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Consumer Mediation around the World: What India Can Learn? (A Comparative Study of Six Jurisdictions and Global Instruments)

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ABSTRACT

It can be too time-consuming, costly and cumbersome for a consumer to go to court against a business. In many of the countries, mediation – a neutral third party assisting both parties in reaching an agreement – has proven to be a more viable alternative. This paper examines the development of consumer mediation systems in six countries - China, Singapore, the United Kingdom, the European Union, the United States and Australia - and the international instruments, such as the UNCITRAL Model Law and the Singapore Convention, that address the issue. The paper then takes a cue from the recent enactment of the Consumer Protection Act, 2019, and the Mediation Act, 2023, in India, and addresses the challenges of consumer mediation in the country. The theory is that good laws exist in India, but weak institutions, and that lessons learned from other countries provide a clear path forward to fill this institutional deficit.

I. Introduction

Each day, millions of consumers worldwide purchase a faulty product, poor service or are misled online. They simply want a quick, fair and cheap remedy for their grievance. Rather, what they are most likely to receive is a slow, costly, and not-necessarily-designed-to-them system of law. Mediation has proven to be a viable solution to this challenge. Mediation is not like a court where a decision is made. It involves bringing both parties to the negotiating table and employing a neutral, trained individual known as a mediator to help the parties resolve their differences. It is quicker, more cost-effective, more relaxed, and more likely to maintain a consumer-business relationship. In the last 20 years, nations have been establishing specialised consumer mediation systems, some within courts, some through industry, and some through independent bodies. The results have been excellent.

India has recognised this. The Consumer Protection Act, 2019, established Consumer Mediation Cells at each of the Consumer Commissions. Following this, the Mediation Act, 2023, introduced in India for the first time a specific law on mediation. But the disparity between law and practice is quite large. Empty mediation cells; mediators not deployed; and consumers waiting years for an adjudicated outcome.

The present paper conducts a comparative study of consumer mediation in six jurisdictions: China, Singapore, the United Kingdom, the European Union, the United States and Australia, as well as some international instruments. It then identifies lessons to be learned from the experience that can be applied in India. The goal is not to find the perfect blueprint from one country, but to learn from the structure of consumer mediation that makes it so effective and understand if it can be incorporated in India's existing structure.

II. Three Ways to Run Consumer Mediation

It is helpful to first understand that there are basically three ways to organise consumer mediation; most countries have a mixture of all three.

The first is “court-annexed”, in which mediation is integrated into the court or tribunal process. The dispute is referred to mediation by a judge or officer prior to a hearing. This is how it operates at the Small Claims Tribunals in Singapore, and for many state courts in the United States. The good thing about mediation is that it's compulsory, not optional. The second is the industry-led model, which provides funding and operation of an ombudsman dispute resolution mechanism by the members of a specific industry. This is the model that prevails in the UK and Australia, particularly within the banking, insurance and telecoms industries. What's great about this is that the expertise is specific to the sector, and consumers can access it for free. The third model is government supervised, involving a central government body or regulatory body that establishes standards, accredits mediators and tracks the results. This is the general approach of the EU's ADR Directive and the People's Mediation Law of China.

The existing system in India tries to take the first approach through the Consumer Mediation Cell (court-annexed with the Consumer Commission) and is moving towards the third approach through the Mediation Council of India, formed under the Mediation Act, 2023. The second type — industry-specific ombudsmen — is also not very common in the consumer mediation sphere, except in certain industries such as banking (RBI Ombudsman) and insurance (Insurance Ombudsman).

III. Six Jurisdictions at a Glance

A. China: Scale and Technology

China's dispute resolution methods are influenced by its long cultural tradition of harmony rather than confrontation. In the last decade, this tradition was formalised as a modern law, the People's Mediation Law (2010). Local village, neighbourhood and enterprise mediation committees are now dealing with an incredible number of disputes. The China Consumers Association (CCA) and its branches reportedly received more than a million consumer complaints in 2022, and successfully resolved consumer complaints in more than 80 percent of cases.

China is also ahead of all other countries in its adoption of technology. E-commerce companies such as JD.com and Alibaba have developed their own internal DR systems, which rely on AI technology to provide initial screening of complaints, algorithms to suggest solutions and human mediators to handle cases where machines can't intervene. The Supreme People's Court has made tremendous efforts to develop the Web-based hearing system. This leads to a dispute resolution system capable of handling complaints on a scale unmatched by India's current system.

