INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 6 AND ISSUE 1 OF 2026

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

https://iledu.in

THE MEDIATION ACT, 2023 — A WATERSHED IN ADR: A DOCTRINAL AND COMPARATIVE ANALYSIS

AUTHOR - KAVYA JOHAR, MUCHUKUND & HARSHRAJ CHOUHAN,

STUDENTS AT NATIONAL LAW INSTITUTE UNIVERSITY

BEST CITATION - KAVYA JOHAR, MUCHUKUND & HARSHRAJ CHOUHAN**,** THE MEDIATION ACT, 2023 — A WATERSHED IN ADR: A DOCTRINAL AND COMPARATIVE ANALYSIS**,** INDIAN JOURNAL OF LEGAL REVIEW (IJLR), 6 (1) OF 2026, PG. 1013-1025, APIS – 3920 – 0001 & ISSN - 2583-2344.

Abstract

The Mediation Act, 2023 represents the first comprehensive legislative framework exclusively governing mediation in India. While mediation had previously operated under fragmented statutory provisions — notably Section 89 of the Code of Civil Procedure 1908[2257], Section 12A of the Commercial Courts Act 2015[2258], and judicially framed mediation rules the absence of a unified statutory regime led to inconsistencies in enforceability, confidentiality, accreditation, and institutional regulation. This paper undertakes a doctrinal analysis of the Mediation Act, 2023 and evaluates whether it constitutes a transformative reform in Indian dispute resolution law. It argues that the Act significantly restructures mediation by institutionalising pre-litigation mediation, codifying confidentiality protections, granting decree-like enforceability to mediated settlements, and establishing a regulatory authority in the form of the Mediation Council of India. However, the paper also contends that certain structural tensions persist, particularly regarding voluntariness in mandatory mediation frameworks, constitutional access to justice concerns, and institutional capacity challenges. By situating the Indian statute within comparative doctrinal frameworks from Singapore, the United Kingdom, and Australia, the paper concludes that the Mediation Act, 2023 is indeed a watershed moment, but its long-term normative success depends upon judicial interpretation and institutional fidelity to party autonomy.

[2257] Code of Civil Procedure 1908

[2258] Commercial Courts Act 2015, s 12A

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 6 AND ISSUE 1 OF 2026

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

https://iledu.in

I. Introduction: Mediation and the Shift from Adversarialism

The modern Indian legal system is predominantly adversarial. Litigation in civil courts is characterised by procedural complexity, prolonged timelines, escalating costs, and congested dockets. In response, the judiciary and legislature have progressively encouraged Alternative Dispute Resolution (ADR) mechanisms to supplement traditional adjudication.

Mediation, unlike arbitration, does not produce a binding adjudicatory award imposed by a third party. Instead, it is a consensual process wherein a neutral facilitator assists parties in negotiating a mutually acceptable resolution. Its normative foundation lies in party autonomy, confidentiality, flexibility, and preservation of relationships.

Despite judicial endorsement, mediation in India lacked statutory coherence for decades. Section 89 of the Code of Civil Procedure 1908 introduced ADR referrals, but implementation remained uneven. The Supreme Court in *Salem Advocate Bar Association v Union of India* [2259]upheld Section 89 and directed the framing of mediation rules. Subsequently, High Courts adopted court-annexed mediation rules. However, these rules varied across jurisdictions and lacked uniform regulatory architecture.

The introduction of Section 12A of the Commercial Courts Act 2015 marked a significant development by mandating pre-institution mediation in commercial disputes. In *Patil Automation (P) Ltd v Rakheja Engineers (P) Ltd*[2260], the Supreme Court affirmed that pre-institution mediation is mandatory and non-compliance renders the plaint liable to rejection.

However, even this development did not create a standalone mediation statute. Mediation remained legally derivative — embedded within civil procedure rather than independently structured.

The Mediation Act, 2023 fundamentally alters this structure. For the first time, mediation is recognised as an autonomous statutory regime. The Act defines mediation, prescribes procedures, establishes enforceability mechanisms, and creates regulatory oversight through the Mediation Council of India.

The central thesis of this paper is that the Mediation Act, 2023 represents a doctrinal transformation in Indian ADR jurisprudence, shifting mediation from court-annexed experimentation to statutory centrality. However, its transformative potential is contingent upon judicial interpretation, constitutional compatibility, and institutional implementation.

II. Historical and Doctrinal Foundations of Mediation in India

A. Section 89 CPC: Judicially Anchored Mediation

Section 89 CPC[2261] empowers courts to refer disputes to ADR mechanisms where elements of settlement exist. However, its drafting ambiguity led to interpretive confusion.

