

# EXAMINING THE IMPACT OF THE MEDIATION ACT OF 2023 ON THE LEGAL LANDSCAPE OF DISPUTE RESOLUTION IN INDIA.

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## ABSTRACT

This article provides an in-depth analysis of the Mediation Act, 2023, tracing its origins, and outlining its key provisions. The primary objectives of the Act include enforcing mediated settlement agreements, regulating mediator standards, promoting various forms of mediation, ensuring confidentiality, and expanding access to justice.

Although the Act brings about several positive changes, it also brings up some issues, including the separation of registered and unregistered mediators, strict deadlines for contesting agreements, and the exclusion of certain disputes. The Mediation Act signifies a crucial stride in integrating mediation into India's dispute resolution framework, offering the promise of swifter, cost-effective, and readily accessible justice. Its ultimate success will depend on how well it is implemented and how flexible it is in order to resolve these issues and foster an atmosphere that will allow mediation to flourish.

The ultimate success of this approach will rely on how well it is put into practice and how adaptable it is to address these problems and create an environment that will support the growth of mediation.

***Keywords: Mediation Act, 2023, Registered Mediator, Pre-litigated Mediation, Community Mediation, Mediated Settlement Agreement, The Mediation Council of India.***

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## INTRODUCTION

Mediation is not a new practice in India; in fact, Panchayats have long used and preferred mediation as a means of resolving conflicts within communities. But while under British administration,

There was a decline in the use of mediation, which led to more disagreements and longer adjudicative proceedings.<sup>2</sup>

Section 89 of the Code of Civil Procedure, 1908<sup>3</sup>, empowers courts to suggest mediation, conciliation, arbitration, or judicial settlement.<sup>4</sup> Initially lacking formal structure and legal acknowledgment, private mediation faced low engagement. However, courts' acceptance and utilization of mediation as a dispute resolution method led to the introduction of the 2021 Mediation Bill, aiming to fortify mediation's effectiveness and establish a robust legal framework for its practice.<sup>5</sup>

On August 7, 2019, India signed the Singapore Convention on Mediation; however, it has not yet been ratified.<sup>6</sup> Because of this, the Singapore Convention on Mediation is not incorporated into the Mediation Act; rather, it functions similarly to the 1996 Arbitration and Conciliation Act's adoption of the "United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards" in that it takes into account and provides a framework for the cross-border enforcement of settlement agreements that come from international mediation.

December 2021 marked the initial introduction of the Mediation Act, 2023 in Parliament under the name "2021 Bill." After a thorough examination and review process, the Rajya Sabha chairperson received the committee's 117th report on the Mediation Bill on July 13, 2022, which included some recommendations for changes to the bill's provisions.

Following careful deliberation, the Lok Sabha and Rajya Sabha both sanctioned the Act on August 2 and August 7, 2023, respectively. This bill becomes The Mediation Act, 2023 on September 15, 2023, after it is signed into law by the president and published in the official gazette.

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<sup>2</sup> Department-Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, "One Hundred Seventeenth Report on The Mediation Bill, 2021", Para 1.4, Page 3, Volume I. (DEC 10,2023, 10:30 AM) [https://prsindia.org/files/bills\\_acts/bills\\_parliament/2021/SC%20Report\\_Mediation%20bill.pdf](https://prsindia.org/files/bills_acts/bills_parliament/2021/SC%20Report_Mediation%20bill.pdf).

<sup>3</sup> Code of Civil Procedure, 1908, § Section 89, No. 10 Act of Parliament, 1908(India)

<sup>4</sup> Code of Civil Procedure, 1908, § Section 89, No. 10 Act of Parliament, 1908(India)

<sup>5</sup> Department-Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, "One Hundred Seventeenth Report on The Mediation Bill, 2021", Para 1.7, Page 4, Volume I. (DEC 10,2023, 10:30 AM) [https://prsindia.org/files/bills\\_acts/bills\\_parliament/2021/SC%20Report\\_Mediation%20bill.pdf](https://prsindia.org/files/bills_acts/bills_parliament/2021/SC%20Report_Mediation%20bill.pdf).

