Rationalization:

Cost sanctions in the UK, time savings in the US, and lower litigation cost in Italy all together demonstrate that ADR reform also has macro-economic objectives.

4. Accreditation and Ethics:

EU and UK models emphasize the need for independent accreditation bodies—a aspect India needs to operationalize urgently under the Mediation Act.

5. Data-Driven Evaluation:

Periodic reporting by the FJC (US), MoJ (UK), and Italian Ministry of Justice reinforce the fact that empirical analysis, not rhetoric, sustains ADR success.

H. Lessons for India

Drawing on these comparative lessons, India needs to construct a hybrid ADR structure taking the best from each of the three models:

•From the United States: procedural mandatoriness, judicial monitoring, and standards of good-faith participation.

•From the United Kingdom: inclusion of pre-action protocols and cost-sanction mechanisms to economically encourage mediation.

•From the European Union (Italy & Germany): statutory certainty, mediator accreditation, and enforceability of settlement through mediation.

This tri-model integration would facilitate India's shift from ad-hoc mediation under Section 89 CPC to a highly institutionalized, answerable, and citizen-focused ADR regime.

I. Conceptual Implications for Indian Legal Reform

The comparative analysis emphasizes that ADR is not a substitute for justice but a supplement mode of justice delivery. It transforms the adversarial process into cooperative, interest-based negotiation without compromising the judiciary's constitutional mandate.

For India, the Mediation Act 2023 gives a legislative framework. To borrow success from abroad, however, the execution of the Act needs to prioritize:

1. Uniform state procedural models,
2. Mandatory pre-filing mediation for designated categories (commercial, employment, and contract disputes),
3. Integration of judicial case-management, and
4. Public trust generation by transparency and training.

J. Conclusion

Comparative analysis of ADR regimes across the world illustrates that the success of mandatoriness in ADR relies not on compulsion, but on the structure of its institutional environment. In India, where judicial pendency has crossed 4.5 crore cases (as of 2025) and civil cases take more than a decade to get decided, reform by calibrated mandatoriness in ADR is no longer a choice, but a necessity.

This chapter offers an integrated, multi-faceted guide to overhauling India's civil justice system through organized implementation of mandatory mediation and allied ADR processes.

(i). Legislative and Regulatory Reforms

1. Repeal and Redraft Section 89 of the Code of Civil Procedure (CPC)

Section 89, enacted in 1999, is the legislative portal to ADR in India, but its vague wording and discretionary nature have undermined its utility. The provision must be reworded to:

•Enact mandatory referral to mediation in all commercial and civil disputes where settlement is possible;

•Prescribe procedural ordering (parallel to Rule 16 FRCP in the U.S.);

•Make explicit that referral to mediation should be mandatory for an attempt and not for the completion of settlement; and

•Add a legislative requirement on courts to note reasons for non-referral.

A organized amendment would eliminate interpretive ambiguity while maintaining judicial flexibility.

(ii). Enforce the Mediation Act, 2023

The Mediation Act, 2023, while landmark in nature, needs to develop by way of secondary legislation and rules of practice to attain full operational effectiveness. The following enhancements are suggested:

•Extend compulsory pre-litigation mediation from commercial disputes (as provided for under Section 12A of the Commercial Courts Act) to cover property, tenancy, and labour disputes;

•jectory "deemed compliance" provisions like Italy's Legislative Decree 28/2010—where showing up at the inaugural mediation session complies with the statutory requirement;

•Include provision for digital mediation and online dispute resolution (ODR) in a dedicated chapter to facilitate remote participation; and

•Provide time constraints (60–90 days) for pre-litigation mediation, post which courts have to accept filings with no procedural penalty.

(iii). Harmonize Legislative Overlaps

India's ADR scene cuts across various legislations—CPC §89, Arbitration and Conciliation Act, 1996, Legal Services Authorities Act, 1987, and more recently, the Mediation Act, 2023. Harmonization via an integrated ADR Coordination Framework (similar to the EU Mediation Directive) will get rid of duplication and harmonize definitions, timeliness, and enforcement provisions.

(iv). Summary of Key Recommendations

Reform Area	Recommendation	Comparative Inspiration
Legislative	Amend Section 89 CPC and expand Mediation Act scope	Italy (Decree 28/2010), U.S. (ADR Act 1998)
Institutional	Establish MCI and multi-tier mediation centres	U.K. Civil Mediation Council, EU accreditation system
Judicial	Mandate mediation screening and cost sanctions	*Halsey* (UK), Rule 16 FRCP (U.S.)
Accreditation	National training and ethics code	EU Directive Art. 4, CMC (UK)
Digitalization	National ODR infrastructure	Singapore, EU e-Justice Strategy
Monitoring	Empirical data and annual evaluation	FJC (U.S.), Italian MoJ reports
Awareness	Public campaigns and law school integration	Civil Justice Council (UK)

K. Conclusion: Towards a Culture of Resolution

India's civil justice system cannot be transformed with just procedural reforms or legislative diktat. It needs a culture shift from litigation to resolution—a shift that recasts how justice is viewed, accessed, and provided. The comparative study of the United States, United Kingdom, and European Union offers overwhelming evidence that mandatory ADR, with institutional sensitivity and constitutional caution, can realize both efficiency and fairness.

