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**AN ANALYSIS OF THE COMMERCIAL MEDIATION FRAMEWORK IN ZAMBIA:
LESSONS FROM INDIA FOR ENHANCING LEGISLATIVE REGULATION**

BY:

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**An obligatory essay submitted to the University of Lusaka in partial fulfilment of
the requirements for the award of the degree of Bachelor of Laws (LLB).**

2025

DECLARATION

I declare that this dissertation entitled, **AN ANALYSIS OF THE COMMERCIAL MEDIATION FRAMEWORK IN ZAMBIA: LESSONS FROM INDIA FOR ENHANCING LEGISLATIVE REGULATION** which is hereby submitted in partial fulfilment of the requirement for the award of a Bachelor's Degree at the University of Lusaka is my own original work and it has not been previously submitted for the award of a degree at this university or any other tertiary institution. I understand what plagiarism entails and I'm aware of the University's policy in this regard. Thus, where other people's work is cited, I have duly acknowledged. The errors or omissions in this work are solely mine.

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SUPERVISORS RECOMMENDATION

I, **THERESA LUMBAMA-KAPUTO** recommend that this dissertation prepared under my supervision by **CHILELEKO ADAM MALIK**, entitled **AN ANALYSIS OF THE COMMERCIAL MEDIATION FRAMEWORK IN ZAMBIA: LESSONS FROM INDIA FOR ENHANCING LEGISLATIVE REGULATION**, be accepted for examination. I have checked it carefully and I'm satisfied that it fulfils the requirement pertaining to the format laid down in the regulations governing directed research.



Mrs. THERESA LUMBAMA-KAPUTO

ACKNOWLEDGEMENT

First and foremost, I thank God Almighty for His unending grace, mercy, and favor throughout my life and academic journey. His presence has been my constant source of strength, guidance, and hope, even in the most difficult moments. Without His divine providence, none of this would have been possible.

Thereafter, my deepest gratitude goes to my mother, Idah Chuuka, who has been more than I could ever ask for. She has single-handedly raised me and supported me unwaveringly through every stage of my life. Her sacrifices, resilience, and love have shaped me into the person I am today. She has not only guided me academically and professionally but has also been my confidante, my source of comfort, and my best friend. Every success I have achieved is a reflection of her strength and devotion.

I also wish to extend heartfelt appreciation to my aunt, Brenda Chuuka, whose consistent financial and moral support has been instrumental to my success. Her generosity and encouragement have kept me going, and I am deeply grateful for the role she has played in my university journey. Truly, without her, I do not believe I would have made it this far, this soon.

I would also like to express my deepest appreciation to my supervisor, Mrs. Theresa Lumbama-Kaputo, who has been far more than an academic supervisor. From my very first year of law school, she has taken me under her guidance and supported my growth both personally and professionally. Her mentorship has shaped not only my academic development but also my outlook on integrity, discipline, and excellence. Throughout this research, she has been exceptionally patient, understanding, and encouraging, guiding me with care and wisdom at every stage. Her dedication, personal involvement, and belief in my potential have made an immeasurable difference in my law school journey. Without her guidance and genuine support, completing this dissertation, and indeed much of my legal education, would have been far more difficult. For this, I am profoundly grateful.

To my little brother, Chipego Victor Mulenga, I owe gratitude for being a constant source of inspiration. Though younger, he continues to teach me valuable lessons

about patience, humility, and responsibility lessons that remind me daily of the kind of man I aspire to be.

To my cousin, Lubomba Kabula, thank you for the invaluable guidance and mentorship you provided throughout my university years. Being a semester ahead, you always took the time to prepare me for upcoming semesters and examinations, and that guidance has been of immense help.

I would also like to acknowledge Samuel Mulilo, a friend turned older brother, whom I met at university. He has been a constant pillar of support, offering wisdom, counsel, and friendship that I will always cherish. Likewise, my oldest friend, John Tembo, deserves special recognition for being a steady presence in my life, someone I could always rely on during challenging times. Our conversations have often lifted my spirit and reminded me to keep going. Similarly, I am grateful to Tracy Msuku, a dear friend who has been there for me in times of difficulty, always offering words of comfort, laughter, and encouragement.

To someone dear to me, Racheal Kunda, I am thankful for the light, hope, and encouragement she has brought into my life along the way. Her presence has been a quiet but meaningful source of strength and motivation through much of my journey.

Special thanks also go to Wongani Elizabeth Zani-Zulu and Suwilanji Baxter Simukanzye for their kindness, friendship, partnership, and encouragement throughout my academic journey. I am also thankful to Aunt Mutinta Chuuka, Uncle Nipa Mukonka Chuuka, and Cousin Coster Kabula for their continued support and belief in me.

Finally, to everyone else who has played a role, big or small, in shaping my personal, academic, and professional journey, there are many of you, though few in name mentioned here, I extend my sincerest gratitude. Your words, acts of kindness, and belief in me have left lasting imprints on my life.

DEDICATION

This work is dedicated to my mother, Idah Chuuka, whose unwavering love, strength, and sacrifices have been the foundation of everything I have achieved. You have carried the weight of complete parenthood with grace and perseverance, guiding me with wisdom, faith, and endless support through every step of my journey. Your belief in me has been my greatest motivation, your resilience my constant inspiration, and your love my most enduring blessing. Every page of this work is a reflection of your strength, and I dedicate it to you with all my heart.

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ABSTRACT

This study critically examines the current state of commercial mediation in Zambia, identifying the legal and institutional challenges that have hindered its development and effectiveness as a dispute resolution mechanism. Although mediation has been recognised within Zambia's judicial reforms and procedural rules, its practice remains largely limited to court-annexed processes, leaving privately initiated commercial mediation without a coherent legislative foundation. The absence of a comprehensive legal framework has led to uncertainties surrounding the enforceability of mediated settlements, accreditation of mediators, and cross-border recognition of agreements.

Through a comparative legal analysis, this research draws lessons from India's Mediation Act, 2023, which provides a unified, enforceable, and institutionally supported system for commercial mediation. The study highlights how India's approach, particularly its emphasis on enforceability, accreditation standards, confidentiality, and pre-litigation mediation, can inform Zambia's legislative reform efforts. Employing a qualitative methodology, the study analyses statutes, case law, policy documents, and academic literature to identify key structural and procedural gaps in Zambia's current mediation landscape.

The findings reveal that Zambia requires a standalone Mediation Act that consolidates existing fragmented provisions, establishes a regulatory authority, and aligns national practice with international standards such as the UNCITRAL Model Law and the Singapore Convention on Mediation. The study concludes that enacting a comprehensive legal framework would enhance business confidence, reduce court congestion, and promote a culture of amicable dispute resolution, ultimately positioning commercial mediation as a viable, efficient, and enforceable alternative to litigation in Zambia.

CHAPTER ONE

INTRODUCTION TO STUDY

1.0 INTRODUCTION

The Alternative Dispute Resolution (ADR) process of mediation has received widespread recognition as a successful way to settle commercial disputes in recent years. Through mediation, parties can settle their differences in a cordial and non-adversarial setting without the drawn-out and expensive process of formal litigation. Additionally, mediation is a private, voluntary, and adaptable procedure that combines party sovereignty to a degree that businesses value in order to preserve confidentiality and save time and money in an attempt to avoid expensive and public litigation.

Given that commercial entities engage in local, cross-border or international trade, an increasing number of jurisdictions have taken steps to formalise mediation as the preferred avenue for the resolution of commercial disputes. With mediation becoming ever more important, there has been a growing need for efficient and business sensitive mechanisms of dispute resolution and several jurisdictions around the world have recognised this need and enacted legislation in recent years supporting mediation, giving rise to the necessary legal legitimacy for the enforceability of mediated settlement agreements. In fact, these developments in India are part of a wider trend in many countries to solidify the legal framework, institutional backing, and legitimacy of commercial mediation.

Similarly, Zambia has demonstrated a goal of encouraging ADR by way of its continuous judicial reforms and policy statements. However, no particular legislative reform or policy has been instituted to manage commercial mediation. The judiciary has made remarkable progress in this area by incorporating ADR into its strategic planning procedures and implementing court-annexed mediation, both of which are signs of growing acceptance of mediation as a legitimate practice in and of itself. Nevertheless, these are still mostly procedural in nature and lack a distinct statutory framework for business mediation. As a result, there are still many obstacles to overcome, including the enforcement of agreements reached through private mediation, the accreditation and regulation of mediators, and the institutional promotion of commercial mediation.

Therefore, Zambia's absence of legislative commercial mediation policy diminishes the opportunity for commercial mediation to grow and facilitate greater efficiency for enterprises. Without formal legislation, enterprises do not want to take the plunge to mediate without a safety net and thus choose to fall back on regular litigation even when this choice is not in their best interest relative to their enterprise. This is a matter of concern because the more we foster enterprise, the more we will need quicker solutions to conflict resolution.

Thus, this research will evaluate the state of commercial mediation in Zambia and compare it to the progress made, and results achieved, in India in establishing a regulatory scheme that is applicable to commercial mediation. For example, India's lengthy transition from informal dispute settlement to the enactment of the Mediation Act, 2023 demonstrates how comprehensive legislation may transform mediation into a dependable and enforceable means of resolving conflicts between businesses. Zambia has a clear model to follow from the Indian structure, which incorporates institutional control, settlement enforceability, and legal recognition, components that are all essential of a durable commercial mediation system.

Further, this research aims, through legal analysis, to draw lessons from the best practices of these regulatory efforts to cultivate a new regulatory scheme for commercial mediation in Zambia to create a sustainable and legitimate legal framework to render commercial mediation in Zambia a viable inexpensive alternative to litigation.

1.2 BACKGROUND OF STUDY

Disputes where money is concerned are a natural part of developing business. The more people engage in trade and investment domestically and internationally, the more likely disputes are to arise. Even though there is a notion of litigation, and the courts availability to render decisions on such activities conducted in commercial enterprises, relying upon the court system is not always a suitable option.

Mediation, as we know it in relation to commerce, can be traced as far back as the Phoenician civilization when one of the main activities was sea trade. It was in areas

with developed trade that saw a rapid evolution of mediation.¹ The need for provisions governing mediators was seen as early as ancient Rome where it had in place such provisions in its laws.²

In Zambia, the usage of ADR procedures, and mediation in particular, can be traced back to traditional customs within distinct ethnic groups. These customs, which place an emphasis on peace making and community harmony, sometimes involve village elders or other community leaders mediating conflicts.³ The introduction of mediation within the formal legal system of Zambia was done with the support of the United States Agency for International Development (USAID). The judiciary in Zambia led the introduction and growth of mediation via court-annexed-mediation as an alternative conflict resolution method starting in 1997. It included training mediators, educating the legal profession about its role in the mediation process, and educating mediation users on the benefits of using mediation. It also involved amending current legislation to include mediation as one of the processes in the litigation process.⁴ The 1997 High Court (Amendment) Rules established court-annexed mediation in the High Court. The Industrial Relations Court (Arbitration and Mediation Procedure) Rules of 2002 further established court-annexed mediation in the Industrial Relations Court, and the Subordinate Court (Amendment) Rules of 2018 subsequently brought it to the Subordinate Courts. Despite these amendments, there has not been any laws passed to either consolidate the said laws, or provide for commercial mediation in particular as these are only focused on court-annexed-mediation leading to grey areas in the enforceability of mediation agreements or settlements, qualifications of mediators, among other issues in private and commercial mediation.

