

## OVERVIEW OF THE MEDIATION ACT, 2023

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### A. INTRODUCTION:

The evolution of modern legal systems has been marked by a constant tension between the need for formal, codified justice and the desire for efficient, accessible conflict resolution. In recent decades, this tension has given rise to the global proliferation of Alternative Dispute Resolution (ADR) mechanisms, a collective term for methods of resolving disputes outside of official judicial channels.<sup>1</sup> ADR is increasingly viewed not as a mere alternative to litigation, but as a core component of "appropriate" dispute resolution, where each conflict is steered toward the most suitable process—be it negotiation, mediation, or arbitration.<sup>1</sup> The primary global impetus for this shift has been the mounting costs, time delays, and adversarial nature of traditional court systems.<sup>2</sup>

India's legal system faces a particularly acute manifestation of this global challenge. With a judicial backlog that surpassed 50 million cases in July 2023, the Indian judiciary has been under immense strain, prompting a search for more expeditious methods of dispute resolution.<sup>4</sup> The enactment of the Mediation Act, 2023, is not an isolated legislative event but a strategic culmination of centuries of cultural practices, decades of judicial encouragement, and a modern legislative push to address this pressing systemic crisis.<sup>4</sup> This report provides a comprehensive overview of the Mediation Act, 2023, tracing its lineage from ancient global and Indian traditions, analyzing its key provisions, and offering a critical perspective on its implications within the contemporary legal landscape.

### B. A GLOBAL HISTORY OF ALTERNATIVE DISPUTE RESOLUTION AND MEDIATION

The practice of resolving disputes with the aid of a neutral third party is far from a modern invention; its roots are deeply embedded in the origins of human civilization. In ancient Sumer, between the sixth and fifth millennium B.C., a figure known as a *mashkim* (roughly equivalent to a bailiff) would examine the merits of a case

and assist parties in reaching a resolution before it ever proceeded to court.<sup>3</sup> In ancient China, the principles of Confucianism prioritized social harmony over rigid legalism, with mediation being a principal form of dispute resolution.<sup>3</sup> These historical examples demonstrate a long-standing emphasis on conciliation and party autonomy, where disputants were empowered to construct their own solutions rather than having a verdict imposed upon them.<sup>3</sup>

The trajectory of mediation in Europe followed a similar pattern. During the medieval period in England, court litigation often went hand-in-hand with informal dispute resolution. Certain days were set aside for mediations, known as "lovedays," and courts would sometimes even adjourn cases to allow parties to seek resolution through mediation.<sup>3</sup> However, as English common law developed and became more formalized, the importance of mediation waned, and litigation ascended as the dominant method of dispute resolution, emphasizing legal rights, contracts, and arguments.<sup>3</sup>

The modern revival of mediation is often attributed to a movement that began in the United States in the 1960s, a period sometimes

referred to as the "Quiet Revolution".<sup>2</sup> This shift was a direct response to the perceived risks, costs, and delays associated with an increasingly crowded and adversarial litigation system.<sup>2</sup> The revolution was not a single event but a wave of change that led to the establishment of hundreds of court-connected mediation programs, neighborhood justice centers, and a host of private and public initiatives.<sup>2</sup> The movement saw mediation as an empowering tool that could help parties restore relationships, maintain confidentiality, and produce more creative and durable resolutions than those available through the courts.<sup>2</sup> This institutionalization of mediation led to the growth of a professional class of mediators and spurred the development of national associations.<sup>2</sup> The American model was subsequently emulated in other common law countries, including the United Kingdom, Canada, Australia, and New Zealand, eventually spreading globally through initiatives like the European Union Directive on mediation and the UNCITRAL Model Law on International Commercial Conciliation.<sup>2</sup>

The global history of mediation reveals a compelling pattern: informal, community-based methods are often supplanted by formal, adversarial legal systems. However, as the rigidities and backlogs of these formal systems become unsustainable, there is a recurring tendency to re-adopt and institutionalize the very informal methods they replaced. The modern revival is thus not a departure from legal history but a necessary corrective, driven by the practical needs of overburdened judicial systems.

