

THE PRACTICE OF COURT-LED MEDIATION IN YANGON REGION: 2021 TO 2023*

Aye Myat Kay Khaing¹

Abstract

This research examines the effectiveness of the newly introduced court-led mediation system in Myanmar, focusing on Yangon Region between 2021 and 2023. The study reveals that 27.7% of mediation sessions were successfully settled, with financial disputes showing the highest success rate. Factors such as mediator training and proper procedures contributed to positive outcomes, while limited public awareness, incomplete documentation, and accessibility challenges affected effectiveness. The study recommends improving mediator capacity, promoting public understanding, and strengthening institutional support to enhance the role of court-led mediation in Myanmar's judicial system.

Keywords: Court-led Mediation, Mediator, Alternative Dispute Resolution (ADR)

Introduction

Court-led mediation has emerged as a component of alternative dispute resolution (ADR), in Myanmar Yangon Region for quite some time now. In the past in Myanmar dispute settlement mainly revolved around action that resulted in prolonged court battles escalated expenses and considerable delays in attaining fairness. The formal integration of court-led mediation since March 2019 signified a change, in how conflicts are resolved within the legal framework. This project was designed to ease the strain on a court system and offer parties a way to settle disputes that is both effective and cooperative. The use of alternative dispute resolution (ADR) in the judicial process is becoming more prevalent around the world. It allows parties to resolve their disputes through peaceful dialogue and mutual understanding. In Myanmar, which has a highly valued community and harmony, mediation can help resolve conflicts.

Then, with the amendments to the Myanmar Civil Procedure Code in October 2021, court-led mediation further cemented its place as a legal route for dispute resolution. This legislative change made cases of specified natures, such as monetary claims, family disputes, and commercial disputes, refer first for mediation before heading into litigation. The aim is to reduce the stress of the court and to ensure good cooperation and resolution between the parties. Thus, mediators have increasingly played an important role in guiding parties through the mediation process and assisting in effective settlements that satisfy the parties. This study will also trace the effectiveness and practical implications of court-led mediation in Yangon from 2021 to 2023. Court-led mediation serves as a vital mechanism for the peaceful settlement of disputes, particularly within the context of court-led mediation in Myanmar. This process emphasizes dialogue and mutual understanding, allowing parties to resolve their conflicts peacefully without resorting to adversarial litigation.

Myanmar people are familiar with the mediation and traditionally pay attention to solving cases of harmony and peace in society. During the time of Myanmar Kingdoms, the judges and arbitrators gave a patient ear to the litigants and encouraged them to settle disputes by agreement.

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¹ Department of law, University of Yangon

On 1 March 2019, the court-led mediation pilot program was initiated in Dekkhina District Court, Taungoo District Court, Takkone Township Court and Taungoo Township Court. It was expanded to 6 township courts of Nay Pyi Taw Union Territory in 2020 and all courts of Yangon and Mandalay Regions in 2021. The court-led mediation project in Yangon region started in March 2021. After the amendment of the Civil Procedure Code, the court-led mediation system was implemented nationwide on 1 August 2022.

Materials &Methods

The research focuses on analyzing mediation outcomes between 2021 and 2023 to evaluate effectiveness and identify key challenges. Primary data were collected from literary, books, reports, judicial manuals, and, while secondary data were obtained from the annual reports of the Supreme Court of the Union and the Yangon Region Court-led Mediation Center. The research focuses on analyzing mediation outcomes between 2021 and 2023 to evaluate effectiveness and identify key challenges. Therefore, the research paper applies qualitative research methodology.

Findings

The study found that the total number of settlements obtained by the Yangon Region from 2021 to 2023 was 27.7%. Notably, this time, 822 out of 2,966 recipients completed the session. The mediation process is open and structured to facilitate discussion between the two parties. Many potential users do not understand the benefits and methods of mediation, making mediation unnecessary. The Supreme Court of the Union has also developed and implemented a strategic plan for the development and improvement of alternative dispute resolution (ADR). Understanding the impact and nature of the hearing should be included in the curriculum so that the public can access the hearings. The information about court-led mediation needs to be spread to people from various fields. The use of court-led mediation in court needs to be improved. In financial cases, the successful resolution of a large-scale civil case in a short time is the success of mediation. Some parties, especially in remote areas, have experienced problems accessing mediation facilities, which hinders cooperation. Mediation is generally considered less formal than litigation, which may affect public acceptance. Studies show that parties involved in financial, family, and business disputes prefer mediation to litigation because it is quicker and less costly to resolve.

