
FRAMEWORK AND FEASIBILITY OF CROSS-BORDER MEDIATION IN INDIA UNDER THE SINGAPORE CONVENTION

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ABSTRACT

International commercial conflicts have grown at an enormous rate alongside the globalization of trade and investment, and it has put a strain on the conventional litigation and arbitration processes to provide efficient, economical, and relationship-conscious results. This paper discusses the structure and viability of cross border mediation in India with reference to the Singapore Convention. It examines the current regime of mediation in India, comprising statutory and judicial practices and recent legislation, and judges how the package is working in harmony with the provisions of the Convention. Based on the study of doctrines and the comparison with other jurisdictions, the article finds legal, institutional, and practical issues that can hinder positive implementation in India. It claims that though India is turning out to be very serious in its policy framework on mediation especially in commercial mediation, the lack of an effective mechanism of enforcing international settlements that are mediated still makes India ineffective in the cross-border. The paper concludes that the effective domestic implementation of the Singapore Convention, optioned by its ratification, along with legislative, judicial, and institutional reforms, would greatly empower the India mediation system, improve the ease of doing business, and turn India into a reputable venue in its international commercial dispute settlements.

1. Introduction

Global trade transactions are characterized by the states of increased participation of foreign parties, assets and performance liabilities that are located in a number of jurisdictions. In case of conflict, companies are also insisting on the quick, predictable, and those mechanisms that would conserve long-term relations. The traditional default in the cross-border commercial dispute has been an arbitration, majorly due to the extraterritorial character of awards as they are generally enforceable under the New York Convention. Mediation, in its turn, has been perceived to be soft: appreciated due to its ability to generate settlement but disadvantaged structurally, since its deliverables, i.e. agreements on settlements, were not provided with an equally significant tool of transnational enforcement.

Upstream, however, this is an enforcement gap that influences behaviour. When cross-border parties are skeptical about the cross-border consequences of mediated results, they will have lesser incentives to invest in mediation, make concessions or agree to mediation terms during the contract writing. The Singapore Convention deals with this structural issue by offering a recognitional and enforcement system of international mediated settlement agreements, on grounds of refusal which are carefully restricted. The Convention is intended to perform a mediation role similar to that of the New York Convention playing a role of arbitration, not to rival regimes in judgments or awards of the Arbitral conventions since it makes no settlements converted into court judgments or arbitral awards.¹

The particularly relevant case study is India. On the one hand, litigation pressure in India is high and the regime has tried on many occasions to mainstream mediation by referring to the courts and requiring pre-institutional mediation² which on the other hand has resulted in inconsistent regulation, poor incentive schemes by referral judges and not knowing the avenues of enforcement.³ India signed the Singapore Convention in 2019, signalling its policy-level support for mediation in cross-border commercial disputes. To ensure that the Singapore Convention operates successfully, India has to be able to implement the convention in a way that creates predictable enforcement and maintains a guard against coercion, fraud and serious

¹ Michal Malacka, 'The Singapore Mediation Convention and International Business Mediation' (2022) 22(2) *International and Comparative Law Review* 179, 188–189.

² Deepika Kinhal and Apoorva, 'Mandatory Mediation in India – Resolving to Resolve' (2021) 2(2) *Indian Public Policy Review* 49, 51.

³ Deepika Kinhal and Apoorva, 'Mandatory Mediation in India – Resolving to Resolve' (2021) 2(2) *Indian Public Policy Review* 53-54.

procedural impropriety.

This paper evaluates the framework (what India has and what does not work, and how it is aligned to Convention requirements) and feasibility (whether it is a realistic adoption and operationalisation, and what changes are needed). It claims that a ratification is possible and preferable, although only under the pre-condition that India also adopts a strictly-written implementing statute, restricting judicial review to Convention-consistent reasons, harmonising the quality of evidentiary material, enhancing the accreditation of mediators and incorporating the digital documentation standards.

2. Foundations of Cross-Border Mediation

Mediation is defined as the process in which parties seek an amicable settlement, assisted by a neutral facilitator who lacks the authority to impose an outcome. The Singapore Convention deliberately defines mediation in a broad sense and establishes that the facilitator cannot impose the outcome.⁴ This decisional choice is important as it prevents formalism from overriding traditional and legitimate mediation techniques and aligns with both ad-hoc and institutional practices.

