

Exploring the Role of Mediation and Alternative Dispute Resolution in Personal Insolvency: International Best Practices

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Introduction

When individuals do not have the money to pay back financial commitments as they fall due, that is called personal insolvency. When a person is unemployed, this means they have much more debt than they can manage which reflects a difficulty structurally meeting their commitments, not just temporary problems with funds. A few things may lead to financial distress such as taking out too much credit, economic slumps, improper managements and unexpected issues such as lawsuits, leading to natural disasters or global crises. Nowadays, both the number of personal bankruptcies and the expenses for legal help have much increased. Now that cases are more numerous and complicated, the already stretched court systems must deal with court hearings that often go on for a long time and cost a great deal. Though traditional legal options still allow people to start over through selling or paying their debts, they are being overwhelmed by recent personal financial difficulties. ¹There are frequent difficulties with adjudication, mainly due to the common pool problem, disruption for the business and high expenses of taking cases to court. Since courtrooms are getting busier, it's becoming clear we need faster and more effective ways to settle disputes. Using standard means of dealing with insolvency usually results in being unable to manage, viewed as unacceptable and high costs. In this situation, ADR creates a method that is friendlier, more flexible and easier to use. Regardless of the advantages, mediation and other ADR methods are not used very often in personal insolvency. Here, we look into how bringing mediation into Indian insolvency law by comparing successful practices from abroad and considering how it would be implemented within India.

The Conceptual Framework: Use of Alternative Dispute Resolution in Personal Insolvency

ADR is used for resolving disagreements outside of court, for example, with negotiation, mediation, conciliation or arbitration. Since mediation helps both parties in a personal insolvency dispute find a solution, it is very important. While commerce insolvency involves large firms, most personal insolvency cases involve individuals dealing with confusing legal and financial matters. It can help people understand one another better, reduce arguments and lead to options for restructuring debt that last a long time.²

What Makes ADR Effective in Solving Issues and the Things That Hold It Back While ADR helps solve financial issues, like personal insolvency, there are some inherent issues that limit it. Advantages of Using ADR for Financial Cases ADR typically saves time and money, as settlements come faster and the legal fees aren't as high as in traditional cases.

Insolvency is a situation where money and resources can be sharply limited, so it is very important. All private financial details and any matters related to either party's reputation are kept hidden in mediation sessions. Due to the possible consequences of revealing information about a company's finances, anonymity in insolvency cases is very important.

- With mediation, both sides in a debt issue are encouraged to discuss and cooperate, not to argue which can help preserve or improve relationships. For companies facing restructuring such efforts are crucial, as they could need to deal with creditors again down the road.

- Oftentimes, mediation is used to come up with unique and flexible answers that a court might not offer. Because they can design agreements for themselves, parties often enjoy better and longer-lasting results.³

- **Reduced Court Burden:** Using ADR reduces caseload on formal courts, improving efficiency and allowing courts to focus on difficult or contentious situations. ⁴

- Parties take an active role in settling problems, leading to increased satisfaction and adherence to agreed-upon terms.

International Best Practices in Personal Insolvency Mediation and ADR

The United States: Pioneering Court-Annexed Mediation in Bankruptcy

In bankruptcy cases, the US is leading the way by making Alternative Dispute Resolution (ADR) an important part of the legal system. Since 1986, the Bankruptcy Court in the Southern District of California has regularly used mediation to deal with insolvency cases. Thanks to this initial adoption, both acceptance and formal guidelines grew. It was important for the Alternative Dispute Resolution Act of 1998 to include a requirement that all federal district courts grant ADR in all

legal cases, including bankruptcy proceedings. Such legislation points to courts acknowledging that ADR matters and is encouraging a shift from pure disputing to mutual solving of issues within the courtroom.⁵ By moving from voluntary mediation to requiring ADR through federal law and then by giving many bankruptcy courts the authority to order mediation, the institution has undergone an obvious transformation. Offering an alternative isn't enough—we need to make ADR a routinely expected part of how court cases are handled. This shows that, in particular bankruptcy cases, worked-out settlements approved by an independent party are better than litigation, even if the outcome must be signed off by a court. Having judges take such an active role has played a major role in the country's success. At present, 40 out of 90 US bankruptcy courts have rules or orders that allow a bankruptcy judge to request mediation. Delaware Bankruptcy Court has required mediation in adversarial proceedings since 2004.

