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**THE MEDIATION ACT, 2023: A CRITICAL ANALYSIS OF ITS  
EFFECTIVENESS IN TRANSFORMING INDIA'S DISPUTE RESOLUTION  
SYSTEM**

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**ABSTRACT**

The passage into law of the Mediation Act, 2023 marks a major milestone in the Indian Government's efforts to improve its dispute resolution regime as well as deal with the long-standing issue of judicial backlog. Mediation, being one of the main components of Alternative Dispute Resolution (ADR) is an effective tool for the peaceful resolution of disputes through a process that is both efficient and economical. Although mediation has been practiced in India for many years, it was not anchored in any form of legislation which led to haphazard application of the process. The Mediation Act, 2023 tries to correct this anomaly by creating a legal framework for all types of mediations and making the mediation process enforceable. This paper provides a critical discussion of the Act through an examination of the major aspects of the Act, its strengths, and its capacity to revolutionize the dispute resolution system in India. Additionally, the paper will also highlight the constitutional, institutional, and practical barriers to the successful implementation of the Act, especially in regards to pre-litigation mediation, justice for all, and the Mediation Council of India. The discussion in the current paper suggests that the success of the Act hinges heavily upon effective implementation and cultural change.

**KEYWORDS:** Mediation Act, 2023; Alternative Dispute Resolution (ADR); Pre-Litigation Mediation; Dispute Resolution; Judicial Backlog.

**INTRODUCTION**

Any legal system must be able to resolve conflicts, but India's traditional adjudicatory process has long been hampered by excessive delays and growing backlogs of cases. The

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need for quick, economical, and effective conflict resolution procedures has grown as millions of cases are pending at all judicial levels. Alternative Dispute Resolution (ADR) procedures, especially mediation, have become effective means of enhancing the official justice delivery system under this situation. More than 51 million cases are awaiting resolution in the Indian courts across all levels of the judiciary as of 2024<sup>3</sup>. Mediation effectively contributes to the voluntary resolution of conflicts.

Mediation is a component of alternative dispute resolution used to address conflicts. When discussing mediation, the Singapore Convention on Mediation (SCM)<sup>4</sup> should be considered, and India is a signatory to it. The Mediation Act 2023<sup>5</sup> is the initial standalone legislation regarding mediation. It seeks to settle the conflicts peacefully. It also discusses the formation of the Mediation Council of India, the role of online mediation, and promotes community mediation while recognizing voluntary pre-litigation efforts. A key aspect is rendering the mediated settlement agreement enforceable as a court decree. Mediation is not a formal process that entails court procedures, burden of proof, or witness testimony; rather, it is a method where the parties jointly meet with a neutral third party known as a mediator, who helps them resolve their disputes and come to an agreement. The Government has been consistently working to establish a policy to resolve the conflicts for an extended period. The different clauses that discuss mediation are:

- Article 89 of the Civil Procedure Code<sup>6</sup>,
- Sections 442, 446, and 449 of the Companies Act 2019<sup>7</sup>,
- Sections 37, 38, 39, and 40 of the Consumer Protection Act 2019<sup>8</sup>,
- Section 30 and Section 31 of the Arbitration and Conciliation Act of 1996<sup>9</sup>,
- Clause 12 of the Commercial Courts Act 2015<sup>10</sup>.

## EVOLUTION OF MEDIATION IN INDIA

Mediation, as a process of resolving disputes, is not a new concept in India, but has been practiced for centuries in the country. Since ancient times, disputes among members of any community have been settled by informal means, such as using village Panchayats where

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<sup>3</sup>Vandana Ghai, *Mediation Act 2023: Need of an Hour*, 8 *Int'l J. L. Mgmt. & Humans*. 526, 528 (2025)

<sup>4</sup>United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention on Mediation), 2019

<sup>5</sup>The Mediation Act, 2023, No. 32 of 2023

<sup>6</sup>Code of Civil Procedure, 1908, § 89

<sup>7</sup>Companies Act, 2013, §§ 442, 446, 449

<sup>8</sup>Consumer Protection Act, 2019, §§ 37–40

<sup>9</sup>Arbitration and Conciliation Act, 1996, §§ 30–31

<sup>10</sup>Commercial Courts Act, 2015, § 12A

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elders would serve as neutral mediators, ensuring that an agreement between the conflicting parties could be reached in a friendly manner<sup>11</sup>. Nevertheless, with the coming of the colonial administration, and subsequently with the formalization of the legal system in India, there was a decline in the practice of using such processes to settle disputes.

