
MEDIATION ACT, 2023: A CRITICAL ANALYSIS OF INDIA'S NEW MEDIATION FRAMEWORK

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ABSTRACT

India has now introduced a standalone law on mediation. The Mediation Act, 2023, which is the country's first comprehensive piece of legislation entirely devoted to this method of dispute resolution, was passed at a time when the Indian judicial system was dealing with a backlog of more than five crore cases. The Act includes a number of important reforms: it gives mediated settlement agreements the same effect as a court decree, provides strong confidentiality protections, sets up a regulatory authority for mediators, and establishes the basis for India to later become a party to the Singapore Convention on Mediation.

The paper gives a critical examination of the Act, looking not only at its various provisions but also at whether or not it is practical in real life. It reviews the history of mediation in India, analyzes the main provisions of the Act together with their limitations, looks at the important Supreme Court decisions that have influenced the mediation sector in India, and compares India's system with those of other countries. The paper concludes that the Act does constitute a major step forward, but its success will depend on effective implementation, a point on which Indian legal reform has in the past run into difficulties.

Keywords: Mediation Act 2023, pre-litigation mediation, mediated settlement agreement, Section 89 of the CPC, Singapore Convention, alternative dispute resolution, institutional mediation.

I. INTRODUCTION

It is a well-known saying in legal circles that it is better to reach a poor settlement than to have a good lawsuit. Mediation is based on this idea. It gets the parties who are in dispute together with a neutral facilitator so that they can arrive at a solution which they both accept, without any involvement from the courts. The process does not make use of formal rules of evidence, does not produce a public record, and prevents there being a winner-takes-all decision. Rather, it is concerned with helping the parties to reach a consensus.

Mediation as a method of settling disputes has long been part of India's history. Early on, bodies like the gram panchayat, community elders, and arbitrators from trade guilds acted as mediators. Yet, with the rise of modern courts, these traditional methods came to be sidelined. In recent decades, since the number of cases awaiting judgment has grown, lawmakers have tried to restore mediation as an alternative means.

The Mediation Act of 2023 is, to date, the most comprehensive legislative initiative. Before it came into force, mediation in India was based on a scattered system: it was mentioned in Section 89 of the Code of Civil Procedure, carried out in certain centers attached to the High Courts, and was required in cases involving commerce under Section 12A of the Commercial Courts Act, yet there had been no single statutory system to govern it. The Act fills this gap by defining what mediation is, stating who is authorized to carry it out, setting out the procedural requirements, and making clear the legal effect of agreements reached through mediation. The present paper critically examines whether the Act satisfies current needs.

II. Evolution of Mediation Law in India

The true origin of mediation in modern Indian law can be traced to the 1999 amendment of the Code of Civil Procedure, which introduced Section 89. This section enabled courts to send ongoing cases over to mediation, arbitration, conciliation, or Lok Adalats. Although the idea behind it was sound, the way it was put into practice was confusing. The courts did not know which cases to refer, how the referral procedure functioned, or what took place next. As a result, the provision remained largely unused for many years.

The Supreme Court finally intervened. In 2005, in what was the first of the Salem Advocate

Bar Association cases,¹ the Court ruled that ADR provided for under Section 89 was constitutionally valid and ordered the preparation of rules to enable it to function. Five years later, in *Afcons Infrastructure Ltd.*,² the Court gave detailed guidelines as to which categories of disputes were appropriate for mediation and on how the procedure under Section 89 should operate in practice. Together, these two judgments gave mediation a judicial foundation that the statute by itself had not done.

At the same time, the Committee set up in 2005 under the Supreme Court's Mediation and Conciliation Project quietly established a network of court-annexed mediation centers all over the country, trained thousands of mediators, and achieved a number of settlements. The system was functioning, but it had no legislative authority.

The Commercial Courts (Amendment) Act of 2018 introduced Section 12A to the Commercial Courts Act of 2015, requiring mediation to be undertaken before commercial suits are filed (except in cases where urgent interim relief is required). This marked the first instance in Indian law of mandatory mediation applying to a specific type of dispute. It functioned quite well and demonstrated that pre-litigation mediation could be carried out in practice.