<sup>6</sup> Department-Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, "One Hundred Seventeenth Report on The Mediation Bill, 2021", Para 1.13, Page 6, Volume I. (DEC 10,2023, 10:30 AM) [https://prsindia.org/files/bills\\_acts/bills\\_parliament/2021/SC%20Report\\_Mediation%20bill.pdf](https://prsindia.org/files/bills_acts/bills_parliament/2021/SC%20Report_Mediation%20bill.pdf).

Eleven chapters, sixty-five sections, and ten schedules make up the Act. This article will look at the specifics of the Act, including its main objectives, rules, limitations, and potential implications on the modern Indian dispute resolution system.

## RESEARCH METHODOLOGY

This research employs a comprehensive methodology focused on investigating the impact of the Mediation Act of 2023 on legal dispute resolution in India. Emphasizing a rigorous analytical approach, the study primarily relies on secondary sources of information, including newspapers, journals, and websites. These sources contribute to a thorough exploration of the subject, complemented by the inclusion of primary sources such as bare acts, bills, and reports of Parliament. The integration of diverse materials ensures a multifaceted understanding of the implications and applications of the Mediation Act within the Indian legal framework.

## REVIEW OR LITERATURE

Soumya Gulati, Shweta Sahu & Sahil Kanuga emphasize mediation's voluntary essence, cautioning that statutory recognition, while a step forward, might constrain its growth potential. They highlight the Act's significance amid COVID-19's impact, yet note persisting ambiguities in provisions like mediator settlement agreements and interim orders, advocating for clearer specifications to enhance its transformative role in dispute resolution dynamics.<sup>7</sup>

Rohan Sharma's analysis delves into the Mediation Bill 2023, spotlighting how current legislative acts like the Commercial Courts Act 2015 reflect evolving mediation principles. Sharma emphasizes the call for a comprehensive framework, suggesting it as a means to modernize and harmonize existing practices in the mediation landscape, aligning them more effectively with today's societal and legal complexities.<sup>8</sup>

Raj Panchmatia, Haabil Vahanvaty and Roselin Alex in the analysis of the Mediation Act 2023 highlights its role as a game changer in dispute resolution. With government support, it promotes mediation as a cost-effective and time-saving alternative to litigation. Inclusion of government bodies

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<sup>7</sup> Nishthi Desai Associates Legal And Tax Counselling Worldwide, (DEC 10, 2023, 11:20 AM), <https://www.nishithdesai.com/SectionCategory/33/Research-and-Articles/12/57/NDAHotline/10748/1.html>.

<sup>8</sup> FICL, (DEC 10, 2023, 11:50 AM), <https://www.ficl.org.in/litigation/2023/09/16/breaking-down-the-mediation-bill-2023-critical-features>.

reflects a shift towards effective dispute resolution. Overall, the Act signifies a pivotal step in altering mindsets toward alternate dispute resolution methods.<sup>9</sup>

## WHAT IS MEDIATION-

Mediation, commonly understood as an alternative dispute resolution (ADR) method, involves parties collaborating with an impartial third party, known as a mediator, to autonomously resolve their conflicts.<sup>10</sup> Additionally, the European Union defines mediation as a "structured process, regardless of terminology, wherein two or more conflicting parties voluntarily seek to reach a settlement agreement on their dispute with the aid of a mediator."<sup>11</sup>

The following guidelines and precepts form the basis of mediation:

There are three parties involved: two parties in dispute and an impartial third-party offering support. Even though there could be more disputing parties in theory, in reality there are usually only two of them who have the strongest disagreements on certain basic issues; The distinction between mediation and negotiation lies in the introduction of a neutral, termed as "assisted negotiation," initiated after the negotiation phase concludes. The collective interactions involving both parties and their mediator are commonly referred to as the "mediation triangle."