In *Salem Advocate Bar Association (II)*, the Supreme Court clarified that Section 89 should be read with Order X Rules 1A–1C CPC and upheld its constitutional validity. The Court recognised mediation as distinct from arbitration and conciliation.

Later, in *Afcons Infrastructure Ltd v Cherian Varkey Construction Co (P) Ltd*[2262], the Court categorised disputes suitable for ADR and

[2259] *Salem Advocate Bar Association (II) v Union of India* (2005) 6 SCC 344

[2260] *Patil Automation (P) Ltd v Rakheja Engineers (P) Ltd* (2022) 10 SCC 1

[2261] Section 89 CPC empowers courts to

[2262] *Afcons Infrastructure Ltd v Cherian Varkey Construction Co (P) Ltd* (2010) 8 SCC 24

emphasised judicial duty to encourage settlement.

Despite these pronouncements, Section 89 remained procedurally subordinate to litigation. Mediation could only occur post-institution of suit and under court supervision.

B. Commercial Courts Act 2015: Mandatory Pre-Institution Mediation

Section 12A of the Commercial Courts Act required parties to exhaust pre-institution mediation before filing commercial suits not involving urgent relief.

In *Patil Automation*, the Supreme Court held that Section 12A is mandatory and not merely directory[2263]. The Court reasoned that legislative intent to reduce commercial litigation burden justified compulsory mediation.

This decision laid constitutional groundwork for legislative expansion of mandatory mediation.

C. Fragmentation and Need for Standalone Legislation

Prior to 2023, mediation suffered from:

- Absence of uniform enforceability
- Inconsistent confidentiality norms
- Lack of central regulatory authority
- Uneven accreditation standards

The Mediation Act, 2023 addresses these lacunae.

III. The Mediation Act, 2023: Structural and Doctrinal Architecture

A. Definition and Scope: Conceptual Consolidation and Jurisdictional Reach

One of the most consequential aspects of the Mediation Act, 2023 lies in its definitional architecture. The Act does not merely recognise mediation as an informal facilitative process; it codifies a comprehensive conceptual framework encompassing facilitated negotiation, institutional mediation, community mediation, and online mediation. This expansive definition reflects a legislative intent to unify disparate consensual mechanisms under a single statutory umbrella and to detach mediation from its historically derivative association with court procedure.

The statutory definition emphasises facilitation rather than adjudication. Unlike arbitration, where a neutral third party renders a binding determination, mediation under the Act is explicitly consensual and party-driven. The mediator does not impose a decision but assists parties in arriving at a negotiated settlement. This structural distinction is critical. It preserves the doctrinal boundary between adjudicatory dispute resolution and facilitative settlement, thereby preventing conflation with arbitral processes under the Arbitration and Conciliation Act, 1996.

The Act also consciously distinguishes mediation from conciliation under Part III of the 1996 Act. While conciliation permits the conciliator to actively propose settlement terms and may carry quasi-adjudicatory undertones, mediation under the 2023 statute is anchored more firmly in neutrality and voluntary dialogue. This separation has doctrinal significance. It prevents procedural overlap and clarifies that mediation is not a subordinate subset of arbitration law but an autonomous regime.

1. Domestic and International Mediation

The Act applies to both domestic mediation and international mediation conducted in India. The inclusion of international mediation is strategically significant. It signals India's intention to position itself as a credible venue for cross-border dispute resolution.

However, the Act confines its applicability to mediations conducted within Indian jurisdiction. This territorial orientation aligns with India's current non-ratification of the Singapore Convention on International Settlement Agreements Resulting from Mediation (2019).

[2263] *Patil Automation* (2022) 10 SCC 1

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 6 AND ISSUE 1 OF 2026

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

https://iledu.in

Should India ratify the Convention, the enforceability architecture of international mediated settlements would acquire transnational dimension. Until then, enforceability remains domestically anchored.

The territorial limitation also raises a future doctrinal question: where a mediation agreement is executed partly in India and partly abroad, which enforcement framework governs? Judicial interpretation will be required to clarify jurisdictional overlaps.

2. Community Mediation

The inclusion of community mediation represents another structural innovation. Community mediation allows resolution of disputes affecting local harmony or neighbourhood relations through designated panels.

This provision reflects a revival of India's traditional consensual dispute resolution culture while embedding it within statutory safeguards. However, doctrinal caution is necessary. Community mediation must not devolve into informal coercive settlements lacking procedural fairness. The voluntary character of mediation must be preserved even at the community level.

