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MEDIATION IN PROPERTY DISPUTES: A COMPARATIVE STUDY OF INDIA AND OTHER JURISDICTIONS

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ABSTRACT

Property and real estate disputes make up a large portion of pending civil cases around the world, especially in India. Issues such as unclear land ownership, multiple claims over property, inheritance disputes, and family conflicts often result in lengthy court battles that can continue for years, and sometimes even across generations. As a result, traditional court-based litigation has often been unable to provide timely and effective solutions to these disputes.

To address these challenges, Alternative Dispute Resolution (ADR) methods, particularly mediation, have gained increasing importance. This article examines the role of mediation in resolving property and real estate disputes through a comparative study of India, the United States, and the United Kingdom. It traces the development of mediation in India from its limited use under Section 89 of the Code of Civil Procedure, 1908, to its recognition as a comprehensive legal framework under the Mediation Act, 2023.

The article also compares India's mediation system with the well-established court-connected mediation programs in the United States and the pre-action mediation practices followed in the United Kingdom. Through this comparison, it identifies key challenges faced by the Indian mediation system, including lack of public trust, difficulties in enforcing settlement agreements, and inadequate institutional support. Finally, the article suggests reforms and measures that can strengthen mediation and make it a more effective mechanism for resolving real estate and property disputes in India.

1. Introduction

Property disputes are different from most other legal disputes because they often involve strong emotional connections, family relationships, long histories of ownership, and significant financial interests. Across the world, disputes relating to land and property place a heavy burden on courts. In India, property-related cases make up a large share of pending civil litigation, contributing significantly to judicial delays. Many of these disputes remain unresolved for years, and in some cases even decades.

The traditional court system follows an adversarial approach, where each party tries to prove its case and the court decides a winner and a loser. While this method is necessary in many situations, it is often not the most effective way to resolve property disputes. Court proceedings can be lengthy, expensive, and stressful. They may also increase hostility between family members, neighbours, or business partners, leading to damaged relationships and leaving valuable property tied up in litigation for long periods.

To address these challenges, mediation has emerged as an important alternative method of dispute resolution. Mediation is a voluntary and confidential process in which an independent third party, known as a mediator, helps the parties communicate and reach a mutually acceptable settlement. Unlike a judge, a mediator does not impose a decision. Instead, the parties themselves work together to find a solution that meets their interests and needs.

Mediation is particularly effective in property disputes because it allows for flexible and practical solutions that may not be available through court judgments. For example, parties can agree on land partition arrangements, shared usage rights, easement modifications, compensation plans, or property buyouts tailored to their specific circumstances.

This article examines the legal and institutional framework of property dispute mediation in India and compares it with the systems followed in the United States and the United Kingdom. It begins by discussing the common challenges associated with property disputes and the limitations of traditional litigation. The article then traces the development of mediation in India, with special emphasis on the Mediation Act, 2023. It further analyses the mediation models used in the United States and the United Kingdom and compares their strengths and practices with the Indian framework. Finally, the article identifies the key challenges facing

mediation in India and suggests reforms that can strengthen its role as an effective mechanism for resolving property disputes.

2. The Unique Nature of Property Disputes

To understand why mediation is particularly effective in property disputes, it is important to recognize how these disputes differ from ordinary civil or contractual disagreements. Property disputes are rarely limited to a simple legal issue. Instead, they often involve complicated ownership records, family relationships, government regulations, and strong emotional attachments to land or property.

For many people, property is more than just a financial asset. It may represent family heritage, security, memories, and future economic stability. As a result, disputes over property are often highly sensitive and difficult to resolve through traditional litigation alone.

2.1 Categories of Property Disputes

Property disputes generally fall into four major categories, each presenting its own challenges for dispute resolution.

(a) Partition and Family Inheritance Disputes

These disputes usually arise when ancestral or jointly owned property has to be divided among family members. Legal heirs may disagree about their respective shares based on wills, succession laws, or family arrangements. Such cases often involve long-standing family tensions and emotional conflicts that have accumulated over generations.

(b) Landlord-Tenant and Lease Disputes

These disputes occur between landlords and tenants regarding issues such as rent increases, eviction, maintenance responsibilities, lease violations, or changes made to the property. In many countries, including India, older rent-control laws and tenancy regulations can further complicate these conflicts.