The American Bankruptcy Institute (ABI) designed “Local Bankruptcy Rules for Mediation” as a reference guide for courts in adjusting their mediation rules. Participative entities, for example JAMS (Judicial Arbitration and Mediation Services), help support this area. Because of their experience, the mediators are skilled at handling restructuring, workout agreements and Chapter 11 cases, helping both debtors and creditors organize clear communication channels to resolve tough issues. JAMS neutrals help participants in Chapter 7 cases handle issues with discharge exceptions, objections to these exceptions and other personal case matters.

Elaborated Case Study: The U.S. Bankruptcy Dispute Resolution Program (BDRP)

Context: One outstanding court-annexed ADR project is the Bankruptcy Dispute Resolution Program (BDRP) which was developed by the United States Bankruptcy Court for the Northern District of California. Here, we handle problems arising in bankruptcy in a faster, less expensive and less stressful way than standard court litigation.

Importance of Mediation/ADR.

Some ways the BDRP supports dispute resolution are mediation, negotiation, early neutral evaluation and settlement facilitation. Talking things through is always optional and people select the method that works for them. A Resolution Advocate (RA) helps groups of people find solutions to their problems. A Resolution Advisor enhances discussions, supports better communication, explores each side's interests, researches the strengths and weaknesses of legal arguments, locates points of agreement and supports finding solutions to the issue. The court could send an issue to the BDRP with both sides agreeing or the parties can decide to refer to the BDRP whenever they choose. Everything is kept private and both involved must pay a little to take part; however, the fee can be forgiven if someone finds it too expensive. Information from the case is not disclosed here, but the BDRP's success is seen in its 2004 start in Delaware and adoption across various U.S. Bankruptcy Courts. In the program, emphasis is placed on parties choosing their solutions, secrecy, keeping costs low and settling disputes themselves, unless complicated, so fewer cases need to go before a judge. The use of such programs demonstrates a wish to engage in collaboration to settle bankruptcy conflicts which benefits the use of court time and helps get more positive results for everyone concerned.

The United Kingdom: Judicial Encouragement and Practitioner-Led Mediation

Mediation is now the main method of Alternative Dispute Resolution in the United Kingdom. Experts consider it highly effective, as results show settlement success rates are between 75 and 80% and some mediators achieve results over 90%. It shows that mediation is a helpful solution for resolving overlapping challenges. Normally, UK courts invite mediation, so participants should try it before going to trial and those who don't may be penalized for costs. This expectation is made stronger since lawyers are required to tell their clients about mediation options. Combining advantages from the courtroom and a sense of professional duty has helped build a mediation culture in the UK, when in other places, voluntary choices were not enough. If you have limited money, Debt Relief Orders are a straightforward way out of debt that is guided by advisors.⁶ Disputes in personal insolvency, as well as many other insolvency situations, are often solved using mediation. For example, if bankruptcy trustees claim part of a jointly owned property and later find out there is a deed of trust on it that reduces the property's value, this strategy becomes especially useful. Mediation works well here to handle the usual doubt and develop a more sensible and business-like response at negotiation. It helps parties work through and resolve issues quickly, simply and easily at any time.⁷

Successful Debt Negotiation in UK Personal Insolvency (James Rosa Associates)

Context:

James Rosa Associates, a UK-based debt advising service, has a proven track record of effectively assisting individuals with huge personal and commercial obligations, which are frequently the result of personal guarantees, overdrawn director's loan accounts, or tax problems. These cases usually include large financial stakes, complex financial conditions, and significant emotional suffering, with official bankruptcy often appearing to be the only option.

Role of Negotiation/Mediation:

The firm will discuss matters with creditors for a long time as a mediator. Even though these are usually not labeled "formal mediation," the process accurately demonstrates ADR principles by guiding both parties to an accepted settlement away from regular court hearings. This work means thoroughly examining the finances, carrying out legal checks and showing why the results of litigation would help the client. When the UK liquidator wrote off 99% of the director's guarantee in

Case Example 1, he made a claim against the director for £1.8 million. A review by James Rosa Associates showed that there was little evidence of debt offered by the bank. Thanks to the inadequacies in the law and showing litigation would not help the bank, the solicitors reached a settlement of £20,000, meaning 99% of the representative claim was written off. It shows that proper negotiation based on legal knowledge is very useful.