3. Online Mediation

The statutory recognition of online mediation reflects post-pandemic adaptation and technological integration. By formally acknowledging digital platforms, the Act legitimises remote facilitation and broadens access.

However, online mediation introduces doctrinal complexities concerning confidentiality protection, digital evidence preservation, and data security. While the Act enables technological flexibility, subordinate regulations must ensure that digital mediation does not dilute confidentiality standards.

B. Pre-Litigation Mediation Framework: Structural Reorientation of Civil Justice

The institutionalisation of pre-litigation mediation represents the most significant structural shift introduced by the Act. Mediation is no longer confined to post-institution court referral under Section 89 CPC. Instead, it precedes litigation in designated categories of civil and commercial disputes.

This transformation reorients the architecture of civil justice. Rather than treating mediation as an alternative to litigation, the Act embeds it as a preliminary stage within the dispute resolution continuum.

1. From Court-Annexed to Statutorily Central

Under the earlier regime, mediation functioned reactively — courts referred parties after litigation had commenced. The 2023 Act reverses this sequencing by encouraging resolution before adversarial machinery is triggered.

This shift has both normative and practical implications. Normatively, it recognises consensual resolution as primary rather than secondary. Practically, it reduces premature adversarial escalation and associated costs.

2. Mandatory Participation and the Voluntariness Paradox

The pre-litigation framework introduces a structural paradox. Mediation is conceptually voluntary, yet participation may be mandatory in certain contexts.

The critical doctrinal distinction lies between compulsory participation and compulsory settlement. The Act mandates attempt, not agreement. Parties retain the right to withdraw or decline settlement.

This distinction is central to constitutional compatibility. Voluntariness operates at the outcome stage rather than the entry stage.

3. Constitutional Scrutiny under Article 2[2264]1

The requirement of pre-litigation mediation invites scrutiny under Article 21 of the Constitution, which encompasses the right to

[2264] Constitution of India, art 21

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 6 AND ISSUE 1 OF 2026

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

https://iledu.in

access justice. Any statutory precondition to filing suit must satisfy constitutional proportionality.

The Supreme Court's reasoning in *Patil Automation (P) Ltd v Rakheja Engineers (P) Ltd* is instructive. The Court upheld mandatory pre-institution mediation under Section 12A of the Commercial Courts Act, reasoning that procedural regulation of suit filing does not extinguish substantive rights. It merely channels their exercise.

Applying proportionality analysis:

- Legitimate Aim: Reduction of docket congestion and promotion of amicable settlement.
- Rational Nexus: Mediation demonstrably increases early resolution rates.
- Necessity: Pre-litigation mediation is less restrictive than barring litigation entirely.
- Balancing: The availability of urgent interim relief preserves meaningful access to courts.

Thus, constitutionality depends on reasonable timelines, clear exceptions, and absence of coercive settlement pressure.

4. Interaction with Limitation and Procedural Law

Another relevant doctrinal issue concerns limitation. If mediation is mandatory prior to suit, the limitation period must not expire during mediation proceedings. The Act's framework must be read harmoniously with the Limitation Act to ensure that mediation attempts do not prejudice substantive rights.

Similarly, courts must clarify whether unsuccessful mediation attempts can be raised to seek cost sanctions or influence judicial discretion.

C. Doctrinal Significance of Structural Reorientation

The combined effect of definitional consolidation and pre-litigation institutionalisation is transformative. The Act does not merely regulate mediation; it restructures its position within the justice system.

Three doctrinal consequences follow:

1. Mediation acquires statutory autonomy distinct from arbitration and conciliation.
2. It becomes a gateway mechanism in civil dispute resolution rather than a peripheral alternative.
3. It redefines the balance between adversarial adjudication and consensual settlement.

However, this structural elevation also increases the burden on institutional capacity and judicial interpretation. If implemented mechanistically, pre-litigation mediation risks becoming a procedural hurdle rather than a genuine opportunity for dialogue.

The ultimate doctrinal legitimacy of the Mediation Act, 2023 will depend on whether courts preserve mediation's consensual ethos while respecting constitutional guarantees of access to justice.

IV. Enforceability of Mediated Settlement Agreements: From Informality to Decree Status

One of the most significant doctrinal innovations of the Mediation Act, 2023 is the conferral of enforceability upon mediated settlement agreements. Prior to the Act, enforceability depended upon procedural context. If mediation occurred under Section 89 CPC and the settlement was recorded by the court, it acquired the status of a decree under Order XXIII Rule 3 CPC[2265]. However, privately mediated settlements lacked uniform enforceability unless converted into consent decrees.