Yet, what is considered mediation's greatest advantages, namely party autonomy and informality, are what has prevented it from gaining a strong foothold in a cross-border context. As settlement agreements are often treated as contracts, their enforcement thus depends on the forum's contract law, procedural rules and defences, namely duress, invalidity etc. Parties may also be forced to "convert" settlements into court decrees or arbitral awards to facilitate a more portable enforcement instrument. This gap is clearly highlighted by the Malaysian analysis: even where a domestic mediation statute allows for written settlement agreements and their binding effect, it may still be lacking in a robust mechanism for enforcing mediated settlements internationally.⁵

The Singapore Convention's primary policy move is to provide a direct enforcement route for eligible settlement agreements, while also carefully limiting the grounds on which a court can

⁴ Michal Malacka, 'The Singapore Mediation Convention and International Business Mediation' (2022) 22(2) *International and Comparative Law Review* 179, 189.

⁵ Iylyana Che Rosli and others, 'Mediated Settlement Agreements: Enhancing Enforcement through the Singapore Convention in Malaysia' (2024) 14(12) *International Journal of Academic Research in Business and Social Sciences* 3225, 3228–3229.

refuse relief. This aims to reduce enforcement uncertainty and raise mediation's credibility in the international commerce circle. The Convention also includes an evidence architecture whereby parties seeking enforcement must produce the settlement agreement and evidence that it resulted from mediation, which can be demonstrated through the mediator's signature, a mediator-signed document confirming mediation, institutional attestation or other acceptable evidence.⁶ This evidentiary design is crucial for feasibility because it affects how domestic courts will process applications.

3. India's Mediation Framework: Trajectory and Shortcomings

3.1 Court-referred mediation under Section 89 of the CPC

India's mediation framework developed largely through procedural law and judicial proceedings, as opposed to a single, long-standing law or act that governs mediation. Under Section 89 of the Civil Procedure Code (hereafter referred to as CPC), courts are empowered to refer disputes to ADR mechanisms. These mechanisms include mediation, where there are elements of settlements which are acceptable to both parties. According to the Vidhi study, it is established that mediation is initiated in India through:

- i) institutional or ad-hoc contractual clauses,
- ii) Court reference under Section 89 of the CPC or special statutes or,
- iii) mandatory pre-litigation mediation keeping in accordance with Section 12A of the Commercial Courts Act.⁷

However, persistent problems have been identified in implementation of mediation. These include problems such as under-referral, where judges do not use Section 89 to its full potential, partly because referral data is not systematically incentivized.⁸

⁶ Iyllyana Che Rosli and others, 'Mediated Settlement Agreements: Enhancing Enforcement through the Singapore Convention in Malaysia' (2024) 14(12) *International Journal of Academic Research in Business and Social Sciences* 3225, 3231.

⁷ Deepika Kinhal and Apoorva, 'Mandatory Mediation in India – Resolving to Resolve' (2021) 2(2) *Indian Public Policy Review*, 51.

⁸ Deepika Kinhal and Apoorva, 'Mandatory Mediation in India – Resolving to Resolve' (2021) 2(2) *Indian Public Policy Review*, 53-54.

Another problem is clarity in drafting and procedure.⁹ The Supreme Court has noted drafting errors and confusion around Section 89's mediation-related terminology and procedure. These challenges shape India's capacity to operationalise an international ADR process because cross-border mediation works efficiently when coupled with predictable institutional pathways, trained mediators and judicial familiarity with mediation's process.

3.2 Commercial Courts' Act, Section 12A

An important innovation is the mandatory pre-institution mediation for certain commercial disputes. Section 12A makes mediation mandatory before filing a commercial suit (except in cases where urgent interim relief is needed). The resulting settlement has the same legal force as an arbitral award under Section 30 of the Arbitration and Conciliation Act 1996.¹⁰ This innovation demonstrates clearly India's willingness to bring about mediation as an option for solving commercial disputes as well as India's instinct to grant settlements brought through mediation "award-like" enforceability.

However, there is also noted a recurring constraint, i.e. a continuing lack of clarity in the enforceability of mediation outcomes in a more broad manner, especially outside specific statutory channels.¹¹ This is precisely the kind of uncertainty the Singapore Convention aims to cure at the international level which suggests that ratifying the Convention could be synergistic with India's domestic mediation reform agenda, provided there is a coherent implementation.

