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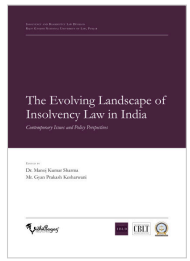
CHAPTER 15

Mediation as a Tool for Balancing Creditor-Debtor Interest in Insolvency Proceedings



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CHAPTER 15

Mediation as a Tool for Balancing Creditor-Debtor Interest in Insolvency Proceedings

AYUSH PANDEY[*] AND SHASWAT TIWARI[**]

The Mediation Act defines mediation as a process that encourages parties to reach a consensual agreement through various types of mediation, whether institutional or commercial, to arrive at a mutually agreeable solution. Unlike arbitration, mediation enables parties to work together collaboratively to resolve their disputes. Section 89 of the Indian Civil Procedure Code allows arbitrators or mediators to assist parties in finding common ground, even when binding decisions may not fully meet their needs. Section 10 of the IBC outlines the procedures for handling insolvency. Although mediation is referenced in several sections, its practical application has grown, as countries like the US and France have successfully employed it. For example, in the US, the Greyhound Lines Inc. bankruptcy case demonstrated mediation's effectiveness, as it resolved various claims, with most settled at an early stage. France experienced similar success.

The primary aim of this paper is to examine the utility and necessity of a process like mediation in bankruptcy proceedings, for achieving a cost-effective, time-saving solution. The paper is structured around a central research question: How will mediation help in the resolution of insolvency cases? It will consider whether mediation is essential for supporting struggling businesses, facilitating methods of debt repayment to creditors, or managing the competition for assets. The paper will also address the challenges of balancing the interests of all creditors, the impact of agreements with creditors, and the complex situations involved in finding solutions that benefit all stakeholders.

The paper will explore the application of mediation in India, drawing examples from other jurisdictions such as the European Union and the United States. It will also analyse the factors that contribute to the success of mediation in these countries and will explore how similar approaches can address prevailing disputes and the "Common Pool Problem" in India. The paper will propose ways to enhance the existing literature by advocating for new mediation methods and legislative reforms that are necessary in India.

Keywords: Mediation, Insolvency, Bankruptcy, Dispute Resolution, Stakeholder Interests

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1 RESEARCH QUESTIONS

1. How does mediation influence resolution of insolvency cases in terms of cost, time and stakeholder satisfaction compared to litigation?
2. What are major problems in solving Insolvency proceedings with the help of mediation techniques?
3. How can best practices and proceedings in EU and U.S.A. help in transforming mediation problems in India related to insolvency cases?

2 OBJECTIVES

1. To analyze effectiveness of mediation as an alternative dispute resolution in insolvency cases. Realizing the cost-effectiveness and other beneficial outcomes.
2. To analyze the challenges that hinder the widespread use of mediation proceedings in insolvency cases in India.
3. To recommend the legal reforms and strategic framework as adopted by international practices to transform mediation practices in India.

3 METHODOLOGY

The methodology used in this paper is grounded on the doctrinal approach. The objective of this paper is to examine the role of mediation process in the Insolvency & bankruptcy proceedings of India. To answer the central question of this paper, various primary sources such as the Insolvency and Bankruptcy Code of India, 2016; Bankruptcy Law Reforms Committee Report; The Mediation Act, 2023; Arbitration and Conciliation Act, 1996 etc. along with secondary sources such as Judgments, case comments, Government notifications & directives, journals, articles etc. have been analysed.

The research also includes the comparative analysis of foreign jurisdictions like US, the UK, European Union etc. This provides insights into how other nations apart from India are utilising mediation as an effective mechanism to deal with Insolvency and Bankruptcy cases.

4 Literature Review

4.1 Justice Arjan Kumar, Constitutionalism and Rule of Law in Theatre of Democracy (Norton Rose Fulbright 2022)

The author highlights the use of mediation in insolvency proceedings as to facilitate a relationship between creditor and debtor so as to reach an amicable solution. It highlights the transformative role of mediation in insolvency proceedings as a form of "democratic decision making". The mediation is seen as a cost-effective solution to the adversarial litigation, facilitating more amicable solutions in business world which may help to preserve relationships.