**The mediator's non-decision-making function** - Lacking adjudicatory power, the mediator fosters an atmosphere where disputing parties can settle all of their differences rather than imposing a resolution. The third neutral party may even offer a draft settlement under some variations of the process, but signing it and forcing its terms on the parties is unquestionably beyond his power.<sup>12</sup> This is a prerogative that only the disputants have. Generally, the mediator's objective is to foster an environment that is conducive to settlement, whatever that may entail in any given situation. It is important to remember that the third party must be unbiased in his assessment of the conflict and separate from the parties engaged in the dispute.

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<sup>9</sup> SCC, (DEC 10,2023, 11:55 AM),

<https://www.scconline.com/blog/post/2023/09/28/game-changer-in-effective-alternative-dispute-resolution-the-mediation-act-2023/amp/>.

<sup>10</sup> The Mediation Act,2023, § Section 3(h) No. 32, Act of Parliament 2023 (India)

<sup>11</sup> Pawan Upadhyay & Rishabh Khare, *The Mediation Act, 2023: A Game Changer in Indian Dispute Resolution*, Lexology, (DEC 12, 2023, 10:36 AM), <https://www.lexology.com/library/detail.aspx?g=0bde5757-1691-4ec6-972e-405509a58aad>

<sup>12</sup> Victor Terekhov, *Online Mediation: A game changer Or much ado about nothing?*, doi.org/10.33327/AJEE-18-2.4-a000018, REV. 33, 35 (2022), (DEC 12, 2023, 1:00 PM)

<https://www.cedr.com/wp-content/uploads/2020/03/Mediator-Guide-to-Online-Mediation-1.pdf>

**Flexible and informal nature of the procedure-** The three parties agree on the fundamental components of the process, or the mediator establishes them in terms and conditions, and the law only governs mediation in the broadest sense. For the purposes of this discussion, we will refer to an informal style of mediation as a "interest based procedure," as opposed to "right-based procedures" like litigation or arbitration, where the objective is to determine what the parties can do for each other rather than to prove who is right or wrong. It also implies that the procedure is under the parties' control and can be tailored to their preferences.

**Private origins-** Private (or "non-public") disputes, on the one hand, are those that parties are allowed to settle among themselves without intervention from the government. But still This feature is becoming less and less relevant due to the increasing number of cases involving mediation in criminal, administrative, constitutional, and even international law. The most important thing to remember about mediation is that it's being done by professionals who are not connected to the courts or any other branch of government; in most cases, these people are essentially independent and exempt from legal review because they only receive training or certificates from public authorities. While some states have few legal regulatory bodies that regulate mediation in accordance with their wishes, others have mediators who self-regulate.

**Voluntary participation-** The procedures' voluntary nature grants the parties the freedom to join and/or exit the process whenever they so choose. They won't face consequences for their lack of collaboration or incapacity to reach a resolution. The parties cannot be coerced into using mediation; it is a matter of mutual and independent agreement between them.

Nonetheless, some national legislators create a system of mandatory, or court-imposed, mediation because they believe that settlements are typically preferable to "hard" solutions in the modern theory of civil procedure. Even so, access to further legal proceedings is not entirely barred by such procedures (to do so would be to violate national laws that have a similar effect or Article 6 of the ECHR on fair trials).

**Mostly face-to-face interaction-** In a traditional mediation, the parties see each other in person (virtually present in the mediator's cabinet) and may have oral discussions. Since it is extremely difficult to create a settlement-friendly atmosphere in any other setting, this is deemed essential. But it isn't (ostensibly on purpose) part of the concept of mediation.

## KEY FEATURES OF ACT

**Pre-litigation Mediation (Section 5):** Before resorting to court or specific tribunals, parties are required to make an effort to resolve their civil or business disputes via mediation. These bodies hold the authority to refer parties to mediation, irrespective of the outcomes of pre-litigation mediation, at any stage of the proceedings.<sup>13</sup>

**Disputes Unfit for Mediation (section 6):** Mediation, commonly defined as an alternative dispute resolution (ADR) method, involves the engagement of conflicting parties with an impartial mediator to autonomously resolve their disagreements. According to the European Union, mediation is characterized as a structured process, regardless of nomenclature, wherein two or more disputing parties endeavor, voluntarily, to reach a settlement agreement with the aid of a mediator.<sup>14</sup>

**Application of The Act:** The Act applies to mediations taking place within India, involving either solely domestic parties or a combination of domestic and at least one foreign party, specifically concerning commercial disputes, provided the mediation agreement explicitly states adherence to this Act.

