

Omer Shapira

Ono Academic College Faculty of Law, Israel

e-mail: oshapira@ono.ac.il

ORCID:0000-0002-9870-6209

THREE DECADES OF MEDIATION IN ISRAEL: LEGAL EVOLUTION, INSTITUTIONAL GAPS, AND COMPARATIVE LESSONS

Abstract

This article examines the institutionalization of civil mediation in Israel over the past three decades. Introduced in 1992 via legislative amendment, mediation was gradually integrated into the judicial system through regulations, a court-linked mediation unit, mandatory orientation sessions, and training standards. These reforms strengthened institutional capacity and increased referrals, yet despite these efforts, mediation remains court-dependent, underregulated, and limited in use.

Drawing on legal sources, empirical data, and case law, the article critically analyses the Israeli model, highlighting structural and cultural barriers to broader adoption. It argues that successful adoption requires a cultural shift, sustained public investment, and coordinated engagement across sectors.

The article offers policy recommendations, including comprehensive legislation, ethical oversight, educational efforts, and data collection. These insights may inform other jurisdictions and invite comparative dialogue on institutional design, the professionalization of mediation, and mediation as a tool for social reform.

KEYWORDS

ADR, mediation regulation, mediator qualifications, court-connected mediation, Israel, civil disputes, mandatory orientation, institutionalisation, ethics, reform, justice

SŁOWA KLUCZOWE

alternatywne metody rozwiązywania sporów, regulacje dotyczące mediacji, kwalifikacje mediatorów, mediacja sądowa, Izrael, spory cywilne, obowiązkowe szkolenie wprowadzające, instytucjonalizacja, etyka, reforma, sprawiedliwość

I. INTRODUCTION

For many years, Israel's judicial system has struggled with heavy caseloads, prolonged delays, and limited access to justice. In response to these challenges, the state has invested considerable effort over the past three decades in developing a civil mediation infrastructure linked to the court system.

The article traces the institutionalization of mediation in Israel and critically examines the achievements, limitations, and lessons of the Israeli model. The central thesis is that despite significant progress in embedding mediation, particularly through the introduction of mandatory pre-mediation orientation sessions and accompanying regulatory efforts, the model's success remains limited with low referral rates, an excessive focus on court mediation, and the absence of comprehensive ethical regulation.

The article offers a unique contribution through a comprehensive and interdisciplinary analysis of Israel's mediation landscape, drawing on legal sources, committee reports, empirical data, and case law. It also initiates a comparative dialogue with other jurisdictions considering mediation reforms.

The following sections present the historical and regulatory background (Part II), key developments in case law (Part III), a critical analysis and institutional lessons (Part IV), and recommendations for future regulation (Part V). Ultimately, the article argues that mediation should not be viewed as a mere technical reform, but as a profound cultural shift that requires sustained investment, ethical clarity, and coordinated engagement from the judiciary, civil society, and the private sector.

II. THE DEVELOPMENT OF MEDIATION REGULATION IN CIVIL DISPUTES IN ISRAEL

1. ISRAEL'S MIXED LEGAL SYSTEM

Israel's legal system is a mixed one, combining elements of common law with components and influences from continental (civil) law and religious law.¹ The resemblance with the common law tradition stems from a shared legal history: during the British Mandate period, English law was applied in the region, and its influence persisted after the establishment of the State of Israel in 1948. This influence is clear in the adoption of English legislation and key doctrines from the common law and equity, as well as the hierarchical structure of the court system, which is headed by a Supreme Court with authority over all lower courts. The principle of binding precedent and the judge's authority to develop the law through case law also reflect this tradition.

However, Israel's legal system also incorporates significant elements of continental law. These influences date back to the Ottoman period and continued through the codification of Israeli civil law. This includes the adoption of general legal principles such as good faith, and the view that judges may fill legislative gaps by referring to the broader normative framework and the foundational principles of the legal system. Religious Hebrew law primarily serves as a non-binding comparative source, except in matters of family law, where it constitutes a binding normative source in the fields of marriage and divorce.

In line with this layered legal tradition, the development of mediation in Israel began with partial legislative initiatives but evolved through an ongoing dialogue with the judiciary, which took an active and significant role in shaping mediation law and promoting its use both within and outside the court system.²

2. THE PROBLEM OF JUDICIAL OVERLOAD

Israeli courts have long faced a structural case backlog. In 1980, the Landau Committee, appointed by the Minister of Justice, warned that delays threatened the system's ability to fulfil its public mandate.³ The Or Committee echoed this

¹ The following discussion is based on Aharon Barak, 'The Legal System in Israel – Its Tradition and Culture' (1992) 40 HaPraklit 5–38.

² See Pt III. Below.

³ Committee on the Structure and Jurisdiction of the Courts, in Aharon Barak & Eliyahu Mazuz (eds), *Landau Book* Vol A (1995) 205.

in 1997, promoting alternative dispute resolution (ADR), including mediation, to ease courtroom congestion and delays.⁴ Comparative research ranks Israel among the highest globally in litigation and caseload; a 2004 study placed it third among 17 developed countries in judicial workload.⁵ The trend persists: in 2023, some 900,000 cases were filed, served by just 765 judges.⁶

3. THE INTRODUCTION OF MEDIATION INTO THE JUDICIAL SYSTEM

The 1992 amendment to the Courts Law authorised judges to employ three ADR methods: judgment by consent without full trial or reasons; referral to mediation (then ‘conciliation’); and arbitration, already recognised under Israeli law.⁷ The amendment’s explanatory notes highlighted mediation’s potential to reduce judicial backlog through swift case resolution.⁸

In 1993, the Minister of Justice enacted the Courts (Mediation) Regulations (hereafter *Mediation Regulations*) covering referrals in civil and labour disputes.⁹ The regulations allowed for suspended proceedings during mediation, defined mediator duties, and introduced a standard agreement for commencing mediation. Israel still lacks general legislation regulating mediation, leaving privately initiated processes unregulated.¹⁰ Two relevant legislative bills have not advanced.¹¹

4. REGULATING MEDIATOR QUALIFICATIONS IN COURT-ASSIGNED CASES

In 1996, the Minister of Justice established a court roster of mediators.¹² Two years later, a committee chaired by Judge Gadot defined qualification standards,

⁴ Committee on the Structure of Ordinary Courts in Israel (1997) 96–104.

