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# **THE MEDIATION ACT, 2023: A CRITICAL ANALYSIS OF IT'S ROLE IN STRENGTHENING ALTERNATIVE DISPUTE RESOLUTION IN INDIA**

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## **ABSTRACT**

As an ADR process in India, mediation has seen significant attention with respect to its legalization by means of enactment of Mediation Act, 2023, marking the inception of uniform statutory law concerning mediation in India for the first time ever. This study seeks to assess the effectiveness of the Mediation Act, 2023 regarding improvement in existing ADR process in India with regards to efficiency, enforceability and access to justice. Prior to the enactment of the Mediation Act, 2023, the regulation of the mediation process in India was carried out according to the fragmented legal system, where the mediation process was regulated under Section 89 of the Code of Civil Procedure, 1908 with consequent inefficiency in procedures and low enforceability of the mediation process. The research seeks to consider the contribution of the Mediation Act, 2023 in reducing backlog in judiciary and fostering an efficient mechanism for dispute resolution. In terms of efficiency, the act provides for pre-litigation mediation, time-bounded process and legally enforceable mediated settlements. This ensures a faster resolution of disputes and saves court time to a great extent. While mediation as an approach promotes fairness as a result of negotiations between the parties involved, there can be issues arising from the power imbalance between the parties, the willingness to enter into such arrangements, and the protection of privacy in mediation. The setting up of the Mediation Council of India and the statutory backing for online and community mediation adds to its legitimacy and helps reach out to underprivileged communities as well. This paper further highlights significant problems related to the voluntary nature of mediation, lack of awareness, lack of qualified mediators, infrastructure-related problems, and misalignment with international agreements such as the Singapore Convention on Mediation. The current paper thus finds that although the Mediation Act 2023 is a significant step towards the adoption of an ADR mechanism in the Indian legal system, there is room for further development insofar as making the process compulsory

in certain categories of disputes and developing capacity and awareness regarding mediation.

**Keywords:** Mediation Act 2023, Mediation, Alternative Dispute Resolution (ADR), Pre-Litigation Mediation, Access to Justice, Mediation Council of India, Judicial Efficiency.

## 1. INTRODUCTION / STATEMENT OF RESEARCH PROBLEM

This has continued to put a heavy liability on the Indian judicial system where there are constantly increasing backlog cases in the Indian judicial system leading to long delays in dispensing justice. According to current judicial statistics, millions of cases still wait to be adjudicated at different levels of courts, which is indicative of system wastes and system complexity.<sup>1</sup>The traditional adversarial system which is the basis of rule of law is usually time-constraining, and complex at a time when it is not affordable by a significant portion of society. This condition is violating the constitutional guarantee of access to justice, which has been identified as part of the facet of Article 21 of the Constitution of India.<sup>2</sup>

Delay, cost, and procedural rigidity have confronted the world which has led to the need to create and introduce Alternative Dispute Resolution (ADR) mechanisms. Of these, mediation has come out as one of the most useful approaches by virtue of its informal, flexible and people-based approach. Mediation has consistently been the focus of overt associations to resolve conflicts in a friendly manner using the intervention of a neutral third party and thus the judiciary in India has consistently upheld the focus on ADR as a critical measure of providing speedy courts and lowering litigation.

Although judges and legislation have encouraged mediation in India, mediation in the Indian context did not initially have a unifying and holistic legal system. Until 2023, mediation was sprinkled throughout a variety of legislations, most prominently the ability of courts under Section 89 of the Code of Civil Procedure, 1908 to apply ADR mechanisms, including mediation depending on its specific settlement agreement having no particular categorization whatsoever. This piecemeal legal regime curtailed the efficiency of mediation and impacted its adoption across the board.

Moreover, the enforceability of settlements negotiated through mediation was also a pressing issue. Such structural inefficiencies resulted to inconsistencies in the quality and reliability of

the mediation services, which are not as readily available as arbitration processes because arbitrators were not guaranteed by any standards and the mediation services were not supported by institutions.<sup>3</sup>

To address them, Mediation Act, 2023 has become the innovation in the ADR system of India. The mediation made in the Act is an institutionalization given the fact that it offers a detailed statutory framework to regulate mediation within and outside countries. Among the major elements that it introduces include compulsory pre-litigation mediation, time limited proceedings, enforceability of the mediated settlement agreements as final binding, and the Mediation Council of India as a council that would have a positive influence on the modern demands wherein the mediation is recognized as a progressive approach.