**Mediators (section 8):** If the parties are unable to agree, a mediation service provider may appoint mediators on their behalf. The mediator may be from any country. A few requirements must be met in order for a foreign mediator to be appointed. Any conflict of interest that might impair mediators' objectivity must be disclosed.<sup>15</sup>

**Mediation Process (Section 16 & Section 18):** After two sessions, a party may opt out of mediation. The mediator's first scheduled appearance is set for a date that will be 120 days from the start of the confidential mediation process. The parties may mutually agree to extend this for an additional period of time, not to exceed 60 days.<sup>16</sup> In the case of pre-institution mediation, a corresponding amendment to the Commercial Courts Act 2015 has also been proposed. Currently,

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<sup>13</sup> The Mediation Act, 2023, § Section 5, No. 32, Act of Parliament 2023 (India).

<sup>14</sup> The Mediation Act, 2023, § Section 6 No. 32, Act of Parliament 2023 (India)

<sup>15</sup> The Mediation Act, 2023, § Section 8, No. 32, Act of Parliament 2023 (India)

<sup>16</sup> The Mediation Act, 2023, § Section 16, No. 32, Act of Parliament 2023 (India)

the mediation process must be finished within three months of the plaintiff's application date, with an additional two months allowed with the parties' consent.<sup>17</sup>

**The Mediation Council of India (section 31):** The India Mediation Council, established by the central government, will comprise a chairperson, two full-time members specializing in mediation or alternative dispute resolution (ADR), three ex-officio members (including the Expenditure Secretary and the Law Secretary), and one part-time member representing an industry association. Its primary role will involve accrediting mediation institutes, mediation service providers, and mediators via registration processes.<sup>18</sup>

**Mediated Settlement Agreement (section 4 & Section 28):** The notion of mediation agreements is described in Section 4 of the Act; these agreements must be in writing and involve both the parties and their successors. Except in cases of community mediation, settlements reached through mediation must be final, enforceable under law.<sup>19</sup> In relation to disputes that are inappropriate for mediation, these may be contested under Section 28 on the grounds of fraud, corruption, or impersonation.<sup>20</sup> However, any challenge to these agreements must be lodged within 90 days from the receipt of the mediated settlement agreement. In exceptional situations, an extra ninety days may be granted to address extraordinary circumstances.<sup>21</sup>

**Community Mediation (section 43):** A group of three mediators will oversee community mediation, aiming to resolve conflicts that could potentially disrupt the peace and harmony within the local community.<sup>22</sup>

**Online Mediation (section 30):** The legislation promotes and acknowledges the significance of technology in contemporary dispute resolution by advocating for online mediation. It underscores the importance of protecting the confidentiality and integrity of online mediation procedures and allows parties the option to exit online mediation at any point using computer networks, secure chat spaces, electronic forms, or audio and video conferencing while prioritizing privacy.<sup>23</sup>

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<sup>17</sup> The Mediation Act, 2023, § Section 18, No. 32, Act of Parliament 2023 (India)

<sup>18</sup> The Mediation Act, 2023, § Section 31, No. 32, Act of Parliament 2023 (India)

<sup>19</sup> The Mediation Act, 2023, § Section 4, No. 32, Act of Parliament 2023 (India)

<sup>20</sup> The Mediation Act, 2023, § Section 6, No. 32, Act of Parliament 2023 (India)

<sup>21</sup> The Mediation Act, 2023, § Section 28, No. 32, Act of Parliament 2023 (India)

<sup>22</sup> The Mediation Act, 2023, § Section 43, No. 32, Act of Parliament 2023 (India)

<sup>23</sup> The Mediation Act, 2023, § Section 30, No. 32, Act of Parliament 2023 (India)

**Confidentiality (Section 22):** One of the main principles of mediation is confidentiality. By offering legal protection for the confidentiality of mediation communications, the Act supports this idea. Disclosures made during mediation are not admissible as evidence in court,<sup>24</sup> encouraging the parties to have an honest and open discussion "without prejudice."<sup>25</sup> Audio and video recordings of the proceedings are strictly forbidden.