4.2 Nishith Desai Associates, Decoding Mediation Act 2023

It aims at decoding mediation act 2023 and its innovation which it has brought into the field of ADR and how to use it. It puts light on the use of online mediation and institutional mediation which is to be done in institutions. It highlights the use of institutional mediation in insolvency matters to solve it amicably as well as promotes online mediation in response to mediation problems involving business abroad.

4.3 IBBI Research Paper Report, "Mediation in Insolvency Matters" (ibbi.gov.in, 2023)

The report examines mediation as an increasing form of dispute resolution in ADR field in insolvency cases. It talks about the effects of mediation and its benefits in solving common pool problem in insolvency cases. It highlights the benefits of mediation like the cost effectiveness, the time saving and a proceeding that promotes the parties to solve their problems by appointing their mediators and by facilitating the process in their own way as well as maintaining confidentiality of proceedings.

The paper highlights different problem-solving techniques of mediation in insolvency cases whether related to common pool problem or related to the debt repayment issue through analyzing the books and research paper. The books highlight the statutory provisions as well as practical techniques while paper highlights the benefits of mediation proceedings thus helping in the study.

5 Introduction

In this era of industrialisation and globalisation, the world is now characterised by the evolution of industrial programmes, dealings, and banking operations across the globe. In this era of development, the backbone of any country is its industrial operations and the dealings

that take place around them. But with growing innovation and technology, problems also arose in relation to debtors and creditors, and insolvency proceedings related to a debtor. The Code that has been enacted to regulate the process and resolve problems of bankruptcy has contributed in many respects, as it has amended previous laws and created unified procedures for bankruptcy and insolvency proceedings related to companies, banks, and industries, and has also instituted a time limit for resolving insolvency proceedings of approximately 180 days, thereby consolidating the insolvency proceedings for creditors who may face difficulties in its absence.[1]

Though the Insolvency and Bankruptcy Code has solidified the process of bankruptcy as well as matters related to insolvency, this can be seen in various sections of the Code — whether in terms of creditors' rights to recover their dues from the debtor, or whether it is for filing a case before an adjudicating authority for initiating proceedings against the debtor, as in Section 7 of the IBC, which provides that an individual creditor or a group of them can file a complaint in the NCLT to initiate proceedings against the debtors or a group of them.[2] Though the Code has laws and statutes to enable proceedings and for regulating the business world, India's dispute resolution practices and time-saving resolution mechanisms do not yet align with practices around the world. When we examine what India is lacking, the answer lies in the absence of mediation — as provided under Section 89 of the CPC, which states that if a court sees that settlement is possible, it can refer the matter to an Alternative Dispute Resolution process like mediation. Industries, when disputes arise, lack these mechanisms, and this paper has examined how mediation can help in solving debt problems, including when they arise from limited assets, and how it can be less time-consuming and effective — thus leading to cost-effective, amicable solutions.

6 HISTORICAL BACKGROUND

Insolvency and bankruptcy laws transitioned from being excessively punitive in nature to providing a fair opportunity to all stakeholders. Since pre-medieval times, insolvency was considered a criminal wrong in societies such as Rome and Greece; if a debt remained unpaid for 30 days, the debtor would be taken captive by their creditor. If the debtor was unable to pay within a further 60 days, the creditor was entitled to put the debtor to death or sell them into slavery.[3] This approach instilled fear in the minds of people and they were

[1] INSOLVENCY & BANKRUPTCY BOARD OF INDIA & VIDHI CENTRE FOR LEGAL POLICY, UNDERSTANDING THE INSOLVENCY AND BANKRUPTCY CODE, 2016 (2019).

[2] Insolvency and Bankruptcy Code, 2016, § 7.