Nevertheless, although the Mediation Act, 2023 represents an important legislative step, its success in meeting the goals of its purpose could be the subject of critical assessment. A number of these issues also remain such as the fact that mediation is to a large extent voluntary, the possibility of opposition by litigants and legal practitioners, general lack of awareness and the fact that the institution requires substantial infrastructure. In addition, concerns exist about the practice of pre-litigation mediation, the functionality of the mediation institutions, and the enforceability of international settlements mediated, without a global system of skill.<sup>4</sup>

Thus, the core research question of the study is to critically assess the extent to which the Mediation Act, 2023 succeeds in enhancing the ecosystem of Alternative Dispute Resolution (ADR) in India by overcoming the flaws of the old multifaceted framework, or whether it encounters practical and structural barriers to its success. The paper will aim to consider the degree to which the Act is helping to decrease judicial backlog, access to justice and mediation as a more preferred mode of dispute resolution in India.

## **2. REVIEW OF LITERATURE**

The discussion of Alternative Dispute Resolution (ADR) in India has changed dramatically over the years and mediation is now a main focus of discourse in scholarly works as well as policy. The literature on ADR in the early stages focused mainly on the necessity to decrease the judicial side of court work and encourage effective dispute solving systems. Experts like M.P. Jain have pointed out that inefficiencies in the justice delivery system causes a breakdown

in the rule of law and the need to embrace alternative methods such as mediation and conciliation.<sup>5</sup>

Judicial contributions have been very vital in the literature of mediation. These court rulings have been subject to a wide commentary within legal scholarship, providing a sort of doctrinal grounding and leading to an increased scholarly reflection on the practice of mediation in India.

The drawbacks of the pre-2023 system of mediation have been analyzed through a large amount of Indian literature. It has been noted that the lack of a specific mediation statute has led to inconsistencies in the processes, and has weakened the enforceability of mediation settlements (such as N.R. Madhava Menon).<sup>6</sup> The lack of trained mediation practitioners and standard accreditation systems has also been discussed as a poor environment to grow mediation in India by the Law Commission of India in their reports (Law Commission of India).<sup>7</sup>

Since the passing of the Mediation Act, 2023, the recent literature has moved towards discussion of the possible impact of the Act on the ADR landscape. The pre-litigation mediation focus and time constraints in the Act have received commendation in contemporary discourse at offering a new avenue of streamlining judicial workloads, getting at least cases out of court and providing a reliable method of settling disputes in a more cost-effective manner.<sup>8</sup>

Nevertheless, the literature raises critical opinions warning against the outcome of overappraisal of the effectiveness of the Act. There are some scholars that are of the opinion that the enforceability of international mediated settlements may indeed be limited by the characteristics of mediation as an overall voluntary mode, as well as India's own state of adoption of globalization models like Singapore Convention on Mediation.

Besides, socio-legal research has highlighted that one factor that influences whether mediation is successful or not is cultural and behavioral. Some have argued that the success of mediation can be achieved not only through legislative frameworks but also by the capacities of the parties and citizens to trust based on shared values and provide concessions aimed at resolving a dispute.<sup>9</sup>

Overall, the literature review indicates a shift towards promoting mechanisms of ADR to critically assess the process of institutionalization of the latter by reforming the laws.

Although the Mediation Act, 2023 has since been generally regarded as a progressive step, there is mixed academic opinion over its efficacy in practice. This work is based on the current literature by critically exploring whether the Act can be effective in the resolution of the structural gaps of the previous framework and in enhancing ADR in India.

### **3. STUDY OBJECTIVES.**

In order to look into the main characteristics of the Mediation Act, 2023.

- To examine its contribution to enhancing ADR in India.
- To measure its efficiency in alleviating the burden on the judiciary.
- In order to determine gaps and difficulties in its application.
- To propose changes in an effort to optimize the system of mediation.

### **4. RESEARCH QUESTIONS**

- What is the impact of the Mediation Act, 2023 on the ADR landscape in India?
- Does the Act help to correct the weaknesses of the former mediation framework?
- What are the great strengths and weaknesses of the Act?
- Would mediation under the Act greatly decrease judicial backlog?

### **5. RESEARCH METHODOLOGY**

The research methodology used in the current study is doctrinal (analytical), the emphasis of which is placed on systematic study and analysis of legal principles, statute provisions, and case laws. The research based on doctrinal inquiry also known as the black letter law research, focusses mostly on analyzing existing legal frameworks and the understanding of how these apply in a greater legal context. The presented study employs this approach to critically examine the efficacy of the Mediation Act, 2023 which enhances Alternative Dispute Resolution (ADR) mechanisms in India.