## KEY ISSUES OF ACT

**Mandating Pre-litigation Mediation:** Regardless of whether the parties have a mediation agreement, the Act requires pre-litigation mediation for all parties before beginning any legal action or proceeding in court. Nevertheless, according to Article 21 of the Constitution, having access to justice is a fundamental, unalienable right, which is uncontrollable or unrestricted.<sup>26</sup>

**Limited Relevant Experience of Mediators:** The Act would permit the appointment of an arbitrator as a full-time member of the Council; however, an arbitrator might not be the most suitable person to carry out tasks such as establishing guidelines for mediators' professional conduct. However, the Council's full-time members must be knowledgeable about mediation or alternative dispute resolution (ADR) laws and procedures.

**Mandating approval from the central government before enacting regulations:** The effectiveness of the Council is limited by the Act, which mandates that the Council obtain approval from the central government before issuing regulations. On the other hand, some organizations don't need permission before releasing regulations, like the Bar Council of India and the National Medical Commission. The Council's primary function will be to issue regulations, but before it can do so, it needs this approval.

**Challenges in Enforcing International Settlements:** International mediation performed in India and acknowledged as a court ruling or decree is regarded as domestic under the Act. Cross-border mediators in India won't benefit from the significant advantages of global enforceability as the

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<sup>24</sup> The Mediation Act, 2023, § Section 22, No. 32, Act of Parliament 2023 (India)

<sup>25</sup> The Mediation Act, 2023, § Section 22(3), 23, No. 32, Act of Parliament 2023 (India)

<sup>26</sup> The Constitution of India, Article 21



Singapore Convention doesn't extend to settlements that already hold this recognized status.<sup>27</sup>

**Multiple registration needed for Mediators:** The necessity for mediators to be registered or authorized at the Legal Services Authority, the Mediation Council of India, a court-annexed mediation center, or an approved mediation service provider raises questions about why fulfilling just one of these criteria is deemed inadequate for this type of mediator.

**Undefined Terminology:** A party may only move the Court for interim relief under Section 8 of the Act in extraordinary circumstances, either before or during the mediation process. Nothing in the Act defines "exceptional circumstances."

**Problems with Online Mediation:** Only 27% of Indians own compatible devices, and only 55% of the population has internet access, according to a recent NITI Aayog report. This indicates that a significant segment of the population faces challenges in accessing resources or services.

## **IMPACT OF MEDIATION LEGISLATION ON INDIA**

**To Address Case Pendency:** With approximately 4.7 crore cases pending across various judicial tiers as of May 2022, a substantial 87.4% rested in subordinate courts, while 12.4% were within High Courts. This circumstance led the Supreme Court of India's Mediation and Conciliation Project Committee to consider mediation as a proven approach for expediting case resolutions and reducing the time taken for settlement.

**Lack of Standalone Laws on Mediation:** While several laws, such as the Code of Civil Procedure, 1908; the Arbitration and Conciliation Act, 1996; the Companies Act, 2013; the Commercial Courts Act, 2015; and the Consumer Protection Act, 2019, include mediation provisions, India does not have a distinct standalone law specifically dedicated to mediation.