The Expert Committee on Mediation, of which Justice (Retd.) S.A. Bobde was the chairperson and then drew up a draft Mediation Bill. Having had a version presented to Parliament in 2021 and it being referred to a Standing Committee, which in turn proposed substantial amendments, the Mediation Act, 2023 was finally enacted and obtained the President's assent on 14 September 2023.

III. Key Provisions of the Mediation Act, 2023

A. Scope and Applicability

The Act extends to mediations held in India whenever all the parties concerned are Indian residents or organizations, or where the mediation agreement provides that the Act shall apply, or where the mediation is international and commercial. It does not cover disputes governed by the Negotiable Instruments Act, 1881 (this includes cases under Section 138 relating to bounced cheques), certain types of cases falling within the Companies Act, 2013, criminal

¹ *Salem Advocate Bar Association v. Union of India*, (2005) 6 SCC 344.

² *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*, (2010) 8 SCC 24.

offenses, and disputes involving government parties unless the government itself chooses to participate.³

The fact that Section 138 of the Negotiable Instruments Act is excluded from the mediation scheme deserves close examination. Cases involving the dishonor of cheques make up about 15 to 20 percent of all criminal cases currently pending in India. Failing to include these cases in the mediation framework is a missed chance and directly contradicts the aim of the Act to reduce the backlog of cases in the courts.

B. Mediation prior to litigation (Section 5)

There was a great deal of debate about this provision when the bill was being drafted. The 2021 Bill used the word 'shall', which made pre-litigation mediation a mandatory requirement before starting any civil or commercial suits. The Standing Committee objected on the grounds that compulsory mediation would be at odds with its voluntary character and might give rise to access-to-justice problems. As a result, Parliament changed the language by substituting 'shall' with 'may voluntarily and with mutual consent'.

The fact that this result gives rise to a basic tension in the Act is that although Section 12A of the Commercial Courts Act 2015 requires pre-litigation mediation in the case of commercial disputes, Section 5 of the Mediation Act makes it optional in all other cases, so it is still unclear whether a voluntary attempt will be enough to change long-established litigation practices.

An important safeguard is that Section 6 maintains the limitation period while mediation is taking place before litigation. If the parties attend mediation in good faith, they will not lose the right to sue even if the mediation fails.

C. The enforceability of agreements reached through mediation (Section 27)

It is the Act's most important provision. Previously, a mediated settlement was merely a contract and could therefore be challenged in the same way as any other contract, with enforcement requiring a new legal action. The provision in section 27 alters this situation: a settlement agreement that has been verified by the mediator and signed by the parties is now binding as a court decree. According to section 27(2), it is to be carried out under the Code of

³ Section 3 of the Mediation Act, 2023, as amended by the First Schedule.

Civil Procedure, 1908 more precisely, using the Order XXI procedures by the civil court that would have had jurisdiction over the dispute.

The only reasons by which an agreement of this kind can be challenged are fraud, corruption, impersonation, and a conflict of interest on the part of the mediator. Challenges have to be submitted within 90 days, a provision which guarantees finality but which might seem unfair to a party who only discovers fraud later.

D. Confidentiality (Sections 21–23)

All statements made or actions taken during mediation such as statements, admissions, documents, and settlement proposals are confidential. Neither the parties nor the mediator may disclose or make use of this information in any future proceeding. The mediator cannot be called as a witness. There are, however, exceptions in cases where the law requires a disclosure, where disclosures are necessary in order to enforce the settlement, or where there are issues relating to the safety of a child.

It is a much better arrangement than the situation that existed before the Act, when confidentiality had been dependent solely on the agreements made by the parties in their mediation contract.

E. The Mediation Council of India (Chapter VI)

The Act establishes a statutory regulatory body, the Mediation Council of India, which is to register mediators, accredit providers of mediation services, and lay down professional standards. The Council is to be chaired by someone who has expertise in mediation and will also have government representatives and independent members.

Although the formation of the Council may seem promising in theory, its effectiveness will depend on whether it is given sufficient funding, operational independence, and institutional support so that it can act as a real regulator, rather than staying on as an under-resourced body with only limited practical impact.

F. Online and Community Mediation (Articles 30 and Chapter IX)

The fact that Section 30 recognizes online mediation shows the greater dependence on remote

methods of resolving disputes in the current post-COVID environment. Community mediation, which is introduced in Chapter IX, is a new approach under which panels made up of respected members of the community can mediate disputes that affect local peace. Yet the Act provides only limited advice as to the training, supervision, and accountability of community mediators.