1.3 STATEMENT OF THE PROBLEM

Commercial disputes are an inevitable part of business operations, necessitating effective dispute resolution mechanisms that promote business confidence, economic growth, and efficiency. Due to its speed, affordability, confidentiality, and ability to maintain business connections, mediation, a type of Alternative Dispute Resolution,

¹ Yuliia Sukhostavska, 'The Origins and the Development of Mediation' (2020) European Proceedings of Social and Behavioural Sciences <https://doi.org/10.15405/epsbs.2020.10.05.324>

² *ibid*

³ 5 L Ngulube, 'A Critical Analysis of the Efficacy of ADR Regimes in Zambia vis-à-vis Adjudication, Mediation and Conciliation at assisting the Judiciary to tackle the problem of case backlog in the Courts'(LLB thesis, Cavendish University Zambia)

⁴ N. Kalonde Mutuna, 'Mediation in Zambia' TDM 3 (2022), www.transnational-dispute-management.com

offers an alluring solution. However, Zambia does not yet have a specific legal structure that regulates business mediation. Important issues including mediator accreditation, procedural requirements, and the enforcement of mediated settlement agreements are all made unclear by its absence. As a result, businesses are still hesitant to completely adopt mediation, preferring to use litigation in spite of the fact that it is expensive and time-consuming.

India, on the other hand, has created a well-organized legal system that encourages and controls commercial mediation. The enforcement of settlement agreements, mediator accreditation, and institutional promotion of mediation throughout the legal system are all covered by India's Mediation Act, 2023. These changes have improved mediation's credibility and predictability for commercial dispute settlement, providing Zambia with valuable information.

This study analyses the commercial mediation practices of India and Zambia in order to determine what institutional and legislative changes are required to improve Zambia's mediation system and framework. The study aims to provide Zambia with practical suggestions for creating a trustworthy, enforceable, and easily accessible legal framework for commercial mediation that encourages alternative dispute resolution and increases investor and business confidence by analysing the achievements and tactics used in India.

1.4 RESEARCH OBJECTIVES

1. To assess the challenges arising from the absence of a legal framework for commercial mediation in Zambia.
2. To examine the development and current state of India's legal and institutional frameworks for commercial mediation.
3. To draw lessons from India on the law governing commercial mediation for Zambia.

1.5 RESEARCH QUESTIONS

1. What legal and practical challenges does Zambia face in the absence of a dedicated legal framework for commercial mediation?
2. How has India structured its legal and institutional framework for commercial mediation?

3. What lessons can Zambia draw from India in terms of the development of a legal framework governing commercial mediation?

1.6 SIGNIFICANCE OF STUDY

This study's importance comes from its timely examination of Zambia's weak legal framework for commercial mediation, a form of dispute resolution that has been shown to improve access to justice, lower litigation costs, and maintain business ties in other jurisdictions. Although court-annexed mediation is recognized in Zambia, its use is still procedural and lacks a solid legal foundation, particularly in the commercial sector. Notably, calls for increased use of alternative dispute resolution (ADR) procedures have grown as a result of public discontent with the adversarial processes, delays, and traffic of the conventional court system. This study immediately responds to that appeal by addressing the institutional and legal shortcomings impeding the full implementation of commercial mediation. It contributes to the library of earlier research by portraying commercial mediation as a crucial component of Zambia's legal modernization and justice reform agenda rather than merely as an alternative to litigation.

Furthermore, this study is particularly relevant given Zambia's status as a developing country actively seeking to attract both domestic and foreign investment. Zambia currently lacks the efficient, trustworthy, and business-friendly instruments that investors want for resolving commercial disputes since there is no independent framework for commercial mediation. The research's examination of the Indian legal system, which has demonstrated efficacy in regulating and promoting business mediation, can provide Zambia with a robust, context-sensitive model. As a result, the study not only advances legal scholarship but also offers practical policy recommendations that can support Zambia's judicial and economic development and raise its attractiveness as a business location.

1.7 SCOPE OF STUDY

This study focuses on the institutional and legislative framework that governs commercial mediation in Zambia, paying special emphasis to the flaws and gaps that limit its efficacy. In order to provide tactics that can improve Zambia's regulatory strategy, the study also takes inspiration from India's mediation structure.

1.8 LITERATURE REVIEW

Commercial mediation's growth and regulation are becoming increasingly important topics in countries trying to update their dispute resolution systems. Due to its effectiveness, affordability, and enormous potential to maintain business relationships, mediation as a method of resolving disputes and an alternative to litigation continues to garner significant attention on a global scale. Despite this, business mediation as a specialist field receives minimal attention in the literature currently in publication, which mostly concentrates on court-annexed mediation or general alternative dispute resolution techniques. Scholarly publications in Zambia primarily discuss institutional initiatives and procedural changes rather than offering a thorough legal analysis of commercial mediation as a specialized field. Furthermore, comprehensive legal studies between Zambia and these India are noticeably sparse, even though India has built robust legal frameworks that incorporate business mediation into its dispute resolution procedures generally. This review critically analyses the corpus of available research, identifies important theme patterns, and highlights scholarly shortcomings in order to demonstrate the need for a legal framework for commercial mediation in Zambia.

David Semple provides a starting point for this literature review as he posits that commercial mediation includes dispute resolution in a wide range of contexts. A disagreement that is appropriate for commercial mediation usually results from an organizational or commercial activity or transaction. He provides that peer mediation, family mediation, community (neighbour) mediation, and additional support needs mediation would not typically be included in this description. Nonetheless, there may be similarities between various forms of mediation: "commercial" mediation may cover employment, court-annexed, environmental, and planning issues.⁵ This gives us a deeper insight into the broad nature and scope of commercial mediation. However, Semple does not explore statutory options for enforceability or institutional accreditation in developing jurisdictions such as Zambia.

Nadja Alexander claims that this trend is a part of a broader "Regulation Story," in which nations like Australia, Hong Kong, and England have incorporated mediation

⁵ Semple, David. "COMMERCIAL MEDIATION." A Guide to Mediating in Scotland, edited by EWAN A MALCOM and FIONA B O'DONNELL, Edinburgh University Press, 2009, pp. 25. JSTOR, <http://www.jstor.org/stable/10.3366/j.ctt1g0b1f8.9>. Accessed 11 Apr 2025.

into their civil justice systems using a range of regulatory tactics, including court mandates, institutional support, and mediator accreditation.⁶ These modifications highlight the increasing importance of legal frameworks in ensuring the legitimacy, effectiveness, and enforceability of mediation. For instance, Alexander notes that inconsistent language and regulatory gaps may lead to uncertainty regarding mediator behaviour and the legal standing of mediated outcomes in unlegislated systems.⁷ Such findings are crucial in Zambia, where mediation is still mostly procedural and court-annexed and lacks a legislative framework that would provide clarity and encourage corporate actors to recognize it as a good alternative to litigation. Alexander does not offer a detailed legislative model for emerging systems, but he does map institutional and regulatory options. This dissertation, however, focuses on specific legislative recommendations that are specific to Zambia.

Mary Mutupa presents an overview of Zambia's ADR environment. The High Court (Amendment) Rules of 1997 and Statutory Instruments Nos. 72 and 73 of 2018, which established and extended court-annexed mediation in both the High Court and Subordinate Courts, are two notable statutory instruments that she highlights, along with the formal legal evolution of ADR in Zambia from the 1990s to the present. While applauding these actions for promoting party autonomy and expanding access to justice, she draws attention to a significant issue, which is the absence of a clear legal framework for general mediation.⁸ Mutupa contends that the inability of mediation results to be enforced outside of the legal system presents a significant obstacle for business conflicts that take place outside of the court system. Mutupa documents Zambia's ADR trajectory but stops at descriptive critique and does not propose specific legislative drafting solutions for commercial mediation enforcement or cross-border recognition.

Theresa Mulele contributes to the discussion by evaluating the practical and legal limitations on the use of mediation in particular and other alternative dispute resolution procedures in Zambian business disputes. She points out that while court-annexed

⁶ Alexander, Nadja. "Four Mediation Stories from Across the Globe." *Rabels Zeitschrift Für Ausländisches Und Internationales Privatrecht / The Rabel Journal of Comparative and International Private Law*, vol. 74, no. 4, 2010, pp. 732–58. JSTOR, <http://www.jstor.org/stable/27878893>. Accessed 12 Apr. 2025.

⁷ *ibid*

⁸ Mary Mutupa, 'An Analysis of Court-Annexed Mediation as a Tool for Improved Access to Justice in the Subordinate Courts in Zambia' (2022) School of Law, University of Zambia <https://www.academia.edu/86335136> accessed 13 April 2025.

mediation is legally recognized in Zambia under the High Court and Subordinate Court Rules, generic mediation, which has nothing to do with ongoing legal proceedings, is not. Her research indicates that because general mediation is not specifically governed by law, settlements reached outside of the judicial system often lack enforcement. Mulele also points out legal fragmentation, such as conflicting standards between the Industrial Relations Court and the High Court, that compromises the consistency and predictability of mediation in corporate conflicts.⁹ Her work highlights the need for a consistent and legally enforceable framework, which is what this dissertation is attempting to solve, even though it is mostly evaluative. The current study examines commercial mediation as a specialized legal mechanism, analysing India's legal environment to suggest particular legislative changes for Zambia, in contrast to Mulele's broad focus on alternative conflict resolution. This study builds on her findings by emphasizing normative legal regulation instead of procedural efficacy.

By analyzing how mechanisms like conciliation, mediation, and arbitration have improved access to justice, particularly by reducing court congestion and providing more flexible avenues for dispute resolution, **Chishimba Chuma-Chomba's** work offers important insight into the development and use of ADR in Zambia.¹⁰ The policy environment, institutional reforms, and comparative lessons learned from Ghana and Kenya are all highlighted in her research, which shows how Zambia has gradually embraced alternative dispute resolution (ADR) as an adjunct to the official court system. She does not, however, discuss the particular institutional and legal structure necessary for commercial mediation as a specialized area in Zambia, instead concentrating on ADR in general and court-annexed mediation.

Ntambo A. Mipunga enumerates five prerequisites for the effective implementation of alternative dispute resolution (ADR) programs, particularly mediation, in poor countries. Enough financial and human resources, cultural acceptability, governmental support, and equality between parties.¹¹ These components demonstrate the degree of institutional and social preparedness required to operationalize mediation

⁹ Chiti Theresa Mwila Mulele, 'The Effectiveness of Alternative Dispute Resolution Mechanisms in Resolving Commercial Disputes in Zambia: An Analysis of Global Banners Limited v Ceinsa Zambia Limited [2018], Charles Mambwe and Others v Mulungushi Investments Limited and Another [2016]' (LLB dissertation, University of Lusaka 2023).

¹⁰ Chishimba Chuma-Chomba, Alternative Dispute Resolution as an Instrument to Improve Access to Justice in Zambia: Lessons Drawn from Ghana and Kenya (LLB dissertation, University of Lusaka 2023)

¹¹ Ntambo A. Mipunga, what does Alternative Dispute Resolution Entail? A Review of the success of the Alternative Dispute Resolution Programmes Implemented in Zambia and the Institutions that Facilitate the Use of the ADR programmes

procedures in a manner that goes beyond straightforward legislative modification. In Zambia, where mediation is still predominantly viewed as court-directed and procedural, Mipunga's observations indicate that statutory enactment alone would not be adequate for the formation of a formal commercial mediation structure. His work supports the notion that mediation must be institutionalized comprehensively, including through political commitment, mediator training, public education, and regulatory design, in order to be a viable alternative to litigation. This study attempts to bridge the conceptual vacuum left by Mipunga's list of requirements for ADR's success, which does not look at how these elements might be strategically integrated into a commercial mediation system.