Discussion

Definition of Mediation, Court-led Mediation and Mediator

Mediation is defined as a dispute resolution process involving a mediator by the Court who facilitates the parties to reach a mutually agreeable solution.¹

Court-led Mediation is defined as a process in the civil suit filed at the court that facilitates parties' settlement negotiation to reach a mutually acceptable agreement with the assistance of a mediator.² In addition, it is described in the Court-led Mediation Manual as the

¹ Section 89A of the Civil Procedure Code 1908

² <https://www.unionsupremecourt.gov.mm>

voluntary or mandatory settlement dispute of the parties in civil suits with the assistance of a court-assigned mediator at the Court Mediation Center.

Mediator: The Judicial officers who have mediation training are assigned as mediators. They have to comply with the principles of Independence, Fairness, Impartiality, and Confidentiality in mediation process.

Alternative Dispute Resolution (ADR)

Alternative dispute resolution involves various ways to resolve disputes outside of traditional courts. In a developing society where the legal system strives to serve people well, ADR has emerged as an alternative to litigation. The main purposes of ADR include negotiation, mediation, arbitration, and conciliation; each has a different purpose and uses different methods. The key features of ADR: ADR processes are generally confidential and allow parties to discuss issues openly without fear of public disclosure. ADR has a flexible process based on the specific needs of the parties involved. ADR can help manage and strengthen the relationship between parties to a dispute by encouraging dialogue and understanding. Discussion to help them reach consensus and agreement. The mediator does not create solutions but guides the parties through the negotiation process.

The mediator will help the parties communicate effectively, understand the interests behind them, and find a way out. The mediator does not make decisions like a judge or magistrate but guides the parties to a decision or agreement. This process can encourage cooperation and preserve relationships that might otherwise be damaged by conflict.

In recent years, many jurisdictions, including Myanmar, have increasingly recognized that ADR processes such as mediation can help improvement justice. Courts have turned to mediation as a measure to help reduce litigation and provide litigants with real options for resolution. In some countries use mediation before the trial for example Indian. The Indian legal system has incorporated court-led mediation into its framework, with many high courts encouraging mediation as a form of pre- trial option. Court-led mediation is a process that has been successfully implemented in most countries.

Law relating to the Court-Led Mediation in Myanmar

To implement the court-led mediation, the Code of Civil Procedure is main legislation. Therefore, the Government enacted the law amending the Code of Civil Procedure in 2021.¹ The Law Amending the Code of Civil Procedure provides the legal framework for voluntary and mandatory Court-led mediation in civil suits, confidentiality of mediation, court's power to pass an order or decree on mediation agreement, and rules making power of Union Supreme Court. The Court-led Mediation Manual of the Union Supreme Court sets out good practice guidance for judges, mediators, court staff, and parties.

¹ State Administration Council Law No. 58/2021 dated 11 October 2021.

According to Section 89 A of the Civil Procedure Code –

- (1) The Court may conduct mediation to a dispute in the case involving a civil nature under this section.
- (2) The Court may refer the following cases to mediation: (a) cases which are prescribed to be mediated by any law or by any notification issued by the Supreme Court of the Union; and (b) cases which are voluntarily referred to mediation by disputant parties.
- (3) The proceedings of mediation shall be confidential. Any communication, statement, and admission made during the mediation process shall not be admissible in any subsequent hearing of the same suit or any other proceedings.
- (4) Where the parties to mediation reach an agreement, the parties shall apply the Court to verify the agreement. The Court shall pass an order or a decree, as it thinks fit, by the relevant provisions of the Code of Civil Procedure.
- (5) The Supreme Court of the Union may issue notifications, orders, directives, procedures, and manuals relating to mediation under this section as may be necessary.

The Practice of Court-Led Mediation in Myanmar

A person who wants to participate a court-led mediation must first file a civil case in court. This is because the client has not yet been able to directly apply to the Mediation Center for mediation. Court -Led Mediation operates within a framework of rules and regulations that guide its practice. This framework should ensure that conflict resolution is fair, efficient, and effective for all parties. In many countries around the world, such as Myanmar, court mediation has been incorporated into the judicial process to increase access to justice and improve efficiency. It is a major step forward in modernizing the way the country resolves disputes.