[3] S.B. Ayed, G. Matteucci & T. Van Nam, *Mediation and Insolvency, with a Focus on Developing Countries*, *in* COMPROMISO CON LOS OBJETIVOS DE DESARROLLO SOSTENIBLE (COMMITMENT TO THE SDGS—SUSTAINABLE DEVELOPMENT GOALS) 115, 115–53 (Rosa Pérez Martell ed., 2021) (Spain).

reluctant to open new businesses for fear of going insolvent. The collapse of the *Ammanati Bank of Pistoia* in 1302[4] was one of the earliest cross-border insolvency issues, which showed that domestic legislation of nations was inadequate in resolving insolvency cases where assets were distributed across multiple nations. This was one of the earliest indications of the need for comprehensive insolvency frameworks that were less punitive and promoted less formal proceedings to ensure the welfare of all stakeholders.[5]

A few centuries later, the United Kingdom enacted the Bankruptcy Act and brought other such reforms, which brought a major shift in the system towards commercial rehabilitation and culminated in the Insolvency Act, 1986.[6] This law currently governs personal and corporate insolvency in the UK, embedding both liquidation and rescue mechanisms, notably administration and company voluntary arrangements (CVAs).

The United States institutionalised corporate reorganisation through Chapter 11 of the U.S. Bankruptcy Code in 1978.[7] Chapter 11 emphasises debtor-in-possession, automatic stay, and a plan of reorganisation, thereby preserving both creditors' and debtors' rights. Landmark rulings such as *Northern Pipeline Construction Company v. Marathon Pipe Line Company*[8] and *Till v. SCS Credit Corp.*[9] have shaped the insolvency and bankruptcy framework by reinforcing judicial oversight and equitable treatment of all stakeholders in the US.[10]

In India, the term "insolvency" was first used when the British established 'insolvency courts' in the presidency towns (Calcutta, Madras, and Bombay) via legislation in 1828. The primary aim of establishing these insolvency courts was not necessarily welfare-driven, but rather a strategic attempt by the British to present a flourishing business environment by solely protecting the interests of insolvent debtors (borrowers). One of the significant drawbacks of this legislation was that it limited insolvency proceedings to the presidency towns (the insolvency framework beyond these towns was expanded by the Provincial Insolvency Act, 1907). The Presidency Towns Insolvency Act, 1909[11] was enacted as modern industries were rising and India was becoming more commercially active. This statute was quite significant because, unlike the earlier debtor-centric laws and courts, this Act marked a gradual shift by considering the interests of both lenders and borrowers.

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[4] Kurt H. Nadelmann, *Bankruptcy Treaties*, 93 U. PA. L. REV. & AM. L. REG. 58–97 (1944).

[5] R.V.N. Ramakanth, P. Sridhar, Yellapu Prasad & S. Sumitra, *Evolution of Indian Insolvency Regime – A Legal Perspective*, 20 NANOTECHNOLOGY PERCEPTIONS 3203–08 (2024), https://nano-ntp.com/index.php/nano/article/download/4480/3452/8609.

[6] 1986 c. 45.

[7] 11 U.S.C. §§ 1101–1174.

[8] 458 U.S. 50 (1982).

[9] 541 U.S. 465 (2004).

[10] John A.E. Pottow, *The Past, Present, and Future of Cross-Border Insolvency Law in the United States*, 87 AM. BANKR. L.J. 249, 252–53 (2013).

[11] Presidency-Towns Insolvency Act, 1909.