⁵ Raanan Sulitzeanu-Kenan, Amnon Reichman & Eyal Vigoda-Gadot, *Judicial Workload: A Comparative Study of 17 Countries*, Haifa Ctr for Public Mgmt & Policy (2007) (Heb).

⁶ Courts Administration, Annual Report 2023 9–10 (Heb) <<https://tinyurl.com/2w85akkm>> accessed 6 July 2025.

⁷ Courts Law (Amendment No 15) (1992) s 79C (Heb); M Mironi, ‘The Limitations of Settlement Conference and the Promise of Mediation’ (2012) 6 Haifa L R 487, 491-492 (Heb).

⁸ Courts Bill (Amendment No 15) (1991) (Heb).

⁹ Courts Reg (Mediation) 1993 (Heb) (‘Mediation Regs’).

¹⁰ Omer Shapira, ‘Israeli Perspectives on Alternative Dispute Resolution and Justice’ (2019) 19 *Pepperdine Dispute Resolution L J* 273, 279.

¹¹ Mediators Bill 2017; Mediation Bill 2018 (Heb).

¹² Courts Regs (Mediator Appointment) 1996 (Heb).

published in the *Gadot Report*,¹³ which formed the basis for the Courts (Mediator List) Regulations,¹⁴ still the accepted minimum training standard in Israel.¹⁵ Rejecting the Israel Bar Association's view that only lawyers should mediate and no formal training was needed,¹⁶ the regulations required an academic degree, five years of professional experience, and completion of a 40-hour course (60 hours for family mediation).

Over 30,000 individuals have completed such courses.¹⁷ However, the court-approved list drew criticism for lacking quality control and admitting underqualified mediators.¹⁸ Judges had few tools for informed selection and tended to rely on a small group of trusted professionals, while most graduates never entered active practice.¹⁹

In 2006, the Rubinstein Committee, appointed by the Minister of Justice to enhance mediation use in courts, identified dissatisfaction with mediator competence as a key barrier to growth. It proposed a small group of skilled mediators subject to ongoing evaluation.²⁰

In 2008, the court mediator list and its criteria were abolished.²¹ However, courts continued to apply these standards until 2017, when a new Mediators' List Regulations introduced stricter eligibility and an advisory committee was formed to support implementation of the regulations.²²

The Mediation Unit within the Court Administration now oversees three rosters: general, small claims, and family. General list eligibility requires (1) academic degree; (2) five years' professional experience; (3) a 60-hour approved course; (4) practicum involving observation and engagement in six mediations; (5) facilitation of eighteen mediations over five years; and (6) completion of a professional assessment and personal interview evaluating skills, knowledge of mediation, and

¹³ Consulting Committee on Mediation in the Courts, Report on the Qualifications and Expertise Required for Inclusion on the Mediators List (1998) ('Gadot Report').

¹⁴ Courts Regs (Mediators' List) 1996 (Heb); Michal Rubinstein, 'The Nature of MAHUT – On the Integration of Mediation into Israel's Court System' in Aharon Barak and others (eds), *Strasberg-Cohen Book* (2017) 334 (Heb).

¹⁵ Shapira (n 10) 279.

¹⁶ Gadot Report (n 13) 14–20.

¹⁷ Mordechai Mironi, 'Mediation v Case Settlement: The Unsettled Relationship – A Case Study' (2014) 19 *Harvard Negotiation LR* 173, 193 n 79.

¹⁸ Shapira (n 10) 289.

¹⁹ *Ibid* 281.

²⁰ Committee to Examine Ways to Increase Use of Mediation in Courts (2006) ('Rubinstein Report') 9, 25, 49–50.

²¹ Courts Regs (Mediators' List – Revocation) 2008 (Heb).

²² Courts Regs (Mediators' List) 2017 (Heb) ('Mediators' List Regs').

familiarity with legal procedures and law.²³ For small claims, criteria include the first four requirements plus six mediations, which may include those from the practicum.²⁴

Family roster admission is more stringent and requires (1) degree in law or designated fields (e.g., Masters in social work or psychology); (2) five years' relevant experience (for lawyers, in family law) within the past ten years; (3) completion of both general and a 40-hour family mediation course; (4) supervised practicum; (5) twenty mediations in five years, ten in family cases; and (6) professional assessment and interview evaluating the candidate's knowledge, skills, and competencies in family mediation and family law.²⁵

As of May 2024, the rosters included 301 general mediators, 128 in family mediation, and 880 for small claims, a sharp decline from past figures.²⁶ Registration must be renewed every five years, with submission of five mediated agreements and successful periodic reassessment via interviews, observation, or feedback.²⁷

5. INSTITUTIONAL LEADERSHIP AND SUPPORT FOR THE ADVANCEMENT OF MEDIATION

In 1998, the Ministry of Justice founded the National Centre for Mediation and Conflict Resolution to advance state-backed frameworks and professionalise mediation, aiming to shift public perception toward mediation as a preferred mechanism for dispute resolution.²⁸

Supreme Court President Aharon Barak endorsed the Centre as a vehicle for a 'mediation revolution' to transform Israeli society.²⁹ In early 2000s remarks, he argued that mediation should serve not merely to ease judicial backlog but to cultivate a culture of agreement: 'Mediation is not intended to solve the problems of the courts. Mediation is meant to solve the problems of society'.³⁰ Barak emphasised the state's role in supporting consensual frameworks³¹ and called to mobilise 'all governmental and private forces' in this effort.³²

²³ Ibid s 3(a).