This is a descriptive and analytical research. Not only does it aim at explaining the legal

framework that currently governs mediation in India, but it is also an attempt at critically examining these strengths, limitations and the implications of these practices. The descriptive component gives a review of the statutory developments, and the analytical part reviews the extent to which the Mediation Act, 2023 has remedied the deficiencies of the previous legal amalgamation, which was rather piecemeal.

The research uses primary and secondary sources of data. The main sources are the Mediation Act, 2023, the clauses of the Code of Civil Procedure, 1908, and especially the section 89 and the landmark court rulings of the Supreme Court and the High Courts, which have contributed to shaping the evolution of ADR in India. These references will allow the research to offer official legal enumerations on the study and allow a close comprehension of the litigatory and judicial context of mediation.

Along with primary sources, the study extensively employs secondary sources including law textbooks and legal journal articles, reports of law commissions and periodical commentaries on mediation and arbitration. The sources provide contributions to the theoretical and critical aspects of the work because they provide a variety of opinion about what should evolve and where the mediation should go in India.

The qualitative and analytical approach taken in this study is the qualitative one. It entails the analytical process of the stipulations of the Mediation Act, 2023, in relation to an investigation of case law on the subject area to determine the role played by the judiciary in ensuring mediation. The study also includes the limited comparative enlightening in previous legal schemes in India in the quest to present the advancement and existing loopholes, then proceed with a keen examination of the efficacy of the Act in meeting its intentions.

This study will be limited to the legal institutional structure of mediation in India, especially the Mediation Act, 2023. Although the research has given certain contextual and comparative information, the study fails to go a notch further to offer comprehensive comparative analysis of foreign jurisdictions. Additionally, as a doctrinal research, it does not entail an empirical technique (survey or an interview) and therefore, may limit the evaluation of the challenging issue of practical implementation. However, the study targets to present an in-depth examination of the legal context of mediation in India.

## 6. DISCUSSION / ANALYSIS

### 6.1 IMPORTANT CHARACTERISTICS OF THE MEDIATION ACT, 2023.

The Mediation Act, 2023 is the first step in a long journey towards integrating mediation within the Indian dispute resolution framework, comprising a new and detailed statutory architectural approach to mediation. Among the most transformative elements of it is the legalization of pre-litigation mediation that requires parties to seek mediation prior to initiating some types of civil or commercial actions. This clause represents a move towards a new legal philosophy of litigation that is more adversarial to a more consensual mechanisms of dispute resolution to diminish the number of cases going into courts and promote early dispute settlement.

The Act aims to eradicate this litigation by encouraging parties to resolve the dispute at an early stage before proceeding to court litigation, thus reducing costs, maintaining relationship between the parties, and providing a more effective system of justice delivery.<sup>10</sup>

One of the critical developments that the Act brings is that the settlement agreements that are mediated are recognized legally and enforceable. Traditionally, in India mediation was not enforced, with settlements in mediation frequently needing to be transferred into court orders to be legally validated. To overcome this limitation, the Act will provide that the mediated settlement agreements are treated as a judgment or decree of a court possessing the force of a binding and enforceable instrument, with a few exceptions to challenge. The phenomenon greatly increases the plausibility of mediation and brings it into perspective with other ADR practices like arbitration where enforceability is among the determinants of success.<sup>11</sup>

The Act also enhances effectiveness in the procedures, through having a time-limited structure of mediation proceedings. According to it, mediation must be normally accomplished in 120 days, which may be extended at the mutual agreement of the sides. This is one of the aspects that directly touch on one of the most long term critics of the Indian legal system- delays in resolution of disputes. The Act also makes mediation a more appealing option to extended litigation by making sure that the entire mediation process is quick.<sup>12</sup>

Another foundation of the Act is institutionalization especially with the creation of the Mediation Council of India. This regulatory entity has been given the mandate to facilitate mediation, control the mediation service providers and uphold professionalism. It is also

instrumental in accreditation and training of mediators, thus dealing with the precedence of lack of standard and uniform qualification. Such an institutional structure should, hopefully, improve the quality, reliability and credibility of mediation services throughout the country.

The Act has expressly guaranteed confidentiality, which is the key to the success of mediation. It also makes sure that the communication, documents, and proposals involved in the course of mediation are confidential and inadmissible in any other legal action, unless within specific parameters. This means that parties can have an easy time discussing easily and talking candidly without the fear of being mistreated creating the probability that peaceful solutions will be reached.