After independence, several significant developments were made with respect to Alternative Dispute Resolution mechanisms like mediation and to insolvency and bankruptcy laws. The Indian Constitution places the terms "insolvency" and "bankruptcy" under the Concurrent List of Schedule 7, meaning that both the Union and the States were empowered to enact legislation for insolvency and bankruptcy. Under the Industrial Disputes Act, the concept of mediation received legislative recognition in India for the first time. India introduced its first comprehensive company law — the Companies Act — in 1956.[12] While the Act did not specifically mention the terms "insolvency" or "bankruptcy", it contained certain provisions that allowed companies to focus on corporate revival rather than resolution or liquidation. The Act also provided an indirect route to deal with financial distress, though a formal insolvency framework was still missing at this stage.[13] It further allowed companies to reorganise and restructure their operations, enter into mergers and acquisitions, and restart as a going concern even in cases of financial default.[14]

ADR mechanisms were formally recognised under the Legal Services Authorities Act, 1987.[15] Mediation was not specifically provided for among the ADR mechanisms at the outset.[16] In 1996, the Indian Parliament passed the Arbitration and Conciliation Act, which set out the procedures for arbitration as well as conciliation of disputes based on legal relations, whether contractual or otherwise, and related proceedings. Nonetheless, mediation did not fall within the scope of this Act. The Act provided procedures for initiating conciliation, appointment of conciliators, seeking assistance of appropriate institutions to recommend or appoint conciliators, and statements detailing how the conciliator would help the parties arrive at a negotiated settlement.

The *Recovery of Debts and Bankruptcy Act, 1993*[17] was further supplemented by the introduction of the *Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI)* in 2002,[18] which brought major enhancements. The two Acts also established avenues to recover debts through two major tribunals: the Debt Recovery Tribunal (DRT) and the *Debt Recovery Appellate Tribunal* (DRAT). These tribunals dealt with cases under SARFAESI as well as the Recovery of Debts and Bankruptcy Act, thereby streamlining the process of debt recovery by financial institutions.

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[12] Companies Act, 1956.

[13] Kanika Ojha & Simranjeet Kaur Gill, *Legal Framework for Alternative Dispute Resolution in India*, 5 INT'L J. RSCH. PUB. & REV. 3452 (2024).

[14] Justice S.U. Khan, *Judicial Settlement Under Section 89 C.P.C.: A Neglected Aspect*, INDIAN J. TRAINING & RSCH. (2014).

[15] Legal Services Authorities Act, 1987.

[16] Manisha Arora & Pranav Ashutosh, *The Constitutionality of IBC Upheld: Understanding the Procedural Aspect and the After-Effects*, IBC LAWS (Feb. 22, 2021).

[17] Recovery of Debts and Bankruptcy Act, 1993.

[18] Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

Moreover, the Parliament enacted the CPC Amendment Act in 1999, which introduced Section 89 in the Civil Procedure Code (CPC)[19] and enabled courts to refer pending cases to ADR mechanisms such as mediation — a first in Indian law. Ever since this amendment, numerous courts in India have set up court-annexed civil mediation and conciliation centres. These centres have recorded high rates of acceptance of their mediations by opposing parties, as opposed to courts referring cases to independent mediators. The *Bankruptcy Law Reforms Committee (BLRC)* was formed in 2014 by the Ministry of Finance with the aim of developing an overall framework for bankruptcy reform in India, under the chairmanship of Dr. T.K. Viswanathan.[20] The recommendations of the Committee across two volumes formed the foundational basis for the enactment of the *Insolvency and Bankruptcy Code of India, 2016*. Not only did the IBC consolidate the various insolvency and bankruptcy laws of the nation into a single framework, but its primary objective was also the resolution of distressed companies while safeguarding the interests of all involved parties.[21]

Currently, the IBC lacks specific provisions on mediation. However, Section 12A of the IBC reflects the legislature's intention to neutralise the adversarial nature of the procedure by enabling dispute resolution and allowing withdrawal of an application from the Corporate Insolvency Resolution Process (CIRP) even after an application is admitted, so long as 90% of the Committee of Creditors (CoC) agrees.[22]

Besides that, in the landmark case of *Swiss Ribbons Pvt. Ltd. v. Union of India*,[23] in the absence of a constituted CoC, the Supreme Court held that a party may make an application directly to the National Company Law Tribunal (NCLT) for withdrawal. The NCLT may grant or reject such withdrawal applications in the exercise of its inherent powers. This illustrates that, despite the absence of express provisions on mediation in the IBC, courts have regularly tried to relieve the NCLT and NCLAT by promoting out-of-court settlement of disputes through amicable resolutions.