After attaining independence from the British rulers, the Indian legal system continued to depend much on litigation. This created complications in the system, with many cases being delayed, and a large number remaining pending in the courts. As a way of addressing such problems, steps were taken to introduce other means of resolving disputes. Among them was the addition of Section 89 in the Code of Civil Procedure, 1908<sup>12</sup>, through the 2002 amendment<sup>13</sup>, providing that courts may refer disputes to ADR methods like mediation, arbitration, conciliation, and Lok Adalats.

More recently, further progress occurred with the passing of the Commercial Courts Act, 2015<sup>14</sup>, where the idea of pre-litigation mediation in commercial cases was introduced. The subsequent 2018 amendment<sup>15</sup> to the law rendered mediation in commercial disputes above a certain amount mandatory. Furthermore, signing the Singapore Convention on Mediation<sup>16</sup> is one of the ways India showed its intentions to align its dispute resolution system with international norms, especially with regard to international commercial disputes.

Nevertheless, the lack of a legal framework that would regulate mediation in India prevented the process from becoming more integrated. In light of the foregoing, passing the Mediation Act, 2023<sup>17</sup> appears to be an effective solution to this problem. The passage of the act marks a new stage in India's evolution from an adversarial dispute resolution system to a cooperative approach to settling disputes.

## **KEY FEATURES OF THE MEDIATION ACT, 2023**

Mediation Act, 2023<sup>18</sup> is one of the most inclusive pieces of legislation that seeks to establish the mediation process as a favored means of resolving disputes in India. This Act comes with certain significant aspects that seek to simplify the mediation process, making it more accessible, enforceable, and effective.

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<sup>11</sup>Nazuk Sood, *Mediation Act, 2023: An Analytical Study*, (2024) 6 Int'l J. Multidisciplinary Rsch.

<sup>12</sup>Code of Civil Procedure, 1908, § 89

<sup>13</sup>Code of Civil Procedure (Amendment) Act, 2002

<sup>14</sup>Commercial Courts Act, 2015

<sup>15</sup>Commercial Courts (Amendment) Act, 2018

<sup>16</sup>Supranote 2

<sup>17</sup>Supranote 3

<sup>18</sup>Supranote 3

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### **Scope and Applicability**

The Act shall apply to all mediations carried out in India when any of the parties in such cases are domiciled, resident, or have their place of business in India. In addition, the Act shall also apply to specific types of international mediations where such mediations are expressly made applicable by virtue of the terms of their agreements. Furthermore, the scope of application of the Act includes disputes between governmental authorities.<sup>19</sup>

### **Definition and Forms of Mediation**

According to the Act, mediation is a process in which disputes are resolved amicably using the intervention of a neutral third party, referred to as a mediator. As such, the Act includes mediation in many forms including pre-litigation mediation, online mediation, community mediation, among others.<sup>20</sup>

### **Pre-Litigation Mediation**

Another salient feature of the Act is the stress laid on pre-litigation mediation. The Act suggests that the parties should first try to resolve the disputes through mediation rather than approaching the court. Although participation in such a process is mostly voluntary, some classes of disputes, especially commercial disputes, of specific value range fall under the category of disputes for which mediation is mandatory prior to litigation<sup>21</sup>.

### **Role and Appointment of Mediators**

A great amount of emphasis has been placed by the Act on the role, appointment, and powers of a mediator. It gives full authority to both parties to mutually appoint a mediator. When both the parties fail to do so, the mediation service provider can appoint a mediator from their panel<sup>22</sup>. The mediator has to conduct themselves in an impartial and neutral fashion without making any binding decision.

### **Procedure and Time Limits**

While conventional litigation procedures are often rigid and inflexible, mediation under the Act is flexible and informal in nature. The mediator is not bound by the strict rules of procedures such as the Code of Civil Procedure, 1908<sup>23</sup> or the Indian Evidence Act, 1872<sup>24</sup>.