### C. THE TRAJECTORY OF MEDIATION IN INDIA: A HISTORICAL PERSPECTIVE

Mediation is not a novel concept in India; it has been an integral part of the social fabric for millennia. Before the arrival of the British, India utilized the Panchayat system, where respected village elders facilitated dispute resolution within their communities.<sup>7</sup> Similarly, among pre-British business communities, impartial and

respected merchants known as

Mahajans were tasked with resolving commercial disputes through an informal process that combined elements of mediation and arbitration.<sup>7</sup> These traditional methods were deeply rooted in principles of dialogue, reconciliation, and the pursuit of harmony, as emphasized in ancient texts like the

*Mahabharata*, where Lord Krishna acted as a mediator to prevent war.<sup>8</sup>

The advent of British colonial rule and the introduction of a formal legal system based on English common law led to a significant decline in these indigenous practices.<sup>8</sup> The adversarial, litigation-focused model superseded the consensual approach, pushing informal dispute resolution to the periphery of the legal system.<sup>8</sup> While mediation faced challenges, arbitration gained traction, regulated by British acts such as the Bengal Regulation Act of 1772.<sup>8</sup>

The modern revival of mediation in India is a story of gradual legislative reform and judicial activism. A foundational step was the Arbitration and Conciliation Act, 1996, which gave statutory recognition to conciliation for the first time, thereby laying a crucial legal cornerstone for non-adversarial dispute resolution.<sup>7</sup> However, the most pivotal legislative development was the introduction of

**Section 89 of the Code of Civil Procedure (CPC)** in 1999, which came into effect in 2002.<sup>7</sup> This provision, a result of recommendations from the Law Commission of India and the Justice Malimath Committee, empowered courts to refer disputes to various ADR mechanisms, including mediation, conciliation, and Lok Adalat.<sup>7</sup>

The true turning point, however, was a landmark judicial intervention by the Supreme Court of India. In the case of *Salem Advocate Bar Association, Tamil Nadu v. Union of India* (2005), the Court addressed anomalies in the drafting of Section 89 and held that a reference to mediation, conciliation, and arbitration was mandatory for court matters, giving mediation

the judicial impetus it needed to take root.<sup>7</sup> The Court's decision signaled a clear shift from viewing mediation as a secondary option to a foundational element of the justice delivery system.<sup>10</sup> This legal history reveals a pattern where the initial statutory recognition was limited, and it was judicial advocacy, driven by the judiciary's own burden, that truly gave mediation official momentum. This active push to promote mediation as a survival mechanism for an overburdened system paved the way for the comprehensive legislative action taken in 2023.<sup>4</sup>

#### **D. THE IMPERATIVE FOR LEGISLATIVE REFORM: OBJECTIVES OF THE MEDIATION ACT, 2023**

Despite a rich history and judicial encouragement, mediation in India prior to 2023 remained under-utilized due to the absence of a robust, uniform legal framework.<sup>4</sup> Mediation centers had been established, but without a clear statute, there was a lack of standardized rules, legal certainty for settlement agreements, and clear procedural guidelines.<sup>4</sup> The result was a fragmented system where mediators operated based on individual interpretations of ad-hoc rules, diminishing the credibility of the process.<sup>4</sup> The Mediation Act, 2023 was enacted to remedy these systemic issues and achieve several core objectives.<sup>4</sup>

The primary driver for the legislation was the staggering judicial backlog, which had become a national crisis.<sup>4</sup> The Act is a strategic legal reform designed to divert a significant volume of civil and commercial disputes from the overburdened court system into a structured, formalized alternative channel.<sup>12</sup> The Act's long title explicitly states its aim "to promote and facilitate mediation, especially institutional mediation, for resolution of disputes, commercial or otherwise".<sup>11</sup>

A key objective was to provide a robust legal framework for the enforceability of mediated settlement agreements (MSAs).<sup>14</sup> By giving MSAs a statutory basis, the Act aims to provide parties with the certainty and finality previously

lacking in the process, thereby strengthening trust and encouraging wider adoption.<sup>5</sup> Furthermore, the Act was also intended to align India with international best practices. As an early signatory to the

**United Nations Convention on International Settlement Agreements Resulting from Mediation** (the Singapore Convention), India signaled its enthusiasm for international mediation.<sup>4</sup> The Act is a crucial domestic step in formalizing a system that can eventually enable India to fully ratify the Convention and position itself as a global hub for dispute resolution.<sup>4</sup>

The Mediation Act, 2023, represents a paradigm shift. It is a multi-faceted approach to create a new, parallel legal infrastructure, including a regulatory body (the Mediation Council of India) and specific provisions for various forms of mediation. The law is a proactive, state-sanctioned response to a deep-seated institutional problem, moving dispute resolution from an "alternative" or "ad-hoc" practice to a core, formalized mechanism within the Indian legal ecosystem.

#### **E. KEY PROVISIONS OF THE MEDIATION ACT, 2023: AN IN-DEPTH OVERVIEW**

The Mediation Act, 2023 introduces a comprehensive framework that governs the entire mediation process from initiation to enforcement.