The Act is also aimed at being flexible to the demands of the modern times: online mediation and community mediation are both formally acknowledged in the Act. Online mediation allows parties to end their disagreements in a digital format, which simplifies the procedure and makes it more affordable and appropriate to a contemporary business deal. Community mediation on the other hand aims at settling disputes locally at the grassroots level in order to bring harmony between the people so as to limit the need to use formal systems of justice. These inventions show how the Act was progressive in trying to incorporate technology and community-based measures in the system of law.<sup>13</sup>

A distinctive indication of the scope of disputes that can pertain to mediation is another significant feature. The Act categorizes several types of disputes that can be subject to mediation but rules out other matters like: criminal offenses, any dispute that involves a minor or any other person of unsound mind and any dispute that has a bearing on the interest of people. This assures that the mediation process is only implemented in situations where consensual elimination is reasonable and practical thus upholding the integrity of the process.

The Act also features a section covering international mediation, which would make India an attractive destination of international mediation. It establishes a structure on how to implement and enforce international mediated settlement agreements but there are some weaknesses in this regard since it is not fully integrated with international conventions. However, this point demonstrates that India is aimed at matching its mediation system to the international standards of best practice and advancement of its scheme in the world of ADR.<sup>14</sup>

On the whole, the Mediation Act, 2023 is a very broad and forward-looking reform, as it is

addressing most of the structural limitations which were restricting the development and progress of mediation in India before. The institutional support, the ability to enforce, procedural clarity, and compelling flexibility of the needs of time all contribute to the substantive enhancement of the mediation as an effective and credible method of resolving disputes. But all this depends on the actual application and adoption within the Indian legal and societal system of things.

## **6.2 CONTRIBUTES TO ADR STRENGTHENING.**

The Mediation Act, 2023 is a crucial legal move towards making Alternative Dispute Resolution (ADR) more robust in India because it adds some form of legal certainty and consistency to an otherwise disjointed framework. Before its introduction, mediation was a case of piecemeal statutory law and judicial rules and a variety of practices and results as to process and enforceability. The Act by codifying the law in mediation within one comprehensive law makes it clear what happens on the mediation process and the rights, responsibilities of parties alongside the functions of mediators and institutions. This consistency adds credibility to the practice of mediation and promotes its further adoption by litigants and lawyers.<sup>15</sup>

By including pre-litigation mediation provisions in the Act, much support is given to engaging in early dispute resolution. This would not only make adjudication more proactive instead of reactive, but also allow parties to settle disputes prior to the initiation of formal litigation. This process of early intervention not only salvages commercial and personal relationships, but also allows the courts to work lighter since it avoids cases of unwarranted cases being brought to the courts. This kind of mechanism illustrates a positive transformation in the dispute resolution philosophy in India, which practitioners have valuing efficiency and cooperation over a confrontational conflict.<sup>16</sup>

The other important input of the Act is that it has decreased the litigation and delays that have been a significant concern in Indian legal system. Conventional litigation procedures are usually lengthy, require several appeals and may also require a lot of money. Conversely, mediation pursuant to the Act is intended to be time restricted and economical, thus, providing a more viable option to dispute resolution. The enforcement of mediated settlement agreements also adds extra assurance to parties that they do not need to take themselves back to the courts to legitimize their results and thus save on time and resources.

Another ADR fortification in the Act is the aspect of party autonomy that is an essential pillar of mediation. It enables parties to voluntarily engage in the process and choose their mediators and the terms of settlement are willing to be decided through mutual consent. This is why mediation is different to adjudicatory processes, where a court or tribunal imposes the results. The Act increases satisfaction, compliance, and effectiveness of settlements in the long term by enabling parties to exercise control over resolving their disputes.<sup>17</sup>

Moreover, the Mediation Act, 2023 will ensure that the ADR framework in India has a world standard and best practice. Through the introduction of certain measures like enforceable settlement agreement, institutional regulation, confidentiality and the acknowledgment of international mediation, the Act also moves Indian mediation law to international standards. This congruency does not only reinforce domestic dispute resolutions but also makes India a more viable location to international commercial meditations. It mirrors the wider trend in India of ensuring modernization of the Indian legal framework and making it conducive to easy doing business by providing effective dispute solutions.

On the whole, the Act transforms the role of ADR in India to become stronger through solving structural deficiencies, facilitating efficiency, and creating a culture of consensual settlement of disputes. Nevertheless, the degree of its success will eventually relate to the idea of successful implementation, institutional capacity, and readiness of stakeholders to start utilizing mediation as the main form of dispute resolution.