The shortcomings of the Chinese model are equally as telling. There are substantial differences in quality and independence between Mediation Committees. The process can be swayed by political and social pressure. In cases where the platform is involved in the dispute, there is a legitimate issue of bias in platform-based dispute resolution. India must borrow the tech from China, but be cautious about the governance aspects.

B. Singapore: Institutional Efficiency

Though Singapore is a small country, its consumer mediation system is strong. The Singapore Mediation Centre (SMC) and the Consumers Association of Singapore (CASE) are an effective ecosystem. CASE is a one-stop solution, accepting complaints, attempting to conciliate and forwarding unresolved cases to the SMC or to the Small Claims Tribunals.

The key element of the Singaporean model is the compulsory mediation procedure prior to adjudication in the Small Claims Tribunals. This is not an optional thing to do, but mandatory. The end result is that between sixty and seventy percent of cases settle before a hearing, that is, before the case goes to trial. Moreover, the Singapore International Mediation Institute (SIMI) provides internationally recognised credentials for mediators not only on the basis of academic qualifications, but also on the basis of supervised practice and peer evaluation.

Singapore can't be replicated in India; it is a state with a population smaller than that of Delhi alone. However, the concept of mandatory pre-adjudication mediation for low-value consumer disputes and the practice-based accreditation system for mediators are concepts that are applicable to all levels of cases.

C. United Kingdom: The Ombudsman Advantage

The consumer ADR system in the UK operates within a network of ombudsman services for specific sectors, such as the Financial Ombudsman Service, the Communications and Internet Services Adjudication Scheme, the Ombudsman Services for energy and communications, etc. Each of these agencies receives more than 300,000 complaints annually. The distinctive feature of these is that they attempt to mediate first, and if that does not work, they issue a binding determination. The customer doesn't pay a penny. The cost is passed on to the business as industry levies.

There are three important features. There is expertise in each sector: A Financial Ombudsman is familiar with banking products, a Telecom Ombudsman is familiar with billing disputes. This knowledge can enhance the quality of mediated results in complicated situations. Second, the "no dead end" guarantee: mediation is not a step that the consumer can get stuck in, because the ombudsman can still provide binding decisions if mediation does not work out. Third, mandatory annual reporting – all certified ADR entities are required to release information on the number of complaints received, the resolution rates, and timelines. This transparency promotes improvement and facilitates policy-making on the basis of real evidence.

D. European Union: A Regulatory Framework at Scale

The EU's ADR Directive (2013/11/EU) stands as the most comprehensive attempt in history to create a single consumer ADR system in several countries. It mandates that all consumers be given the right to access certified, quality ADR services in any dispute stemming from a sales or service contract in any EU member state. The ADR bodies are required to have minimum standards of expertise, independence, fairness, and a speed of ninety days to settle. The European Commission keeps and releases a list of approved bodies.

The EU also experimented with a centralised Online Dispute Resolution (ODR) system within Regulation 524/2013, which was an online platform for consumers in twenty-seven different countries to submit complaints against online traders. The outcomes were not very promising: only a fraction of complaints were resolved, and many were closed without any response from the business. It has since been taken down. It is a good lesson to learn: Technology is not a magic bullet. There was no website without the institutional involvement and without the business participation.

The EU's positive contribution is the concept of collective ADR through the Representative Actions Directive (2020/1828), which enables ADR providers to represent groups of consumers who have been impacted by the same unfair practice. This is something India has not added to its consumer mediation system so far.

E. United States: Innovation and Fragmentation

Consumer mediation is not regularised and uniform across the US, despite the presence of a very mature private mediation industry. The federal government has no law that provides a single consumer mediation law. The Alternative Dispute Resolution Act (1998) promotes the use of ADR as a viable tool in all civil actions, but does not require mediation of consumer cases. There are a variety of state laws. Better Business Bureau (BBB) is a non-governmental entity that is responsible for a large volume of consumer ADR, with more than 850,000 complaints received each year, but it also faces the challenge between impartiality and financial sustainability because it relies on fees paid by accredited businesses.