3.3 Data, Incentives and Institutional Capacity

The feasibility of cross-border mediation depends on whether mediation is sufficiently institutionalised. There is striking evidence that mediation referrals in certain High Courts (2011–2015) were merely a small fraction of instituted cases. Some suggested systemic reasons for low referral rates are lack of incentives and proper training for

⁹ Deepika Kinhal and Apoorva, 'Mandatory Mediation in India – Resolving to Resolve' (2021) 2(2) *Indian Public Policy Review*, 53.

¹⁰ Deepika Kinhal and Apoorva, 'Mandatory Mediation in India – Resolving to Resolve' (2021) 2(2) *Indian Public Policy Review*, 53.

¹¹ Deepika Kinhal and Apoorva, 'Mandatory Mediation in India – Resolving to Resolve' (2021) 2(2) *Indian Public Policy Review*, 53-54.

judges.¹² For cross-border mediation, this matters because international users value repeatability; they need confidence that courts understand mediation, will not re-litigate the merits and will enforce settlements in a swift and proper manner.

4. Operational Design and Relevance of the Singapore Convention to India

4.1 Scope and Function

The Singapore Convention applies to international settlement agreements resulting from mediation in commercial disputes, while excluding agreements that have become court judgments or arbitral awards. Thus, it avoids overlap with judgment enforcement or arbitral enforcement regimes.¹³ The Convention's core promise is to provide a uniform enforcement pathway for mediated settlements. This has turned mediation into a credible first-choice mechanism in cross-border commerce.

4.2 Evidence and Formality (Article 4)

There has been a recurring practical obstacle in mediation agreement: proving that an agreement truly was because of mediation. The Singapore Convention's evidentiary model includes:

- i) the mediator's signature on the settlement,
- ii) a mediator-signed document confirming mediation, institutional attestation or
- iii) other evidence acceptable to the competent authority.¹⁴

The Convention also recognises electronic communications for "writing" requirements which are deemed to have been satisfied if the content is recorded in any form and, in cases where it is electronic, is accessible for future reference.¹⁵

¹² Deepika Kinhal and Apoorva, 'Mandatory Mediation in India – Resolving to Resolve' (2021) 2(2) *Indian Public Policy Review*, 53.

¹³ Michal Malacka, 'The Singapore Mediation Convention and International Business Mediation' (2022) 22(2) *International and Comparative Law Review*, 179, 188.

¹⁴ Iylyana Che Rosli and others, 'Mediated Settlement Agreements: Enhancing Enforcement through the Singapore Convention in Malaysia' (2024) 14(12) *International Journal of Academic Research in Business and Social Sciences* 3225, 3231.

¹⁵ Iylyana Che Rosli and others, 'Mediated Settlement Agreements: Enhancing Enforcement through the Singapore Convention in Malaysia' (2024) 14(12) *International Journal of Academic Research in Business and*

4.3 Grounds of Refusal and Risk of Expansive Review (Article 5)

The Convention is structured around limited refusal grounds which is analogous in spirit to enforcement of arbitration. Malaysia's analysis highlights that domestic mediation legislation may provide no explicit refusal grounds for mediated settlements which produces uncertainty; as opposed to this, the Convention sets out a clear framework for grounds of refusal.¹⁶

India's main risk is that of a doctrinal clash; Indian courts have sometimes deployed "public policy" as a flexible control device in the context of enforcement. If India imports that flexibility into enforcement of the Convention, it could erode the Convention's predictability. India, thus, can safeguard against coercion, fraud, incapacity and mediator misconduct but must avoid turning enforcement into a merits review.

5. Assessing Feasibility: Legal, Institutional and Market Dimensions

5.1 Legal Feasibility: Competence and Legislative Technique

India has the competence to ratify the Convention and enact implementing legislation while specifying

- (i) the competent court,
- (ii) application procedure,
- (iii) required documents,
- (iv) limited grounds of refusal, and
- (v) relationship with domestic mediation and contract law.

Nothing in India's procedural architecture prevents such enactment. Indeed, India has already used legislation to bolster mediation (for example, Section 12A's mandatory pre-institution mediation), indicating policy capacity and desire for reform.¹⁷

Social Sciences 3225, 3231.