Case Example 2: Company Prevents Financial Ruin (72% write-off): A company was in danger due to a debt of £942,000. Thanks to the settlement agreed by James Rosa Associates, the company did not fall and the director avoided personal bankruptcy, worth a total of £264,000. This shows that using mediation in negotiations can allow a business to keep going and steer clear of problems caused by insolvency.

Case Example 3: Secured Personal Guarantee (40% write-off): One of our clients provided a secured personal guarantee to their claim valued at £368,522. The business got the charge taken off the client's property and saved the client £148,000.

Outcome:

Consistently, expert-led negotiation techniques help write down debts, prevent formal bankruptcy, save family homes from liquidation and frequently give creditors a better payoff than bankruptcy would. They explain that collaborative solutions and custom approaches to problems often work better than traditional court decisions. The effectiveness of these mediator-led negotiations, when they are not formally called mediation, proves the strong effect of ADR principles on achieving real and productive results in personal insolvency.

Canada: formalized mediation for certain personal insolvency disputes.

The country uses a planned system to add mediation to bankruptcy cases, concentrating on helping two main types of conflicts in personal insolvency situations. There are disputes about how much additional income a bankrupt individual gives over to their creditors and about the details of their discharge from bankruptcy. The process for mediation is set by the Bankruptcy and Insolvency General Rules. The Superintendent of Bankruptcy is responsible for naming mediators, who might be employees from the Division Offices or anyone else matching the experience and training of a mediator. By doing this, there is no risk of personal bias or lack of professionalism during the process.⁸

Case Study: Case study of mediation used in fights over Canadian surplus income and discharge. Before anything else, the Canadian personal bankruptcy process requires the trustee to figure out how much surplus income a bankrupt owes to their creditors. Later in the process, the trustee offers advice on what terms should apply for the bankrupt's discharge. If the bankrupt or the creditors challenge these decisions, it can slow things and cause extra lawsuits which should be handled correctly. Mediation can be used when someone is unsure about surplus income or discharge terms; this right belongs to any party who wishes to use it: the bankrupt, trustee or creditor. Upon getting a request for mediation, the official receiver hand the case over to a designated mediator, who must arrange the mediation for within 45 days. A mediator only assists in communication, without giving a judgment. The intention is for its use to adapt, meaning people can meet in person or join from afar via virtual methods. Part of the process is keeping what takes place in mediation private, except if the law requires it to be revealed. Because the environment is safe, we can honestly talk to each other.

Outcome: If a mutual agreement is reached at mediation, a written settlement called a mediation settlement agreement is created for all parties to sign. The terms of the arrangement apply to the parties legally and as long as nothing changes because of the court, payments ordered by the trustee are made as agreed. If an agreement cannot be made, the mediator sends a notice saying the issues were unresolved and the case will go to court for a judge to decide. The step-by-step, time-based mediation method designed for repeating bankruptcy issues helps move the process faster, cuts down the work for courts and allows parties to decide on reasonable terms for rebuilding finances. It reveals why ADR is effective for personal insolvency because it offers a focused, friendly way to solve frequent issues of dispute.

European Union: Directives Promoting Cross-Border Mediation in Civil and Commercial Cases

The European Union strongly encourages mediation and similar methods as a way to settle disagreements while keeping costs, time and strain down from taking legal actions in court. By being proactive, this approach wants to hand more power to citizens to guard their rights in legal matters. At its heart, EU mediation is based on the directive known as 2008/52/EC and it only covers disputes that surpass different EU borders. Mediation's main purpose is to make mediation more popular in Member States and to ensure that agreements reached through mediation can be enforced across the EU. The Directive mandates Member States to guide mediator skills and furnish top-quality mediation services. Sometimes,

a judge will invite the parties to consider mediation, but will not force them to participate. • Making sure mediation agreements are enforceable by having the court give them its approval or by adding a public notary certification. • Mediators cannot be compelled to talk about their discussions with anyone and everything said in mediation meetings must be confidential. • Making sure that Mediation Edition's guidance does not waive the right to approach a court of law.

