

## Book Reviews

### Global Mediation Reform

Shahla F. Ali, *Court Reform Mediation: Efficiency, Confidence, Perceptions of Justice* (Cheltenham: Edward Elgar Publishing, 2018) pp 296. Hardcover: \$82.56.

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In contemplating the purposes underlying a civil justice system, it is inescapable that reconciliation, dispute resolution, and justice rise to the top of the list. To achieve these purposes, countries expend significant resources planning, implementing, and operating civil courts. As domestic and international business disputes have risen in number and level of sophistication, civil court systems around the world have struggled to keep pace. As a result, countries have increasingly embraced varied alternative dispute resolution (ADR) pathways such as extra-judicial mediation, court-facilitated mediation, informal settlement talks, conciliation, and arbitration, among others.

Pathways to resolving a civil dispute outside of a formal trial generally involve the conscious choice of multiple parties agreeing in writing, either before or after a dispute, to remove themselves from formal judicial channels in favour of mediation, arbitration, or other settlement mechanisms. Within a court system, other ADR pathways may be mandated or strongly encouraged for particular civil-case types. These pathways typically involve mandatory or suggested pre-trial mediation in which a third-party neutral provided by the court acts as a facilitator to assist the parties to communicate, identify potential solutions, and reach a mutually agreeable resolution before expending the time and expense associated with a full-blown trial. In short, Professor Ali's book focuses on court mediation within a civil justice system. However, her work is filled with so much more.

As indicated by its title, *Court Reform Mediation: Efficiency, Confidence, Perceptions of Justice* highlights the achievements, challenges, and lessons learned in the implementation of court-mediation programmes for civil claims. Recognizing the highly contextual nature of court-mediation programmes and noting that programme achievements depend largely on the “functioning of the civil litigation system, the qualities and skill of the mediators, safeguards against bias, participant education, and cultural and institutional support” (p. viii), the author sets out on a journey to provide a comparative analysis of the court-mediation systems and recent reforms in ten different countries. She does not purport to “offer a unitary conclusion as to which type of program is most effective in the abstract, but rather aims to reflect on the achievements of such programs and what has led to success” (p. 20).

Attempting to balance her analysis, the author has selected court-mediation systems in both common-law and civil-law countries in different regions of the world. Aiming to respond to calls for “empirical studies of the effectiveness of ADR” especially outside of North America that include comparative studies within and between mediation programme types (p. 221), the author also supplies the results of interviews of over 80 legal professionals who are active in the realm of court mediation.

The timing of this work is ideal given that the use of mediation across the globe continues to intensify. Professor Ali correctly observes that mediation systems are evolving around the world “in response to what has been described as ‘a sharp increase in the number, rapidity and complexity of transactions’ characterized by ‘cumbersomeness, costliness and legal unpredictability’” (p. 2). Countries continue to actively seek out ways to improve methods of integrating mediation into civil-case administration. Many countries see benefits in court-ordered or court-suggested mediation based on the theory that such mediation programmes can help reduce caseloads, expedite case resolution, preserve relationships, increase access to justice, reduce costs for individuals and society, and balance individual process choices and social efficiency, among other things. Because of its in-depth comparative approach, this book merits attention from individuals interested in learning more about the various forms of court mediation and discovering whether the theoretical goals supporting mediation are aligned with current outcomes.

*Court Reform Mediation* is comprehensive, thorough, and well done. This work looks to move beyond existing scholarship that has examined the varying intrinsic and extrinsic rationales motivating courts to introduce mediation programmes including “reduction of caseloads, private and public sector efficiency, as well as extrinsic factors including relational, societal and process-based considerations” (p. 2). Instead, it aims to explore developments in the voluntary and mandatory mediation approaches of judicial systems from a comparative perspective while assessing the efficiency, confidence, and fairness resulting from such approaches (p. 3). In fact, throughout the book, the author focuses on the differences between mandatory and voluntary mediation. Of note, she emphasizes that mandatory mediation is still “viewed with caution in many jurisdictions where discretionary or categorical referral of cases for mediation may imply differing levels of compulsion.” (p. 30) Fortunately, the book achieves its ambitious goal.