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<sup>19</sup>*The Mediation Act, 2023*, §§ 1–2

<sup>20</sup>*Id.* § 3

<sup>21</sup>*Id.* § 5

<sup>22</sup>*Id.* §§ 7–9

<sup>23</sup>Code of Civil Procedure, 1908

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Rather, the mediator follows the principles of equity, justice, and objectivity. In order to increase the efficacy of the procedure, the Act stipulates that 120 days should be the maximum time period for completing the mediation process. This can be extended further by 60 days at the joint request of the parties involved<sup>25</sup>.

### **Mediated Settlement Agreements**

Another notable feature of the Act is its provision for recognizing and enforcing mediated settlement agreements. These agreements have to be reduced to writing, duly signed by the parties, and verified by the mediator. Once these agreements are approved by both parties, they become legally binding and enforceable as if they were the decrees of a court of law. However, limited provisions for disputing mediated agreements exist, and these include fraud, corruption, or impersonation<sup>26</sup>.

### **Institutional Structure and Mediation Council of India**

Under the Act, an institution known as the Mediation Council of India (MCI) is established. The MCI acts as a regulatory authority responsible for managing mediation within the country. Functions performed by the Mediation Council include accreditation and registration of mediators and mediation service providers, among others. These institutional arrangements seek to enhance the credibility of the mediation process<sup>27</sup>.

### **Online and Community Mediation**

To address challenges related to access and innovation, the Act proposes the use of technology-based mediation. In this respect, it allows parties to engage in mediation using online methods. Moreover, the Act also recognizes the possibility of community mediation for resolving disputes<sup>28</sup>.

### **Confidentiality and Ethical Protections**

Confidentiality is one of the key aspects of the Act. Any information, any proposal, and any document generated or exchanged in the course of the mediation cannot be used as evidence in subsequent legal processes, which promotes honest communication<sup>29</sup>.

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<sup>24</sup>Indian Evidence Act, 1872

<sup>25</sup>*The Mediation Act, 2023*, § 27

<sup>26</sup>Id. §§ 31–40

<sup>27</sup>Id. §§ 31–40

<sup>28</sup>Id. §§ 30, 43

<sup>29</sup>Id. §§ 22

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To summarize, the Mediation Act, 2023<sup>30</sup>, is a comprehensive document that establishes a number of measures intended to make mediation a viable alternative to litigation. Despite the obvious benefits associated with these provisions, it remains to be seen how successfully they will be implemented.

### **ADVANTAGES OF THE MEDIATION ACT, 2023**

The Mediation Act, 2023 is associated with many important merits that will improve India's dispute resolution system and enable a transition from the adversarial approach to litigation. Firstly, the new act has the potential to alleviate the workload in courts. The Indian judiciary suffers from the enormous backlog of cases at different tiers of the judiciary. Encouraging parties to settle their disputes through mediation will help cut down on the number of court cases and ensure greater efficiency in judicial processes<sup>31</sup>.

Secondly, mediation is an inexpensive and fast procedure compared to litigation. Litigation is a costly and lengthy process because lawyers spend considerable effort on compiling evidence and preparing for court hearings. However, mediation will take less time than litigation because of the time limit stipulated by the law. Party autonomy and flexibility have been prioritized in the Act. This is because, through the process of mediation, parties have control of what happens since the mediator will only facilitate negotiations but does not determine the final outcome. Consensus improves the satisfaction levels of the parties involved and helps to improve compliance with the settlement agreement<sup>32</sup>.

One of the other advantages of the Act is that it protects the confidentiality of parties involved. All communications made during the process of mediation are kept confidential and not used in any way in subsequent court cases. Confidentiality will lead to better and more sincere discussions and negotiations. Finally, the enforcement of the settlements reached in mediation as decrees from the court makes the process more credible.

Further, the Act aids institutionalization through the creation of the Mediation Council of India and recognition of mediators and mediation service providers. This will aid in making mediation procedures more standardized and professional, thus increasing its popularity and adoption. The addition of online and community mediation makes it even more accessible for everyone. In conclusion, the Mediation and Conciliation (Amendment) Act is an important piece of legislation that marks progress towards a better dispute resolution process in India.