(c) Boundary, Easement, and Title Disputes

These disputes involve disagreements over property boundaries, encroachments, rights of way, access routes, easements, or ownership claims. Resolving such matters often requires technical surveys, land records, and detailed factual investigations. Since these disputes usually require practical adjustments rather than strict legal rulings, they can

be difficult to settle through conventional court proceedings.

(d) Developer-Buyer Disputes

With rapid urbanization and the growth of the real estate sector, disputes between property developers and buyers have become increasingly common. These disputes may arise due to delays in possession, construction defects, changes in approved building plans, failure to provide promised amenities, or non-compliance with regulatory requirements.

2.2 Limitations of the Adversarial System

Traditional courts operate within the limits of legal procedures and statutory rules. Judges can determine ownership rights, award compensation, or grant injunctions, but they often have limited flexibility to create solutions that address the practical interests of all parties involved. For example, consider a dispute among four siblings over an ancestral house that cannot easily be divided. A court may ultimately order the property to be sold and the sale proceeds distributed among the siblings. While legally sound, this solution may force the family to lose a property that holds sentimental value and may not maximize its true economic worth.

Mediation offers a different approach. Instead of focusing solely on legal rights, it encourages the parties to discuss their interests and priorities. A mediator can help the siblings explore alternatives such as transferring ownership of the house to one sibling in exchange for compensation, allocating other family assets, or arranging payments over time. Such flexible solutions are often impossible to achieve through a traditional court judgment.

3. Historical Development of Mediation in India

The idea of mediation is not new to India. Long before the modern court system was introduced, Indian communities commonly resolved disputes through informal and community-based mechanisms. Institutions such as village Panchayats, family councils (Kula), and trade guilds (Shreni) played an important role in settling disagreements relating to land, family property, agricultural rights, and other local matters. These bodies relied on respected elders who encouraged discussion and consensus rather than imposing decisions.

However, during the colonial period, India adopted the British legal system, which emphasized formal court procedures and adversarial litigation. As a result, traditional methods of dispute resolution gradually lost their importance, and legal disputes became increasingly dependent

on lengthy court proceedings.

3.1 The Legal Framework Before the Mediation Act, 2023

For many years after independence, mediation in India operated without a single comprehensive law. Instead, it was supported by various provisions scattered across different statutes.

A major step towards incorporating mediation into the formal legal system came through the Civil Procedure Code (Amendment) Act, 1999, which introduced Section 89 into the Code of Civil Procedure, 1908. This provision empowered courts to refer disputes to Alternative Dispute Resolution (ADR) mechanisms, including arbitration, conciliation, judicial settlement, and mediation, whenever there appeared to be a possibility of settlement between the parties. Although Section 89 encouraged the use of mediation, its implementation initially faced difficulties due to uncertainty regarding the procedures to be followed and the distinction between mediation and conciliation.

These issues were clarified by the Supreme Court in *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.* (2010). The Court laid down detailed guidelines regarding court-referred ADR and identified the types of disputes most suitable for mediation. Significantly, the Court observed that family property disputes, partition suits, landlord-tenant conflicts, and boundary disputes are particularly appropriate for mediation because they involve ongoing relationships and require practical solutions rather than purely legal determinations. This decision played an important role in promoting mediation in real estate-related disputes.

At the same time, several sector-specific laws also began incorporating mediation mechanisms. One important example is Section 12A of the Commercial Courts Act, 2015, introduced through an amendment in 2018. This provision requires parties to attempt pre-institution mediation before filing a commercial suit, unless urgent interim relief is needed. The requirement applies to many high-value property, construction, and real estate disputes.

The mandatory nature of this provision was confirmed by the Supreme Court in *Patil Automation Pvt. Ltd. v. Radha Krishna Blade Ltd.* (2022). The Court held that pre-institution mediation is not merely optional and that a suit filed without complying with Section 12A may be rejected under Order VII Rule 11 of the Code of Civil Procedure.

3.2 The Real Estate (Regulation and Development) Act, 2016 (RERA)

The rapid growth of the real estate sector led to an increase in disputes between developers and

homebuyers. To address these concerns, the Real Estate (Regulation and Development) Act, 2016 (RERA) introduced measures to encourage amicable dispute resolution.