²⁴ Ibid s 3(b).

²⁵ Ibid s 4.

²⁶ Letter, Minister of Justice, 1 July 2024 (on file with author).

²⁷ Mediators' List Regs (n 22) s 8.

²⁸ Mironi (n 7) 491; Peretz Segal, 'The "Mediation Revolution"' (2019) Ministry of Justice, Legal Roots Project (1 April 2019) (Heb).

²⁹ Aharon Barak, 'On Mediation' (2002) 3 Sha'arei Mishpat 9, 11 (Heb).

³⁰ Ibid 11.

³¹ Ibid 10.

³² Ibid 11.

Until its closure in 2009, the Centre implemented this vision through practicum design, mediator training, legislative advocacy, and partnerships with bodies such as the State Comptroller and Police.³³ Its closure reflected a shift in Ministry policy favouring court-centred implementation over a social approach.³⁴

The Attorney General supported mediation as well. A directive concerning state-party disputes recommended ADR, including compromise and mediation.³⁵ Though a committee was formed in 2000 to execute this, its 2003 recommendations were never implemented,³⁶ and litigation remains the state's preferred method.³⁷

6. INSTITUTIONALISATION OF MANDATORY PRE-MEDIATION ORIENTATION SESSIONS ('MAHUT') IN CIVIL CASES

From 2001, courts developed case-routing units to refer civil cases to mediation,³⁸ either to internal mediators (e.g. affiliated lawyers, clerks, labour tribunal representatives) working pro bono, or to private mediators paid by parties.³⁹

A decade after mediation's formal introduction, voluntary referrals remained limited and public frustration over delays grew.⁴⁰ The Rubinstein Committee identified limited familiarity with mediation and concerns about mediator quality as key obstacles.⁴¹ Its 2006 report proposed a pilot of mandatory pre-mediation orientation sessions, known by its Hebrew acronym, MAHUT, consisting of free, introductory sessions led by external mediators. Unlike mandatory mediation, these aimed to explain mediation benefits, clarify issues, and assess prospects for consensual resolution. The parties retained discretion to proceed or litigate. Continuing with mediation incurred payment for the mediator's services.⁴²

The Committee viewed MAHUT as balancing mediation promotion and safeguarding access to justice.⁴³ Following its recommendations, the 2007 regula-

³³ Segal (n 28).

³⁴ Mironi (n 7) 521; Segal *ibid*.

³⁵ Directive 60.125 (1999), 'Dispute Resolution by Mediation Where the State Is a Party', s 1.

³⁶ Steering Committee on Mediation in State-Party Disputes, Report – Vol A (2003); Mironi (n 7) 521.

³⁷ Shapira (n 10) 301.

³⁸ Michal Alberstein, 'Jurisprudence of Mediation' (2007) 98.

³⁹ Yitzhak Zamir, 'Mediation in Public Affairs' (2004) 7 *Law & Gov't* 119, 124 (Heb).

⁴⁰ Mironi (n 7) 523.

⁴¹ Rubinstein (n 14) 334.

⁴² Rubinstein Report (n 20) 9.

⁴³ *Ibid* 19–21, 41.

tions introduced the pilot in three magistrates' courts, allowing cost sanctions for non-attendance.⁴⁴ Mediators were selected via tender, requiring roster listing, experience, and prior court-approved settlements.⁴⁵

The pilot between 2008 and 2010 was deemed successful. In 2010, MAHUT expanded to six more courts.⁴⁶ As of 2021, with the new Civil Procedure Regulations, it became a permanent feature across all magistrates' courts.⁴⁷

7. EXPANSION OF MANDATORY PRE-MEDIATION ORIENTATION SESSIONS IN FAMILY DISPUTES

Based on recommendations from a 2005–2006 steering committee, a therapeutic version of the MAHUT model was adopted in family courts in 2016.⁴⁸ Rather than filing for divorce immediately, parties submitted a general request to resolve the dispute, avoiding early escalation. Each side attended one to four orientation sessions, led by court-affiliated social workers from assistance units and held without lawyers, free of charge.⁴⁹

The assistance units operating under the Ministry of Welfare offer counselling, therapy, and short-term mediation (three to four meetings).⁵⁰ After orientation, parties decide whether to litigate or pursue a consensual resolution.

8. RATIFICATION OF THE SINGAPORE CONVENTION

In August 2019, Israel signed the UN Convention on International Settlement Agreements Resulting from Mediation (the Singapore Convention). It was approved in November 2024 and adopted via amendment to the Courts Law.⁵¹ To date, of 59 signatories, 18 states have ratified it.⁵²

The Convention promotes mediation in international commercial disputes by establishing simplified enforcement of mediated settlements across member

⁴⁴ Civil Procedure Regs (Temporary Provision) 2007 (Heb); Rubinstein (n 14) 335.

⁴⁵ Rubinstein *ibid* 334, 336.

⁴⁶ *Ibid* 338–39.

⁴⁷ Civil Procedure Regs 2018, ss 34–37 (Heb).

⁴⁸ Settlement of Litigation in Family Disputes Law 2014, eff 1 Jan 2016; Settlement of Litigation in Family Disputes Regs 2016 (Heb).