1. From Adjudication to Resolution: Reframing Justice Delivery

For centuries, the Indian justice system, as in most common-law systems, has synomously linked justice with adjudication—a process of settlement of differences by authoritative judicial determinations. While assuring finality and doctrinal evolution, this model has also yielded insanitary delays, procedural inflexibility, and adversary animosity.

The experiences of leading jurisdictions demonstrate how justice can also result from collaboration and dialogue as opposed to conflict. Mediation and the rest of the ADR tools reflect the belief that justice is not just a decision rendered to the parties, but a resolution developed by the parties. This reimagining of justice supports India's constitutional vision under the Preamble and Article 39-A, which call for equal access to justice through effective and affordable mechanisms.

2. The Philosophical Foundation: Justice through Participation

Compulsory ADR does not erode the authority of the judiciary; rather, it makes dispute resolution more democratic by providing citizens with more control over their own results. As in the U.S. federal system, mandatory mediation guarantees each litigant at least considers cooperative resolution before resorting to state power. Likewise, Italy's pre-litigation mediation system illustrates that procedural participation responsibilities can foster responsibility, courtesy, and understanding between disputants.

In the Indian setting—where family and kinship, neighborhood, and social caste structure shape disputes—mediation finds harmony with such traditional forms of reconciliation as the panchayat and nyaya samiti. Contemporary ADR reform thus acquires the form of not a foreign imposition but a reinvigoration of native justice practices re-fashioned in a constitutional and rule-based context.

3. The Empirical Imperative: Overcoming the Pendency Crisis

The numerical load on India's judiciary is still overwhelming. The National Judicial Data Grid (NJDG) reports more than 4.5 crore pending cases as of 2025, of which nearly 60 percent are civil disputes. Average disposal time for civil suits in subordinate courts takes more than six years, and in High Courts, more than ten years.

International experience establishes that compulsory or strongly recommended ADR can significantly lower such pendency:

- The U.K. Civil Mediation Council (2021) had 93 percent success in cases mediated and over £3 billion saved every year.
- The U.S. Federal Judicial Center (2020) observed that court-annexed mediation shortens the case by 35–40 percent.
- The Italian Ministry of Justice (2023) had 46 percent settlements through compulsory mediation, with more than 90 percent compliance.

If even a small 15–20 percent of India's unsettled civil cases were redirected into organized mediation, it would potentially liberate judicial capacity amounting to tens of thousands of judge-days per year—a structural change beyond the ambit of judicial appointments or budgetary additions.

4. Balancing Efficiency and Rights: Constitutional Compatibility

One of the core issues around compulsory ADR is whether it violates the basic right to access justice. Comparative jurisprudence allays this fear. The U.S. courts, pursuant to Rule 16 FRCP, have supported compulsory ADR as due process consistent because it does not preclude adjudication. The U.K. Court of Appeal in Churchill v. Mersey Care NHS Foundation Trust (2023) confirmed that ADR ordered by the court is proportionate and legal under Article 6 ECHR. Likewise, the Italian Constitutional Court (Judgment No. 272/2012) and the European Court of Justice (Menini & Rampanelli, 2017) upheld compulsory mediation as long as the right to trial is preserved.

Applying these principles, India can proceed with confidence in enshrining pre-litigation mediation without offending Articles 14 and 21 of the Constitution, as procedural compulsion—contrary to substantive denial—is in the public interest of prompt and affordable justice.

5. Institutionalizing Trust: The Role of the Mediation Act 2023

The Mediation Act 2023 is a legislative turning point in history. Mediation is recognized for the first time by statute, but also by procedural protection and enforceability provisions. Legislation is however not the complete solution. Mediation's dependability rests on:

- National accreditation and ongoing professional training for ensuring the credibility of mediators;
- Judicial support to ensure courts proactively refer cases and honor mediated agreements; and
- Administrative coordination, where data, technology, and policy assessment in mediation move as a seamless whole under one umbrella.

By founding the Mediation Council of India (MCI) and enabling High Courts to formulate rules of local application, the Act sets the ground for a federal ADR landscape—coordinated but context-aware.