The Directive makes it possible for Member States to choose measures to encourage mediation or impose it by law, so long as everyone still has a way to reach the courts. The cases of Lehman Brothers and MF Global Holdings prove that mediation is able to bridge legal boundaries and protect value for a growing world economy. Both using mediation in the Lehman Brothers and MF Global Holdings cases demonstrate that mediation is helpful in issues that involve different countries. This application works well for multi-jurisdictional insolvency as it allows for the use of neutral methods to align different laws, manage coordination and gain mutual agreement among many parties. Preservation of value results immediately from this skill which could be lost if international litigation was pursued. Since the Singapore Convention on Mediation took effect in 2020, individuals can apply for earlier and more convenient recognition and enforcement of agreements created through mediation in different countries. It is a major step toward having similar ways of following up on mediated agreements across the world.

Australia

Australia has Debt Agreements (under Part IX of the Bankruptcy Act 1966) and Personal Insolvency Agreements (under Part X) as options along with bankruptcy.⁹ PIAs are legally binding between people owing money and their creditors, with the help of a trustee, to sort out their debts outside of bankruptcy.¹⁰ The department actively promotes ADR, assists government agencies with advice and makes it mandatory for agencies to examine mediation and other ADR options before filing legal cases. It becomes clear that alternative forms of settlement are in demand. To maintain ethical practice, Australia has created a strict program for approving and controlling mediators. While it's clear that ADR brings benefits everywhere, the best approaches are not always the same and instead are often customized. That shows a customized strategy based on the setting is more important than broad pressure for ADR in personal insolvency. By using many styles and various levels of pressure, the law allows for different solutions in different places.

How Mediation and ADR Are Being Used in India in Personal Insolvency.

It reviews the rules for personal insolvency now in place in India under the Insolvency and Bankruptcy Code (IBC) 2016, highlighting the work of the Insolvency and Bankruptcy Board of India (IBBI) and identifying the potential for bringing in mediation and ADR. The Insolvency and Bankruptcy Code (IBC) 2016: Rules Concerned with Sole Traders and Partnerships When the Bankruptcy and Bankruptcy Code (IBC) was launched in 2016, it became a vital step forward in Indian law, seeking to combine and reform the rules for reorganizing and settling debt for corporations, partnership firms and individuals. The central aim of the Code is to satisfy all stakeholders, boost credit availability and boost entrepreneurship by using a constant and set process for handling failed financial businesses. Individual and partnership firm insolvency and bankruptcy are discussed in Part III of the IBC. Here, the methods discussed are called a "fresh start" (for those in debt with few assets), insolvency resolution (the creation and approval of a payment plan) and, in some cases, bankruptcy. These activities start with filling an application with the Adjudicating Authority (the Debt Recovery Tribunal for individuals and partnership firms), agreeing on a Resolution Professional to investigate the application and move the process along, adding periods when creditors cannot take legal action and finalizing repayment plans. Even though the IBC stresses quick resolution and allows 180 to 330 days for CIRP processes, there remains a big worry about delays. The reason for these delays may be that many cases are being heard, tribunals are overburdened, and creditors need time to begin proceedings after a default.¹¹

A major problem with the IBC's rules on personal insolvency is that there are only limited mediation or ADR options in Part III. As a result, the Code's official use and enforceability in mediated personal insolvency cases is not always clear. Because nothing in the specific insolvency laws makes clear how mediation is to be used, it is not always a usual part of the process.¹² Because there is no consistent support from the law, mediation in personal insolvency is still done sporadically and so can't improve the situation much.

Insolvency and Bankruptcy Board of India (IBBI) Initiatives and Proposals

At the same time, the government in India is changing the law to encourage using ADR. This Act takes steps forward by covering institutional mediation, the effect of mediated settlement agreements, mediation online and how to handle disputes outside one's country. Its purpose is also to make insolvency mediation a key part of the IBC, since it is seen as beneficial. The forms of recommendations, principles and regulations set out by the IBBI. Because the issue of delays and litigation is constant in the insolvency space, the Insolvency and Bankruptcy Board of India (IBBI) is moving forward

with using Alternative Dispute Resolution (ADR) in order to improve its processes. The Expert Committee, put together by the IBBI and headed by Shri T.K. Viswanathan, recommends adding a voluntary mediation system into the Insolvency and Bankruptcy Code (IBC).¹³