⁴⁹ *Ibid*.

⁵⁰ Shapira (n 10) 296.

⁵¹ Courts Law (Consolidated Version) 1984, s 79C(a) (Heb).

⁵² United Nations Convention on International Settlement Agreements Resulting from Mediation.

states. Israel's ratification aimed to position it as a hub for global business mediation.

III. CASE LAW DEVELOPMENTS IN ISRAELI MEDIATION AS A RESPONSE TO PARTIAL REGULATION

1. APPLICATION OF MEDIATION NORMS TO PRIVATE PROCEEDINGS

Mediation in Israel is only partially regulated, with the Courts Law and Mediation Regulations formally applying to court-referred cases.⁵³ Nonetheless, private mediators often include clauses in agreements adopting these provisions voluntarily.⁵⁴ In addition, the courts have recognised circumstances in which it is appropriate to apply principles derived from the law and regulations, such as fairness, confidentiality, privilege, and conflicts of interest, even in the absence of judicial referral, in order to uphold the integrity and reliability of the mediation process.⁵⁵

2. JUDICIAL RECOGNITION OF A DOCTRINAL PRIVILEGE IN MEDIATION PROCEEDINGS

Israeli case law on mediation largely concerns confidentiality, inadmissibility, and privilege, yet neither the Courts Law nor Mediation Regulations explicitly grants privilege.⁵⁶ The Courts Law prohibits using mediation communications as evidence in civil proceedings,⁵⁷ while the Mediation Regulations require mediators to keep mediation-related information confidential from non-parties.⁵⁸ A standard agreement also prohibits calling mediators to testify or disclose documents.⁵⁹

⁵³ Shapira, 'Following Permission for Civil Appeal 1496/15 *Levi v Drory et al*' (2018) 21 *Law & Bus* 133, 144, n 41 (Heb).

⁵⁴ *Ibid* 150.

⁵⁵ Arbitration Motion (Jerusalem DC) 55780-06-18 *Nechmias v Talpiot* (Nevo, 27 November 2019) (s 5(h) applies to private mediation); SC (AP) 4781/12 *Eini v Bank Leumi* (Nevo, 6 March 2013) (confidentiality applies pre-litigation); SC (AP) 1496/15 *Levi v Drory* (Nevo, 21 May 2015) para 7 (conflict rules guide private mediators).

⁵⁶ Shapira (n 53) 166.

⁵⁷ Courts Law (n 51) s 79C(d) (Heb).

⁵⁸ Mediation Regs (n 10) s 5(e) (Heb).

⁵⁹ S 3(f) *ibid* provides that the standard agreement applies to the parties and mediator unless otherwise agreed in writing.

The lack of express privilege created years of ambiguity. Eventually, Supreme Court rulings recognised a doctrinal, relative privilege,⁶⁰ even extending to mediator testimony, subject to the parties' waiver.⁶¹ However, lower courts later adopted a stricter view, asserting that the privilege covers both participants and the mediator, who may not be compelled to testify even with the parties' consent, a stance pending final resolution by the Supreme Court.⁶²

3. MEDIATOR LIABILITY FOR HARM

Although the Mediation Regulations impose duties on mediators, they do not address the consequences of breach. While academic literature has debated mediator liability,⁶³ damages awarded in practice remain rare.⁶⁴

One exception in Israel involved a mediator who submitted an affidavit supporting a party in a family dispute, disclosing text messages exchanged during mediation.⁶⁵ The court found this breached the orally agreed confidentiality⁶⁶ and amounted to bad faith, serving only one party's interests.⁶⁷ Damages of 60,000 NIS (≈64,000 Polish złoty) were awarded. The judge stressed that 'only a guarantee of confidentiality and [its] enforcement... will encourage and promote mediation [and] strengthen the status of mediators so that parties place their trust in them'.⁶⁸

⁶⁰ SC (AP) 2235/04 *Bank Discount v Shiri* [2006] PD 61(2) 634 (privilege over ADR documents); SC (AP) 4416/09 *Gabai v Rubin* (Nevo, 3 September 2009) para 9 (privilege may be waived); Eini (n 55) para 4 (relative privilege applies).

⁶¹ Levi (n 55) para 8.

⁶² Legal Motion (Central DC) 17350-05-15 *Plonit* (Nevo, 11 June 2018); Agreement Case (Jerusalem Family) 21092-01-21 *Ploni v Plonit* (Nevo, 13 September 2022); CC (Herzliya Mag) 67060-02-23 *Ploni v Migdal* (Nevo, 16 September 2024); Shapira (n 53) 165-178; Yitzhak Amit, *Privileges and Protected Interests* (2021) 590 (Heb).

⁶³ Orna Deutsch, *Mediation: The Awakening Giant* (1998) 68–99 (Heb) (mediator liability in Israel); Michael Moffitt, 'Suing Mediators' (2003) 83 *Boston Univ L Rev* 147 (mediator liability in the US).

⁶⁴ Moffitt, 'Disciplining Mediators' in Shapira (ed), *Mediation Ethics: A Practitioners' Guide* (2021) 309.

⁶⁵ CC (Tel Aviv Mag) 55994-04-19 *Marom v Rosenthal* (Nevo, 3 February 2021).

⁶⁶ *Ibid* para 5.3.

⁶⁷ *Ibid* para 5.5.

⁶⁸ *Ibid* para 5.7.