### **6.3 CRITICAL ANALYSIS**

Although the Mediation Act, 2023 can be regarded as an important legislative step in the Indian dispute resolution system, its application is under a variety of structural and operational constraints. Among the greatest issues is associated with the fact that, mediation under the Act is predominantly voluntary in nature. Even though the law brings in pre-litigation mediation a mandatory and universal requirement in all types of disputes is not created. This watered-down compulsory construction is likely to make its effect less meaningful since parties can skip mediation and go straight to court. The lack of robust compulsion, in a legal culture firmly ingrained with adversarial practices, may impede the institutionalization of mediation, as well as restricting its ability to reduce judicial backlog significantly.<sup>18</sup>

The other area of serious concern is a small knowledge and acceptance of mediation by the

Indian society. Mediation is still viewed as a second or supplementary process of resolving disputes instead of a primary process in resolving disputes despite the fact that it is acknowledged by the legislation. Litigants and even legal practitioners do not understand properly the benefits and long-term consequences of mediation as a process. The lack of major awareness campaigns, the lack of mediation training in legal education and practice also contributes to this gap. As a result, the success of the Act might be limited unless it is supplemented with long-term campaigns of raising awareness of the law and behavioral change.<sup>19</sup>

The Act further sets up statutory exclusions on some types of disputes such as those that concern crimes, any type of dispute that involves a minor or an individual of unsound mind and that which is in the interest of the common good. As much as these exclusions are essential to maintain the integrity of the justice system and the sensitive issues that the mediation is supposed to address under the finger of well qualified authorities, so are the constraints of mediation as a holistic dispute settlement process. Specifically, the fact that some types of civil disputes are out of bounds of mediation probably limits the possibilities of the latter to settle complex, multi-dimensional conflicts that otherwise might be the subject of negotiated settlements.

What comes out as a pronounced shortcoming of the Act is the international mediation and the cross-border enforcement of settlement agreements. Even though the act can act as a guideline to international mediation, there are still pragmatic issues of aiding in the recognition and enforcement of such contract to cross boundaries. India is still in the initial phase of adoption of international soft power tools like the Singapore Convention on Mediation and the lack of a fully coordinated enforcement regime can pose a challenge to foreign actors. Such a drawback may impact the goal of India aspiring to become a mediation center in the world, especially as it relates to the world of international business disputes.<sup>20</sup>

Moreover, the institutional capacity and presence of trained mediators on which the success of the Act greatly depends is also a problem of concern. Although the introduction of the Mediation Council of India is a good institutional change, the assurance of the success of the initiative will require developing effective accreditations and training programs and providing professional advancement. There is currently a lack of appropriately trained mediators and equipped mediation centers particularly in the rural and semi-urban regions. This

distribution imbalance can result in the lack of equality in access to high-quality mediation services and the lack of integrity with the ultimate goals of the Act.

Another critical aspect of criticism is associated with the implementation gap between the will of the law and the actual enforcement. A tight-knit law is not enough in itself to ensure good dispute resolution. The effectiveness of mediation is reliant on the readiness of the most important actors such as the judges, lawyers and litigants to take an active role in the process and promote it. Nonetheless, mediation might not be adopted quickly by members of the legal profession who might feel it is a threat to the typical litigation processes. Also, it might not always be the case that courts will resort to mediation of cases based on explicit procedures set by the court and institutional incentives.

Another concern that the Act brings to light is the flexibilities versus regulation. Although mediation is a profoundly flexible and informal process, it can be over-regulated by statutory requirements and institutional control over the process which can compromise its essence. Excessive standardization of the process and the strong adherence to the standards might deter the parties to choose mediation and decrease its appeal as an alternative to litigation. As such, a proper balance between control and flexibility is essential to enabling success of the mediation framework in the long term.

In addition, the confidentiality provisions, though necessary, might be challenging in some contexts. In fact, confidences can be strict, thereby reducing transparency and accountability especially when there is power difference between two parties. Confidentiality might also be abused to hide unfair deals or coercive ways particularly when there is not equal bargaining power among the parties. This requires coming up with measures that prevent frustrations such that mediation is confidential and equitable.<sup>21</sup>

In conclusion, while the Mediation Act, 2023 establishes a comprehensive and forward-looking framework for dispute resolution, its effectiveness is contingent upon addressing these critical challenges. The Act's success will depend not only on its statutory provisions but also on the development of institutional infrastructure, capacity building, awareness generation, and a cultural shift toward consensual dispute resolution. Without these complementary measures, the transformative potential of mediation in India may remain only partially realized.

## 7. CASE LAWS / CASE ANALYSIS

Indian judicial pronouncements have significantly and revolutionarily contributed to mediation developing into an essential element of Alternative Dispute Resolution (ADR). Even before the promulgation of the Mediation Act, 2023, the Indian courts diligently acknowledged the constraints of the old system of adversarial litigation and pursued consensual dispute resolving approaches by relying on an interpretive approach to statutory provisions and constitutional standards. The intellectual and institutional groundwork to the legislative framework the present Mediation Act, 2023, was achieved through these judicial efforts.