Dorcas Quek warns that coercive frameworks run the risk of undermining the core principle of free participation in mediation in her compelling critique of court-mandated mediation. She argues that when mediation is made required, especially with penalties for disobedience, it becomes a quasi-judicial process that may discourage open discussion and proactive problem-solving.¹² This is especially important in Zambia, where court-annexed mediation is commonly used in the absence of a separate legislative framework for voluntary business mediation. Quek's cautious approach supports the notion that judicial assistance for mediation is essential but must be carefully balanced against party autonomy protections. However, she does not address the difficulty of introducing non-mandatory commercial mediation in regulatory-weak nations such as Zambia, an issue that this study directly addresses because her focus remains on jurisdictions with reasonably developed ADR systems.

According to **Harry T. Edwards**, ADR procedures may produce results that are neither impartial or procedurally fair, particularly when the parties' power or resources are unequally distributed. He is concerned that, in the absence of strong procedural standards and safeguards, alternative conflict resolution may create outcomes that worsen pre-existing inequality rather than bringing about justice.¹³ This issue is especially relevant in Zambia, where general mediation operates without government regulations limiting mediator standards, moral behaviour, or settlement enforcement. Edwards believes that a structured legal framework for commercial mediation is

¹² Dorcas Quek, 'Mandatory Mediation: An Oxymoron? Examining the Feasibility of Implementing a Court-Mandated Mediation Program' (2010)

¹³ *ibid*

necessary to guarantee justice and fairness while allowing parties to resolve problems amicably. However, Edwards leaves a gap that this study aims to address by failing to examine how legal regulation might address these procedural flaws in jurisdictions with less institutional development.

Ronán Feehily¹⁴ critically evaluates the legislative inadequacies and limitations associated with commercial mediation, with a focus on South Africa. He contends that because "many varied processes are collectively described as mediation," the uncontrolled nature of many mediation systems may result in misunderstandings about the process itself, eroding uniformity and legal certainty. Feehily's concerns are especially relevant in Zambia, where court-annexed proceedings are the dominant way that mediation is perceived, and there is no legislative structure dedicated only to commercial mediation. He also notes that where there are power discrepancies between parties, commercial mediation may provide "second-class justice," particularly in the absence of legally mandated ethical norms, precise definitions, and accredited mediators. Feehily believes that procedural fairness and legitimacy must not be compromised, even though he recognizes the benefits of mediation in terms of reducing court backlogs and increasing efficiency. These findings underscore Zambia's need to establish a regulatory framework that institutionalizes commercial mediation while also addressing issues of enforceability, mediator impartiality, and procedural safeguards, which this dissertation tries to address.

The work of **Kofi Agyekum**¹⁵ observed that the growth and normalisation of mediation as a mainstream dispute resolution process depend heavily on strong judicial and institutional support. His research in Ghana, a developing jurisdiction, shows that when courts actively promote mediation through referral mechanisms, the establishment of mediation centres, and procedural encouragement for parties to explore settlement, public confidence in the process increases significantly. He further found that legislative endorsement further reinforces this acceptance by providing a unified legal framework that governs both private and court-connected mediation, ensuring the enforceability of mediated outcomes and clarity of procedure. The central insight from this body of work is that institutional backing, combined with statutory recognition,

¹⁴ Ronán Feehily, 'Commercial Mediation: Commercial Conflict Panacea or an Affront to Due Process and the Justice Ideal?' (2015) 48(2) *Comparative and International Law Journal of Southern Africa* 318

¹⁵ Kofi Agyekum, 'The Role of the Courts in Promoting Mediation in Ghana' (2015) *University of Ghana Law Journal*

transforms mediation from a voluntary or peripheral option into an integrated component of the justice system. This principle is particularly relevant to Zambia, where the lack of a dedicated mediation statute continues to hinder the effective enforcement and uptake of commercial mediation. However, while existing scholarship identifies the importance of judicial and legislative support in strengthening mediation systems, it does not examine how these elements can be designed or sequenced within Zambia's specific legal environment to ensure commercial mediation becomes a reliable and enforceable mechanism.

Joseph Mante's study on dispute resolution in infrastructure-related construction projects in developing countries highlights the institutional weaknesses that arise when dispute management systems lack coherence and legal structure.¹⁶ His research found that in many developing states, including those in Sub-Saharan Africa, dispute mechanisms are fragmented, underutilised, and poorly integrated into broader policy frameworks, leading to costly and protracted outcomes. Mante's findings illustrate the consequences of treating mediation and related ADR mechanisms as peripheral rather than embedding them in a structured legal and institutional framework. The study underscores a broader challenge relevant to Zambia which is that the absence of a clear statutory and institutional basis for mediation limits its accessibility, predictability, and efficiency in commercial disputes. While Mante's study identifies systemic weaknesses in dispute resolution frameworks in developing countries, it focuses on construction-specific disputes and does not develop or test legislative models for the regulation of commercial mediation. This dissertation builds on that insight by advancing legal and institutional recommendations tailored to Zambia's commercial mediation framework.

Rohit Bhatia's analysis of commercial mediation highlights the persistent challenges that impede its acceptance as a mainstream dispute resolution mechanism. He argues that despite its proven efficiency and cost advantages, commercial mediation remains underutilised due to limited legal awareness, weak institutional support, and scepticism among business actors who continue to prefer arbitration and litigation.¹⁷ Bhatia underscores that unless jurisdictions adopt targeted legislative measures and

¹⁶ Joseph Mante, 'Resolving Infrastructure-Related Construction Disputes in Developing Countries: The Ghana Experience' in A B Raidén and E Aboagye-Nimo (eds), *Proceedings of the 31st Annual ARCOM Conference (Association of Researchers in Construction Management 2015)* 73

¹⁷ Rohit Bhatia, 'The Role of Mediation in Resolving Commercial Disputes: Challenges' (2014) SSRN Electronic Journal <https://ssrn.com/abstract=2443322> accessed 9 October 2025

create competent mediation centres, the process will remain peripheral to commercial dispute resolution. His discussion captures a universal problem among developing economies, where mediation is promoted procedurally but not structurally embedded in law. Although Bhatia's work illuminates the structural and perceptual barriers to commercial mediation globally, it does not explore how national legal systems can design statutes to overcome these obstacles. This dissertation addresses that gap by examining how Zambia's legislative framework can integrate mediation more effectively, drawing lessons from India's recent legal developments.

Kariuki Muigua's work on *Alternative Dispute Resolution and Access to Justice in Kenya* explores the link between ADR mechanisms and the constitutional right to access justice. As summarised by Endoo Dorcas Chepkemei in her review, Muigua argues that effective dispute resolution requires both recognition of traditional and formal ADR methods and a coherent legal framework that supports them. He highlights the tension between maintaining the flexibility that makes ADR attractive and ensuring that regulation prevents abuse or inconsistency in practice. Muigua's reflections on the role of lawyers, institutions, and legislative design underscore that sustainable ADR development depends on integrating mediation within the broader legal system while preserving its voluntary and conciliatory spirit. These insights resonate with Zambia's ongoing struggle to define the legal boundaries and institutional responsibilities surrounding commercial mediation. While Muigua's analysis provides valuable lessons on the importance of regulatory balance and institutional design, it is situated within Kenya's access-to-justice framework rather than the commercial mediation sector. This dissertation extends the conversation by focusing on how Zambia can build a legal and institutional model that enhances commercial mediation's reliability and accessibility.

This review of existing literature reveals a clear and persistent gap that this study seeks to address. Most of the scholarly writing in Zambia centres on general ADR reforms or procedural aspects of mediation, with minimal attention to commercial mediation as a distinct field requiring its own legal framework. Where studies do engage with mediation regulation, they often remain descriptive and stop short of proposing concrete legislative or institutional models suited to Zambia's commercial sector. Internationally, while India's recent enactment of the Mediation Act, 2023 has generated growing academic discussion, there has been no in-depth analysis of what

lessons this development holds for countries such as Zambia that are yet to legislate in this area. This dissertation therefore occupies an underexplored intersection: it moves beyond procedural commentary to provide a legal and institutional analysis of commercial mediation in Zambia, drawing actionable lessons from India's legislative experience to guide domestic reform.

1.9 METHODOLOGY

This research shall primarily be a qualitative analysis, reference shall be made to statutes, internet sources, reports, text books, articles, journals, and case law as well as other relevant research materials that shall contribute towards this research. The aim of these visits will be to obtain information about the challenges faced due to the lack of a legal framework on commercial mediation.

1.10 ETHICAL CONSIDERATION

This research will adhere to all necessary ethical standards that may arise during its execution. The researcher will ensure that any information or knowledge obtained in confidence during this research remains confidential, and there will be no instances of misinformation or misuse of the acquired information that may disadvantage the source providing the information.

1.11 RESEARCH OUTLINE

CHAPTER ONE serves as an introduction to this dissertation. It presents the background of the study, outlines the research problem, and states the objectives and significance of the research. It also highlights the scope and limitations of the study and provides a summary of the methodology that will be used.

CHAPTER TWO examines the legal and institutional framework governing commercial mediation in Zambia. It analyses the relevant laws, procedures, and institutional arrangements that support mediation and identifies the major gaps and weaknesses that hinder its effective implementation.

CHAPTER THREE explores development and current state of India's legal and institutional framework for commercial mediation under the Mediation Act, 2023. It discusses the key provisions of the Act, including pre-litigation mediation, enforceability of settlements, confidentiality, and the establishment of the Mediation

Council of India, showing how the Act promotes a structured and business-oriented approach to mediation.

CHAPTER FOUR draws lessons from India's mediation framework that Zambia can adopt to strengthen its own legal and institutional structure. It highlights how specific features of India's model can address Zambia's identified gaps and proposes ways in which these lessons can be adapted to the Zambian context.

CHAPTER FIVE summarises the findings presented in the preceding chapters and offers recommendations aimed at improving Zambia's legal and institutional framework for commercial mediation. It suggests the enactment of a comprehensive Mediation Act, the creation of a supervisory body, and other reforms that would enhance access to justice and promote effective commercial dispute resolution in Zambia.

CHAPTER TWO

CHALLENGES ARISING FROM THE ABSENCE OF A LEGAL FRAMEWORK FOR COMMERCIAL MEDIATION IN ZAMBIA.

2.0 INTRODUCTION

This chapter looks at the state of commercial mediation in Zambia. It begins by setting out the policy, legal and administrative contexts which currently impact on mediation in Zambia, with specific regard paid to those that are most specifically relevant to commercial disputes. Thereafter, the chapter discusses the principal legal concerns arising from there not being a consolidated commercial Mediation Act or an Act with a direct effect on commercial mediation, and then goes on to discuss the principal practical (on-the-ground) obstacles to the effective use of commercial mediation.