IV. EVALUATION AND LESSONS LEARNED

1. SCOPE OF THE REGULATION OF MEDIATION

Israel lacks a comprehensive legal framework for mediation, and past legislative proposals have stalled.⁶⁹ This regulatory void poses the risk of unqualified practitioners delivering substandard services, undermines the field's credibility, and perpetuates its image as amateur. It has also prompted the judiciary to fill the resulting legal gaps through case law,⁷⁰ an approach that, while adaptive, could be viewed as judicial overreach into legislative and executive domains.

Moreover, the judiciary focus on mediation has also hindered mediation's potential as a tool for societal transformation. Without dedicated legislation, funding is limited, and no central professional body exists to guide or coordinate development at scale. The optimal path forward is the enactment of a general Mediation Law to regulate the whole field alongside a national entity responsible for its implementation and ongoing development.⁷¹

2. BETWEEN LEGAL EFFICIENCY AND SOCIAL TRANSFORMATION

Israel's judiciary has long faced chronic case overload, delays, and a shortage of judges.⁷² As a result, a procedural approach to mediation has emerged, viewing it primarily as a tool to enhance efficiency, reduce caseloads, and shorten legal proceedings.⁷³ Mediation success is often quantified through settlement rates and closures,⁷⁴ reflecting a narrow conception of justice as efficiency, rather than a broader notion of substantive justice.⁷⁵ This diverges from earlier judicial leaders' views that embraced mediation as a mechanism for societal dialogue and agreement-building beyond relieving pressure on the courts.⁷⁶

Mediation's role in solving internal judicial challenges, combined with courts serving as its primary source of referrals for mediation and training, has entrenched a legalistic model of mediation. Rights-based discourse, evaluation, and case

⁶⁹ Note 12 above.

⁷⁰ Pt III above.

⁷¹ See recs 1–2 below.

⁷² Pt II.1 above.

⁷³ Mironi (n 7) 532.

⁷⁴ Ibid 493.

⁷⁵ Shapira (n 10) 276.

⁷⁶ Pt II.4 above.

closure dominate, being familiar to judges and lawyers,⁷⁷ but restrictive for the development of alternative mediation styles.⁷⁸ Mediator training has followed suit, shaped by the legal mediation model⁷⁹ and raises concerns about limits on party autonomy, mediator neutrality, and mediation's potential to serve as a genuine alternative to adjudication.⁸⁰ In practice, mediation has yet to produce meaningful social change, a stronger dialogue culture, or lower litigation rates.⁸¹ It seems that to advance mediation, it must be embraced not solely for efficiency but as a broader form of justice across the legal system and society.⁸²

One promising path is found in family court assistance units, where social workers employ therapeutic methods, including mediation.⁸³ A 2012–2013 study showed 65% of families received mediation, with 73% reporting high satisfaction and 48% reaching at least partial agreements.⁸⁴ A 2024 study indicated that most parties continued to engage in dialogue-based dispute management, with 70% noting staff neutrality, 48% gaining better self-understanding of needs, and 38% improving understanding of points of disagreement.⁸⁵

3. SCOPE OF MEDIATION USE WITHIN AND BEYOND THE JUDICIAL SYSTEM

Due to low voluntary uptake, the judiciary explored making mediation a litigation precondition, leading to the MAHUT model of mandatory orientation se-

⁷⁷ Shapira (n 10) 295; Orna Rabinovich-Einy, 'Pre-Action Protocols, Mediation and Access to Justice under the Proposed Reform of Israeli Civil Procedure Rules' (2005) 9 *Mishpatim Al Atar* 33, 43 (Heb).

⁷⁸ Faina M Sivan & Orna Rabinovich-Einy, 'Mediating Procedure and Substance: On the Privatization of the Justice System and Equality at Work' (2008) 11 *Law & Gov't* 517, 532–533 (Heb); Shapira (n 10) 295.

⁷⁹ Mironi (n 7) 493.

⁸⁰ Shapira, 'The Paradox of Power in Mediation' (2006) 6 *Kiryat HaMishpat* 371, 419–420 (Heb); Shapira, 'On Human Dignity in Mediation' (2008) 8 *Kiryat HaMishpat* 373, 392–393 (Heb); Ruth Halperin-Kaddari & Bryna Bogoch, 'The Voice is the Voice of Mediation, but the Hands are the Hands of the Law: Mediation and Divorce in Israel' (2007) 49 *HaPraklit* 293, 328, 331 (Heb); Shapira, 'On the Meaning and Justification of Mediators' Ethical Duty of Impartiality' (2012) 28 *Bar-Ilan Law Studies* 259, 284 (Heb); Ronit Zamir, 'The Myth of Mediator Neutrality' (2013) 17 *Law and Business* 411, 428 (Heb); Mironi (n 7) 532–533.

⁸¹ Mironi (n 7) 526–527; Shapira (n 10) Pt III B.

⁸² See recs 3–5 below.

⁸³ Shapira (n 10) 296; Pt II.6 above.

⁸⁴ Tali Bayer-Topilsky and others, *Family Court Social Services – National Evaluation Study* (Myers-JDC-Brookdale Institute 2015) (Heb).

⁸⁵ Yoa Sorek and others, *Family and Religious Court Social Services: A National Evaluation Study RR-993-24* (Myers-JDC-Brookdale Institute 2024) (Heb).

ssions.⁸⁶ Launched as a pilot in three magistrates' courts, the programme underwent professional evaluation to guide improvements.

A) MAHUT PROGRAMME EFFECTIVENESS AND CHALLENGES

A May 2009 interim report showed high satisfaction with orientation sessions, mediators, and the process.⁸⁷ About 40% of litigants said they would not have considered mediation absent the referral.⁸⁸ 52.9% of sessions proceeded to mediation, and 61.4% of those mediations settled.⁸⁹ The pilot also identified case types, e.g., traffic and personal injury, as better suited for early evaluation.⁹⁰

Later findings affirmed MAHUT's impact. In 2013, 58% of mediated cases settled, 61% of users reported high satisfaction, 69% reported improvement in perceived court service, and 75% willingness to use mediation again.⁹¹ In light of these findings, the programme was extended nationwide to all magistrates' courts.