The Act addresses this gap by providing that a mediated settlement agreement, once duly authenticated and signed by parties and

[2265] Code of Civil Procedure 1908, Order XXIII Rule 3

mediator, shall have the status of a decree or judgment of a court for purposes of enforcement. This provision is transformative for three doctrinal reasons.

First, it recognises mediation as a dispute resolution mechanism independent of judicial ratification. Settlement agreements are no longer derivative of court authority; they derive enforceability from statute.

Second, it reduces transactional uncertainty. Parties entering mediation now possess statutory assurance that a settlement will be executable.

Third, it aligns India with international practice, particularly with the Singapore Convention on Mediation 2019, which emphasises cross-border enforceability of mediated settlements.

However, enforceability raises complex doctrinal questions.

A. Grounds for Challenge

The Act provides limited grounds upon which mediated settlement agreements may be challenged — such as fraud, corruption, impersonation, or incapacity. This reflects a policy choice to minimise post-settlement litigation.

Yet, the narrow grounds of challenge may generate constitutional scrutiny. If mediation occurs under structural pressure or informational imbalance, overly restrictive challenge grounds may undermine substantive justice.

Courts will likely interpret challenge provisions in light of principles under Section 34 of the Arbitration and Conciliation Act 1996[2266], though mediation differs fundamentally from arbitration.

B. Interaction with Arbitration Law

Unlike arbitral awards, mediated settlements are not adjudicatory decisions. They are negotiated outcomes. Therefore, transplanting arbitration standards into mediation may be doctrinally inappropriate.

The Act's framework suggests a lighter review mechanism compared to arbitral awards. This reflects legislative intent to preserve finality and party autonomy.

V. Confidentiality Framework: Codification and Limits

Confidentiality lies at the normative core of mediation. Parties must be able to engage in candid dialogue without fear that statements will be used adversely in subsequent proceedings.

Prior to 2023, confidentiality obligations derived largely from mediation rules framed by High Courts or contractual agreements.

The Mediation Act codifies confidentiality by providing that mediation communications, proposals, admissions, and settlement discussions shall not be disclosed or admissible in evidence, except in specified circumstances.

A. Scope of Confidentiality

The Act protects:

- Written and oral communications;
- Proposals and counter-proposals;
- Admissions made during mediation;
- Settlement drafts.

This aligns with global standards such as the UNCITRAL Model Law on International Commercial Mediation 2018[2267].

B. Exceptions

The Act provides limited exceptions where disclosure may be permitted, such as:

- For implementation or enforcement of settlement;
- Where disclosure is required to prevent threat to public safety;

[2266] Arbitration and Conciliation Act 1996, s 34

[2267] UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation 2018.

- Where law mandates disclosure.

These exceptions are narrowly drawn, reflecting a strong pro-confidentiality orientation.

C. Tension with Transparency and Public Interest

Confidentiality, while essential, may create doctrinal tension in disputes involving public bodies or regulatory issues.

If state entities engage in mediation, excessive secrecy may conflict with transparency principles under Article 19(1)(a) and the Right to Information Act 2005.

Future judicial interpretation may need to balance confidentiality with public accountability.

VI. The Mediation Council of India: Institutionalisation and Regulatory Power

The Mediation Act establishes the Mediation Council of India (MCI) as a central regulatory authority.

This represents a shift from decentralised, court-controlled mediation to nationally standardised oversight.

A. Functions of the Council

The Council is empowered to:

- Recognise mediation service providers;
- Lay down mediator accreditation standards;
- Maintain mediator registers;
- Promote mediation education and research;
- Frame regulations.

This institutionalisation addresses prior fragmentation.

B. Regulatory Concerns

However, regulatory design raises doctrinal concerns:

1. Executive Influence — If appointments to the Council are executive-dominated, independence may be questioned.
2. Uniformity vs Local Flexibility — Centralised standards may not account for regional diversity.
3. Professionalisation vs Accessibility — Strict accreditation requirements may increase quality but reduce accessibility.

The success of institutional mediation depends upon balanced regulation.

VII. Mandatory Pre-Litigation Mediation: Constitutional Scrutiny

The most debated feature of the Act remains mandatory pre-litigation mediation.

A. Access to Justice and Article 21

Access to courts forms part of Article 21's guarantee of fair procedure. Any statutory barrier must satisfy proportionality.

The Supreme Court in *Patil Automation*[2268] upheld mandatory pre-institution mediation under the Commercial Courts Act, reasoning that:

- It does not bar access permanently;
- It merely postpones litigation;
- It advances legitimate public interest in reducing docket congestion.

This reasoning likely extends to the Mediation Act.