¹⁶ Iylyana Che Rosli and others, 'Mediated Settlement Agreements: Enhancing Enforcement through the Singapore Convention in Malaysia' (2024) 14(12) *International Journal of Academic Research in Business and Social Sciences* 3225, 3231.

¹⁷ Deepika Kinhal and Apoorva, 'Mandatory Mediation in India – Resolving to Resolve' (2021) 2(2) *Indian Public Policy Review*, 53.

The more difficult question is legislative technique. An implementing statute must be drafted to minimise procedural complexity and prevent forum shopping. It should also harmonise with the Convention's "evidence that mediation occurred" requirements and its openness to electronic records.¹⁸

5.2 Institutional Feasibility: Mediator Standards, Judicial Training and Infrastructure

Domestic experience of mediation has shown that institutional weakness may compromise even a well-drafted law. The Vidhi paper points out a lack of training for the referral judges and lack of incentive to refer.¹⁹ In case of cross-border mediation, the need for training is stronger: judges need to know about the limited review model under the Convention and resist re-opening of merits. Mediator standards are thus equally important. International users provide the value of accreditation systems, ethics and reliable confidentiality norms. Comparative analysis (EU and other jurisdictions) makes it seem that the mere mechanisms of confidentiality and accreditation may well fail to generate uptake if there was not some compulsion or strong confidence in enforcement.²⁰ This would reinforce the argument that ratification would only have meaningful signaling value if it was carried with some credible enforcement practice.

5.3 Market Feasibility: Business Incentives and Transaction Costs

With regard to the effect on contracts from a market point of view, enforceability dampens down risk premiums. If the parties can be confident of mediating and enforcing the settlement abroad, then they will be more willing to use clauses to agree to mediate and will be willing to avoid long drawn out arbitration proceedings while maintaining the relationships. Malaysia's paper maintains that adoption of the Singapore Convention can lead to greater attractiveness towards foreign investment and international commercial activity by providing businesses with confidence of upholding agreements across jurisdictions.²¹ The same reasoning goes for India, which competes with the region as an investment attractor and sophisticated dispute resolution

¹⁸ Iylyana Che Rosli and others, 'Mediated Settlement Agreements: Enhancing Enforcement through the Singapore Convention in Malaysia' (2024) 14(12) *International Journal of Academic Research in Business and Social Sciences* 3225, 3231.

¹⁹ Deepika Kinhal and Apoorva, 'Mandatory Mediation in India – Resolving to Resolve' (2021) 2(2) *Indian Public Policy Review*, 53-54.

²⁰ Deepika Kinhal and Apoorva, 'Mandatory Mediation in India – Resolving to Resolve' (2021) 2(2) *Indian Public Policy Review*, 59.

²¹ Iylyana Che Rosli and others, 'Mediated Settlement Agreements: Enhancing Enforcement through the Singapore Convention in Malaysia' (2024) 14(12) *International Journal of Academic Research in Business and Social Sciences* 3225, 3229.

forum.

6. Important Issues for India under the Convention

6.1 Public Policy and Excessive Reconsideration

One of the main issues is the control of the scope of "public policy" refusal. If public policy becomes a catch all to re-litigate substantive matters, the value of the Convention falls apart. India should draft implementing provisions to make clear that public policy refusal is exceptional, narrowly construed and does not allow merits review - similar to the pro-enforcement bias found in Convention commentary.

6.2 Evidence, Authentication and Digital Evidence (No 22 and 23)

The conspicuous and quite important characteristic of the Singapore Convention is its evidentiary architecture. The mediated settlement agreement is a contractual instrument as compared to arbitral awards, which are self-authenticating instruments of adjudication provided by tribunals, the viability of which requires demonstration that they were the product of a real mediation process.²² Article 4 of the Convention thus mandates that to enforce the settlement agreement, a party that wishes to enforce this must provide the settlement agreement with the evidence of the settlement being a product of mediation. Such evidence can be of various kinds such as the signature of the mediator on the settlement agreement, a document signed by the mediator to the effect that the mediation was conducted, an attestation made by the administration institution, or any other evidence which can be recognized by the competent authority.²³ The fact that institutional attestations are considered as an authentic mode of evidence is an intentional choice of policy. The Convention is not implicitly based on the assumption that all mediations should be undertaken by state-appointed mediators or within a fixed set of statutory frameworks. Rather it recognizes the factuality of international commercial practice, where in many cases, mediation is undertaken by private institutions, professional associations, chambers of commerce and industry sector specific dispute resolution centres.²⁴ By so doing, the Convention abolishes the role of courts and equips

²² United Nations Convention on International Settlement Agreements Resulting from Mediation (adopted 20 December 2018, entered into force 12 September 2020) UN Doc A/RES/73/198 (Singapore Convention).