2.1 OVERVIEW OF THE CURRENT STATE OF COMMERCIAL MEDIATION IN ZAMBIA

Commercial mediation in Zambia remains a developing field. While mediation is gradually being used within courts by way of court-annexed mediation and there are various institutions providing Alternative Dispute Resolution (ADR), no single statutory provision addresses commercial mediation outside the courts thoroughly. The result is a patchy environment in which court-referred mediation is fairly well organized procedurally, but privately initiated commercial mediation, which is the type used in commercial contracts and international trade, sits in a legal limbo that creates a measure of uncertainty for businesses thinking of mediation as an initial-response tool.¹⁸ This assessment concurs with the Zambia Law Development Commission that Zambia's ADR system is fragmented and that mediation still has not been incorporated into a stand-alone, modern statute particularly addressing commercial mediation and ancillary enforcement machinery.¹⁹

2.1.1 Policy Framework

The Eighth National Development Plan (2022 - 2026)

The Eighth National Development Plan (2022 - 2026) recognizes alternative dispute resolution generally, and mediation specifically, as a means of improving access to

¹⁸ Zambia Law Development Commission, Development of the Alternative Dispute Resolution Legislation: Review Project Report (2025) 4

¹⁹ Ibid p1

justice and reducing court congestion. The Plan declares ADR an instrument of national policy for unclogging the formal courts and providing faster, less expensive dispute resolution to citizens and businesses, and proposes investment in capacity building and legislative reforms as support mechanisms for scaling up ADR uptake.²⁰

Zambia's Vision 2030

Vision 2030, Zambia's long-term development strategy, also positions access to justice and institutional reform of the dispute resolution sector at the center of more extensive economic and governance ambitions, encouraging the introduction of ADR mechanisms across the justice system to deliver faster and more equitable outcome, particularly for rural and underserved populations. Vision 2030's emphasis on ADR implicitly supports the imperative of statute instruments and institutional arrangements that make ADR, like commercial mediation, workable and reliable as tools of economic governance.²¹

Summary of Policies Reviewed

While national planning documents and presidential pronouncements include express policy endorsement of ADR, the same is yet to be translated into a specific policy tool for commercial mediation on enforceability, cross-border recognition, and mediator accreditation and oversight. The Commission therefore recommended drafting full ADR legislation with explicit provisions for mediation.

2.1.2 Legal Framework

The legal regime of Zambia for mediation is a mosaic of directions of court practice, sector legislation and the Arbitration Act, none of which separately or collectively form a complete statutory regime for commercial mediation.

2.1.2.1 The Constitution (Amendment) Act No. 2 of 2016

The Constitution is Zambia's supreme law.²² It establishes government structures, processes, and institutions, including the Legislature, Executive, Judiciary, and other government organs. Article 118 establishes the Judiciary and vests judicial power in Zambia's Court system. The Constitution encourages the use of alternative dispute

²⁰ Ministry of Finance, Eighth National Development Plan (2022 - 2026), (Republic of Zambia, 2022)

²¹ Ministry of Finance and National Planning, Vision 2030: A Prosperous Middle-Income Nation by 2030 (Government of Zambia, 2006)³⁴.

²² The Constitution of Zambia (Amendment) Act No.2 of 2016, Article 1(1)

resolution in various manifestations, emphasizing the role of amicable dispute resolution mechanisms in the justice system. Article 118(2)(d) mandates the judicial courts and organs to promote reconciliation, mediation, and other forms of dispute resolution mechanisms. The general recognition allows for traditional justice mechanisms, conciliation, negotiation, and restorative justice mechanisms to be included, particularly in customary law cases and communal-based resolution of conflicts. By identifying such mechanisms, the Constitution encourages access to justice, reduces the litigation cost, and promotes the values of fairness and inclusiveness in the settlement of disputes. It is, however, an observation that a large part of Zambia's statute book has not been modified to include various mechanisms for efficient and expeditious dispute resolution in line with the Constitutional dictate. It is therefore requisite that Zambia continues to update its statute book with a view to making it reflect current ideals of dispute resolution.

2.1.2.2 The High Court (Amendment) Rules, SI No. 71 of 1997

The High Court (Amendment) Rules which was initially promulgated in the 1990s and later amended institutionalized court-annexed mediation by authorizing judges to refer specific commercial and civil cases for mediation and to control procedural aspects of court-referred mediations. These rules played a key role in bringing mediation into the formal courts, but the rules were never meant to regulate private, out-of-court commercial mediation on an exhaustive basis.

2.1.2.3 The High Court (Amendment) Rules, SI No. 29 of 1999

Judiciary attempted to employ mediation for commercial disputes specifically using the High Court (Amendment) Rules, SI No. 29 of 1999, under which were introduced important provisions for mediation procedures in commercial cases.²³ This shows that at an early stage, commercial disputes were singled out as being particularly amenable to mediation as a means of unclogging the courts. Still, these rules were confined to court-annexed mediation and did not create a full legislative regime for private commercial mediation outside the courts.

²³ Ibid (n 1) 19

2.1.2.4 The High Court (Amendment) Rules, SI No. 72 of 2018

The Rules are an addition to the 2018 High Court Rules, whose central objective is to reduce the number of cases within the courts of law. There is clear focus on what has been termed "Court-Annexed Mediation," where the Court is able to refer an issue, at the scheduling conference and before trial, to a session of mediation. In 2018, the High Court (Amendment) Rules 2018,²⁴ were issued to amend certain provisions of the High Court Rules on Mediation. To this extent, the High Court Rules are a source of ADR governing court-annexed mediation. Obviously, however, there have been earlier attempts by the judiciary to make use of mediation as a tool to decongest the judiciary. This was exemplified by the enactment of the High Court (Amendment) Rules, SI No. 29 of 1999, to include provisions for the mediation process for commercial disputes.²⁵

2.1.2.5 The Subordinate Court (Amendment) Rules, SI No. 73 of 2018

The Subordinate Court (Amendment) Rules extended court-annexed mediation to the lower courts and hence extended the judiciary's capacity to use mediation as a delay-reduction device. The subordinate-court rules are an exemplification of the High Court arrangements in part, but again they relate to litigation-linked mediation and not standalone commercial mediation caused by contractual conditions among enterprises. The fragmentation among superior and subordinate court rules as an exemplar of legal uncertainty.

2.1.2.6 Industrial and Labour Relations Act, Chapter 269 of the Law of Zambia

The Industrial Relations Court and rules of procedure embrace mediation and conciliation in industrial and employment disputes; these sectorial provisions have been useful in labor-related commercial disputes but are not applicable in other sectors of business. The Industrial Relations regulations reveal that sectoral mediation rules will be helpful if they are incorporated into a broader adjudicatory and enforcement regime, but any such sectoral approach does not rid us of the need for a general mediation statute covering commercial mediation as such.²⁶

²⁴ Statutory Instrument No. 72 of 2018

²⁵ Ibid (n 7)

²⁶ Ibid (n 1)

2.1.2.7 The Local Courts Act, Chapter 29 of the Laws of Zambia

The Act provides for the recognition and establishment of local courts and consolidates the law relating to the jurisdiction and procedure of local courts, together with any matter's incidental thereto. The Act empowers the courts to resolve disputes through customary and traditional laws and means, provided they do not contravene statute law or principles of justice. This leaves space for conciliation and negotiation, which are firmly rooted in traditional dispute resolution mechanisms in Zambia.

Practically, it is observed that among the hierarchy of courts, the local court has embraced the ADR principles in handling non-serious offences. ADR mechanisms such as instant court mediation and negotiation are frequently used in the court to resolve cases, which includes traditional commerce cases.²⁷

2.1.2.8 Ancillary

The Arbitration (Code of Conduct and Standards) Regulations (SI No. 12 of 2007) and other sectoral legislation (e.g., the Public Procurement Act and the Mines and Minerals Development Act) all contain ADR provisions or conflict resolution procedures involving mediation or negotiation as an option. Although these sectoral provisions represent policy recognition of ADR across government contracts and extractive-industry agreements, they are not meant to create a generalized, comprehensive legal remedy allowing mediated settlements as directly enforceable documents in commercial settings. These piecemeal statutory references are insufficient for the needs of commercial participants requiring predictable enforceability of mediated outcomes.

Globally, Zambia has not incorporated the UNCITRAL Model Law on International Commercial Mediation into local legislation and has not acceded to the United Nations Convention on International Settlement Agreements Resulting from Mediation (the 'Singapore Convention'). This lacuna is a significant barrier to cross-border enforceability of mediated settlements and notes that without statutory reform or accession to international conventions, mediated settlements concluded in Zambia (or elsewhere) are handicapped by obstacles to credible recognition and enforcement.²⁸

²⁷ *ibid* (n 1) 18

²⁸ *Ibid* (n 1) 14

2.1.3 Administrative framework

The Judiciary of Zambia has been the principal institutional lead in facilitating mediation through court-annexed programs. The Judiciary has established mediation offices, trained mediators, and established an advisory structure (court-annexed mediation as well as delay-reduction committees) that institutionalizes mediation as a case-management option within the courts. The Judiciary's 2023 Annual Report records the number of mediators employed within the courts and provides statistics on the number of cases handled by the Mediation Office and reveals that court-annexed mediation has had measurable operational momentum.²⁹

Outside the courts, new institutions have been set up to provide ADR services to the private sector. The Lusaka International Arbitration Centre (LIAC), which started in 2024, is an administrative initiative to provide a neutral, commercially oriented center of arbitration and mediation services. The LIAC has been defined as an important evolution in the domestic ADR landscape as it offers institutional rules, administrative case management and a forum capable of hosting commercial mediations independent of the courts. Nevertheless, LIAC is situated within a still-absent unambiguous statutory regime for mediation, which constrains the legal certainty available to parties using the Centre.³⁰

Professional associations are also engaged: the Chartered Institute of Arbitrators (Zambia branch) certifies and standardizes arbitrators and mediators, and the Institute for Mediation Excellence (IME), established in 2023, is focused mostly on mediator capacity development, accreditation pathways and guidelines for practice. Practitioner competence and public confidence rely upon such bodies' work, but voluntary standards cannot substitute for statutory arrangements that regulate enforceability, confidentiality protection and regulation by regulators.

Overall, the administrative environment consists of a mix of public (courts) and private institutional efforts that collectively constitute an encouraging ADR system in practice but not in law as institutions exist but their legal foundations for commercial mediation are missing.

²⁹ Judiciary of Zambia, Annual Report 2023 (August 2024) 15 – 16

³⁰ Ibid (n 1) 26

2.2 Legal challenges arising from the current state of commercial mediation in Zambia

2.2.1 Uncertainty in the Enforceability of Mediated Settlement Agreements

The central legal challenge is how to enforce mediated settlement agreements that arise outside courts of law. In the majority of jurisdictions law or treaty provides for a straight line to enforcement as opposed to only enforcing court-annexed mediation. In Zambia, as there are no statute provisions nor treaty accession in regard to mediation, privately negotiated mediated settlements could be required to be reduced to consent judgments or litigated for enforcement, negating the time and cost savings mediation is intended to offer. It is this lack of enforcement clarity that is one of the main reasons for reluctance by companies to establish mediation as a first-line approach to resolving disputes and even attract more business players.³¹

2.2.2 Absence of Statutory Regulation and Accreditation of Mediators

Most directly related to this is the lack of statutory accreditation and regulation of mediators. Mediation accreditation in Zambia today is led primarily by training providers and professional associations rather than by statutory registration or license. This creates inconsistency in qualifications of mediators, differing standards of practice and ensuing concerns regarding mediator impartiality and competency in complex commercial disputes. It is forcefully argued that any comprehensive ADR legislation needs to have provisions in areas of accreditation, codes of conduct and sanctions for professional misconduct.