The Mediation Act[24] was enacted in 2023 with the primary objective of promoting and facilitating mediation, especially institutional mediation, to resolve disputes, commercial and otherwise. The Act permits voluntary and consensual mediation, and also encourages and gives legal validity to mediated settlement agreements. Since the Mediation Act neither specifically excludes nor includes the IBC within its purview, it is silent on the Code. There is

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[19] Code of Civil Procedure, 1908, § 89 (inserted by the Code of Civil Procedure (Amendment) Act, 1999).

[20] Avantika Tewari & Chetan R., *Mediating the Game of Insolvency: Unlocking Efficiency and Equity in India's Bankruptcy Landscape*, RMLNLU L. REV. BLOG (Apr. 11, 2025).

[21] Anonymous, *Resolving Corporate Conflicts Outside the Courtroom: A Study of ADR Mechanisms and the Companies Act in India* (SSRN Working Paper, Feb. 29, 2024).

[22] Arbitration and Conciliation Act, 1996.

[23] Swiss Ribbons Pvt. Ltd. v. Union of India, (2019) 4 SCC 17.

[24] The Mediation Act, 2023.

no mention of any limitations on mediation under *the Code, or on mediation in bankruptcy cases, in the 2023 Act*.[25] The Code does not appear to be covered by the 2023 Act, since it is special legislation and no particular adjustment has been made to allow mediation under the Code as per the 2023 Act.[26] The expert committee has determined that a self-contained code is necessary to accomplish the goal of the statutory deadline under the Code, and that the "one size fits all" approach under the 2023 Act is not appropriate for insolvency mediation.[27]

Thus, it can be said that India appears poised to blend formal insolvency adjudication with informal resolution techniques.[28] Mediation, though not yet codified under the IBC,[29] is progressively being acknowledged by tribunals as a legitimate and desirable tool — particularly in pre-pack insolvency processes and cross-border insolvency cases, where consensual resolutions are vital.[30]

7 MEDIATION IN INSOLVENCY: CONCEPT AND MECHANISM

Mediation can be defined as a process whereby the disputing parties collaborate to reach a consensus by appointing a neutral third party who facilitates them in reaching a consensual decision. In insolvency proceedings, it will certainly help stakeholders whether debtors or creditors to resolve the financial disputes prevailing between them. It differs from traditional litigation, which involves a procedural process before different courts and tribunals that can be both costly and time-consuming; mediation may therefore spare the parties in an industrial dispute from such processes.[31]

Mediation is a dynamic process in which parties approach an institution such as the Indian Institute of Mediation and Arbitration and appoint a mediator who facilitates them in reaching an amicable solution. In insolvency proceedings, parties may also exercise their will to appoint a mediator who has proficiency in commercial matters and insolvency law.

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[25] Insolvency and Bankruptcy Code, 2016.

[26] Mediation Act, 2023.

[27] Pitamber Yadav & Sanyam Gupta, *Streamlining Insolvency Through Mediation in India: Key Takeaways from the IBBI's 2024 Report*, MEDIATE (Dec. 6, 2024), https://mediate.com/streamlining-insolvency-through-mediation-in-india-key-takeaways-from-the-ibbis-2024-report/.

[28] MINISTRY OF FIN., REPORT OF THE BANKRUPTCY LAW REFORMS COMMITTEE, Vol. I & II (2015).

[29] Insolvency and Bankruptcy Code, 2016, § 12A.

[30] Press Information Bureau, *Year End Report 2023 Mediation Act, 2023*, PIB (Dec. 15, 2023), https://www.pib.gov.in/pressreleaseiframepage.aspx?PRID=1986723.