**Mediation's Role in Achieving Genuine Justice and Societal Transformation:** Mediation, employing clear and accessible language, simplifies the delivery of justice and proves to be a more cost-effective alternative compared to conventional approaches. Through the flow of ideas and information, the settlement reached during mediation ensures that individuals receive true justice

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<sup>27</sup> Nishith Desai, *Decoding the Mediation Act 2023*, Nishith Desai Associates Legal & Tax Counselling Worldwide, (DEC 13, 2023, 6:45 PM) <https://www.nishithdesai.com/NewsDetails/10748>.

and that social norms are brought into compliance with constitutional values.<sup>28</sup>

**Mediation as a tool for reducing legal cost and fostering Resolutions:** Financially, mediation presents an appealing choice as it enables parties to make substantial savings compared to litigation. Litigation typically involves hefty legal fees, court expenses, and the prospect of prolonged legal proceedings. The Act's prioritization of mediation facilitates quicker resolutions, particularly in time-sensitive scenarios like business conflicts or family disputes concerning child custody or visitation rights. The well-documented effectiveness of mediation in conflict resolution further underscores its value.

## POSSIBLE SUGGESTIONS

**Phased Implementation of Mandatory Pre-Litigation Mediation:** Pre-litigation mediation will become mandatory gradually, first for a small subset of dispute types and then for a larger subset of disputes.<sup>29</sup>

**Capacity Building:** The Mediation and Conciliation Project Committee of the Supreme Court of India has proposed initiatives such as formulating model mediation codes, facilitating nationwide mediation training, and supervising the process across districts. Additionally, NITI Aayog emphasized the need to consider the availability of mediators and the system's capacity to train a substantial number of mediators while designing the mandatory framework for pre-litigation mediation in India.

**Reducing Time of Mediation:** It was proposed in the Parliamentary Standing Committee Report on Mediation Bill, 2021, to reduce the 180-day mediation period to 90 days.

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<sup>28</sup>Victor Terekhov, *Online Mediation: A game changer Or much ado about nothing?*, doi.org/10.33327/AJEE-18-2.4-a000018, REV. 33, 35 (2022), (DEC 14, 2023, 10:00 AM)  
<https://www.cedr.com/wp-content/uploads/2020/03/Mediator-Guide-to-Online-Mediation-1.pdf>

<sup>29</sup> Nandini Gore & Rohit Kumar, *Mediation Act 2023: Facilitating Conflict Resolution in Modern Era*, Monday, (DEC 14, 2023, 10:15 AM), <https://www.mondaq.com/india/arbitration--dispute-resolution/1372144/the-mediation-act-2023-facilitating-conflict-resolution-in-the-modern-era>

**Use of Disruptive Technologies:** Artificial intelligence (AI) and international arbitration (IA) are two of the most cutting-edge substitutes for conventional procedures. AI replaces traditional dispute resolution techniques, and IA replaces traditional performance approaches. Through the improvement of human cognitive capacities, artificial intelligence (AI) holds great promise for the arbitration process and its participants. AI-powered services could assist attorneys with drafting, reviewing documents, and other duties.

## CONCLUSION

In conclusion, the Mediation Act 2023 is a significant piece of legislation that will help create a conflict resolution process that is more open, effective, and contemporary. In addition to defining and differentiating mediation, it presents novel concepts like pre-litigation and online mediation. In order to monitor and control the mediation ecosystem and guarantee that mediators adhere to strict professional standards, it also establishes the Mediation Council. In conclusion, the Act promotes court-annexed mediation and highlights the enforceability of mediated agreements, both of which will aid in reducing the backlog of cases in court and expediting the administration of justice.

It is expected that this legislation will have a significant impact. It will lessen the stigma associated with mediation by promoting a cultural shift towards using it as the first choice for resolving conflicts. By reducing legal fees and expediting settlements, it will also guarantee improved access to justice for all parties, regardless of their financial situation. Better relationships and uninterrupted business operations are the results of mediation, and these benefits will support happier, healthier communities and more successful economies. The Mediation Act 2023, which emphasizes professional development and standardized accreditation to ensure the reliability and validity of mediation services, also shows promise for the mediation industry's expansion.

The Mediation Act 2023 is a shining example of how the legal system is evolving to meet the demands of the contemporary world and advance the goal of just and effective dispute resolution. In conclusion, this legislation is revolutionary for the field of conflict settlement. It not only brings the conflict resolution process up to date, but it also conforms to the changing demands of both people and corporations. This law opens the door to a more just and peaceful future with its diverse effects on the economy, culture, and society at large.