6. A "Hybrid Mandatory" Model for India

The comparative analysis proposes that either complete voluntariness or compulsive rigidity cannot ensure success. Rather, the most viable path is hybrid mandatoriness—compulsory effort at mediation, voluntary result of settlement.

This model conforms to:

- The U.S. "good-faith participation" standard,
- The U.K. "cost-sanction" doctrine of Halsey and Churchill, and
- The Italian "first-session compliance" model.

India should formalize this hybrid standard by way of uniform procedural rules compelling appearance in the first mediation session, following which parties still enjoy the freedom to resort to litigation in case of non-agreement. This maintains autonomy at the cost of ensuring serious participation—a balance between efficiency and fairness.

7. Technology, Transparency, and Accessibility

The future of Alternative Dispute Resolution (ADR) is digital. Incorporating Online Dispute Resolution (ODR) infrastructure—already proved effective in Singapore, the EU, and Canada—can make it more democratic for citizens scattered across India's large geography.

- Online mediation sessions minimize costs of logistics and allow remote region participation.
- AI-supported triage may assign cases to expert mediators, enhancing efficiency.
- Electronic documentation and electronic signatures make enforcement and transparency possible.

India's National Judicial Data Grid (NJDG) and e-Courts infrastructure provide a great platform for scaling ODR through the Mediation Act 2023, in line with international trend towards "smart justice."

8. Cultivating a Mediation-Friendly Legal Culture

The deeper challenge is cultural, not procedural. Indian legal training, advocacy, and judicial practice continue to be highly adversarial. Lawyers tend to define success in terms of courtroom win, and not cooperation. Thus, to establish an authentic "culture of resolution," the following cultural interventions are necessary:

1. Legal Education Reform: Make ADR, negotiation, and mediation advocacy integral subjects in law curricula; set up simulation-based mediation clinics.
2. Bar and Bench Sensitization: Run continuing legal education courses with a focus on mediation ethics, client counseling, and settlement design.
3. Public Awareness: Countrywide campaigns, in several Indian languages, pointing out mediation's affordability, speed, and confidentiality.

These initiatives would make mediation more of an internalized social norm than a statutory obligation.

9. International Positioning and Global Leadership

India's embracement of formal mediation reforms makes it the best poised to lead the international ADR landscape. Signing the Singapore Convention on Mediation (2019) would further solidify India's reputation as an international seat for commercial mediation, bolstering its existing arbitration center in Mumbai and Delhi. Joining international paradigms such as the UNCITRAL Model Law (2018) and collaboration with the European Network of Mediation Centres could lead to cross-border capacity building and harmonization of standards.

Such global coordination not only enhances investor confidence but also promotes India's reputation as a rule-of-law jurisdiction that is committed to peaceful dispute settlement.

10. Towards Sustainable Justice: The Road Ahead

In the end, the intention of re-fashioning India's civil justice system by way of mandatory ADR is not merely to cut down on case volumes—it is to rethink the philosophy of justice itself. Justice needs to transform from a passive mechanism of adjudicating rights to an active system of resolving relationships. Mandatory ADR realizes this vision by:

•Making the process of justice human;
•Enabling citizens as co-architects of their settlements; and
•Enhancing judicial legitimacy through efficacy and universality.

The change will take persistence, coordination, and leadership from all stakeholders—judges, lawyers, policymakers, and civil society. But the comparative experience of other democracies attests that such transformation is both attainable and sustainable.

11. Final Reflections

In the end, the comparative odyssey through the United States, United Kingdom, and European Union serves to illustrate that the real test of a justice system is not how many cases it decides, but how many disputes it resolves creatively.

India is at a turning point. With the Mediation Act 2023, expanding judicial insight, and increasing international involvement, the country has all the ingredients to bring about a new age of conflict resolution—a new age characterized by cooperation rather than confrontation, by dialogue rather than decree, by reconciliation rather than retribution.

By adopting a culture of resolution, India has the potential to turn its civil justice system into one that is not just efficient, but indeed compassionate, accessible, and transformative—realizing the constitutional promise of justice: social, economic, and political for all citizens.

India is at a critical fork in its quest for civil justice reform. Comparative lessons indicate that compulsory ADR can be constitutionally sound, procedurally efficient, and socially transformative if well implemented.

The Mediation Act, 2023 provides the premise, but successful institutionalization demands judicial discipline, professionalised mediators, and citizen engagement. A "mandatory attempt but voluntary settlement" model—delicately balancing compulsion and consent—can render mediation a normative mechanism for the delivery of justice.

Longitudinal studies measuring rates of settlement, mediator performance, and sectoral efficiency should be the focus of future research. Only an evidence-based and calibrated policy will effectively transform India's civil justice system.

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