The project majorly focuses on reducing the steps in insolvency, increasing the return on distressed assets, heavily lowering litigation expenses and hastening the process toward resolving matters. The IBBI wants an independent mediation channel for the IBC, because insolvency cases have certain unique needs and are time sensitive compared to others. Based on careful analysis, the Expert Committee decided that Mediation Act 2023 is insufficient for the IBC because it is too general and does not match the fixed structure and pressing timelines of the IBC. This shows the IBBI recognizes that resolving insolvency cases swiftly, with many parties involved and quick timelines, requires specially designed ADR processes. A general mediation statute would undermine the IBC's main objective to increase efficiency. The suggestion for separate laws and a unique system highlight that the author gets how this area of law can be integrated through mediation.

The key suggestions from the IBBI Expert Committee and related discussion papers are:

- To supervise and manage insolvency mediations under the IBC, the proposal calls for the establishment of a specialized mediation cell, perhaps connected to the National Company Law Tribunal (NCLT).
- The committee recommends a framework for voluntary mediation in cases of insolvency. When a dispute arises, the parties should decide that mediation is the best course of action.
- To avoid delays that could negatively impact the corporate debtor's finances, mediation must be finished within the CIRP's statutory timeframe of 180–330 days.
- For compliance and stakeholder confidence, Mediated Settlement Agreements (MSAs) must be legally recognized and enforced.
- To foster confidence and trust in the process, qualified mediators with insolvency experience are essential.
- Phased Implementation: To address challenges and improve procedures over time, mediation should be applied gradually, for example, in a "regulatory sandbox."
- Specific disputes, such as inter-creditor issues, claims collation, and conflicts under Section 60(5) of the IBC, should be addressed by the framework. Later research can be done on pre-institution mediation for cases brought by financial creditors.¹⁴

Before starting Section 9 proceedings under the IBC, the IBBI published a discussion paper in November 2024 suggesting that operational creditors (OCs) participate in voluntary pre-institution mediation. In order to expedite adjudication, this plan aims to relieve Adjudicating Authorities (AAs) of cases involving small money claims.

With effect from May 2025, recent IBBI amendments to the Insolvency Resolution Process for Personal Guarantors to Corporate Debtors laws emphasize the need for debtors to provide repayment plans on time and provide creditors with a structured remedy in the event that noncompliance occurs. Although these changes aim to streamline procedures and cut down on delays, they strengthen the enforcement of the current framework rather than specifically establishing mediation.

Challenges to Widespread Adoption of Mediation in Indian Personal Insolvency

Even with the clear advantages and the proactive approach of the IBBI, several significant obstacles keep mediation from being extensively applied in Indian personal insolvency cases out of reach.

India's admitted "lack of a mediation culture," in which conventional litigation is still the firmly ingrained norm, is a major obstacle. This implies that institutional cultural change may not be achieved with just voluntary mediation offered as a choice. The problem goes beyond a legislative void to include a strong institutional and behavioral resistance to ADR. Unless stronger structural incentives—such as time restrictions, cost penalties for rejection, or pre-admission screening—that mean meaningful choice for mediation is not possible. This implies that effective integration calls for active judicial support, robust capacity building for mediators, and broad public awareness campaigns to change the default perspective from combative litigation to cooperative problem solving.

Ensuring the availability of qualified mediators with specific knowledge in complicated financial and insolvency problems is another important issue. One of the blamed factors for lower settlement rates is the inadequate mediation training. Mediation calls for special skills not all attorneys have, and depending on court officials with other duties might not allow enough time or focused attention.

Furthermore raising questions is the enforceability of mediated settlement agreements (MSAs). Often in rem, insolvency procedures in India affect all parties and usually call for official enforceable orders to guarantee fair treatment of many stakeholders including employees, creditors, and suppliers. Unless codified, mediation's non-binding character can lead to uncertainty and limit its attractiveness in major, multi-stakeholder insolvency proceedings.

Moreover, timing mismatches cause a rather practical challenge. The general timetables of the Mediation Act of 2023 (e.g., 120–180 days) run counter to the IBC's tight, accelerated settlement times (180–330 days). Maintaining mediation

could compromise the effectiveness of insolvency processes, so compromising the main objective of timely resolution of the IBC. This disparity calls for a customized structure for insolvency mediation fit with the IBC's time urgency.