²³ Singapore Convention (n 1) art 4.

²⁴ Michal Malacka, 'The Singapore Mediation Convention and International Business Mediation' (2022) 22(2) *International and Comparative Law Review* 179, 188–189.

mediation institutions itself with a part of the role of legitimacy. This design option has considerable implications to the viability of the implementation of the Convention in India.

a. Evidential Function and Processual Legitimacy

The Convention institutional attestation has two functions which are interrelated. First, it is a procedural form of verification, it ensures that there was a mediation process and that the result of the process was the settlement. Second, it serves as a legitimacy marker, which proves to the enforcing court that the mediation process was undertaken in an institutional framework that meets the minimum professional and ethical standards. Courts that have well-developed mediation systems, in those jurisdictions, can make use of the reputation, government, and professional integrity of institutionalized mediation. This enables the courts to maintain an unobtrusive probe of the mediation process per se yet at the same time maintain the confidentiality and independence of mediation practices and maintain the integrity of the procedure.²⁵ The grounds of refusal in the Convention also support this practice by restricting the judicial examination to distinct categories that can be clearly defined like incapacity, invalidity, serious violation of obligations of mediators and the public policy. Nevertheless, this paradigm assumes that there is an effective institutional ecosystem. In a situation where there is no clear accreditation of mediation institutions, governance standards and professional control, institutional attestations may turn out to be formalized instead of substantive. Under these conditions, the courts can be forced to conduct factually intensive investigation of the mediation which contradicts the purpose of the Convention of minimal judicial intervention.

b. Institutional Landscape of Institutional Mediation in India

The infrastructure of mediation in India has grown promptly over the past few years with a mixture of court- annexed mediation centres, statutory mediation authorities, and the idiosyncratic mediation providers. The High Courts have nearly all mediation and conciliation centres and mediation facilities are becoming more common in the district courts. The Commercial Courts Act has also introduced the establishment of the pre-institution mediation centres, and more and more institutions are presently providing commercial mediation facilities to domestic and international conflicts.²⁶ Despite this growth, India still has no harmonized structure of national mediator and mediation institutions accreditation and quality assurance.

²⁵ Singapore Convention (n 1) art 5.

²⁶ Commercial Courts Act 2015, s 12A.

The historic regulation of mediation has been by patchwork of procedural provisions in the section 89 of the code of civil procedure, high court, mediation rules and sector specific legislation. This has created a non-uniform mediator training, erratic ethical standards and inconsistent institutional governance. Survey tests on the India mediation system point to chronic system deficiencies. Although mediation is suitable in principle, training standards are not well consistent, there is no centralised accreditation system and institutional performance is not monitored adequately. Lack of a unified regulatory system has limited the credibility of mediation towards commercial users especially in cases of life-threatening cases with the involvement of for cross-border parties.

c. Standards and Grounds of Refusal of the Convention Mediator.

Singapore Convention also allows rejection of enforcement in the case when the mediator has engaged in personal gross violation of relevant standards or has not reported the cases that rendered reasonable suspicion of bias or lack of independence, even though this breach had a significant effect on the settlement. Such provisions implicitly presuppose that professional standards can be identified, according to which mediator conduct can be evaluated. Without an elaborated accreditation and regulatory framework in India, these grounds of refusal may have a high likelihood of being denied in the courts. Without enforced mediator binding rules there would be a danger of judicial imposition of mediator misconducts being arbitrary, inconsistent and random. This would be against the fundamental purpose of the Convention which was to create a standard and consistent enforcement regime. In contrast, a national accreditation system would allow courts to ascribe to accreditation the same role as a proxy of procedural integrity that arbitral institutions and professional institutions serve in international arbitration. The result of such a framework would be that there are minimum qualification conditions, standardised training qualifications, ethical standards, and conflict-of-interest disclosure standards, and disciplinary measures. It would also give a clear basis of reference on whether the actions of a mediator are a serious breach as per Article 5 of the Convention.