However, mediator remuneration in MAHUT remains unresolved. Sessions are free for litigants, and this has caused frustration among mediators and raised ethical concerns, particularly regarding potential pressure on parties to proceed to paid mediation.

B) UNDERUTILISATION OF MEDIATION

Despite encouraging outcomes, referral rates to mediation remain low relative to case volume. In 2014, of 344,349 pending cases, just 7,041 were referred to MAHUT; 2,326 proceeded to mediation, and 59% settled.⁹² By 2023, 497,799 cases were pending,⁹³ with 10,062 referred to MAHUT; 3,570 proceeded to mediation, yielding 2,106 settlements (59%).⁹⁴

An additional 8,295 cases from magistrates', district, and small claims courts were referred directly to mediation,⁹⁵ producing 2,547 mediations and 1,607 settlements

⁸⁶ Pt II.5 above.

⁸⁷ Rubinstein (n 14) 336.

⁸⁸ Ibid.

⁸⁹ Mironi (n 7) 524 n 168.

⁹⁰ Rubinstein (n 14) 342.

⁹¹ Ibid 340.

⁹² Shapira (n 10) 293–294.

⁹³ Courts Administration, *Annual Report 2023* 9 (Heb).

⁹⁴ Adv Natali Levi, Director, Court Mediation Unit, emails dated 3–4 March 2025 and Zoom Meeting 10 March 2025.

⁹⁵ Judicial Authority, *Freedom of Information Report 2023* 72 (Heb).

(63%).⁹⁶ In sum, of roughly 900,000 cases filed in 2023, of which 360,000 in civil courts,⁹⁷ only 18,500 reached MAHUT or mediation, with 6,200 mediation sessions recorded. Though partial, these figures highlight unrealised potential. Contributing factors include weak incentives: prevailing parties rarely receive realistic costs,⁹⁸ and court filing fee reimbursement applies only to plaintiffs, as defendants pay none.⁹⁹ A proactive policy shift is needed to boost participation in MAHUT and formal mediation.¹⁰⁰

C) PROMOTING MEDIATION OUTSIDE THE JUDICIAL SYSTEM

Outside the courts, mediation remains underused. Public awareness is low, and no significant independent market has formed. Although tens of thousands have trained in mediation, few practice professionally, relying largely on court referrals. Limited demand impedes experience-building and professional growth. Community mediation, though expanding, depends on local initiatives, volunteers, and political sponsorship, calling for coordinated support from central and municipal government.¹⁰¹

The private sector remains tied to court-driven training and caseloads. This reliance curbs independent initiatives and overemphasises court-defined qualifications, limiting diversity in training and practice.¹⁰² The preferred policy is to expand mediation beyond courts and support autonomous, private-sector development alongside court-related frameworks.¹⁰³

4. OVERSIGHT AND REGULATION OF MEDIATORS

A) CLARITY CONCERNING MEDIATOR DUTIES

Israeli mediation law offers limited regulation for private-sector practice and only general guidance on mediator duties in court-referred cases.¹⁰⁴ The concise

⁹⁶ Note 95 above.

⁹⁷ Courts Administration, *Annual Report 2023* (n 101) 25, 37.

⁹⁸ Mironi (n 7) 529 n 190.

⁹⁹ *Ibid* 522 n 161.

¹⁰⁰ See recs 6–11 below.

¹⁰¹ Shapira (n 10) 298.

¹⁰² *Ibid* 297.

¹⁰³ See recs 12–15 below.

¹⁰⁴ Omer Shapira & Carmela Zilberstein (eds), *Mediation Ethics: Codes of Ethics and Dilemmas* (2018) 32–33 (Heb).

language of the Mediation Regulations grants wide discretion, risking ethical inconsistency.¹⁰⁵

Critics have pointed to the lack of practical, concrete instruction necessary to preserve the integrity of mediation, as well as the absence of clear rules on core issues such as party autonomy,¹⁰⁶ conflicts of interest,¹⁰⁷ impartiality,¹⁰⁸ confidentiality,¹⁰⁹ addressing power imbalances,¹¹⁰ and mediator responsibility for the outcome of the process.¹¹¹

The recommended policy is to adopt clear and specific definitions for mediator duties, both for court-connected and private mediation.¹¹²

B) LEGISLATIVE REGULATION OF MEDIATION PRIVILEGE

Courts have applied regulatory norms to private mediation to fill oversight gaps,¹¹³ yet developing mediator duties through case law causes inconsistency, uncertainty, and conflicting interpretations. Judicial doctrine on mediation privilege is particularly ambiguous: its scope, exceptions, and whether mediators may invoke it if parties waive privilege remain unclear.¹¹⁴ This highlights the need for legislation defining mediator duties and codifying mediation privilege and its limits.¹¹⁵

C) INSTITUTIONAL ETHICAL FRAMEWORK FOR MEDIATORS

Israeli law provides limited oversight of mediator conduct. Oversight mechanisms in mediation should reflect three concurrent responsibility levels:¹¹⁶

¹⁰⁵ Shapira (n 10) 291.

¹⁰⁶ Shapira (2008) (n 80) 383–385.

¹⁰⁷ Shapira (n 53) 151–154.

¹⁰⁸ Shapira (2012) (n 80) 261–262.

