

News

Mediation must move out of elite law spaces: Former CJI BR Gavai



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Mediation in India must move beyond elite legal circles and into the daily lives of citizens, former Chief Justice of India BR Gavai said on Saturday at an event in Mumbai.

The judge was speaking at the International Mediation and Dispute Resolution Conference 2025 at DY Patil University, School of Law, Navi Mumbai.

He called for a people-centric, inclusive, and locally grounded approach to alternative dispute settlement.

“Mediation must also move out of elite legal spaces and become a common, approachable mechanism for everyday disputes. We must invest in community mediation centres that are physically approachable, culturally familiar, and free or low-cost,” the judge said.

He warned that if mediation remained confined to court buildings or centres in big cities, it risks becoming inaccessible to the majority of citizens.

“Embedding mediation in local communities is essential to ensure it remains a service for the people, not a privilege for the few,” he said.

Justice Gavai also explained that conflict resolution cannot be effectively addressed if parties are forced to speak in dominant languages alone.

“Disputes arise everywhere: in tribal hamlets, rural farmlands, small towns, and peri-urban settlements,” he said.

“Expecting a farmer in Vidarbha or a forest dweller in Koderma to narrate their grievances in English or even Hindi is unrealistic and unjust,” he said.

He called for the creation of a cadre of mediators fluent in local languages and street-level dialects to make the process ‘truly democratic.’

Justice Gavai also stressed on the bias and power dynamics within mediation, highlighting how mediation happens within social contexts.

“A woman trying to negotiate in a matrimonial case, a Dalit labourer seeking wages, or a transgender person facing discrimination may carry a structural disadvantage that affects their ability to negotiate freely,” Justice Gavai said.

He stated that mediators should be trained to spot and mitigate unequal bargaining power, implicit bias, and coercive dynamics. ***“Safeguards, including independent legal advice and exclusion of mediation in cases involving violence or intimidation, may be necessary to ensure justice, not mere settlement,”*** Justice Gavai found.

The judge also spoke at another event in Mumbai hosted by Loksatta, a Marathi daily of the Indian Express Group, where he defended his decision to apply the creamy layer principle to Scheduled Castes.

The Supreme Court, in its decision delivered on August 1, 2024, had called for the identification of the creamy layer among the Scheduled Castes and Scheduled Tribes (SC/STs) to take them out of the fold of affirmative action (reservation).

Currently, the concept of creamy layer applies only to Other Backward Classes (OBCs) and not SC/STs.

However, four of the seven top court judges who were part of the bench that allowed sub-classification of SC/STs had also called for creamy layer identification among SC/STs, so that benefits of reservation reach only the backward among such groups.

He said he had been widely criticized by people from his own group with regard to that judgment.

“I was accused of taking advantage of the reservation and reaching up to the post of Supreme Court judge, and now advocating the [creamy layer principle],” Justice Gavai recalled. “The allegations are based on basic ignorance of the constitutional provisions,” he added.

The former CJI also dismissed claims that he was elevated to the Supreme Court because of reservation.

He explained that the higher judiciary, which includes the High Court and Supreme Court, lies outside the reservation framework.

“The persons who have made these allegations do not even know that for the constitutional offices of the High Court or the Supreme Court, there is no reservation,” he said. “Persons from this category have to compete with others to be appointed as a judge or a Chief Justice.