Mediation facilitates cooperation between the parties. The parties may be represented by their lawyers, but if necessary, they must appear before a mediator. The rules of the court-led mediation manual govern the mediation process. The mediation period is generally limited to one month, but if the mediator deems it necessary, the period may be extended with the approval of the court. The offer remains valid during the mediation period and continues to be valid after the conclusion of the mediation.

Enforcement

Mediation is strongly recommended as a mandatory settlement for claims involving financial, family, and commercial matters. As a voluntary settlement for financial, family, and commercial matters; and as a voluntary settlement for others. The court refers to the Mediation Center as soon as possible during this process. Section 89A (3) of the Civil Procedure Code provides, the legal basis for enforceability of the meditation agreement. The Court shall pass an order or a decree, as it thinks fit, on the application of the parties to verify the agreement. In the mediation center, when the mediation is successful, both sides based on mutual agreement the

court may pass, the degree of admission¹ or, withdrawal of case² or the passing of a degree of settlement³, an appropriate degree must be passed. If the parties withdraw their claims through actual settlement negotiations before the hearing of witnesses, one-half of the court fees for the claim will be refunded under the Supreme Court of the Union Notice No. 243, dated June 29, 1973.

If the court may pass Order 23 Rule 3 of the civil procedure code, there are two parts. The first part is the dismissal of the case in whole or partly by agreement or settlement by law. When it is proved to the satisfaction of the court that it has been negotiated and clarified in part or part. Whether the litigation is related to the entire content of the case or when the plaintiff is satisfied with some of the parts. The court will consider this agreement. A decree shall be adopted because the settlement or satisfactory action shall be written down in the case. After the decree is passed, the case will be closed. If the judgment -debtor fails to act as they agreed, the decree-holder can open file an application with the court to initiate execution proceedings to enforce the judgment.

Under the Civil Procedure Code, order 23 rule 3 second part, by the terms of the settlement agreement or satisfaction measures, a decree must be issued with the right for the clients to apply to suspend and approve all further actions in the case. About the established decree, if the client does not act according to the terms of the agreement, he applies in the pending legal case to act according to those terms. When such an application is made, the court will make a decree that the client will act according to the agreement.⁴ If the judgment debtor fails to implement the decree, the decree-holder can apply for the execution. There is no sanction for failure to mediate if one party to the dispute proposes mediation and the other party ignores the proposal, refuses to mediate, or interferes with the mediation process. The case will continue even after mediation fails.

The Effectiveness of Court-Led Mediation in Yangon Region

The court-led mediation project in the Yangon region started in March 2021.

Year	Total Cases Referred to Mediation	Successfully Settled Cases	Success Rate (%)
2021	417 cases	111 cases	26.6 %
2022	1,447 cases	414 cases	28.6 %
2023	1,102 cases	297 cases	26.8 %
Total (2021–2023)	2,966 cases	822 cases	27.7 % (average)

According to the data obtained from the Yangon Region Mediation Center, out of a total of 297 successfully mediated cases in 2023, financial disputes accounted for 167 cases (56%), family disputes for 67 cases (23%), commercial disputes for 48 cases (16%), and other disputes for 15 cases (5%). It was found that financial disputes had the highest success rate among all

¹ Order 12, Rule 6 of the Civil Procedure Code.

² Order 23 Rule 1(1) of the Civil Procedure Code.

³ Order 23 Rule 3 of the Civil Procedure Code.

⁴ Ko Min Lwin and Maung Than Naing 2005, MLR,P-127.

types of cases. However, the overall success rate of mediation appeared relatively low because it was calculated based on the total number of cases referred to the mediation center from 2021 to 2023, including those that were not actually mediated. Some cases were unsuitable for mediation or could not proceed due to incomplete documentation or other procedural issues. Therefore, if the success rate were calculated only from the cases that were actually mediated, the percentage of successful settlements would likely be significantly higher, indicating a more effective performance of the mediation process in practice

Parties to claims involving financial, family, and business matters prefer mediation than other claims. The success rate for mediation of financial claims is the highest of all. Litigation is often time-consuming and expensive, leaving both parties in limbo for long periods. Mediation can provide a quicker resolution, allowing both parties to move on with their lives without the burden of lengthy court proceedings. This quality is especially welcome in situations where relationships are important, such as family conflicts or business partnerships.