[31] EXPERT COMMITTEE, INSOLVENCY & BANKRUPTCY BOARD OF INDIA, FRAMEWORK FOR USE OF MEDIATION UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016 (Jan. 31, 2024), https://ibbi.gov.in/uploads/resources/1256aa8a9e2c89bd09d8186dae2e6019.pdf.

The scope of insolvency mediation is broad, as it may occur at the pre-insolvency stage and also in the context of cross-border transactions involving different jurisdictions.[32]

Various problems can be addressed through mediation, including the prominent "common pool" problem in insolvency cases. The common pool problem arises when a debtor has limited assets and there are multiple creditors, raising the question of how to satisfy each creditor's claim. Mediators can facilitate negotiations to address this problem so that the assets can be optimally valued and creditors can be satisfied despite limited assets, thereby preventing significant loss to both creditors and debtors.[33]

7.1 Global Mediation Framework in Different Areas Including Business Framework

7.1.1 European Union

The European Union promotes mediation as a flexible and time-efficient platform for resolving disputes. The EU's 2014 recommendations on business failure and insolvency, and the 2019 Directive, mandated the appointment of mediators so that negotiations on restructuring plans could be conducted. The EU's evolving framework highlights the need for mediator training and codes of conduct for professional mediation practice.[34]

7.1.2 United States

In the United States, mediation has been embedded in insolvency proceedings under Chapter 11 of the complex bankruptcy law. Bankruptcy courts in federal districts also have the power to order parties into mediation. U.S. mediation has demonstrated to the world how multi-creditor disputes can be resolved and how consensus for restructuring plans can be achieved.[35]

7.2 Challenges of Mediation in Indian Bankruptcy Laws

Mediation in Indian insolvency cases marks a significant breakthrough in bankruptcy and insolvency law, having contributed to the development of the *Insolvency and Bankruptcy Code, 2016*. Previously, Indian insolvency cases were resolved through traditional tribunal and

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[32] Adv. Aayush Gupta & Abhishek Kedia, *Mediation in Insolvency: A Way Forward*, IBC LAWS, https://ibclaw.in/mediation-in-insolvency-a-way-forward-by-adv-aayush-gupta/ (last visited Aug. 6, 2025).

[33] EXPERT COMMITTEE, INSOLVENCY & BANKR. BD. OF INDIA, FRAMEWORK FOR USE OF MEDIATION UNDER THE INSOLVENCY AND BANKRUPTCY CODE 6–7 (Jan. 31, 2024), https://ibbi.gov.in/uploads/resources/1256aa8a9e2c89bd09d8186dae2e6019.pdf.

[34] EU Framework: European Parliament, Directive (EU) 2019/1023, 2019 O.J. (L 172) 18; European Commission, Recommendation 2014/135/EU, 2014 O.J. (L 74) 65.

[35] US Framework: Alternative Dispute Resolution Act of 1998, 28 U.S.C. §§ 651–658; *In re* Purdue Pharma L.P., 633 B.R. 53 (Bankr. S.D.N.Y. 2021).

adjudicatory processes to address corporate distress; however, with an increasing number of cases, backlogs, and the need for collaborative solutions, there has been a move towards alternative dispute resolution.[36]

Though alternative mediation has started gaining ground, it also faces several challenges that have prevented it from achieving recognition on a wider scale.

7.2.1 Coordination Among Creditors

In insolvency proceedings, creditors often have conflicting strategies and interests. Though cooperation may assist in overall recovery, creditors may be reluctant to collaborate and may even "free ride" by benefiting from others' efforts for their personal interest, thereby hampering the mediation process.[37]

7.2.2 Complexity and Fragmentation of Creditor Claims

Coordination among creditors across different jurisdictions is difficult. This problem of diverse jurisdictions primarily challenges the mediator, who must build consensus among different creditors, which becomes particularly difficult when multiple jurisdictions are involved, creating significant complications.[38]