Under Section 32(g) of RERA, state regulatory authorities are empowered to facilitate settlement through conciliation and mediation mechanisms. Several states have established dedicated conciliation forums to resolve disputes between developers and consumers.

Maharashtra provides a notable example through the establishment of conciliation benches under MahaRERA. These forums, consisting of representatives from both consumer groups and the real estate industry, have successfully resolved a large number of disputes without the need for lengthy adjudication. Their success demonstrates how mediation can effectively address real estate conflicts in a practical and efficient manner.

3.3 The Mediation Act, 2023: A New Era for Mediation

The Act represents a significant shift in India's dispute resolution system. It brings together various mediation-related provisions under a single framework and recognizes mediation as an independent and professionally regulated method of dispute resolution.

Some of the most important features of the Act, particularly in relation to property disputes, are discussed below.

(a) Voluntary Pre-Litigation Mediation

Section 5 of the Act allows parties to attempt mediation before approaching a court in civil or commercial disputes. While earlier proposals suggested making pre-litigation mediation compulsory, the final legislation adopted a voluntary approach. This balances the need to encourage settlements while ensuring that parties participate in mediation willingly and in good faith.

(b) Establishment of the Mediation Council of India

The Act establishes the Mediation Council of India (MCI), a central regulatory body responsible for promoting and regulating mediation in the country. The Council is entrusted with registering mediators, accrediting mediation service providers, and maintaining professional and ethical standards. This addresses a long-standing concern regarding the absence of uniform training and quality standards in the mediation profession.

(c) Enforceability of Mediated Settlement Agreements

One of the most significant innovations of the Act is the legal recognition given to Mediated Settlement Agreements (MSAs). Under Section 27, a settlement reached through mediation is not treated merely as a private contract. Instead, it has the same

enforceability as a judgment or decree of a civil court. This provides certainty to the parties and reduces the possibility of a settlement being ignored or challenged after it has been reached.

(d) Time-Bound Resolution

The Act also seeks to ensure speedy dispute resolution. Under Section 18, mediation must generally be completed within 120 days from the date of commencement. With the consent of the parties, this period may be extended by a further 60 days. These strict timelines stand in sharp contrast to traditional property litigation, which often takes several years, and in some cases decades, to reach a final resolution.

Overall, the Mediation Act, 2023 marks an important milestone in the evolution of dispute resolution in India. By providing a clear legal framework, professional standards, enforceable settlements, and time-bound procedures, it strengthens the role of mediation as a practical and effective method for resolving property disputes.

4. The United States Approach: Court-Connected Mediation Programs

The United States provides an important example of how mediation can be effectively integrated into the legal system. Unlike many countries where mediation remains optional, the US has developed highly organized court-connected mediation programs that encourage parties to resolve disputes before they reach trial.

Through federal legislation such as the Alternative Dispute Resolution Act, 1998, as well as various state-level laws, mediation has become a regular part of civil litigation.

Property and real estate disputes are frequently referred to mediation at an early stage, reducing the burden on courts and helping parties reach practical settlements.

4.1 State-Level Models: Florida and California

The effectiveness of mediation in the United States is particularly visible at the state level. Florida is often regarded as one of the leading examples of court-connected mediation. Under Chapter 44 of the Florida Statutes, courts have broad authority to direct parties in civil disputes, including property disputes, foreclosure cases, and partition suits, to participate in mediation. If a party refuses to cooperate or participate in good faith, the court may impose penalties such as legal costs or other sanctions. As a result, a large number of property disputes are settled

before reaching trial, saving both time and expense.

California follows a similarly proactive approach. Courts regularly encourage parties involved in complex real estate disputes to participate in mediation or other settlement-oriented processes at an early stage. Judges often issue case management directions that steer parties toward negotiation before litigation progresses further.

An important feature of the American system is the use of specialized mediators. Property disputes are commonly handled by experienced real estate lawyers, retired judges, or technical experts who possess a strong understanding of land-related issues. Their expertise helps parties identify practical solutions and avoid unnecessary litigation.