In India, court-referred mediation was formally introduced through the amendment of Section 89 of the Code of Civil Procedure in 1999, which empowered courts to refer civil disputes to Alternative Dispute Resolution (ADR) mechanisms, including mediation. To institutionalize this practice, the Supreme Court of India established the Mediation and Conciliation Project Committee (MCPC) on 9 April 2005, marking the beginning of structured court-annexed mediation across the country. The first mediation centers was inaugurated at the Madras High Court in April 2005, followed by similar centers in Delhi, Bangalore, and other jurisdictions. Within the first three years of implementation (2005–2008), the reported success rates of court-annexed mediation ranged between approximately 50 to 65 percent—Delhi’s “Samadhan” centers recorded around 56–60 percent settlement rates, while the Bangalore Mediation Centre achieved about 65 percent. These results demonstrated that court-referred mediation could significantly reduce case backlogs, deliver quicker resolutions, and enhance public trust in the justice system. The Indian experience thus provides a valuable reference point for Myanmar, where court-led mediation has similarly been developed to promote amicable dispute settlement and to relieve the burden on the judiciary.

When comparing the mediation systems of Myanmar and India, it is evident that India has a more experienced and well-established mediation framework. The Indian system was introduced through the amendment of the Code of Civil Procedure in 1999, and in 2005, the Mediation and Conciliation Project Committee (MCPC) was formed to oversee and expand court-annexed mediation centers across the country. Within the first three years of implementation (2005–2008), the success rate of mediation ranged between 50 and 65 percent.¹

On the other hand, Myanmar introduced its court-led mediation system only recently, in March 2021. From 2021 to 2023, the Yangon Region recorded a total of 2,966 cases referred to mediation, out of which 822 were successfully settled, showing an average success rate of 27.7 percent. Among these, financial disputes represented the highest number of successful settlements.

Therefore, Myanmar’s court-led mediation system remains in its early stage of development, comparable to India’s initial phase of implementation. With continued efforts to

¹ <https://www.delhihighcourt.nic.in>

enhance mediator training, expand access to mediation centers, and raise public awareness, Myanmar's mediation success rate is expected to increase significantly in the coming years, following India's successful model.

Challenges of Court-Led Mediation

Currently, mediation centers can be established in all the high courts in the state. In some areas, parties are unable to travel to mediation centers that are located far from their residences. The failure of parties to attend mediation was a major cause of mediation failure. Access to mediation centers remains a challenge for effectively implementing the court-led mediation system. The problem for the courts is that parties refuse to agree to mediation and do not appear in court even after the mediation process is completed. The court solves these issues by the Civil Procedure Code. The biggest challenge facing court mediation is the lack of public understanding of the benefits of mediation and the process involved. Due to lack of knowledge, many potential clients are still unaware of the possibility of mediation as a means to resolve their dispute. For mediation, timely access to services can maintain momentum and ensure that the conflict is mutually beneficial. The transition to mediation requires a cultural shift. The perception of mediation as an informal, less legal process is related to differences in human participation. Public information campaigns are needed to inform the public about the benefits to be gained from court discussions to increase participation. Training and information sessions are particularly effective community participation strategies. This may include improving resource allocation and administrative support for mediators. Through mediation, both parties and the court can enjoy the benefits of mediation, because both parties can negotiate to resolve the dispute by actually discussing and finding a solution during the meeting, the relationship between the two clients can be improved; the consultation process is simple and easy for the client to participate. Details that the user wants to keep confidential; ensuring the security of evidence without the knowledge of others; when mediation is done, it will help to reduce the burden of workloads in the courts and also help the process to be completed quickly.

Conclusion and Recommend

The study of court-led mediation in Yangon from 2021 to 2023 shows little progress but great potential for improvement. These findings highlight the importance of mediator training and the need for clearly defined procedures to improve mediation outcomes. Strengthen Public Awareness: conduct awareness campaigns to educate the public and lawyers about the benefits of mediation. Improve Institutional Capacity: establish mediation centers in all districts and townships to ensure accessibility. Data and Monitoring Systems: develop standardized data reporting and monitoring mechanisms to assess mediation performance to increase the effectiveness of court negotiations, public information aimed at educating potential users on the advantages and methods of the court is important. By implementing the court-led mediation system, civil cases in the courts can be resolved more efficiently, quickly, and at a lower cost, not only for the public's access to justice but also for improving people's social-economic lives and prosperity. If Myanmar continues to improve mediator professionalism, public participation, and institutional infrastructure following India's successful example court-led mediation can become a vital instrument for delivering timely, cost-effective, and harmonious justice within the

country's evolving legal framework. Furthermore, providing ongoing support to mediators will contribute to a stronger peace process in Myanmar.

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