##### **a) Scope and Application**

The Act applies to mediations "conducted in India".<sup>4</sup> It covers disputes where all parties habitually reside in or have their place of business in India, as well as cases where a mediation agreement specifies that any dispute will be resolved in accordance with the Act.<sup>11</sup> A significant provision is the Act's coverage of "international mediation," which is defined as a commercial dispute where at least one party is a foreign national or entity, but the mediation is undertaken in India.<sup>13</sup> This scope sets the stage for a critical discussion of the Act's relationship with international standards.

### b) Pre-Litigation Mediation

A ground breaking aspect of the Act is its promotion of pre-litigation mediation.<sup>11</sup>

**Section 5 provides** that, regardless of a pre-existing mediation agreement, parties can voluntarily and with mutual consent take steps to settle a civil or commercial dispute through mediation before filing a suit.<sup>11</sup> This provision, however, carries a nuanced mandatory element. For commercial disputes of a "Specified Value," pre-litigation mediation must be undertaken in accordance with

**Section 12A of the Commercial Courts Act, 2015**, which makes it a compulsory step.<sup>11</sup> This creates a gatekeeping mechanism designed to divert certain disputes from the court system before they become part of the judicial backlog.<sup>12</sup>

### c) The Mediation Council of India (MCI)

The Act provides for the establishment of the **Mediation Council of India** as a body corporate with perpetual succession.<sup>18</sup> The MCI's functions are extensive and central to the Act's institutionalization of mediation. It is tasked with promoting domestic and international mediation in India, setting guidelines for the continuous education, certification, and assessment of mediators, and maintaining an electronic depository of mediated settlement agreements.<sup>18</sup> The Council is composed of a Chairman and other members, including ex-officio members from the government.<sup>18</sup>

### d) Enforcement of Mediated Settlement Agreements (MSAs)

This is arguably the most transformative provision of the Act. **Section 27** states that a mediated settlement agreement is final and binding on the parties and is "enforceable in the same manner as if it were a judgment or decree passed by a court".<sup>20</sup> This elevation of MSAs from a mere contract to a court decree provides the legal certainty and authority that was previously a major weakness in the Indian mediation system.<sup>5</sup>

The Act sharply limits the grounds on which an

MSA can be challenged to a narrow set of criteria, including fraud, corruption, impersonation, or the dispute not being fit for mediation as per **Section 6** of the Act.<sup>20</sup> This limited challenge mechanism is designed to prevent frivolous litigation aimed at delaying enforcement.<sup>22</sup> While it significantly strengthens the process, it also raises concerns about whether it adequately protects a party who may have been subjected to coercion or procedural unfairness.<sup>5</sup>

### e) Modernizing the Process

The Act formalizes and supports modern dispute resolution practices. It explicitly recognizes **online mediation**, mandating the establishment of secure and confidential procedures, thereby making the process accessible to parties in remote locations.<sup>12</sup> Furthermore, in a nod to India's traditional roots, the Act promotes **community mediation** as a way to bring dispute resolution closer to local communities.<sup>12</sup>

### f) Confidentiality and Timelines

The Act provides strong legal protections for confidentiality. **Section 22** ensures that all mediation communications, including any documents or information shared, cannot be used as evidence in any court or tribunal proceeding.<sup>12</sup> To ensure efficiency, the Act stipulates that the mediation process should be completed within a time-bound framework of 180 days, with a possible extension of up to 60 days, thus preventing the prolonged delays that plague traditional litigation.<sup>12</sup>

## F. COMPARATIVE JURISPRUDENCE: INDIA'S ACT IN A GLOBAL CONTEXT

The Mediation Act, 2023, positions India's legal framework for mediation distinctly on the global stage, offering a compelling contrast to other systems like those in the United States and the framework provided by the Singapore Convention.

The most striking difference lies in the enforcement of mediated settlement agreements. In the United States, an MSA is

treated as a contract, which means a party can challenge it using a wide array of contract law defenses, such as duress, undue influence, or mutual mistake.<sup>22</sup> This contractual status creates a significant enforcement loophole, often leading to protracted, costly, and time-consuming litigation over the validity of the settlement itself.<sup>22</sup> In contrast, India's Act provides a robust statutory framework that elevates an MSA to the status of a court decree, sharply limiting the grounds for challenge and thereby providing far greater certainty and finality.<sup>22</sup>

A unique and deliberate feature of India's Act is its limited international scope. While India was an early signatory to the Singapore Convention, the Act is currently limited to mediations "conducted in India" and does not provide a framework for the recognition or enforcement of settlements that result from mediations conducted abroad.<sup>4</sup> This approach appears to be a strategic one. As one expert, Ms. Laila Ollapally, notes, the Act is "purely for mediations within India" and gives Parliament "room to address any shortcomings" before India fully ratifies the Singapore Convention.<sup>4</sup> This reflects a deliberate, transitional strategy: first, to establish a stable and functional domestic legal framework for mediation, and second, to use this strong foundation to fully integrate with the international legal system once the domestic model is mature.