IV. CRITICAL ANALYSIS

The Act includes a number of important advantages. The fact that mediated settlements can be enforced is a major step forward. The confidentiality framework is strong and the recognition of online mediation is suitable. Furthermore, although there are uncertainties about the regulatory body's effectiveness, the fact that it has been set up shows a clear commitment from an institutional point of view.

The Act also poses substantial challenges.

The fact that the pre-litigation mediation scheme is voluntary might not be enough to change existing practices. The Indian legal system has an adversarial tradition, and lawyers are generally paid on a per-appearance basis. At the moment, there is no economic incentive for lawyers to suggest mediation, and there is also no rule regarding cost consequences for unreasonable refusals to mediate. In England, after the case of *Churchill v. Merthyr Tydfil County Borough Council*,⁴ the courts have the power to require the parties to mediate, and failing to do so unreasonably can result in cost consequences. India does not have a similar provision. Without such a mechanism, Section 5 is unlikely to have the effect it is intended to have.

The fact that an exemption has been given to government organizations is a major restriction. Since it is the largest party to bring lawsuits in India, the government is involved in a large number of the cases that are currently pending. If government disputes are excluded from the requirement of pre-litigation mediation, then a large part of the backlog of cases will not be affected by the main innovation of the Act. The exemption should therefore be reconsidered.

It is just as difficult to justify the omission of Section 138 of the Negotiable Instruments Act on the grounds of reducing the judicial backlog. Moreover, although the community mediation provisions are well-meant, they are still not adequately developed and therefore cannot be made

⁴ *Churchill v. Merthyr Tydfil County Borough Council* [2023] EWCA Civ 1416.

effectively operative without extensive secondary legislation.

As for the question of enforceability, the 90-day period allowed for challenging a mediated settlement under Section 28 is rather narrow. It is impossible to discover fraud within that time frame. If the time period for challenging on the grounds of fraud were to be extended while the shorter period for all other grounds remained in place, this would better achieve a balance between the principles of finality and fairness.

The greatest difficulty could be institutional in nature. Although the Mediation Council of India is currently mainly in the form of a statute, the facilities for training mediators are scarce outside the major urban areas, and there is a clear difference between the mediation centers in the metropolitan areas and those in the rest of the country. Although the Act provides a legal framework, it fails to establish the kind of environment needed for effective mediation, and further progress in this field is still necessary.

V. KEY JUDICIAL DECISIONS

Salem Advocate Bar Association v. Union of India, (2005) 6 SCC 344

This is the basic case; the Supreme Court confirmed the constitutional validity of Section 89 CPC and ordered the preparation of implementation rules. More significantly, the Court was the first to state, in an authoritative constitutional context, that reducing the judicial backlog through ADR was not only procedurally convenient but also constitutionally important. Thus, mediation acquired the legitimacy which it had previously lacked, and as a result, the court-annexed mediation infrastructure was set up, leading eventually to the 2023 Act.

Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd., (2010) 8 SCC 24

This is the guide that practitioners should follow regarding Section 89. The Court specified which types of disputes are appropriate for referral to mediation (such as commercial disputes, matrimonial property disputes, neighbor disputes and tort claims) and which are not (for example, cases in which urgent interim orders are needed, criminal matters and cases involving substantial questions of law). It also made clear the procedure to be followed: the court first assesses whether the parties are willing, then makes the referral, and the mediator then proceeds to facilitate without imposing any decisions. The present case is still the main judicial authority on the procedure for mediation in India.

K. Srinivas Rao v. D.A. Deepa, (2013) 5 SCC 226

The Supreme Court has ordered that in any matrimonial dispute, all cases should be compulsorily referred to mediation prior to going to trial. The Court noted that the effects of litigation in tearing families apart cannot be repaired by a court judgment, while mediation gives the parties an opportunity to arrive at a solution that works for both of them and in particular for their children. This case presented the idea of mediation not only as a case-management device but also as a more humane method of resolving disputes that have a personal aspect.