2.2.3 Fragmented and Inconsistent Legislative Provisions Governing Mediation

Fragmentation of legal provisions is another concern. Mediation appears in a range of instruments like the High Court and Subordinate Court rules, certain sectoral Acts and the Arbitration Act but these provisions are not harmonized. Such fragmentation creates procedural uncertainty, e.g., on confidentiality, admissibility of mediation communications in subsequent proceedings, or the effect of mediation clauses in commercial contracts, which undermines legal predictability for contracting parties. This is a technical but critical obstacle to the establishment of a mediation-friendly business culture.

³¹ Ibid (n 1) 14

2.2.4 Lack of a Legal Framework for International Recognition and Enforcement

Another challenge in the law is the lacuna of international enforceability. In the absence of domestic law giving effect to the UNCITRAL Model Law on Mediation or the Singapore Convention, mediated contracts with an international element face legal resistance each time cross-border enforcement is required. This lacuna reduces the allure of Zambia as a location for international commercial mediation and increases the reluctance of foreign investors to include mediation clauses without a well-developed enforcement pathway.³²

2.2.5 Constraints in State Participation and Authority to Settle Disputes

State representation in mediation gives rise to another unique legal concern. On the basis of fact that where the State is involved, attorneys who serve as government representatives usually are not empowered to settle matters on an ad hoc basis and settlements usually must be sanctioned by the minister or payment procedures which slow down or terminate mediated agreements. The penalties for non-appearance at mediation, for example, in the High Court rules, are not in a meaningful sense enforceable against the Attorney-General's Chambers for most cases, undermining incentives for timely involvement and resolution.

2.2.6 Insufficient Confidentiality and Evidentiary Protections in Mediation Processes

Finally, there are confidentiality and evidentiary issues. Without statutory rules that clearly protect mediation communications from later use in court proceedings, parties will be reluctant to make complete and candid disclosures during mediation. There is a need for a statute of mediation to make provision for confidentiality, exceptions, and the admissibility of material in mediation in later proceedings so that parties may mediate without fear of promises or admissions being used against them in the future.

³² *ibid*

2.3 Practical challenges

2.3.1 Low Awareness and Misconceptions Among Legal Practitioners and the Business Community

Adequacy of perceptions and awareness among the legal fraternity and business community is the major practical issue. High numbers of attorneys still regard mediation as a client-unfriendly or peripheral procedure, sometimes as a foe of billable hours, and high numbers of commercial parties are simply unaware of the benefits and process of commercial mediation. The consultations of the ZLDC recognize public education and awareness-raising as needed if commercial mediation is to become mainstream for Zambia's business community.³³

2.3.2 Inadequate Training and Limited Professional Capacity Among Commercial Mediators

Training and capacity remain cause for concern. There is a lack of experienced, trained full-time commercial mediators, and the majority of mediators are part-time with another ongoing career. This results in inconsistent quality of service and limited numbers of available mediators with the specialist knowledge that they must have in order to deal effectively with difficult commercial cases. The initiatives of the ZLDC, IME and CIArb strive to do this, but until statutory accreditation and funding for ongoing professional development are in place, capacity shortages will remain.³⁴

2.3.3 Weak Logistical and Administrative Infrastructure Supporting Mediation

Logistical and infrastructural problems like sub-standard mediation facilities, inadequate administrative support for pre-mediation case administration, and poor record-keeping affect the success of mediation. The ZLDC observed that pre-mediation administration is poorly managed in the majority of cases and that mediations also go wrong from time to time on logistical and process grounds rather than on substantive grounds. A good administrative infrastructure (case administration, registrar services, ADR centers with proper facilities) is therefore imperative.³⁵

³³ Ibid (n 1) 4

³⁴ Ibid

³⁵ Ibid

2.3.4 Resource and Funding Constraints Within the Judiciary and ADR Units

Also of concern is resources and money. The Judiciary's 2023 Annual Report documents the courts' staffing and resource deficits, and while court-annexed mediation maintains per-case expenses low, the Mediation Office and such units require stable money and staff to properly process mediation caseloads.³⁶

2.3.5 Absence of a Central Coordinating or Regulatory Authority for Mediation

Finally, the absence of a special monitoring authority for mediation is a working weakness. The ZLDC recommends a coordinating institution that would undertake accreditation, maintain registers, issue practice guidelines and undertake public education. Institutional arrangements bear a lot in terms of uptake and quality assurance. There is no organization in Zambia with such legislative powers.³⁷

2.4 Conclusion

This chapter has illustrated that while Zambia has made remarkable practical steps in incorporating mediation into parts of the justice system, serious legal and practical defects remain. Policy literature and judicial practice enable a facilitative setting for mediation but the law is fragmented and there is no single statute that gives commercial mediation clear enforceability, accreditation or cross-border application. Operational impediments like low awareness levels, inadequate number of specialist mediators, logistical constraints, and weak regulation which further limit use. All these findings are consistent with the Chapter One envisioned need for a well-drafted, commercially confidential mediation law combined with institutional reform and capacity-building initiatives to enact certain, enforceable and business-attractive commercial mediation in Zambia.

³⁶ Judiciary of Zambia, Annual Report 2023 (August 2024)

³⁷ Ibid (n 1) 92

CHAPTER THREE

DEVELOPMENT AND CURRENT STATE OF INDIA'S LEGAL AND INSTITUTIONAL FRAMEWORK FOR COMMERCIAL MEDIATION

3.0 INTRODUCTION

India's mediation environment has experienced a significant transition, from unofficial community-based settlement customs to a formal, legally recognized system, integrated into the formal court system. Judicial reform, economic liberalization, and the increasing demand for effective dispute resolution procedures that may supplement litigation and arbitration have all contributed to the growth of commercial mediation in particular.

This chapter examines the institutional framework, legislative turning point, and historical evolution that have influenced mediation in India, leading to the passage of the Mediation Act, 2023, the nation's first comprehensive mediation law. In order to demonstrate how commercial mediation has become a reliable method for settling business and legal conflicts, the analysis will follow the development of traditional modern statutory regulation.

3.1 HISTORICAL DEVELOPMENT OF MEDIATION IN INDIA

3.1.0 Traditional and Pre-Colonial Foundations

In India, mediation is ingrained in social and cultural customs and predates the official legal system. In Indian civilization, disagreements were settled through community-based processes that placed more emphasis on discussion, consensus, and restorative justice than on adjudication even before British control was established.³⁸ The panchayat, a council of esteemed village elders that arbitrated conflicts within local villages, was the most well-known of these structures. The objective was to maintain ties within the society and restore social peace rather than to administer legal punishment.³⁹

³⁸ Anil Xavier, 'Mediation: Its Origin and Growth in India' (2005) 27 Hamline Journal of Public Law and Policy 1.

³⁹ Ibid

In a same vein, traders frequently used Mahajans, who were respected and unbiased businessmen in their guilds, to settle conflicts in the commercial setting.⁴⁰ Integrity, equity, and reputation among business networks were prioritized in these early commercial mediation methods, which blended aspects of arbitration and mediation.

In these systems, conflict resolution is viewed as a collaborative, interest-based process rather than an adversarial competition, reflecting the cultural continuity between ancient and modern mediation⁴¹. By assisting parties in reaching amicable agreements, the mediator (also known as the pancha) served as a peacemaker.⁴² However, with the arrival of British colonial administration, this native structure steadily deteriorated. The British established a rights-based, adversarial legal system that prioritized formality and precedent over popular agreement.⁴³ Courts, written pleadings, and legal counsel now dominate the dispute resolution process, which was once community-led and participatory.⁴⁴

While mediation was marginalized and remained mostly informal, surviving mostly in rural and business communities, arbitration gained statutory footing throughout colonial times.⁴⁵ India had the difficulty of balancing the requirements of a contemporary, codified legal system with its traditional, accommodative ethos after gaining independence.

3.1.1 The Drive for ADR After Independence

After gaining independence, India's legal system was beset by backlogs, expenses, and delays. In order to relieve the courts and provide fast justice, this led policymakers to investigate alternative dispute resolution (ADR) procedures.⁴⁶ The first law in India to acknowledge mediation was the Industrial Disputes Act of 1947. Conciliators are appointed by Section 4 of the Act and are "charged with the duty of mediating in and promoting the settlement of Industrial disputes." Certain procedures for conciliation sessions were created by the Act.⁴⁷ The UNCITRAL Model Law on International Commercial Arbitration and the UNCITRAL Conciliation Rules (1980)

⁴⁰ Mediation and Conciliation Project Committee (MCPC), Handbook on Mediation (Supreme Court of India, 2005) 4

⁴¹ Xavier (n38)

⁴² Ibid

⁴³ Ibid

⁴⁴ Dr Mahesh R Sharanappa, V Shudarshana and Tilaka N S, 'The Role of Mediation in Resolving Commercial Disputes in India: Challenges' (2025) 2 AIJVBCL 216 Page 2.

⁴⁵ Ibid

⁴⁶ Ibid

⁴⁷ The Industrial Disputes Act 1947 (India)

were included into the Arbitration and Conciliation Act, 1996, which was the first complete move toward institutionalizing ADR.⁴⁸ Part III of the Act recognised conciliation as a formal process facilitated by an impartial third party,⁴⁹ a process considered akin to mediation.⁵⁰ Conciliated settlements gained the legal standing of arbitral awards under Section 74, which made them subject to judicial enforcement. However, there was conceptual and procedural uncertainty because mediation was not specified independently in the Act and was frequently confused with conciliation. It was also noted that, in spite of the legal structure, conciliation and mediation were not frequently employed in real-world situations.⁵¹ The majority of litigants and attorneys were still ignorant of these choices, and many saw alternative dispute resolution (ADR) as an adjunct to the traditional legal system.⁵² Due to this lack of knowledge, mediation remained mainly undeveloped and informal in commercial practice, while arbitration continued to rule.

3.1.2 Civil Procedure Code Amendments and Judicial Initiatives

The Indian judiciary actively promoted mediation after realizing that legislative changes by themselves would not be sufficient to advance ADR. Section 89, which was added by the Code of Civil Procedure (Amendment) Act, 1999, gave courts the authority to send cases to mediation, conciliation, arbitration, or judicial settlement.⁵³ The goal of this amendment was to directly incorporate ADR into the legal system. However, implementation was complicated by the lack of a precise definition of mediation and the procedural overlap with conciliation. In order to solve this, the Supreme Court established a committee to create model regulations and practical guidance, which was chaired by Justice M. Jagannadha Rao, who was the Law Commission's chairman at the time.⁵⁴

A landmark development came with **Salem Advocate Bar Association, Tamil Nadu v Union of India (2005)**, where the Supreme Court held that courts must make efforts to refer disputes to ADR mechanisms, including mediation, before proceeding to trial.⁵⁵ This case became the judicial foundation for India's mediation movement. It confirmed

⁴⁸ Arbitration and Conciliation Act 1996 (India) Part III

⁴⁹ Ibid S 62-64

⁵⁰ Sharanappa, Shudarshana and Tilaka (n 44)6.

⁵¹ Ibid

⁵² Ibid

⁵³ Code of Civil Procedure (Amendment) Act 1999 s89

⁵⁴ Xavier (38)

⁵⁵ Salem Advocate Bar Association, Tamil Nadu v Union of India (2005) 6 SCC 344.

the legality of Section 89 referrals and underscored mediation as a legitimate judicial function.

Following this, the Supreme Court established the **Mediation and Conciliation Project Committee (MCPC)** in 2005 to oversee and coordinate mediation across the country.⁵⁶ The MCPC developed a *Handbook on Mediation*, trained judges and mediators, and facilitated the creation of court-annexed mediation centres in every High Court and major district court.⁵⁷ By the middle of the decade, mediation was being used extensively for court-referred civil, family, and commercial disputes. However, rather than being voluntary, participation was still mostly court-driven.⁵⁸ Even though it was new, private mediation was not as accepted or enforceable.