*Salem Advocate Bar Association v. Union of India*<sup>22</sup> is one of the first and most notable decisions in this regard. Here the Supreme Court supported the constitutional merits of the Code of Civil Procedure, Section 89, 1908 and pointed out the need to introduce ADR tools into the civil justice system. The Court realized that lack of speed in litigation weakens the justice delivery system and suggested to develop model rules to implement ADR processes, such as mediation. Notably, the decision marked the beginning of a new judicial rationale by accepting that the role of the courts was not just to adjudicate the matters but also help in settling them using other alternative sources.

Resting on such a basis the Supreme Court in *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.* offered much-needed insight into the practical application of the Section 89 CPC. The Court provided an extensive review of the kinds of disputes that may be settled by ADR and outlined the differences in cases that would be subject to mediation, conciliation, arbitration and judicial settlement. It particularly singled out mediation as effective especially in conflicts involving relationships, business transactions, and those which need hybrid and interest-based resolutions. This decision has become a pillar in the Indian ADR jurisprudence, not only in that it helped to clarify the procedural ambiguities but it also influenced courts to take more active role in sending the disagreements to mediation.<sup>23</sup>

The judgment in *Anita Kushwaha v. Pushap Sudan* also contributed to enhancing the normative foundation of mediation with the appreciation of access to justice as a constitutional right of Article 21 of the Constitution of India. The Court broadened the definition of access to justice to involve access to affordable, effective and timely dispute resolution systems. The judgment itself, focusing on the fact that justice should be available borrowing and also

financially, advocacy the way to go is to use mediation as one other option to expensive and time-intensive litigation. This constitutional view is quite in line with the goals of the Mediation Act, 2023 that aims to make dispute resolution more convenient and efficient.<sup>24</sup>

Under the family law, the Supreme Court in the case of *K. Srinivas Rao v. D.A. Deepa* was categorically urging in favor of mediation in the marital disputes. The Court noted that family litigation is usually emotional and psychological in nature, and cannot be sufficiently resolved in an adversarial proceeding. It highlighted that mediation is more humane and conciliatory methodology whereby parties are able to settle disputes and at the same time maintain relationships. This conclusion essentially highlights the appropriateness of the mediation in delicate conflicts and the possibility to reach the results that are both legally and socially reasonable.<sup>25</sup>

Another notable addition to the mediation jurisprudence is in *M.R. Krishna Murthi v. New India Assurance Co. Ltd.*, the Supreme Court stressed the importance of enriching the ADR mechanisms in India. The Court suggested that institutional structures, mediator training programs, as well as inclusion of ADR in the justice delivery system should be instituted. It recognized that mediation can have a significant impact on the backlog of cases, increasing efficiency, which supported the policy rationale behind the later introduction of the Mediation Act, 2023. This ruling demonstrates a proactive judicial stance that is more than an interpretation and is a sign of reforming the law.<sup>26</sup>

Besides, the judicial patterns adopted by different High Courts have always favored applications of mediation especially in commercial conflicts, property issues and conflicts involved with services. Not only has pendency been minimized by the mediation process but more satisfactory and enduring results have been achieved by having the parties directly participate in the development of their own settlement, according to courts. This increasingly judicial acceptance has been a vital move towards making mediation mainstream in the Indian legal system.<sup>27</sup>

A combination of these judicial rulings portrays a consistent and evolutionary trend in the development of mediation jurisprudence in India. They bring to the human eye the judiciary as not just adjudication but as a means of settling disputes. Its principles, as spelt out in these cases, including the significance of access to justice, appropriateness of disputes to mediate,

and the institutional back-up, are now mirrored and enshrined in the Mediation Act, 2023. In this way, the Act may be considered a legislative product of a judicial effort to advance mediation as a component of the system of justice delivery.

Concurrently, a critical analysis of such cases, shows that the judicial support was not enough to make mediation a common practice, thus the necessity of a complete statutory system. The Mediation Act, 2023 is based on such judicial roots but it also tries to overcome recognized practical barriers found in the cases that developed by courts, including inadmissibility, procedural ambiguity and institutional insufficiency. Subsequently, the interplay of judges across judicial precedents and legislative reforms demonstrates an exciting process of law development between courts and the legislature to give more reinforcement to ADR in India.