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<sup>30</sup>Supranote 3

<sup>31</sup>Supranote 1

<sup>32</sup>Supranote 9

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## CHALLENGES AND CRITICISM OF THE MEDIATION ACT, 2023

However, despite its progressive characteristics, the Mediation Act of 2023 suffers from several shortcomings and possible obstacles that could hamper the smooth execution of the provisions of the said law. One of the main points of contention surrounding the Mediation Act is its compliance with the Constitution of India, specifically Article 21<sup>33</sup> that guarantees the fundamental right to have access to justice for all citizens. The problem here lies in the requirement of mediation prior to litigation<sup>34</sup>. Although such a provision serves as an advantage of the said law, it poses the risk of preventing or delaying one's access to a competent court. Another problem associated with the Mediation Act is the capacity of the Mediation Council of India (MCI)<sup>35</sup>, which will oversee the implementation of the law's provisions.

In order for the MCI to function effectively, it needs to be created in time, properly equipped, and supplied with appropriate guidelines for regulation. There is no set standard for the selection and accreditation of mediators. Moreover, questions about the implementation of mediated settlements have also been raised. While the Act allows mediated settlements the same status as court decrees, the inefficiency and delay in the process of enforcing such settlements may render their utility ineffective.

The emergence of online mediation carries with it both advantages and drawbacks. On the one hand, it promotes accessibility, especially in the age of the Internet; however, problems associated with digital illiteracy and technological access, as well as cybersecurity, can hamper the process of mediation, especially in rural and underdeveloped parts of the country. Furthermore, there is a general lack of awareness and training about mediation among all parties involved, including litigants, lawyers, and sometimes even judges. In the absence of appropriate training programs, the Act will fail to achieve its full potential. To conclude, the Mediation Act, 2023 is a revolutionary legislation that seeks to revolutionize the dispute resolution system in India. However, it faces many challenges, which need to be overcome.

## SUGGESTIONS AND WAY FORWARD

However, in order for the Mediation Act, 2023<sup>36</sup> to serve its purpose, several modifications may be required. Although the Act forms a solid legal base, what remains vital is proper

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<sup>33</sup>Article 21, Constitution of India, 1950

<sup>34</sup>*The Mediation Act, 2023*, § 5

<sup>35</sup>*Id.* §§ 31–40

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implementation and acceptance of the same by all the stakeholders. The first step towards achieving the goals of the Act will require strengthening of the institutional mechanism involved, which would entail efficiency of the Mediation Council of India (MCI). It is important to formulate appropriate and unified standards for certification, training, and appraisal of mediators in the process. The second step is that of capacity building and generating awareness about the advantages of mediation. Litigants, lawyers, and judicial officers alike need to be educated about the advantages of the process.

Thirdly, there needs to be a greater emphasis on investing in the infrastructural development of mediation in terms of institutional mediation and online mediation. For instance, the development of mediation centres needs to be encouraged, technology for online mediation has to be put in place, and the digital divide addressed in order to make mediation more accessible to rural or underdeveloped areas. In addition, judicial support and referrals are very crucial for mediation. The courts need to take an active role in referring relevant cases to mediation, but it is also essential to ensure that it does not simply turn into a mere formality. Screening of cases fit for mediation is also essential.

India could ratify the Singapore Convention on Mediation<sup>37</sup> which will give a boost to the enforceability of mediated settlements internationally and make India a mediator in international commercial disputes. Finally, measures to safeguard against pre-litigation mediation becoming a barrier to access to justice have to be put in place in terms of guidelines ensuring the voluntariness of parties, preventing any form of coercion, and protecting the weaker party in the process. Through these measures, the Mediation Act, 2023 can become a robust instrument that compliments the legal process in India.

## CONCLUSION

The Mediation Act of 2023<sup>38</sup> stands out as a crucial step towards the reform of India's dispute resolution system. As indicated by the Mediation Act of 2023<sup>39</sup>, the main objective of this act is to promote an alternative method of resolving disputes through the creation of an elaborate legal mechanism. This is evident from the provisions for pre-litigation mediation, mediation agreement enforcement, and institution regulation. However, the success of the Act cannot be assessed using only its purpose. Various issues raised by this study indicate a number of factors which need to be considered before the law is implemented successfully.

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<sup>37</sup>Supranote 2

<sup>38</sup>Supranote 2

<sup>39</sup>ibid

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Although these are major problems, the Act has immense capacity to revolutionize the scenario of dispute resolution in India. In conjunction with proper institutional support and greater awareness about the process of mediation along with a cultural change in adopting the process of mediation for dispute resolution, there could be a great reduction in the judicial workload. Eventually, the fate of the Mediation Act, 2023 will rest upon the cooperation of all concerned segments of the society for mediation as the primary means of dispute resolution.