#### G. CRITICAL ANALYSIS AND CHALLENGES

While the Mediation Act, 2023, is a significant leap forward, it is not without its criticisms and challenges that will require careful navigation during implementation.

One of the central debates surrounds the apparent paradox of **mandatory mediation**. Critics argue that compelling parties to mediate may conflict with the voluntary ethos that is the cornerstone of a successful mediation.<sup>5</sup> The risk is that parties will participate without genuine intent, turning the process into a procedural formality rather than a substantive effort to resolve the dispute.<sup>5</sup> This is in stark contrast to

models in the UK and Singapore, which often rely on incentives like tax benefits or reduced court fees to encourage voluntary participation rather than a blanket mandate.<sup>5</sup>

Another significant concern is the structure and oversight of the **Mediation Council of India (MCI)**. The Act establishes a powerful central body to regulate mediation, but its composition is heavily government-dominated, with an appointment process that lacks transparency.<sup>5</sup> The lack of independence in a body responsible for setting standards, certifying mediators, and overseeing the process is a potential threat to the neutrality and organic growth of mediation in India.<sup>5</sup> Over-regulation by a state-controlled body could stifle innovation and public trust, which are paramount for any ADR mechanism.<sup>5</sup>

Furthermore, the Act's drafting contains certain ambiguities. The illustrative list of disputes "not fit for mediation" is not precisely defined, which could lead to new litigation over jurisdictional issues and whether a matter is eligible for mediation, ironically defeating the Act's purpose of reducing court burden.<sup>5</sup> The lack of provisions for addressing issues like power imbalance or procedural unfairness within the mediation itself, especially when there is limited recourse to challenge a settlement agreement, could lead to unfair outcomes for vulnerable or marginalized parties.<sup>17</sup>

Finally, while the Act elevates mediated agreements to court decrees, it also reinstates certain procedural steps for enforcement under the Code of Civil Procedure.<sup>20</sup> This has been criticized as a potential weakness, as it could reintroduce the very delays and costs the Act is designed to eliminate, undermining the primary goal of achieving faster, more cost-effective results.<sup>20</sup>

#### H. CONCLUSION:

The Mediation Act, 2023, is a landmark piece of legislation that represents a profound shift in India's approach to dispute resolution. It is a progressive step that institutionalizes mediation, provides a robust legal framework for the

enforcement of mediated settlement agreements, and embraces modern practices such as online and community mediation.<sup>17</sup> By treating a mediated settlement as a final and binding court decree and limiting the grounds for challenge, the Act provides the legal certainty and credibility that was sorely missing from India's mediation ecosystem.<sup>14</sup> The Act is a direct and strategic response to a systemic crisis of judicial congestion, aiming to offload the burden from the courts and create a parallel, efficient system for dispute resolution.

However, the success of this monumental legislation will not be determined by its enactment alone but by its practical implementation. The Act must successfully navigate the inherent paradox of its mandatory provisions and ensure that parties are genuinely invested in the process. It will also be critical to address the concerns regarding the independence of the Mediation Council and to provide greater clarity in its provisions to avoid new rounds of jurisdictional litigation.<sup>5</sup>

In conclusion, the Mediation Act, 2023, sets the stage for India to become a global leader in dispute resolution. The Act's strategic, step-by-step approach to first stabilizing a domestic model before fully integrating with the international legal framework is a pragmatic and well-considered strategy.<sup>4</sup> By formalizing a system that is both deeply rooted in India's cultural heritage and aligned with modern global practices, the Mediation Act, 2023, is poised to reshape the Indian legal landscape, fostering a culture of cooperation and dialogue that can serve as a model for the world.