d. Institutional Attestation as a Regulatory Instrument

The attestation of institutional nature, however, cannot be viewed as just an instrument of evidence, but rather as a control tool. India can passively affect the quality of mediation without over-intervention by her by putting the condition of Convention enforcement on attestations of recognised institutions. A powerful implementation system must ensure that there is a national

roll call of accepted mediation institutions approved to give Convention attestations. This recognition shall come with stipulated conditions of compliance with prescribed conditions of governance, transparency and independence. The institutions are to be obligated to hold mediator panels which are accredited and disciplined, lead codes of ethics which reflect the best international practice, and provide internal quality control measures. Procedural verification, the support of the enforcement processes with the necessary evidence should be viewed as the limit on record-keeping requirements, without violation of the confidentiality of mediation. There would also be periodic audit and renewal of institutional recognition to maintain continued compliance. This solution would be similar to the best practices in international arbitration, where institutional reputation plays a significant role of legitimacy and creates judicial trust.

6.3 Confidentiality and Communication Transparency

Confidentiality is a key component of the mediation process and raises measurement and accountability problems. Malaysia's paper cites challenges in assessing effectiveness due to the need for confidentiality of sessions because content is not disclosed.²⁷ India more or less has the same tension, with confidentiality but with the ability to extract aggregate metrics (referrals, settlement rates, enforcement outcomes) without disclosing content. Feasibility calls for data infrastructure to be able to track this to outcomes without compromising confidentiality.

6.4 Integration with Court Annexed and Pre Institution Mediation

India has multiple points of access to mediation: contractual, court-referred and mandatory pre-institution.²⁸ It should not fragment the implementation of the Convention. The implementing statute should tell what is the relationship among:

- (i) domestic mediated settlement, enforceable as contract/decreed
- (ii) settlement deemed award-like under Section 12A arrangement,
- (iii) Convention settlement, enforceable through treaty based mechanism.

²⁷ Iylyana Che Rosli and others, 'Mediated Settlement Agreements: Enhancing Enforcement through the Singapore Convention in Malaysia' (2024) 14(12) *International Journal of Academic Research in Business and Social Sciences* 3225, 3231.

²⁸ Deepika Kinhal and Apoorva, 'Mandatory Mediation in India – Resolving to Resolve' (2021) 2(2) *Indian Public Policy Review*, 51.

7. Comparative lessons: Malaysia and the "Enforcement Gap" as a Warning

Malaysia's Mediation Act 2012 provides for written settlement agreements and their binding effect, and even the possibility for recording as consent judgments where proceedings are in court.²⁹ Although, as the Malaysian analysis amplifies, this does not mean the same for international enforcement and existing mechanisms such as reciprocity of judgments, do not necessarily reflect mediated settlements.³⁰ A broader lesson of this experience is that recognition of mediation at the domestic level does not necessarily mean that a mediated settlement is enforceable internationally.

For India, the lesson to learn from the comparative is two-fold. First, the adoption of mediation legislation at the domestic level (or the development of a mediation through the practice in the courts) is simply not enough for the commerce between nations, if there is no bridge to enforceability. Second, implementation of the Convention exposes attention as to evidentiary architecture and grounds for refusal, which are precisely the areas that Malaysia's paper indicates ought to be subject to explicit criteria, particularly authentication and acceptable evidence beyond authentication.³¹

8. Recommendations for India: A Convention-ready Implementation Plan

8.1 Ratify and Enact a Specific Implementing Statute

India need to ratify the Convention and implement a short statute which would: (a) is the designation of competent courts for applications for enforcement;

(b) enacts summary procedure with time-limits;

(c) adopts the documentary requirements of the Convention and recognises electronic evidence; and

²⁹ Iyllyana Che Rosli and others, 'Mediated Settlement Agreements: Enhancing Enforcement through the Singapore Convention in Malaysia' (2024) 14(12) *International Journal of Academic Research in Business and Social Sciences* 3225, 3228.

³⁰ Iyllyana Che Rosli and others, 'Mediated Settlement Agreements: Enhancing Enforcement through the Singapore Convention in Malaysia' (2024) 14(12) *International Journal of Academic Research in Business and Social Sciences* 3225, 3229.