The worst aspect of the U.S. system, from the standpoint of the consumer, is that a large number of consumer contracts contain pre-dispute binding arbitration provisions. In AT&T Mobility LLC v. Concepcion (2011), the Supreme Court ruled that companies can forbid class actions by having an arbitration clause. A large number of consumer grievances that could be resolved through mediation are unnecessarily committed to a quasi-adjudicatory arbitration process, which is biased in favour of businesses. India has chosen to go the other route: The Consumer Protection Act, 2019, makes no provision to replace mediation with arbitration in consumer cases; this is the correct choice.

F. Australia: Coherent, Accessible, and Sector-Specific

Australia's model of consumer mediation can be argued to be the most coherent of the six models analysed. Unlike the US, there is no jurisdictional fragmentation of the Australian Consumer Law (ACL). First-level conciliation is conducted by state agencies responsible for consumer affairs, and those that are not conciliated reach low-cost civil and administrative tribunals. There are external dispute resolution (EDR) schemes in place for industry-specific complaints, such as the Australian Financial Complaints Authority (AFCA), which replaced three previous EDR bodies in 2018, and these are available to consumers at no cost. The business is bound to AFCA's decisions.

National Mediator Accreditation Standards (NMAS) have also been introduced in Australia, which prescribe a minimum number of training hours, competency assessment and ongoing professional development for all mediators. This multi-stakeholder governance of bodies with consumer and business members on the board creates legitimacy and, consequently, a policy that is developed according to the needs of both.

IV. What International Instruments Say

The development of consumer mediation in India is relevant to two international instruments. UNCITRAL Model Law on International Commercial Mediation 2018 offers a universally accepted set of principles on the definition of mediation, choice of mediator, confidentiality and the enforceability of mediation agreements. The Mediation Act, 2023 of India was modelled on this Mediation Model Law and significant provisions, such as the definition of "mediator", "mediation process", "confidentiality" and the establishment of the Mediation Council of India, were incorporated into the Indian Act. This international footing provides credibility and interoperability with international standards to the Act.

The most important development in international mediation law in recent years is the Singapore Convention on Mediation (2019), the United Nations Convention on International Settlement Agreements Resulting from Mediation. It establishes a border-crossing framework for enforcing mediated settlement agreements in the same way as the New York Convention for arbitral awards. India has signed the Convention. But it has an important qualification: the Convention does not apply to consumer disputes; it only applies to commercial disputes. So, as cross-border ecommerce continues to boom and Indians are increasingly purchasing from international sellers, there is no international mechanism in place to enforce a mediated settlement in their favour. The gap needs to be addressed at the international level through legislation.

The five key principles of consumer ADR are accessibility, expertise, independence, transparency and timeliness, as outlined in the OECD's Recommendation on Consumer Dispute Resolution and Redress (2007, amended 2016). The five principles serve as a handy checklist to assess India's existing consumer mediation framework, and in many respects, India is underperforming on most of these criteria.

V. Where India Stands

What India has done is something no other nation has done – it has enacted consumer mediation with seriousness. The Consumer Protection Act, 2019, Chapter V prescribes Consumer Mediation Cells at all levels of the Consumer Commission. Introducing the Mediation Act 2023, a holistic national mediation law, with the establishment of the Mediation Council, the laws for online mediation and an internationally harmonised definition of mediation. This is a pretty good feat on paper.

The actual state of affairs in the institutions is much more limited. The Mediation Council of India, established under the Mediation Act, has not yet been formed (the government has yet to appoint a Chairperson and Members). The CPA's old Chapter V, which is to be replaced by the new Mediation Act framework in Section 65 and the 10th Schedule, is unnotified. The CPA definition of mediation, which is merely "Mediation is what a mediator does" (Section 2(25)), sits uneasily with the more nuanced definition in the Mediation Act (Section 3(h)), which introduces definitional uncertainty at the base level.

The comparison against the OECD's 5 principles is sobering. India's mediation cells are physically linked to Commissions in district offices with no online access and weak reach in rural areas. Mediators are chosen from general panels, with no training that mandates consumer expertise. The cell becomes structurally integrated into the Commission itself on Independence, and the President of the Commission supervises the panel. As to transparency, there is no obligation to report mediation outcomes. With regard to the timeliness, the three-month statutory period in the Mediation Regulations, 2020, is reasonable on paper but not in practice. The problem of mediation in India is not one of legislation per se. It's an implementation one.

VI. Five Lessons India Can Adopt

Five transferable lessons can be identified from all six jurisdictions and international instruments for India.

First — Make mediation mandatory for low-value disputes.