¹⁰⁹ Limor Zer-Gutman, 'Ensuring Confidentiality in Mediation' (2002) 3 Sha'arei Mishpat 165 (Heb)

¹¹⁰ Shapira (2012) (n 80) 282–283.

¹¹¹ Deutsch (n 63) 106, 113.

¹¹² See rec 16 below.

¹¹³ Pt III.1 above.

¹¹⁴ Shapira (n 53).

¹¹⁵ See rec 17 below.

¹¹⁶ Shapira, 'The Significance of Suing Mediators' in A Hinshaw, AK Schneider and SR Cole (eds), *Discussions in Dispute Resolution: Volume II* (2025) 223–227. For implementation, see IMI Code of Conduct for Mediators (Draft 2024) <https://imimmediation.org/wp-content/uploads/2024/12/Non-binding_Draft_IMI_Code_of_Conduct_for_Mediators_2024.pdf> accessed 6 July 2025.

- *Ethical accountability* – minimum professional expectations typically outlined in a code of ethics. Ethics committees interpret these duties in response to mediator queries, provide guidance and facilitate learning without imposing sanctions, e.g., for unintentional confidentiality breaches or isolated misconduct.
- *Disciplinary responsibility* – arises from serious ethical violations. Complaints that pass preliminary scrutiny may lead to formal proceedings before disciplinary panels and to soft sanctions, such as retraining or warnings. Instances may include repeated confidentiality violations or conduct that undermines professional standing.
- *Legal liability* – reflects minimum obligations under the law determined by courts in exceptional cases involving harm, e.g. injurious confidentiality breaches¹¹⁷ or public policy violations voiding settlements.

Ethical duties encompass disciplinary and legal obligations. Classification depends on institutional policy and regulatory considerations.

Despite significant court-based mediation activity in Israel, no formal ethics committee exists to guide practice or consolidate field knowledge. A voluntary Ethics Forum has operated since 2012,¹¹⁸ issuing opinions and codes of ethics for community and private mediators.¹¹⁹ However, it lacks statutory authority and funding, relying on volunteerism and reputation. The recommended course is to establish a national statutory ethics committee within a broader regulatory framework.¹²⁰

D) ESTABLISHING A DISCIPLINARY OVERSIGHT MECHANISM

Unlike established professions such as law or medicine, Israel lacks a formal disciplinary body for mediators. While the advisory committee may remove a mediator from the court-approved roster following conviction of a serious offence or breach of the Mediation Regulations,¹²¹ the process is opaque, with no published procedures or decisions and no known removals to date.

The preferred policy is to create a structured, accessible national mechanism with clear rules on complaint submission, investigation, hearings, sanctions, and public disclosure.¹²²

¹¹⁷ Note 64 above.

¹¹⁸ Shapira & Zilberstein (n 104) 109–113.

¹¹⁹ Ibid.

¹²⁰ See rec 18 below.

¹²¹ Mediators' List Regs (n 22) ss 6, 11.

¹²² See rec 19 below.

5. DATA COLLECTION ON MEDIATION

A major barrier to evaluating mediation's adoption is the lack of systematic, longitudinal data. Existing information is limited and anecdotal, e.g., MAHUT evaluations¹²³ or partial annual reports to the Knesset (parliament).¹²⁴ Private mediation data is virtually absent.

This gap hinders informed policy and reform. The challenge is not unique to Israel: the U.S. also lacks comprehensive ADR data, as noted by Professor Welsh.¹²⁵ Key metrics should include ADR eligibility of cases, referral and settlement rates, participant perceptions, trust levels, costs, compliance, and demographics.¹²⁶

6. JUDICIAL INVOLVEMENT IN MEDIATION

Israeli law allows judges to propose or approve settlements at any stage of proceedings.¹²⁷ With fewer than 10% of cases concluding by reasoned judgment,¹²⁸ and chronic overload in the system, settlement is increasingly viewed as preferable to judicial determination.¹²⁹ Judges face institutional pressure to resolve cases quickly, sometimes viewing full trials as failures.¹³⁰

While judicial facilitation offers benefits, e.g., leveraging a judge's authority and experience to move parties and deterring litigants from abusing procedural rights,¹³¹ it also risks blurring mediation and adjudication and compromising party autonomy. Specialised training¹³² and revised ethical codes are needed for judges in quasi-mediator roles.¹³³

¹²³ Notes 85–86 and 88–92 above.

¹²⁴ Mediators' List Regs (n 22) s 14.

¹²⁵ Nancy A Welsh, 'But Is It Good: The Need to Measure, Assess, and Report on Court-Connected ADR' (2021) 22 *Cardozo J Conflict Resol* 427, 449; 'Bringing Transparency and Accountability (with a Dash of Competition) to Court-Connected Dispute Resolution' (2020) 88 *Fordham L Rev* 2449, 2384–2387.

¹²⁶ *Ibid*; rec 20 below.

¹²⁷ Courts Law (n 51) s 70A(b); Civil Procedure Regs (n 47) s 63(B)(17); Karni Perlman, 'A Settlement Judge? On Judicial Dispute Resolution and a Proposal for Israeli Law' (2015) 19 *Law & Business* 365 (Heb).

¹²⁸ Issachar (Issi) Rosen-Zvi, 'Privatising Adjudication' (2022) 33 *Legal Stud* 715, 774–775 (Heb).

¹²⁹ *Ibid* 720.

¹³⁰ *Ibid* 775.

¹³¹ Louise Otis and Eric H Reiter, 'Mediation by Judges: A New Phenomenon in the Transformation of Justice' (2006) 6 *Pepperdine Disp Resol LJ* 351, 365–366.

¹³² *Ibid* 367.

¹³³ *Ibid* 365.