4.2 Confidentiality Under the Uniform Mediation Act

Another important strength of the American mediation system is the protection of confidentiality. Several states have adopted the Uniform Mediation Act (UMA), which ensures that statements, documents, and discussions that take place during mediation cannot normally be used as evidence in later court proceedings. For property disputes, where sensitive family, financial, or ownership issues are often involved, confidentiality creates a safe environment for honest and productive discussions.

5. The United Kingdom Approach: Encouraging Mediation Through Judicial Guidance

The United Kingdom has adopted a somewhat different approach to mediation. Instead of relying heavily on mandatory court orders, UK courts encourage mediation through judicial guidance and the possibility of financial penalties for parties who unreasonably refuse to participate.

This approach seeks to preserve the voluntary nature of mediation while creating strong incentives for parties to seriously consider settlement before proceeding to trial.

5.1 Civil Procedure Rules and Pre-Action Protocols

Mediation in the United Kingdom is largely supported by the Civil Procedure Rules (CPR), 1998. These rules require courts to actively manage cases and encourage parties to explore Alternative Dispute Resolution whenever appropriate.

In property disputes, parties are generally expected to attempt negotiation or mediation before

commencing formal litigation. This expectation is reinforced through various Pre-Action Protocols and professional guidelines that apply to property-related claims.

For disputes involving commercial leases, boundary issues, property maintenance, or similar matters, parties are expected to demonstrate that they have genuinely explored settlement options. A refusal to engage in mediation without a valid reason may be viewed negatively by the court.

5.2 Cost Sanctions and the Halsey Principle

One of the most influential features of the UK system is the use of cost sanctions.

The leading case on this issue is *Halsey v. Milton Keynes General NHS Trust* (2004). In this case, the Court of Appeal held that although parties cannot generally be forced into mediation, an unreasonable refusal to participate in mediation may result in financial consequences.

This means that even if a party ultimately wins the case at trial, the court may refuse to award legal costs if that party unreasonably rejected opportunities to settle through mediation.

The principle was further strengthened in *PGF II SA v. OMFS Company 1 Ltd* (2013).

The Court held that simply ignoring an invitation to mediate is itself unreasonable conduct. As a result, parties are expected to respond seriously to mediation proposals and provide valid reasons if they choose not to participate.

This approach has made mediation an important part of property dispute resolution throughout the United Kingdom.

5.3 The Impact of Churchill v. Merthyr Tydfil (2023)

A significant development occurred in *Churchill v. Merthyr Tydfil County Borough Council* (2023).

In this case, the Court of Appeal clarified that courts have the authority to pause legal proceedings and require parties to engage in non-binding ADR processes, provided that doing so is fair, proportionate, and does not interfere with a party's right to access the courts.

This decision represents an important shift in UK mediation policy. While mediation remains non-binding, courts now have greater power to direct parties toward ADR before allowing litigation to proceed. As a result, the UK system has moved closer to the court-connected model seen in the United States.

6. Challenges to Property Mediation in India

Although the Mediation Act, 2023 has created a strong legal foundation for mediation, several practical challenges continue to limit its widespread use in property disputes. These challenges are not only legal but also social, cultural, and institutional in nature.

6.1 Social and Cultural Attitudes Towards Mediation

In India, land and property are often closely linked to family identity, social status, and emotional attachment. As a result, property disputes are rarely driven by legal or financial concerns alone. Family pride, personal relationships, and long-standing grievances often play a major role.

Because of these factors, many people view mediation with skepticism. Some parties believe that agreeing to mediation is a sign of weakness or surrender. Others prefer to continue litigation for years rather than compromise with the opposing party. This mindset creates a significant barrier to the successful use of mediation in property disputes.

6.2 The Role of Lawyers

The Indian legal system has traditionally been based on adversarial litigation. Many lawyers are trained to represent clients through court proceedings rather than through collaborative dispute resolution processes.

In some cases, mediation may be viewed as reducing the need for prolonged litigation, which can affect traditional fee structures based on court appearances and lengthy proceedings. As a result, some lawyers may be hesitant to actively encourage mediation and may instead advise clients to pursue formal litigation.

For mediation to become more effective, legal professionals must view it as a valuable tool for achieving quicker and more satisfactory outcomes rather than as a substitute for legal practice.