Singapore's experience is that the single best way to encourage mediation is to take away the voluntariness of the first mediation. A Consumer Commission referring a dispute below a predetermined limit to mandatory pre-adjudication mediation would change the referral rate overnight. The parties have the right to reject a settlement without having the right to refuse an attempt to reach a settlement. This is in line with the spirit of Section 37(1) of the CPA, 2019, which provides that the Commission shall "direct" parties to agree to mediation where elements of settlement seem to be present. The term "shall" must be interpreted as the command it is.

Second — Introduce sector-specific ombudsmen for high-complaint industries.

Currently, India has two Ombudsmen, one for the RBI and one for the insurance sector, but neither of these is comprehensive enough. There are no counterparts for e-commerce, real estate and telecommunications, the three areas that account for the most complaints from consumers regarding data. A joint funding E-Commerce Disputes Ombudsman would deal with millions of complaints that now litter the Consumer Commissions. The United Kingdom and Australia offer good blueprints for structuring and designing funding (industry levies) and governance (mixed boards, with consumers and businesses) of such bodies to ensure their credibility and sound financial sustainability.

Third — Establish the Mediation Council and build a professional mediator community.

In October 2023, the Mediation Council of India was given legal powers, but it has failed to establish itself. This is the biggest implementation deficit. The Council, once established, should adopt a practice-based accreditation system (like SIMI in Singapore) which would involve supervised mediation experience, peer evaluation and continued professional development as an accreditation requirement, rather than only academic qualifications. Consumer mediators need to be trained in power dynamics between individual consumers and corporate entities, which is not covered by any Indian training model, as recommended by UNCITRAL Technical Notes on Mediation (2021).

Fourth — Establish infrastructure for online mediation and spend money collecting data.

Online mediation is now included within the provisions of Section 30 of the Mediation Act 2023, as well as the definition of online mediation in Section 3(h). This element has not been notified, however, and there is no digital infrastructure for online mediation for consumers. Building a portal without institutional involvement is like the EU's approach, and India should avoid such pitfalls — the technology must be supported by trained mediators, user-friendly interfaces, data protection measures under the Digital Personal Data Protection Act, 2023, and digital literacy programs. At the same time, a compulsory reporting system (as has been required in the UK for certified providers of ADR) should be established, and data on referral and settlement rates, average timelines, and costs per mediation should be used to facilitate evidence-based policy reform.

Fifth — Promote awareness and encourage involvement.

All successful consumer mediation regimes examined here have made substantial and ongoing investments in public education – the UK consumer rights websites, the state consumer affairs agencies in Australia, and the Singaporean CASE outreach programmes. There is no such facility in India. More importantly, incentives for the advocates, who are the first point of contact between consumers and the Consumer Commission, must be designed to incentivise mediation referral. As long as the advocates make much more money from extended adjudication than from a fast mediation, the culture of the profession will fight back against the change. In addition to public-facing awareness campaigns, Bar Council engagement, training programmes for advocates, and a new fee structure that incentivises early settlement instead of punishing it are needed.

VII. Conclusion

The six countries examined in this paper began with very different situations—legal traditions, economic environments, attitudes toward dispute resolution, etc. They all, however, have come to the same basic conclusions: mediation is effective for consumers when it is available, when mediators are trained to be effective, when its results are binding, when the process is transparent, and when those who benefit—the courts, the companies, the lawyers—have an interest in using it.

The Indian legislature has reached the right destination. The Mediation Act, 2023 and the Consumer Protection Act, 2019, form a statutory framework that many developing countries would wish to have in place. Unfortunately, the law is not being enforced.

There is no State that has successfully implemented consumer mediation through legislation and then waited. In each village, China established Mediation Committees. Singapore has made mediation mandatory and provides funding for mediation institutions. The UK backed sector-specific ombudsmen and made them accountable via compulsory reporting. Australia developed national standards for accreditation and multi-stakeholder governance. The common denominator is: institutional investment and political will to implement, not legislate.

India is at a pivotal moment. The Mediation Council of India can be established tomorrow, as the law already exists. The Tenth Schedule can be notified with adequate protection measures for consumers. Low-value consumer disputes could be subject to mandatory pre-adjudication mediation under a simple amendment to the Consumer Protection Act. No new legislation is needed for any of these. They need to be directed, motivated and implemented.

India's consumers — more than a billion of them — need a mediation system that works. The world has shown that it can be accomplished. Now the only big question is whether India will draw a lesson from it.

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