The work is rich in content and detail. After establishing a foundation based on theory and facts, the book offers a comprehensive 10-country case-study coupled with a longitudinal analysis of changes to judicial efficiency, perceptions of justice, and overall confidence in the court system over a five-year time period since the implementation of the respective programmes in each country. This case-study is further supplemented by survey research about perceptions, observations, and experiences of court-mediation practitioners from diverse regions to gain insight into the dynamics, strengths, and challenges of mandatory and voluntary court-mediation programmes.

In examining the various court-mediation systems, the author also looks closely at the struggle between the realization of justice and court-mediation innovations designed to reduce costs and delay, emphasizing that innovations cannot be made “at the expense of those qualities of the judicial process that are more important to litigants—most importantly the realization of justice” (p. 17). *Court Mediation Reform* is a useful tool for both novices and experts in mediation, including legal practitioners, foreign observers, researchers, teachers, students, and others interested in delving into the world of mediation across the globe.

The work serves many functions and purposes. In Part I, Professor Ali recaps the aims and objectives of court-mediation reform across the world, focusing heavily on the differences between mandatory court mediation and forms of mediation that are merely suggested by the courts. Her writing is balanced as she strives to present the readers with an objective picture of court mediation. By way of illustration, Professor Ali highlights the many advantages of court mediation in this initial section while emphasizing that, notwithstanding the benefits of

the pathways to mediation, “court-based mediation is not without criticisms, principally those challenging its consistency within institutionalized settings, its potential to obstruct access to justice, and its inappropriateness to particular classes of cases” (p. 44).

After laying a foundation of theory and fact, the following two sections of the book provide country case-studies selected from a non-random sample of ten countries consisting of five regions in a “mandatory mediation regions” group and five in a “voluntary mediation regions” tracking intra-regional changes, if any, to levels of efficiency, confidence, and perceptions of justice following the implementation of court-mediation reforms over a five-year timeframe (p. 8). More specifically, Part II dives into a detailed analysis of voluntary court-mediation programmes in the UK, Hong Kong, the Netherlands, France, and Malaysia. Part III tackles mandatory court-mediation programmes in the US, Australia, Italy, China, and India. In both sections, using a host of facts and figures, the author offers useful descriptions and assessments of court mediation in each country. In addition, the author explains the improvements in efficiency, confidence, and perceptions of justice within each respective system while simultaneously exploring systemic improvements in efficiency, affordability, reduction of delays, overall quality of civil justice, enforcement of judgments, impartiality and effectiveness of ADR, and discrimination elimination.

In the final section of the book, Part IV, the author presents an analysis of survey data extracted from 83 experienced practitioners, including judges, attorneys, administrators, mediators, and participants, who have been involved in the area of court-mediation reform. The survey is designed to elicit insights into the dynamics, challenges, and lessons learned in each respective court-mediation system. The author fully grasps the difficulties associated with obtaining quantitative data of court mediations and recognizes that the qualitative data are subject to differences in reporting and interpretation. At the same time, the author attempts to use the research methodology to triangulate the exploration of judicial mediation reform by drawing on a combination of the country case-studies, a comparative examination of global court-user experience data, and an analysis of survey data (p. 8). This triangular approach is valuable in demonstrating the attitudes, advantages, disadvantages, and effectiveness of court-mediation systems and ongoing reforms.

Because it is important for the world to understand more about court mediation and the consequences to the civil judicial system and society as a whole, *Court Mediation Reform* is worth the time spent reading and studying its findings and conclusions.

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### **The Politics of Religion and Constitutionalism in Asia**

Dian A.H. Shah, *Constitutions, Religion, and Politics in Asia: Indonesia, Malaysia, and Sri Lanka* (New York and Cambridge: Cambridge University Press, 2017) pp 306. Paperback: \$35.99

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