## REFERENCE

1. Alternative dispute resolution - Wikipedia, accessed on September 10, 2025, [https://en.wikipedia.org/wiki/Alternative\\_dispute\\_resolution](https://en.wikipedia.org/wiki/Alternative_dispute_resolution)
2. The International Evolution of Mediation: A Call for Dialogue and ..., accessed on September 10, 2025, <https://mediate.com/the-international-evolution-of-mediation-a-call->

[for-dialogue-and-deliberation/](#)

3. The Evolution Of Mediation - Global Law Experts, accessed on September 10, 2025, <https://globallawexperts.com/the-evolution-of-mediation/>
4. India's Mediation Act and International Mediation | Singapore International Mediation Centre, accessed on September 10, 2025, <https://simc.com.sg/insights/indias-mediation-act-and-international-mediation>
5. Mediation Bill, 2023: A Step Forward or Missed Opportunity? - ijrpr, accessed on September 10, 2025, <https://ijrpr.com/uploads/V6ISSUE4/IJRPR43619.pdf>
6. Mediation in The Indian Legal System | chetananand, accessed on September 10, 2025, <https://www.chetananand.co.in/mediation-in-the-indian-legal-system/>
7. HAMLIN JOURNAL OF PUBLIC LAW & POLICY [Vol. 27 ...], accessed on September 10, 2025, [https://www.arbitrationindia.com/pdf/mediation\\_india.pdf](https://www.arbitrationindia.com/pdf/mediation_india.pdf)
8. Historical Background of Mediation in India: A Tapestry of Ancient ..., accessed on September 10, 2025, <https://www.mplegalfirm.in/2023/06/historical-background-of-mediation-in.html>
9. Arbitration and ADR mechanisms under the scope of section 89 of code of civil procedure, 1908 - International Journal of Law, Justice and Jurisprudence, accessed on September 10, 2025, <https://www.lawjournal.info/article/61/3-1-5-862.pdf>
10. The Evolution of Section 89 of the Code of Civil Procedure: From Case Law to Reform, accessed on September 10, 2025, <https://www.sconline.com/blog/post/2025/02/26/the-evolution-of-section-89-of-the-code-of-civil-procedure-from-case-law-to-reform/>
11. THE MEDIATION ACT, 2023 NO. 32 OF 2023 An Act to promote and ..., accessed on

September 10, 2025,  
<https://legalaffairs.gov.in/sites/default/files/MediationAct2023.pdf>

12. The Mediation Act, 2023: A Comprehensive Guide to Effective ..., accessed on September 10, 2025, <https://biac.org.in/the-mediation-act-2023-a-comprehensive-guide-to-effective-dispute-resolution/>

13. THE MEDIATION ACT, 2023 NO. 32 OF 2023 An Act to promote and facilitate mediation, especially institutional mediation, for reso - eGazette, accessed on September 10, 2025, <https://egazette.gov.in/WriteReadData/2023/248775.pdf>

14. Enforceability of Mediated Settlement Agreements in ... - Law Senate, accessed on September 10, 2025, [https://www.lawsenate.com/publications/articles/Enforceability\\_Of\\_Mediated\\_Settlement\\_Agreements\\_in\\_India.pdf](https://www.lawsenate.com/publications/articles/Enforceability_Of_Mediated_Settlement_Agreements_in_India.pdf)

15. International Mediation in Asia, 2023-2024: From Japan to Sri Lanka, accessed on September 10, 2025, <https://simc.com.sg/insights/international-mediation-asia-2023-2024-japan-sri-lanka>

16. Decoding the Mediation Act, 2023 - Nishith Desai Associates, accessed on September 10, 2025, <https://www.nishithdesai.com/NewsDetails/10748>

17. A Critical Analysis Of The Mediation Act,2023 - IJCRT, accessed on September 10, 2025, <https://ijcrt.org/papers/IJCRT2508622.pdf>

18. MEDIATION COUNCIL OF INDIA - TaxTMI, accessed on September 10, 2025, <https://www.taxtmi.com/article/detailed?id=11911>

19. usllsadrblog.com, accessed on September 10, 2025, <https://usllsadrblog.com/mediation-council-of-india/#:~:text=The%20functions%20are%3A,Section%2015%20of%20the%20Act.>

20. Mediation Act, 2023 - Impetus to Indian

disputes with an ..., accessed on September 10, 2025, <https://www.cadrnlud.in/post/mediation-act-2023-impetus-to-indian-disputes-with-an-international-context>

21. The Mediation Act, 2023: India Paves The Way For A New Mediation Law – Part II, accessed on September 10, 2025, <https://legalblogs.wolterskluwer.com/mediation-blog/the-mediation-act-2023-india-paves-the-way-for-a-new-mediation-law-part-ii/>

22. From Delay to Resolution: Can India's Mediation Act Inspire U.S. ..., accessed on September 10, 2025, <https://legalblogs.wolterskluwer.com/mediation-blog/from-delay-to-resolution-can-indias-mediation-act-inspire-us-reforms/>

23. THE MEDIATION ACT & IT'S INTERPLAY WITH THE ... - Maadhyam, accessed on September 10, 2025, <https://www.maadhyaminternational.com/uploads/maadhyam/resources/files/view-pdf.pdf>