## **8. FINDINGS**

Through the analysis of the Mediation Act, 2023 it is possible to show that it effectively addresses a long-term legislative gap in the Indian Alternative Dispute Resolution (ADR) framework. Before its enactment, the system of mediation existed in a disjointed legal framework, with disparate statutory provisions and case laws. This tended to create a lack of procedure consistency and uncertainty as to its application. The Act, with its integrated and consistent legal structure, offers clarity and coherence to mediation upgrading it as a secondary rather than an institutionalized form of dispute resolution.

The results one can learn is that the Act makes mediation more credible and enforceable. The Act can overcome one of the greatest limitations of the previous system since mediated settlement agreements are accepted as the final and binding decision, just like any court decision. This enhances the confidence of the people in mediation and makes mediation more credible and appealing to resolve a dispute, especially in civil and commercial cases.

The Act also enhances judicial system effectiveness by fostering time-constricted and cost-effective dispute resolution. Other rules like pre-litigation mediation and timetabling's are to be used to minimize delays and unnecessary litigation. Consequently, mediation can majorly lighten the burden on the courts that are at present experiencing a backlog of cases. This change is also indicative of a wide-seated change in the attitude of the Indian law to the law that has been more focused on speed, accessibility and consensual settlement rather than on the lengthy adversarial procedure.

The findings, however, also indicate that there are a number of practical challenges that are still in place, which could be potentially limiting the efficacy of the Act. The absence of popular and legal professionals' awareness and acceptance of the role of mediation is one of the main problems. In the absence of adequate knowledge of these benefits and processes, mediation might remain underutilized. Also, the infrastructural constraints, such as lack of trained mediators and well-established mediation institutions are also a major obstacle to effective implementation.

The other issue of concern is voluntariness of mediation that can influence the participation and compliance. Party autonomy, which is a fundamental cause of mediation, is not complemented by more powerful mandating mechanisms, which could make parties to favor the traditional litigation. This may help diminish the net effect of the Act towards its goal of reducing judicial pendency.

Overall, even though the Mediation Act, 2023 is a significant move towards empowering ADR in India by increasing its levels of legal transparency, enforceability, and effectiveness, its success in the long term will be determined by whether it is successfully implemented and institutionalized and whether it leads to the cultural change allowing the society to accept mediation as a primary method of resolving disputes.

## **9. RECOMMENDATIONS / SUGGESTIONS**

A series of specific legal and institutional changes that can help in strengthening the implementation and acceptance of the Mediation Act, 2023 can greatly improve its effectiveness. Among the most necessary recommendations is to prelitigate mediation being compulsory to some types of disputes, especially that which are business, contractual, and marriage related and can be resolved amicably. A more formal compulsory system, with fewer exemptions, would mean that parties are actually trying to mediate before it gets into a lawsuit and therefore the cases going to courts will be reduced.

The next important measure is to raise awareness and make legal literate the issue of mediation as far as the public is concerned. Although mediation has a number of benefits, it is not fully exploited because litigants and even lawyers have no awareness of it. National campaigns against ignorance, mediation awareness education within the legal aid system and outreach programs via bar associations and courts would be very important in encouraging acceptance.

The institutional framework is also to be considered to determine the success of the mediation. Thus, it is crucial to develop the institutional capacity through certification and training of certified mediators. Construction of standardized training programs, ongoing professional growth, and tough norms of accreditation will guarantee the quality and reliability of mediation services. Also, there will be increased access by expanding mediation centers in urban and rural areas.

To place India on the world map as a mediated settlement center, international mediation settlement enforcers have to be strengthened. Enhanced proximity to international systems and increased cross-border enforceability will enhance trust in international actors and make India a desirable choice of a commercial mediator.

One more valuable suggestion is to mediate legal education and professional training. Making mediation a required course in law schools and including clinically-based training with clinical legal education will ensure that a new breed of lawyers is developed that is proficient, not only in adversarial, dispute resolution but also in consensual dispute resolution. Long term success of mediation in India needs this change in culture.

Lastly, active state involvement in mediation, especially in cases where state parties and government bodies are clashing with each other should be encouraged. As one of the biggest litigants in India, the government can play a major role in mitigating the amount of litigation in the nation through mediation as a form of dispute resolution. Institutional mechanisms and policy directives ought to be created which foster mediation in government related disputes.

Generally, the following recommendations should help to fill a gap between the intentionality of legislative goals and the effectiveness of their application, so that the institution of mediation could become a strong, effective, and generally accepted tool of the Indian justice delivery system.