M.R. Krishna Murthi v. New India Assurance Co. Ltd., (2019) 2 SCC 724

In the face of the huge number of motor accident claims waiting to be dealt with by the MATs all over the country, the Supreme Court put a straightforward question: why aren't these cases being mediated? The Court suggested a scheme for mediation before litigation in cases involving motor accidents and instructed the Law Commission and the Ministry of Law to look into making it mandatory. The judgment broadened the judiciary's view of mediation from commercial disputes to mass civil torts – a category which makes a huge contribution to the number of cases in court.

Perry Kansagra v. Smriti Madan Kansagra, (2019) 20 SCC 753

In the context of an international child custody dispute, the Court observed that adversarial proceedings are not well adapted to settling matters in which the emotional interests are high and where the relationship between the parties continues. The Court promoted the use of mediation and stressed that no matter how well a judicial decision is drawn up, it cannot take the place of an agreement which both parents have truly accepted. This case therefore supported the idea of using mediation in all family law disputes.

VI. A COMPARATIVE GLANCE***The Singapore Convention***

The Singapore Convention on International Settlement Agreements Resulting from Mediation commonly referred to as the Singapore Convention is the international treaty equivalent of the New York Convention with regard to arbitration. When a state joins the Convention,

mediation settlement agreements become directly enforceable in other states. By June 2026, 57 states had signed the Convention, and 14 had ratified it.⁵ India had signed it early on but has not yet ratified it. The Mediation Act of 2023 was in part drawn up with the aim of establishing the domestic legal framework required for ratification. Since the Act is now in force, accession should be given priority.

The United Kingdom

England has not had a separate mediation statute and has therefore developed its mediation culture mainly through the cost-consequence provisions in the Civil Procedure Rules as well as due to the support given by the courts. The latest ruling in *Churchill v. Merthyr Tydfil* has now brought about the courts actively requiring the parties to try alternative dispute resolution. This shows that although legislation is important, so too are judicial customs and the economic incentives involved. Even though India's Act is more advanced in the area of codification, it still falls behind England when it comes to creating practical incentives for the use of mediation.

Singapore's Domestic Model

The Singapore International Mediation Center, which was set up in 2014, is an institutionally based mediation center that is well funded and professionally managed. The reason for Singapore's success has been deliberate government investment, comprehensive training, and a conscious strategy for establishing the country as a global center for dispute resolution. Although India now has the necessary legislative framework, similar institutional investment is still needed.

VII. SUGGESTIONS

Many specific measures could considerably improve the effectiveness of the Act. The first of these should be to quickly put the Mediation Council of India into operation, providing it with adequate funding, a capable secretariat, and real regulatory independence. Secondly, Parliament ought to introduce rules on cost and consequences, possibly by amending the Code of Civil Procedure, in order to penalize parties who unreasonably refuse pre-litigation

⁵ The UNCITRAL Singapore Convention on Mediation Status, available at <https://uncitral.un.org/en/texts/mediation/conventions/international_settlement_agreements/status> (last accessed in June 2026).

mediation. Thirdly, the government exemption should be reduced; at least the government should be required to try mediation in cases involving contracts and services. Fourthly, the exclusion of Section 138 of the Negotiable Instruments Act should be reviewed since a voluntary mediation option for cases involving dishonored cheques could greatly reduce the number of cases pending in court. Fifthly, the Bar Council of India should revise the billing rules under the Advocates Act, 1961, to allow fair payment for mediation work, so as to bring legal professionals' incentives into line. Finally, India should move forward with the Mediation Act, 2023, which is timely and appropriately drawn up. The Indian judicial system cannot depend entirely on litigation to resolve disputes. The Act sets up a credible and enforceable framework for mediation and is in line with international standards, tackling the most serious flaws of the earlier fragmented system.

Yet legislation by itself is not enough. Since the provision relating to pre-litigation mediation in the Act is voluntary, it is clear that there will be no automatic change in the culture of dispute resolution. The government exemption means that a large part of the backlog remains untouched. The Mediation Council needs to be developed, must be given adequate funding, and should be granted effective authority. Moreover, the legal profession, whose cooperation is necessary, must be given economic incentives in order to support mediation.

How much effect the Mediation Act, 2023 will have on India's dispute resolution system in the coming years will depend on the decisions and actions of legislators, judges, lawyers, and administrators. Although the statutory framework has now been put in place, effective implementation is still the main challenge.

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