7.2.3 Problem of Maintaining Confidentiality

The tension of keeping mediation proceedings confidential is another challenge, as insolvency mediation proceedings may involve a great deal of financial and sensitive business data that is required to be disclosed under the *Insolvency and Bankruptcy Code, 2016*, thereby reducing trust among stakeholders.[39]

7.3 Pathways for Reform: Strengthening Mediation in Insolvency Resolution

Mediation offers a holistic, cost-effective, and expeditious solution to many disputes — whether related to matrimonial matters or to the relationship between debtor and creditor in insolvency cases. Integrating mediation with the IBC, 2016 will address the present need to de-congest court dockets and reduce procedural delays. Fostering a mediation culture among stakeholders will address the questions and problems arising from their disputes.

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[36] Shashyak Roy & Arima Kaushal, *Mediation Under the IBC Framework: A Pragmatic Shift or Premature Experimentation?*, INDIACORPLAW (Apr. 27, 2025).

[37] Avantika Tewari & Chetan R., *Mediating the Game of Insolvency: Unlocking Efficiency and Equity in India's Bankruptcy Landscape*, RMLNLU L. REV. BLOG (Apr. 11, 2025).

[38] Scott Atkins & Kai Adam Luck, *Mediation as a Bankruptcy and Insolvency Game Changer*, NORTON ROSE FULBRIGHT (Nov. 1, 2022), https://www.nortonrosefulbright.com/en-in/knowledge/publications/50ba6f9d/mediation-as-a-bankruptcy-and-insolvency-game-changer.

[39] Rajesh Chakrabarti & Poonam P. Som, *Mediation and the Insolvency Resolution Process in India: Challenges and Opportunities*, SSRN (Dec. 17, 2024), https://ssrn.com/abstract=5060666.

7.3.1 Establish a Mediation Framework within the Insolvency and Bankruptcy Code

A self-contained mediation framework should be enshrined within the IBC, 2016, operating independently of any external statute. The mediation framework should respect the timelines of the insolvency proceedings. A dedicated mediation cell would also be beneficial, on the model of the NCLT mediation cell.[40]

7.3.2 Promote Experienced and Uniform Mediators

Only experienced mediators with expertise in restructuring, business management, and insolvency matters should be empanelled. These mediators will play a crucial role in fostering trust among debtors, creditors, and companies in cases of dispute resolution. Ensuring rigorous training and qualification requirements will ensure that mediators possess both the knowledge and credibility required.[41]

7.3.3 Introduce the Practice of Voluntary Mediation

Mediation should evolve on a voluntary basis, supported by regulatory frameworks that allow for its adoption in the industry. Mediation processes should be regulated by institutions such as the Insolvency and Bankruptcy Board of India for the refinement of mediation processes related to insolvency.[42]

8 Conclusion

In the era of insolvency and business operations, massive financial transactions not only affect the business operations of a particular company but also have a wider impact on nations as a whole. Though the Insolvency and Bankruptcy Code of India provides various processes and laws for approaching the adjudicating authority, mediation, as provided under Section 89 of the CPC, is an evolving mechanism that promotes amicable solutions, whether in family matters or in business disputes. Through this paper, we have come to understand how other countries employ this mechanism for resolving matters related to business transactions, and we have also identified the various challenges that mediation may face in India, along with a set of innovative solutions.

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[40] Expert Committee, Insolvency and Bankruptcy Board of India, Report on Framework for Use of Mediation Under the Insolvency and Bankruptcy Code, 2016 (Jan. 31, 2024), https://ibbi.gov.in/uploads/resources/1256aa8a9e2c89bd09d8186dae2e6019.pdf.

[41] *Paper on ADR and Personal Laws: Evolving Practices and Challenges in the Indian Context*, at 15.

[42] *Phased and Voluntary Implementation with Regulatory Oversight*, 4 Resol. Prof'l, at 6 (Apr. 2024), https://www.iiipicai.in/wp-content/uploads/2024/05/the-resolution-professional-april-2024.pdf.