3.1.3 Commercial Mediation Prior to the 2023 Mediation Act

Prior to 2023, India's mediation system functioned as a patchwork of municipal laws, private efforts, and judicial guidelines rather than as a single legal structure.⁵⁹ There was no separate statute governing voluntary or business mediation, even though court-annexed mediation under Section 89 CPC grew somewhat common. With the founding of the Indian Institute of Arbitration and Mediation (IIAM)⁶⁰ in Kochi and the Centre for Advanced Mediation Practice (CAMP)⁶¹ in Bengaluru, private mediation started to gain traction. These organizations played a key role in providing training, enabling business settlements, and advancing mediation as a professional discipline. They were based on global norms like those of the CPR Institute for Dispute Resolution and the International Mediation Institute (IMI).

Nevertheless, the institutional and legal deficiencies were apparent. The effectiveness of mediation was undermined by the fact that settlements reached through private mediation were not always enforceable; parties needed to bring separate lawsuits to enforce them as contracts.⁶² This created a void and prompted action because it was emphasized that enforceability was crucial to mediation's legitimacy in business settings.⁶³

⁵⁶ Supreme Court of India Mediation and Conciliation Project Committee (MCPC), *Mediation Training Manual of India* (MCPC 2006) 7-8.

⁵⁷ *ibid*

⁵⁸ *Ibid*

⁵⁹ Sharanappa, Shudarshana and Tilaka (n 44) 15.

⁶⁰ Indian Institute of Arbitration and Mediation (IIAM), About IIAM (2023) www.arbitrationindia.com Accessed 29th October, 2025.

⁶¹ Centre for Advanced Mediation Practice (CAMP), About Us (2023) www.campmediation.in Accessed 29th October, 2025.

⁶² Sharanappa, Shudarshana and Tilaka (n 44) 15.

⁶³ *Ibid*

In addition, there was no institutional acknowledgment of mediation service providers, no consistent code of conduct, and no national accreditation system for mediators.⁶⁴ Despite the judiciary's strong support for mediation, private and international business conflicts frequently turned to arbitration due to the lack of a legislative basis.⁶⁵

Calls for a comprehensive mediation statute got stronger by 2022 as the complexity and value of commercial conflicts increased. Following lengthy deliberations, the Mediation Bill, 2021 was finally passed into law as the Mediation Act, 2023, offering India's first institutionalized and unified legal framework for mediation.

3.2 THE 2023 MEDIATION ACT

3.2.1 Goals and Legislative Justification

An important turning point in India's conflict resolution reform is the Mediation Act of 2023. It changes the informal practice of mediation into a formal, legally binding, and institutionally controlled procedure. "Promote and facilitate mediation, especially institutional mediation, for the resolution of disputes, commercial or otherwise," according to the preamble of the Act.⁶⁶

One of the main challenges to the growth of mediation was the absence of legislative support. Therefore, the goal of the 2023 Act was to provide a consistent and binding legal framework that would apply to both India's civil and commercial spheres.

Its main objectives are:

1. Institutionalizing and regulating mediation at the domestic and commercial levels;
2. Ensuring the enforceability of mediated settlements;
3. Encouraging pre-litigation mediation as a preliminary step prior to court filing;
4. Standardizing mediator ethics, training, and qualifications; and
5. Aligning India's mediation law with global best practices, such as the UNCITRAL Model Law on International Commercial Mediation (2018), are its main goals.⁶⁷

⁶⁴ Ibid

⁶⁵ Ibid

⁶⁶ The Mediation Act 2023 (India) No 32 of 2023, Gazette of India, Extraordinary, Part II § 1 (15 September 2023) Preamble.

⁶⁷ Act No 32 of 2023 Preamble

Through achieving these goals, the Act closes long-standing deficiencies in India's mediation ecosystem and positions mediation as an additional pillar to litigation and arbitration.

3.2.2 Key Provisions Relating to Commercial Mediation

3.2.2.1 Scope of Application

The Act covers all types of mediation practiced in India, including commercial mediation, whether it be online, community-based, institutional, domestic, or court-annexed. It also applies to disputes in which government agencies participate, as long as they involve business problems, and it encompasses international mediations in which at least one Indian party is involved. Prior to the Act, court-referred mediation under section 89 of the Code of Civil Procedure 1908⁶⁸ and the Arbitration and Conciliation Act 1996⁶⁹ were two examples of fragmented frameworks that primarily facilitated mediation in India. This is addressed in Section 2, which offers a unified, all-encompassing legal framework for all mediation operations in India.⁷⁰

3.2.2.2 Form of Mediation Agreement

A valid mediation agreement and its permissible formats are outlined in Section 4. It stipulates that the agreement must be in writing, either as a distinct instrument or as a provision in a contract, but it also acknowledges contemporary forms of communication including letters, emails, and pleadings that demonstrate shared intent.⁷¹ This clause closes a gap by establishing a precise standard of proof for mediation agreements, guaranteeing their legal recognition and enforceability while taking into account the reality of internet communication in business transactions.

3.2.2.3 Pre-litigation mediation

Pre-litigation mediation, which is introduced in Section 5, enables parties to settle disagreements before going to court.⁷² In accordance with section 12A of the Commercial Courts Act 2015⁷³, it further stipulates that mediation is a required step prior to bringing a lawsuit in commercial disputes of a certain amount. By fostering consensual resolution at the outset, pre-litigation mediation institutionalizes an early

⁶⁸Act No. 5 of 1908

⁶⁹ Act No. 26 of 1996

⁷⁰ Ibid s2

⁷¹ Ibid s4

⁷² Ibid s5

⁷³ Act No. 4 of 2016

settlement process that increases efficiency, saves money, reduces court backlogs, and eliminates needless litigation.

3.2.2.4 Disputes Not Fit for Mediation

The Act's First Schedule and Section 6 list the types of conflicts that are not eligible for mediation. These include criminal prosecutions, taxation, land acquisition, problems affecting third-party rights, and issues involving minors or people with intellectual disabilities.⁷⁴ Previously, there was no regulation on what could and could not be mediated due to a lack of statutory direction, which led to varying judicial interpretations. The Act guarantees that mediation is limited to suitable topics by codifying these exclusions, upholding the integrity of public law matters and safeguarding the rights of parties who are most in need. Additionally, this clarity aids in preventing the abuse of mediation in cases that need court supervision.

3.2.2.5 Number and Appointment of Mediators

Pursuant to section 8, parties may freely select any qualified mediator, including people of any nationality.⁷⁵ A mediator must be assigned by the mediation service provider within seven days if the parties are unable to reach an agreement. By establishing precise guidelines for prompt appointment and encouraging party autonomy, this clause overcomes the gaps that existed. Furthermore, by allowing foreign mediators, it also acknowledges India's increasing involvement in cross-border mediation, strengthening the nation's conformity to international conflict resolution standards.

3.2.2.6 Conflict of Interest and Disclosure

Mediators are required by Section 10 to reveal any information that could raise questions about their independence or impartiality. Parties may request the mediator's replacement or submit a written waiver of objections in the event of a conflict.⁷⁶ By enforcing proactive disclosure obligations and integrating impartiality into the legal framework, this section resolves the ambiguity around conflicts of interest. Parties can now engage in the mediation process with increased assurance regarding its legality and fairness.

⁷⁴ Act No. 32 of 2023

⁷⁵ Ibid s8

⁷⁶ Ibid s10

3.2.2.7 Commencement of Mediation

In accordance with Section 14, mediation is considered to have started when a mediator is appointed in the event that no mediator has been appointed, or when a party receives a notification of mediation under an existing agreement.⁷⁷ Previously, procedural ambiguity could have arisen due to the lack of a clear start date, particularly with regard to deadlines and limitation periods. By creating a clear beginning point for mediation procedures, this clause addresses that problem and guarantees procedural uniformity and clarity for both local and foreign mediations. Additionally, it connects to section 29, which suspends statutes of limitations while mediation is underway.⁷⁸

3.2.2.8 Conduct of Mediation

Section 15 of the Act outlines the manner in which mediation proceedings are to be conducted. It calls for mediators to ensure that parties participate willingly, behave impartially, respect confidentiality, and support a fair process. The mediator is not constrained by the formal rules of evidence or procedure and may meet with the parties separately or jointly. Indian mediations mainly relied on unofficial procedures or court orders prior to this codification, which lacked a consistent procedural standard. By defining guiding principles of neutrality, secrecy, and voluntariness and offering a clear statutory framework for behaviour, Section 15 closes that gap and transforms mediation from an unofficial procedure into a legally recognized dispute resolution method.

3.2.2.9 Representation of Parties

Despite having limited provisions as to representation, and parties being encouraged to participate in person, the Act acknowledges that in some situations, they may also be represented by authorized representatives.⁷⁹ This is a reflection of actual reality, particularly in business disputes where parties may turn to corporate officers or legal counsel.

3.2.2.10 The Role of the Mediator

The duties and obligations of the mediator are outlined in Section 16. It emphasizes that the mediator can help parties explain issues, explore settlement options, and

⁷⁷ Ibid s14

⁷⁸ Ibid s29

⁷⁹ Ibid S 37A

communicate effectively, but that the mediator cannot enforce choices. The mediator's role is facilitative rather than adjudicatory.⁸⁰ By formally defining the mediator's facilitative role and reaffirming the voluntary nature of mediation, it helps prevent inconsistent mediator behaviour, such as when mediators behave more like arbitrators or evaluators. Thus, this clause guarantees that party sovereignty stays at the center of the process and brings Indian mediation practice into compliance with international standards.

3.2.2.11 Confidentiality

Confidentiality is established as a fundamental component of the mediation procedure pursuant to Section 22. It forbids parties, mediators, or service providers from disclosing any information, correspondence, or document exchanged during mediation. Sessions cannot be recorded on audio or video, and courts are not allowed to use such recordings as evidence.⁸¹ Prior to the Act, confidentiality had little enforceability and was mostly based on contractual or ethical commitments. By giving secrecy legal protection, the statutory recognition closes this gap and promotes candour and transparency between parties, which are necessary for fruitful settlement negotiations.

3.2.2.12 Admissibility of Evidence

In any court or tribunal proceedings, mediators, experts, and participants cannot be forced to reveal information they learned during mediation, according to Section 23, which upholds the confidentiality principle. The clause also prohibits words, offers, or propositions made during mediation from being used as evidence in other contexts.⁸² There was previously ambiguity regarding privilege and disclosure in India due to the absence of a formal framework guiding the admissibility of mediation communications. By codifying evidentiary protection akin to international norms, Section 23 addresses this issue and guarantees that parties can engage in unfettered negotiations without worrying about their words being used against them in the future.

⁸⁰ Ibid S 16

⁸¹ Ibid S 22

⁸² Ibid S 23

3.2.2.13 Termination of Mediation Proceedings

The conditions under which mediation procedures are deemed to have ended are outlined in Section 24. According to it, termination takes place when a settlement agreement is signed, a mediator declares in writing that additional mediation is not warranted, or any party opts out in writing.⁸³ In the past, mediations could conclude in an ambiguous manner, particularly in institutional settings, leaving room for doubt regarding the resumption of enforcement or limiting dates. By officially defining termination events, this section addresses that issue and gives the mediation lifecycle procedural finality and clarity.