³¹ Iyllyana Che Rosli and others, 'Mediated Settlement Agreements: Enhancing Enforcement through the Singapore Convention in Malaysia' (2024) 14(12) *International Journal of Academic Research in Business and Social Sciences* 3225, 3231.

(d) codifies the grounds of refusal strictly in accordance with the Convention and prohibits merits review; and

(e) explains relationships with domestic ways of mediation and enforcement of contracts.

8.2 Narrowing of Public Policy and Standardisation of Refusal Analysis

An implementation of legislation should define a narrower public policy and require courts to write down reasons with explicit connection to Convention grounds, and prevent a general equitable reading. This is important in terms of predictability and investor confidence.

8.3 Improve Mediator Accreditation, Ethics and Institutional Attestations

Because the Convention provides for institutional attestations as evidence of mediation, India should formulate clear standards for institutions and mediators. This is consistent with comparative insights that accreditation and quality assurance help to provide legitimacy.³²

Building Data and Training Infrastructure

In India, Vidhi has identified a domestic bottleneck in the low incentive, lack of training, and absence of systematic tracking of referrals and outcomes.³³ To be Convention feasible, specialised training of the judges in Convention enforcement and evidence handling is paramount, as also non-invasive ways of collecting data.

8.5 Incorporate the norms of ODR and electronic documentation

Cross-border disputes are increasingly using online processes. There should be amendments to procedural and sectoral laws to recognise online mediation and electronic signatures with the amendments to Section 89 CPC and Section 12A frameworks for online mediation.³⁴ India's implementation of the Convention should explicitly incorporate electronic writing and authentication standards which follow Convention's approach to "writing" via accessible

³²Deepika Kinhal and Apoorva, 'Mandatory Mediation in India – Resolving to Resolve' (2021) 2(2) *Indian Public Policy Review*, 59.

³³ Deepika Kinhal and Apoorva, 'Mandatory Mediation in India – Resolving to Resolve' (2021) 2(2) *Indian Public Policy Review*, 53-54.

³⁴ Akash Gupta and Arushi Bajpai, 'Online Dispute Resolution in India: A Distant Reality or Dream?' (draft chapter, SSRN) 16–17.

electronic communication.³⁵

9. Conclusion

The Singapore Convention can best be understood as structural intervention of the framework of international dispute resolution: it provides an enforceability regime putting a change in the incentive architecture around mediation. India's domestic mediation ecosystem has expanded through the development of court practice and specific statutory interventions, such as mandated pre-institution mediation under the Commercial Courts Act, but has struggled for a long time with under-referral incentives and ambiguity over enforcement.³⁶ These weaknesses directly impact the feasibility issues because the cross border (commercial) users sought predictability and little review.

Ratification and implementation is legally possible and strategically desirable for India. They would be an indicator that India has been embracing a modern, settlement-focused model of global trade and able to deliver binding results without the hassles of full adjudication. However, it will only be possible with thoughtful design: any form of legislation should take into consideration the evidentiary framework of the Convention, digital records, and regulate the revision of the policy by the public to prevent a second wave of litigation as a result of the enforcement. Domestic mediation legislation experience in the example of Malaysia shows that it is possible to still leave multi-border enforceability across borders without regulation, underscoring the necessity of Convention-based reform.³⁷

With a Convention-ready blueprint starting with clear procedure, minimal grounds to refusal, high standards of the mediator and building institutional capacity, India could transform cross-border mediation into a credible, enforceable and popular tool, leading to a reduction of the cost of transactions, and enhancing India's bargaining power in the global trade.

³⁵ Iylyana Che Rosli and others, 'Mediated Settlement Agreements: Enhancing Enforcement through the Singapore Convention in Malaysia' (2024) 14(12) *International Journal of Academic Research in Business and Social Sciences* 3225, 3231.

³⁶ Deepika Kinhal and Apoorva, 'Mandatory Mediation in India – Resolving to Resolve' (2021) 2(2) *Indian Public Policy Review*, 53-54.

³⁷ Iylyana Che Rosli and others, 'Mediated Settlement Agreements: Enhancing Enforcement through the Singapore Convention in Malaysia' (2024) 14(12) *International Journal of Academic Research in Business and Social Sciences* 3225, 3228-3231.