6.3 Problems with Land Records and Registration

One of the biggest challenges facing property mediation in India is the condition of land records. Unlike countries such as the United Kingdom and the United States, where land ownership records are generally clear and reliable, property records in India are often incomplete, outdated, or disputed. This makes it difficult for mediators to determine the basic facts necessary for settlement discussions.

Even after a settlement is reached, parties may face difficulties in updating land records,

obtaining mutations, or making changes in government registers. Delays at the administrative level can discourage parties from choosing mediation as a method of dispute resolution.

6.4 Lack of Institutional Infrastructure

The success of mediation depends on the availability of trained professionals and effective institutions.

At present, India faces a shortage of accredited mediation centres, trained mediators, and specialized programs dealing with property disputes. The problem is particularly serious in rural and semi-urban areas, where most land and inheritance disputes arise. Without adequate infrastructure and trained personnel, the benefits of mediation cannot reach a large section of the population.

7. Recommendations for Strengthening Property Mediation in India

To make mediation a more effective mechanism for resolving property disputes, India should consider adopting several practical reforms.

7.1 Mandatory Pre-Litigation Mediation for Certain Property Disputes

Although the Mediation Act, 2023 follows a voluntary approach, certain categories of property disputes may benefit from mandatory pre-litigation mediation.

Disputes involving family partitions, inheritance claims, minor boundary disagreements, and landlord-tenant issues are often suitable for negotiated settlements. Requiring parties to attempt mediation before filing a lawsuit could help resolve many disputes at an early stage and reduce the burden on courts.

The success of mandatory pre-institution mediation under the Commercial Courts Act demonstrates that such an approach can be effective when implemented properly.

7.2 Adopting Cost Sanctions for Unreasonable Refusal to Mediate

India could also learn from the experience of the United Kingdom by introducing stronger financial consequences for parties who refuse mediation without a valid reason.

Currently, courts rarely impose substantial costs on parties who engage in unnecessary or obstructive litigation. If judges were empowered to impose realistic cost penalties on parties who unreasonably reject mediation opportunities, litigants would be more likely to seriously consider settlement before proceeding to trial.

Such measures could encourage a culture of cooperation while discouraging avoidable litigation.

7.3 Developing Specialized Property Mediators

Property disputes often involve technical issues relating to land surveys, title documents, valuation reports, municipal regulations, and revenue laws. Therefore, specialized knowledge is often necessary for effective mediation.

The Mediation Council of India should work with legal institutions, survey professionals, urban planners, and real estate experts to create specialized training programs for property mediators. Mediators with expertise in real estate matters are more likely to help parties reach practical and workable solutions.

7.4 Integrating Mediation with Digital Land Records

The enforcement of mediated settlements can be improved by connecting them directly with digital land record systems.

Programs such as the Digital India Land Records Modernization Programme (DILRMP) provide an opportunity to streamline this process. Once a settlement agreement is reached, relevant information could be electronically transmitted to land registration and revenue authorities for immediate updating of ownership records and property details.

This would reduce administrative delays and increase public confidence in mediation outcomes.

8. Conclusion

Property disputes are among the most complex and emotionally sensitive forms of civil litigation. Traditional court proceedings remain essential for protecting legal rights, but they are often not the most effective method for resolving disputes involving family relationships, shared ownership, and long-term commercial interests.

The experiences of the United States and the United Kingdom demonstrate that mediation works best when it is supported by clear legal frameworks, strong institutional support, confidentiality protections, and meaningful incentives that encourage parties to participate in good faith.

India has taken a significant step forward through the enactment of the Mediation Act, 2023.

The Act provides a comprehensive legal framework that recognizes mediation as an important component of the justice system. However, legislation alone cannot ensure success. Greater public awareness, improved infrastructure, professional training, reliable land records, and supportive judicial policies are equally important.

If these reforms are implemented effectively, mediation can become a preferred method for resolving property disputes in India. It can reduce court backlogs, save time and costs for litigants, preserve personal and family relationships, and contribute to a more efficient and accessible system of civil justice. Ultimately, a stronger mediation culture can help unlock the economic and social value of property while promoting faster and more harmonious dispute resolution.