The lack of an explicit reference to mediation inside the IBC leaves practitioners and judges in procedural uncertainty and ambiguity. This legal gap causes court referrals to ADR to be often inconsistent and litigants may lack faith in a method that is not obviously incorporated in basic insolvency law. Low referral rates and judges' general rejection to send cases to ADR follow from this.

At last, management and institutional capability are quite important. Appropriate funding, infrastructure (including specialized mediation centers), and trained mediation management are clearly needed. If sufficient resources and committed people are lacking, mediation projects will be challenging to start and sustain. Delays by financial creditors in starting activity reduce value even before official IBC procedures start, hence stressing the need of efficient out-of-court workout systems.

Opportunities for Enhanced Efficiency and Stakeholder Value in India

Notwithstanding the challenges, including mediation and ADR into India's personal insolvency law presents great chance to increase efficiency and maximize stakeholder value.

- Unlike usual litigation techniques, mediation lowers delays and costs in insolvency procedures. Faster resolutions help guarantee creditors get more timely returns and help prevent stressed assets from worsening more.
- Mediation's private and secret character preserves the debtor's reputation, so preventing the public stigma connected with official insolvency. Moreover, mediation helps to preserve important business ties—which are vital for possible rehabilitation and future economic involvement—by motivating cooperation and honest communication.
- The adaptability of mediation helps to provide innovative and customized solutions not possible from conventional court rulings. In personal insolvency, where particular circumstances and different creditor interests call for customized solutions resulting in more acceptable and long-lasting results, this flexibility is especially helpful.
- Mediation finds application at several phases of the insolvency process. This covers legal actions to settle inter-creditor conflicts, claims collation, and third-party conflicts as well as pre-insolvency problems in which debt restructuring or repayment plans can be set informally. Early participation and continuous conflict resolution made possible by this flexibility help throughout the insolvency process.
- Learning from international best practices will help India immensely, particularly from countries like the US and UK with established mediation customs and court-backed ADR programs. By means of efficient models of judicial encouragement, professional training, and institutional incentives, India's attempts to establish a strong and mediation-friendly environment can be much enhanced.
- blueprint for developing economies: India's innovative approach to include mediation into its insolvency system, especially the IBBI's recommended bespoke framework, could be a helpful model for other rising nations having comparable problems. This experience can provide useful insights on using ADR in a range of legal and financial environments as well as show how efficiency and effectiveness might be raised in insolvency resolution without sacrificing core goals, as well as provide practical insights on applying ADR in a variety of legal and economic contexts.

Conclusion

By means of strategic integration of mediation and ADR, the future trajectory of personal insolvency resolution in India is expected to be rather changed. The IBBI's proactive projects and recommendations for a customized mediation system inside the IBC show a definite will to modernize the insolvency landscape. Realizing this promise, though, calls for coordinated efforts in many spheres.

Legislative improvements are first priority in giving mediation in IBC Part III clear statutory support, so guaranteeing legal certainty and enforceability of mediated settlements. In individual insolvency cases, this would eliminate the present ambiguities and provide a clear legal basis for ADR. Concurrent with strong capacity building and professional development initiatives for mediators, emphasizing specialized insolvency knowledge, is crucial to guarantee the availability of qualified neutrals who can successfully negotiate challenging financial conflicts.

More importantly, encouraging a real culture of mediation in India calls for structural incentives, court support, and extensive public awareness campaigns to break ingrained litigation practices and inspire confidence in ADR than only legal provisions. This cultural change can be accelerated by learning from foreign models where courts aggressively support mediation and punish irrational rejection. Moreover, using technology under Online Dispute Resolution (ODR) can improve efficiency and accessibility especially for a large and varied nation like India.

India can greatly improve the efficiency and effectiveness of its personal insolvency resolving system by methodically following these suggestions. This will not only relieve the load on the court system but also give those in financial difficulty more compassionate, reasonably priced, and rehabilitative routes to a fresh start, so helping to contribute to more general economic stability and a stronger financial ecosystem. Mediating and ADR together is not only a procedural change but also a basic step toward a more stakeholder-centric and value-maximizing method of personal insolvency in India.