The Judiciary Ombudsman in Israel permits settlement facilitation based on informed consent,¹³⁴ but prohibits judges from mediating civil disputes¹³⁵ or holding separate meetings even with the parties' consent.¹³⁶ Still, judicial settlement efforts often resemble mediation, a practice likely to expand.¹³⁷ The preferred path is to adapt judicial training and ethics to reflect this evolving reality.¹³⁸

V. SUMMARY OF RECOMMENDATIONS FOR THE REGULATION OF MEDIATION

The following set of recommendations aims to offer policy directions and operational mechanisms to advance the institutionalisation, quality, and reach of mediation, both locally and in comparative discourse.

1. Enact a general Mediation Law positioning mediation as a national tool for societal change beyond court efficiency.¹³⁹
2. Establish a national authority responsible for mediation and a national mediation centre with state support.¹⁴⁰
3. Adopt a systemic approach framing mediation as justice beyond efficiency for cultural change.¹⁴¹
4. Integrate mediation into public institutions and the education system to promote respectful dialogue and peaceful conflict resolution.¹⁴²
5. Legitimate diverse mediation styles beyond settlement-focused models.¹⁴³
6. Expand referrals to orientations sessions across courts and case types.¹⁴⁴
7. Improve continuation rates post-orientation sessions via mediator assessment and success metrics.¹⁴⁵
8. Implement a fair compensation structure for orientation sessions.¹⁴⁶

¹³⁴ Ombudsman of the Israeli Judiciary, Opinion 8/04.

¹³⁵ *Ibid* Opinion 157/14 'Mediation Before a Family Court Judge'.

¹³⁶ *Ibid* Opinion 9/07.

¹³⁷ Shapira (n 10) 307–308.

¹³⁸ See rec 21 below.

¹³⁹ Pt IV, sections 1–2 above.

¹⁴⁰ *Ibid*.

¹⁴¹ Pt IV, section 2 above.

¹⁴² *Ibid*.

¹⁴³ *Ibid*.

¹⁴⁴ Pt IV, section 3 above; see also Rubinstein (n 14) 341.

¹⁴⁵ Pt IV, section 3 above.

¹⁴⁶ *Ibid*.

9. Introduce additional ADR mechanisms (e.g., Early Neutral Evaluation) for cases less amenable to mediation.¹⁴⁷
10. Empower courts to mandate ADR at suitable litigation stages.¹⁴⁸
11. Authorise courts to sanction refusals to engage in ADR without cause.¹⁴⁹
12. Institutionalise mediation as a national endeavour through funding, public campaigns, training, and integration across public services.¹⁵⁰
13. Embed mediation values in education from early childhood onward.¹⁵¹
14. Expand government and municipal support for community mediation.¹⁵²
15. Encourage judicial endorsement of mediated agreements outside formal litigation.¹⁵³
16. Define clear and concrete mediator duties for both court and private mediators.¹⁵⁴
17. Codify mediation privilege, including scope and exceptions.¹⁵⁵
18. Establish a statutory ethics committee for mediators.¹⁵⁶
19. Create a disciplinary mechanism for mediators with transparent procedures and enforcement powers.¹⁵⁷
20. Build a centralised system for data collection on mediation processes.¹⁵⁸
21. Statutorily recognise judges' settlement facilitation roles and adapt training and ethical codes accordingly.¹⁵⁹

VI. CONCLUSION

Three decades of mediation in Israel reflect a history of partial success and a complex journey. While there has been significant institutional development within the courts, this contrasts with the absence of comprehensive regulation,

¹⁴⁷ Ibid; see e.g., United States District Court for the Northern District of California, Early Neutral Evaluation (ENE) <<https://cand.uscourts.gov/about/court-programs/alternative-dispute-resolution-adr/early-neutral-evaluation-ene>> accessed 6 July 2025; Civil Procedure Rules (UK), r 3.1(2)(m).

¹⁴⁸ Pt IV, section 3 above.

¹⁴⁹ See e.g. Civil Procedure Rules (UK), r 44.2(5)(e); Law No 6325 on Mediation in Civil Disputes (Turkey), Art 18/A(11).

¹⁵⁰ Pt IV, section 3 above; see also Rubinstein (n 14) 342.

¹⁵¹ Ibid.

¹⁵² Ibid.

¹⁵³ In Israel, this is enabled through Courts Law (n 52) s 79C(h).

¹⁵⁴ Pt IV, section 4 above.

¹⁵⁵ Ibid.

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.

¹⁵⁸ Pt IV, section 5 above.

¹⁵⁹ Pt IV, section 6 above.

low referral rates, limited use outside courtrooms, and unresolved ethical challenges. The Israeli experience demonstrates that integrating mediation requires more than technical adoption; it demands a cultural and legal transformation, sustained governmental support, and coordinated efforts across sectors. These insights may inform other jurisdictions as well, can lay the groundwork for comparative dialogue and promote mediation as an alternative culture.

The policy proposals presented in the article seek to broaden the perspective on mediation, suggesting that it should be viewed not merely as a procedural tool, but as a socio-legal mechanism that requires an institutional, ethical, educational, and cultural infrastructure. The recommendations emphasize the need for comprehensive legislative regulation, the establishment of dedicated bodies, the integration of mediation values into the education system, and the development of monitoring, ethics, and data collection mechanisms to ensure the quality of mediation and public trust in it.

Alongside these, a new understanding is also required regarding the role of the mediator, the function of the judge, and the state's responsibility for promoting mediation as a national mission. I believe that only through a combination of a moral vision, institutional planning, and consistent regulatory action will it be possible to realise the potential of mediation in advancing an accessible and fair justice system and a society based on the values of dialogue, respect, and consensual resolution.

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