3.2.2.14 Costs of Mediation

According to Section 25(1), costs are to be decided in accordance with regulations, with the exception of community mediation. As a result, the financial components of mediation have a consistent and clear structure.⁸⁴ Prior to the Act, mediation fees were applied unevenly, differing between institutions and geographical areas, which left users in the dark. By guaranteeing that fees are established by precise legal standards rather than by arbitrary practice, the clause brings uniformity and equity.

3.2.2.15 Mediator Fees

The previous clause is strengthened by Section 25(2), which states that parties must equally split the mediator's fees and service provider expenses unless otherwise agreed.⁸⁵ Due to the lack of statutory direction, parties have historically been able to dispute on fee division or default on payment. The Act guarantees the viability of mediation services while simultaneously advancing equity by codifying the equal cost-sharing principle. This makes mediation a more official, ad hoc process and helps establish it as a good substitute for litigation.

3.2.2.16 Suspension of Running of Limitation Period

According to Section 29, the time spent in mediation will not be taken into account for calculating the statute of limitations for any ensuing judicial or arbitral procedures. Prior to this protection, parties who participated in mediation ran the risk of losing their ability to sue, which might deter early settlement attempts.⁸⁶ By "freezing" the statute of

⁸³ Ibid S 24

⁸⁴ Ibid S 25 (1)

⁸⁵ Ibid S 25(2)

⁸⁶ Ibid S 29

limitations during mediation, the section makes amends and guarantees that parties can try to reach a mutually agreeable agreement without endangering their procedural rights. With this innovation, Indian mediation practices are more in line with forward-thinking international mediation regulations like Singapore's 2017 Mediation Act.

3.2.2.17 Establishment of Supervisory Body (Mediation Council of India)

The Mediation Council of India is created as a statutory body corporate with perpetual succession under Section 31. The Council's responsibilities include upholding professional standards, encouraging mediation, and keeping an up-to-date mediator registry.⁸⁷ A fragmented landscape previously resulted from the lack of a central body to accredit or regulate mediators prior to the Act, and not, by offering centralized monitoring, encouraging standardization, and professionalizing mediation practice nationwide, the Council's establishment closes this regulatory gap.

3.2.2.18 Duties and Functions of the Supervisory Body

The functions of the Mediation Council of India are explained in more detail in Section 38. For mediators and service providers, it requires the creation of training curricula, certification processes, ethical guidelines, and criteria for ongoing education.⁸⁸ In the past, India lacked a rigorous regulatory framework to oversee mediator ethics or accreditation, which led to inconsistent quality. The Act guarantees uniformity, accountability, and public confidence in mediation organizations by giving the Council the authority to supervise training, discipline, and development.

3.2.2.19 Resort to Arbitral or Judicial Proceedings

Section 89 of the Code of Civil Procedure 1908⁸⁹ is amended by the Fourth Schedule, giving judges the authority to send cases to Lok Adalat, arbitration, or mediation. This reform guarantees congruence between judicial and alternative systems and incorporates the Mediation Act into India's larger dispute resolution framework. In the past, section 89 only offered vague referral guidelines, which led to procedural ambiguity. A move toward a single, multi-door justice system that promotes settlement before adjudication is signalled by the amended provision, which harmonizes mediation with current ADR procedures.

⁸⁷ Ibid S 31

⁸⁸ Ibid S 38

⁸⁹ Act No. 5 of 1908

3.3 Conclusion

From the unofficial Mahajan practices of its traders to a complex legal framework based on the Mediation Act, 2023, India's commercial mediation system exhibits a continuous progression. What started out as well-known businessmen serving as peacemakers has developed into a professionally run, legally binding procedure that is a part of the legal system.

The Act offers a uniform, enforceable, and institutional framework for mediation in business disputes, bridging decades of disjointed practice. A thorough institutional design is represented by the creation of the Mediation Council of India, the incorporation of private mediation services, and the cooperation with the Mediation and Conciliation Project Committee. Furthermore, India's mediation system now offers a strong basis for resolving business disputes. It serves as an example of purposeful legislative reform that strikes a balance between contemporary procedural rigor and historic conciliatory principles. Once a peripheral aspect of Indian law, mediation is now a vital part of the country's legal system since it is effective, enforceable, and developing.

CHAPTER FOUR

LESSONS ZAMBIA CAN DRAW FROM INDIA FOR DEVELOPING A COMMERCIAL MEDIATION FRAMEWORK

4.0 Introduction

Zambia's approach to mediation, as outlined in Chapter Two, remains weak because its legal provisions lack coherence, there is minimal institutional oversight, and the few existing rules are inconsistently applied. In contrast, India addressed similar shortcomings through the enactment of the Mediation Act, 2023 which is a modern and business-focused framework that provides structure, accountability, and clarity. This chapter examines the gaps within Zambia's mediation framework and connects each one to corresponding provisions in India's model, showing how those mechanisms could address local weaknesses. The goal is to propose practical legal and institutional reforms that would enable Zambia to build a comprehensive and functional system for commercial mediation.

4.1 Lessons from India to Address Zambia's Gaps in Commercial Mediation

4.1.1 Need for a Standalone Mediation Legislation

Zambia's setup splits mediation rules between court guidelines and individual laws, as a result, processes end up disjointed.

India tackled this very problem by passing the Mediation Act in 2023, a one-stop law handling every kind of mediation, including commercial, institutional, or international mediation.⁹⁰ Instead of scattered rules, Zambia might borrow this model to craft its own all-in-one mediation law, making dispute settlement by commercial players outside court more trusted and effective.

4.1.2 Enforceability of Mediated Settlement Agreements

Businesses in Zambia are apprehensive since private mediation agreements do not always hold up in court. When results are not legally binding from the beginning, trust quickly erodes.

In India, agreements that are reached through mediation are enforceable similar to court verdicts under Section 18 of its Mediation Act; no additional legal procedures are

⁹⁰ The Mediation Act 2023 (India) No 32 of 2023, Gazette of India, Extraordinary, Part II § 1 (15 September 2023) Preamble.

required.⁹¹ Zambia might develop its own regulations to ensure that mediated decisions are implemented immediately rather than later.

4.1.3 Recognition of the Mediation Agreement

Another issue faced in Zambia is the lack of a definition of what amounts to a mediation agreement. This means that regardless of whether they are completed online or on paper, mediation agreements lack legal standing, which is a hurdle that will need to be dealt with if mediation agreements are to be made enforceable.

In contrast to India, section 4 of the Mediation Act specifies exactly what constitutes a mediation agreement of which the main requirement is for it to be written and recognizes online agreements or digital as legitimate means of forming one.⁹² Therefore, rather than continuing with the status quo, Zambia might consider employing this flexible arrangement, which would enable more commercial entities to obtain justice while maintaining a dependable, accessible and certain dispute resolution avenue.

4.1.4 Pre-Litigation Mediation for Commercial Disputes

Due to the lack of mediation procedures in Zambia's legal system, there are no incentives for pre-litigation mediation, leading to a pile up of cases in Zambian courts.

In contrast, section 5 of the Indian Act stipulates that some disputes, especially those pertaining to commerce and covered by the 2015 Commercial Courts Act, must be mediated before going to trial.⁹³ A similar mechanism could improve Zambia's overcrowded dockets and encourage parties to reach settlements more quickly which would be in the best interest of commercial entities.

4.1.5 Clarity on Mediation-Eligible Matters

As Zambia's legal system does not spell out what kinds of conflicts are fit for mediation, India's example shows how certain cases, like crimes or tax issues, cannot go into mediation, pursuant to the section 6⁹⁴ and the First Schedule of their Mediation Act.⁹⁵

⁹¹ No.32 of 2023 s 18

⁹² Ibid s 4

⁹³ Ibid s 5

⁹⁴ Ibid s 6

⁹⁵ Ibid First Schedule

Zambia may learn from this and enact legislation that also leaves out certain unfit cases, so as to allow only suitable business conflicts to end up being mediated.

4.1.6 Appointment and Number of Mediators

The lack of a clear regulation regarding the selection process for mediators and the precise number of mediators who should manage commercial conflicts is another issue facing Zambia.

Section 8 of the Indian Mediation Act establishes a framework that allows parties to select one or more mediators based to their requirements, including foreign mediators if necessary.⁹⁶ When it comes to resolving commercial disputes, Zambia can benefit from a similar arrangement that brings in qualified experts from overseas. which would allow for the international experts to fall within and be regulated by the Act

4.1.7 Conflict of Interest and Disclosure by Mediators

Another gap that exists in Zambia outlined in the preceding chapters is that actual or potential conflicts of interest are not required to be disclosed by mediators.

A lesson to be learnt from India is that throughout the proceedings, mediators are required by Section 10 to provide such disclosures.⁹⁷ Zambia can use comparable measures to encourage impartiality and transparency

4.1.8 Commencement of Mediation

The legal system in Zambia lacks precise criteria about the official start date and time of a mediation, which leads to confusion regarding the procedures involved in the process.

The lesson to be learned from India is According to Section 14 of the Indian Act, mediation begins immediately after a mediator is chosen or someone submits a notice based on an existing agreement.⁹⁸ Starting the process could be more uniform if Zambia adopted that explicit regulation.

4.1.9 Procedural Conduct of Mediation

Another gap that exists in Zambia is that there are no rules on how mediation should be carried out, which leads to irregularities or inconsistencies. Indian lesson? Section

⁹⁶ Ibid S 8

⁹⁷ Ibid S 10

⁹⁸ Ibid s 14

15 delineates procedural norms, including as voluntariness, confidentiality, and equal treatment of parties.⁹⁹ Zambia ought to move towards enshrining these principles in a formal code of conduct.

4.1.10 Representation of Parties

Uncertainty persists in Zambia over whether parties may be legally represented in mediation, particularly in commercial contexts. In contrast, the Indian Act permits representation by any authorised person, including legal practitioners in some instances as outlined in the preceding chapter.¹⁰⁰ This provision, if adopted, would ensure fairness and accessibility in Zambia.

4.1.11 Role of the Mediator

Considering that there is no formal regulation outlining how mediators must perform in Zambia, their responsibilities might occasionally become ambiguous as they rely on other non-binding or inconsistent principles. A lesson from India? Section 16 makes it clear that the mediator facilitates communication but does not make decisions, according to the notion that the parties maintain control.¹⁰¹ This or a similar regulation could be used by Zambia to reinforce the discretionary nature of mediation.

4.1.12 Confidentiality and Admissibility Rules

Confidentiality in mediation is another area where Zambia falls short because it is not legally protected, which undermines participant trust. On the other hand, the Indian Mediation Act's Sections 22 and 23 prohibit the use of mediation communications as evidence in later actions and guarantee procedural confidentiality.¹⁰² Similar provisions would promote candid communication during mediation if they were implemented in Zambia.

4.1.13 Termination of Mediation

In Zambia, there are no legal regulations that specify the formal conclusion of mediation. In contrast, Section 24 of the Indian Mediation Act specifies terms for termination, which include settlement, party withdrawal, or the mediator's declaration

⁹⁹ Ibid S 15

¹⁰⁰ Ibid S 37A

¹⁰¹ Ibid S 16

¹⁰² Ibid S 22 and 23

of futility.¹⁰³ For the purpose of procedural clarity, Zambia might implement these requirements.

4.1.14 Costs and Mediator Fees

Because Zambia's system lacks explicit guidelines for managing mediation costs, fee agreements vary greatly throughout organizations due to the absence of a statute dictating who is responsible for what. However, if no other decision is made, Section 25 of the Indian Act specifies how expenses and charges are divided.¹⁰⁴ Zambia can employ this arrangement to maintain equity and facilitate access to mediation.