## **10. CONCLUSION**

The Mediation Act, 2023 has been a game-changer in the history of dispute resolution in India, a key step in the institutionalization of mediation as a core part of Alternative Dispute Resolution (ADR). The Act offers a total statutory framework that offers a long overdue clarity, structure and legal enforceability to the mediation environment and remedies the long-

standing gaps in the previous piece meal system. Its focus on time-limited, pre-litigation mediation and binding agreements on settlements demonstrate the contemporary and innovative way of solving a dispute concern.

On a larger scale, the Act marks the shift in the very philosophy of the Indian system of laws; it is more a consensual and collaborative approach to settling disputes than a more adversarial fervor of the law. Mediation under the Act can greatly decrease the impact of the court load and expand access to justice since it promotes efficiency, cost reduction, and maintenance of relationships between parties.

Nevertheless, the real outcome of the legislation would hinge on successful implementation and creation of a conducive ecosystem. The availability of trained mediators, institutional capacity, judicial support, and prevalence of awareness among the populace is critical in determining whether occurrence of mediation will cease being an alternative mechanism or become a mainstream mode of dispute resolution. Further, a change in culture of litigants, lawyers and authorities in the population to accept mediation is vital to its long-term success.

To sum it up, though the Mediation Act, 2023 provides a powerful legal framework enabling the reinforcement of ADR in India, the transformative potential in question can be achieved only with efficient reforms, an institutional enhancement, and involvement of stakeholders. Through the appropriate balance in providing legal support and actuality in practice, mediation may become the first and first choice method of resolving disputes, offering a method to ensure that justice is favourable and affordable to everyone in a timely manner.

**ENDNOTES:**

- <sup>1</sup> National Judicial Data Grid, Pending Cases in India (2024).
- <sup>2</sup> Anita Kushwaha v. Pushap Sudan, (2016) 8 SCC 509.
- <sup>3</sup> M.P. Jain, Indian Constitutional Law 1589 (8th ed. 2018).
- <sup>4</sup> Mediation Act, 2023, No. 32 of 2023, Acts of Parliament, 2023 (India).
- <sup>5</sup> M.P. Jain, Indian Constitutional Law 1589 (8th ed. 2018).
- <sup>6</sup> N.R. Madhava Menon, Justice Delivery System in India 214 (2017).
- <sup>7</sup> Law Commission of India, Report No. 222, Need for Justice Dispensation through ADR, etc. (2009).
- <sup>8</sup> Mediation Act, 2023, No. 32 of 2023, Acts of Parliament, 2023 (India).
- <sup>9</sup> Avtar Singh, Law of Arbitration and Conciliation 412 (11th ed. 2018).
- <sup>10</sup> Mediation Act, 2023, No. 32 of 2023, § 5, Acts of Parliament, 2023 (India).
- <sup>11</sup> Id. S 27.
- <sup>12</sup> Id. S 18.
- <sup>13</sup> Id. SS 31–40.
- <sup>14</sup> Id. S 2(f), S 28.
- <sup>15</sup> Law Commission of India, Report No. 222, Need for Justice Dispensation through ADR, etc. (2009).
- <sup>16</sup> Mediation Act, 2023, No. 32 of 2023, § 5, Acts of Parliament, 2023 (India).
- <sup>17</sup> Sriram Panchu, Mediation Practice and Law: The Path to Successful Dispute Resolution 85 (2015).
- <sup>18</sup> Sriram Panchu, Mediation Practice and Law: The Path to Successful Dispute Resolution 67 (LexisNexis 2015).
- <sup>19</sup> Avtar Singh, Law of Arbitration and Conciliation 412 (Eastern Book Co. 11th ed. 2018).
- <sup>20</sup> S.C. Tripathi, Alternative Dispute Resolution: Mechanisms and Practices 233 (Central Law Publications 2016).
- <sup>21</sup> P.C. Rao & William Sheffield, Alternative Dispute Resolution: What It Is and How It Works 145 (Universal Law Publishing 2007).
- <sup>22</sup> Salem Advocate Bar Ass'n v. Union of India, (2005) 6 SCC 344.
- <sup>23</sup> Afcons Infrastructure Ltd. v. Cherian Varkey Constr. Co. (P) Ltd., (2010) 8 SCC 24.
- <sup>24</sup> Anita Kushwaha v. Pushap Sudan, (2016) 8 SCC 509.
- <sup>25</sup> K. Srinivas Rao v. D.A. Deepa, (2013) 5 SCC 226.
- <sup>26</sup> M.R. Krishna Murthi v. New India Assurance Co. Ltd., (2019) 4 SCC 177.
- <sup>27</sup> Law Commission of India, Report No. 222, Need for Justice Dispensation through ADR, etc. (2009).

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