4.1.15 Suspension of Limitation Periods

In Zambia, mediation puts parties at risk by delaying procedures without stopping statute of limitations. However, in India, Section 29 suspends statutes of limitations while mediation is underway.¹⁰⁵ This clause could be used in Zambia to promote early mediation without compromising litigation rights.

4.1.16 Forms of Mediation Agreement

The formalities and structure of mediation agreements, including whether they should be independent contracts, terms inside commercial contracts, or separate instruments, are not governed by any laws in Zambia.

A variety of mediation agreements, such as those reached as part of commercial contracts, subsequent settlement agreements, or pre-dispute undertakings, are recognized by India's Section 4(2).¹⁰⁶ This adaptable strategy guarantees that parties can formally agree to mediate in whatever format that best meets their business requirements. In order to increase contractual certainty and facilitate access to mediation, Zambia should emulate this acceptance of various agreement forms.

4.1.17 Establishment of Supervisory Body

Zambia currently has no single institution responsible for regulating, accrediting, or promoting the development of mediation, particularly commercial mediation. By contrast, Sections 31 to 38 of India's Mediation Act establish the Mediation Council of

¹⁰³ Ibid S 24

¹⁰⁴ Ibid S 25

¹⁰⁵ Ibid S 29

¹⁰⁶ Ibid S 4(2)

India, a statutory body tasked with supervision, accreditation, and advancement of mediation practice.¹⁰⁷ Zambia can draw from this model by creating a similar Mediation Council of Zambia or by assigning such regulatory authority within the judiciary. The establishment of such a dedicated supervisory body would ensure consistent standards, professional accountability, and sustained growth of mediation as a credible dispute resolution mechanism.

4.2 Conclusion

Zambia could use India's 2023 Mediation Act as a clear, up-to-date model for handling commercial disputes through mediation. With local adjustments that fit Zambia's needs while fixing weak spots in today's setup, the country might build a smoother, more reliable way to settle conflicts. This kind of system would not just speed things up, it would also boost trust, ease pressure on courts, draw in overseas investors, and support ongoing changes to the justice sector.

¹⁰⁷ Ibid S 31-38

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

This chapter presents the overall conclusions and recommendations arising from the study. It brings together the key findings from the previous chapters and proposes measures that Zambia can undertake to strengthen its legal and institutional framework for commercial mediation. The primary focus of the research was to analyse the state of Zambia's mediation system, identify existing weaknesses, and draw lessons from India's Mediation Act, 2023, which provides a comprehensive and modern model for integrating mediation into a country's legal framework. The recommendations offered here are directed towards creating a coherent, business-oriented, and accessible mediation regime that can enhance Zambia's dispute resolution system and contribute to the efficient administration of justice.

5.2 General Conclusion

The findings of this study demonstrate that Zambia's mediation framework remains underdeveloped and fragmented. Mediation currently operates under limited procedural rules, particularly those governing court-annexed mediation, without an independent legislative foundation. There is no comprehensive law regulating the conduct of mediation, no national institution responsible for accreditation or oversight, and no clear mechanism for enforcing privately mediated settlements. As a result, mediation has not yet evolved into an autonomous or credible process capable of meeting the needs of commercial entities. The lack of statutory direction also hinders predictability, discouraging businesses from opting for mediation as a serious alternative to litigation.

The study has shown that India's Mediation Act, 2023 provides valuable lessons that Zambia can adopt. India's legislation is built upon a unified and systematic approach that governs all aspects of mediation from pre-litigation mediation and enforceability of agreements to accreditation, confidentiality, and institutional regulation. The Act creates a legal environment in which mediation functions as both an independent and complementary mechanism to the court process. It offers certainty, flexibility, and enforceability, three features that are currently lacking in Zambia's legal framework. India's experience demonstrates that enacting a dedicated mediation statute not only

enhances access to justice but also builds confidence among commercial stakeholders and attracts foreign investment by providing an efficient and predictable means of resolving disputes.

Therefore, the central conclusion of this dissertation is that Zambia's existing legal and institutional framework for commercial mediation requires substantial reform. The country must establish a legislative and institutional foundation that gives mediation legal recognition, defines its process, and ensures enforceable outcomes. Zambia's framework should draw directly from the lessons identified in India's model, while remaining sensitive to its own legal, social, and economic context. A well-designed Mediation Act could transform Zambia's current ad hoc practice into a credible and sustainable part of the justice system.

5.3 Summary of Chapters

Chapter One introduced the background to the study, outlining the growing need for a more effective dispute resolution mechanism within Zambia's commercial landscape. It established that litigation and arbitration, while well developed, are often costly and time-consuming, prompting the need to explore mediation as a viable alternative, especially for small-medium enterprises. The chapter set out the research problem, objectives, and questions, highlighting the study's purpose, which are to examine Zambia and India's existing legal framework and draw lessons from India's experience. It further established the study's significance in contributing to national justice reform and promoting business confidence through efficient dispute resolution.

Chapter Two examined Zambia's current legal and institutional framework governing commercial mediation. It found that mediation exists only as part of the court process, primarily under the High Court and Subordinate Court Rules. There is no standalone legislation that defines mediation, regulates mediators, or provides for enforcement of settlements. The absence of statutory guidance means that mediation operates on discretion rather than on a defined legal basis. The chapter concluded that Zambia's framework is limited in scope and lacks the institutional support needed to develop mediation as a mainstream commercial dispute resolution mechanism.

Chapter Three turned to India's experience and explored the Mediation Act, 2023 in detail. The chapter outlined the historical development of commercial mediation in India, and how it successfully created a unified legal framework that governs all forms

of mediation including commercial, institutional, private, community, and pre-litigation mediation, inter alia. It discussed the Act's key provisions, such as the enforceability of settlement agreements, confidentiality, the suspension of limitation periods, and the establishment of the Mediation Council of India. The Act demonstrates a practical and context-sensitive approach to mediation, one that balances flexibility with formal recognition. India's framework shows how legislative reform can bring coherence, credibility, and structure to mediation, ensuring that it serves both public and commercial interests.

Chapter Four built upon these findings by identifying nineteen specific lessons that Zambia can draw from India's model. It linked the gaps observed in Zambia's system with the corresponding provisions in India's Mediation Act. Among the most significant lessons were the need for a standalone Mediation Act, the formal recognition of mediation agreements, the enforceability of settlement agreements, the introduction of pre-litigation mediation, the definition of mediable disputes, and the establishment of a supervisory body to oversee accreditation and training. The chapter also drew lessons on confidentiality, representation, conduct of mediation, termination of proceedings, and cost regulation. Each of these lessons provides a pathway for Zambia to design a comprehensive and functional mediation framework suited to its own needs.

5.4 Recommendations

In view of the findings and the lessons drawn from India, this study recommends that Zambia undertake deliberate legislative reform to establish a unified and enforceable mediation framework. The foremost recommendation is the enactment of a standalone Mediation Act that consolidates all laws relating to mediation and provides clarity on procedure, scope, and enforceability. Such an Act should recognise both court-annexed and private-commercial mediation, define the legal status of mediated settlements, and set out the duties and obligations of mediators and parties. It should also provide for the recognition of electronic and cross-border mediation agreements, bringing Zambia in line with modern international standards. The enactment of this law would create certainty and predictability in mediation practice, thereby enhancing confidence among commercial parties.

Furthermore, there is a need to establish a Mediation Council of Zambia, modelled on India's Mediation Council, to regulate and promote the practice of mediation nationwide. This statutory body would be responsible for accrediting mediators and mediation service providers, setting professional standards, maintaining a national register, and advising government on policy matters. The establishment of such a body would bring uniformity, professionalism, and accountability to mediation practice, which are essential for building trust in the system.

Another key recommendation is the introduction of pre-litigation mediation for defined categories of commercial disputes. This measure would encourage parties to attempt settlement before resorting to court, reducing the backlog of cases and promoting early resolution. The process should be guided by clear procedural rules and supported by qualified mediators registered under the proposed Council. Additionally, settlement agreements reached through mediation should be enforceable as court decrees once registered, whether they arise from court-annexed or private mediation. This would enhance the legal certainty and finality of mediated outcomes, making mediation a more attractive option for commercial entities.

It is also recommended that Zambia expand its institutional infrastructure for mediation by establishing regional mediation centres beyond Lusaka. These centres would enhance accessibility and support the growth of mediation at both domestic and cross-border levels. They could operate under the supervision of the proposed Mediation Council and in collaboration with professional bodies such as the Law Association of Zambia and the Chartered Institute of Arbitrators (Zambia Branch). Alongside institutional expansion, there is a strong need for capacity building and awareness programmes. The government, judiciary, and universities should collaborate to promote public education on mediation, integrate mediation courses into university curricula, and train legal professionals in mediation advocacy and ethics. Creating awareness among businesses and the public would help embed mediation into Zambia's legal culture.

Finally, the author of this study recommends that the Judiciary, working with the proposed Mediation Council, develop a monitoring and evaluation framework for mediation practice. This would involve the collection of data on case volumes, settlement rates, and satisfaction levels, allowing policymakers to assess the

effectiveness of mediation and make informed reforms over time. Aligning the proposed Mediation Act with existing statutes such as the Civil Procedure Code, the Arbitration Act, and the High Court Rules would ensure coherence and smooth integration between mediation, arbitration, and litigation processes.

5.5 Final Remark

Mediation has the potential to reshape Zambia's dispute resolution landscape by providing a faster, more flexible, and cost-effective means of resolving commercial disputes. However, its growth and success depend on the establishment of a clear and comprehensive legal framework supported by capable institutions. The lessons drawn from India's Mediation Act, 2023 demonstrate that a unified law can create the certainty, enforcement mechanisms, and professionalism required to make mediation a credible tool of justice. For Zambia, enacting a similar law which is tailored to its domestic context would not only strengthen access to justice but also enhance the country's attractiveness as a secure and predictable commercial environment. A well-structured mediation framework would complement the existing court system, reduce case backlogs, and promote amicable resolution of disputes in line with the nation's broader vision of modernising justice delivery.

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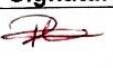
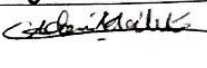
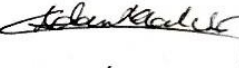
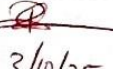
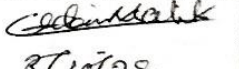
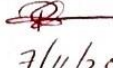
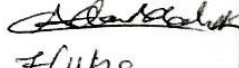
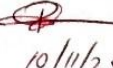
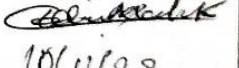
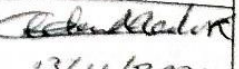
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Stage	Comments	Supervisor's Signature & Date	Student's Signature & Date
Research Proposal	Topic is fine and can proceed	 25/03/25	 28/03/25
Chapter 1 – Introduction	minor changes	 20/10/25	 20/10/25
Chapter 2 –	minor changes	 3/10/25	 3/10/25
Chapter 3 –	okay to proceed	 7/11/25	 7/11/25
Chapter 4 –	minor changes	 10/11/25	 10/11/25
Chapter 5 – Conclusions & Recommendations	okay to proceed	 12/11/25	 12/11/25
Table of Contents, Bibliography and Appendices	Okay to proceed	 13/11/25	 13/11/25
First Draft	A few minor changes but okay to submit	 13/11/2025	 13/11/2025

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