However, constitutionality depends on:

- Reasonable timelines;
- Exceptions for urgent relief;
- Non-coercive implementation.

B. Voluntariness vs Compulsion

Mediation is conceptually voluntary. Mandatory mediation appears paradoxical.

[2268] *Patil Automation (P) Ltd v Rakheja Engineers (P) Ltd* (2022) 10 SCC 1

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]
VOLUME 6 AND ISSUE 1 OF 2026
APIS – 3920 - 0001 *(and)* ISSN - 2583-2344
Published by
Institute of Legal Education
https://iledu.in

Comparative jurisprudence is instructive.

In *Halsey v Milton Keynes General NHS Trust*[2269], the English Court of Appeal held that compelling unwilling parties to mediate may infringe the right to access courts. However, it allowed cost sanctions for unreasonable refusal to mediate.

The Mediation Act adopts a softer compulsion model: parties must attempt mediation, but are not compelled to settle.

Thus, voluntariness operates at outcome stage, not entry stage.

C. Proportionality Assessment

Under proportionality:

- Legitimate aim: Reduce litigation burden.
- Rational connection: Mediation promotes settlement.
- Necessity: Less restrictive means? Possibly incentivised rather than mandatory.
- Balancing: Access delay must not be excessive.

If implemented flexibly, mandatory pre-litigation mediation likely withstands constitutional challenge.

VIII. Comparative Doctrinal Analysis: Global Mediation Frameworks

To determine whether the Mediation Act, 2023 represents a watershed reform, it is necessary to situate it within comparative mediation jurisprudence. Mediation regimes across jurisdictions differ in their treatment of enforceability, confidentiality, compulsion, and institutional regulation.

A. Singapore: Institutional Strength and International Enforcement

Singapore represents one of the most sophisticated mediation jurisdictions globally. The Singapore Mediation Act 2017[2270] codifies confidentiality, mediator immunity, and enforceability of mediated settlement agreements. Crucially, Singapore also spearheaded the United Nations Convention on International Settlement Agreements Resulting from Mediation (the "Singapore Convention on Mediation") adopted in 2019.

The Convention provides cross-border enforceability of international mediated settlements, analogous to the New York Convention for arbitral awards.

India signed the Singapore Convention in 2019 but has not yet ratified it. The Mediation Act, 2023 strengthens India's readiness for ratification by codifying enforceability mechanisms domestically. However, without ratification, Indian mediated settlements lack streamlined international enforceability.

Doctrinally, Singapore's model emphasises:

- Strong institutional mediation centres;
- Clear mediator standards;
- Judicial deference to settlements;
- International commercial integration.

India's Act mirrors many of these features, but implementation capacity remains comparatively nascent.

B. United Kingdom: Judicial Encouragement without Direct Compulsion

The United Kingdom does not have a standalone mediation statute equivalent to India's 2023 Act. Instead, mediation is embedded within civil procedure and judicial case management.

In *Halsey v Milton Keynes General NHS Trust* [2004] EWCA Civ 576, the Court of Appeal held that compulsory mediation may infringe Article 6 of the European Convention on Human Rights (right to fair trial). However, courts may impose cost sanctions for unreasonable refusal to mediate.

[2269] *Halsey v Milton Keynes General NHS Trust* [2004] EWCA Civ 576

[2270] Mediation Act 2017 (Singapore)

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 6 AND ISSUE 1 OF 2026

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

https://iledu.in

More recently, the UK Civil Justice Council has revisited the permissibility of mandatory mediation in certain civil claims, indicating evolving acceptance of structured compulsion.

The UK model thus represents a softer form of institutionalisation — encouragement through procedural consequences rather than statutory compulsion.

India's Mediation Act adopts a more explicit statutory approach, especially in pre-litigation mediation.

C. Australia: "Genuine Steps" Legislation

Australia's Civil Dispute Resolution Act 2011[2271] (Cth) requires parties to file a "genuine steps statement" before commencing proceedings in federal courts, demonstrating efforts to resolve disputes.

The High Court of Australia has upheld such frameworks as legitimate procedural regulation.

This model closely parallels India's pre-litigation mediation structure under both the Commercial Courts Act and the Mediation Act.

Australia demonstrates that structured pre-litigation ADR does not necessarily undermine constitutional access to courts.

D. Canada: Mandatory Mediation Programmes

Ontario's Mandatory Mediation Program under Rule 24.1 of the Ontario Rules of Civil Procedure[2272] requires mediation in certain civil cases.

Canadian courts have generally upheld mandatory mediation frameworks, recognising them as procedural devices aimed at efficiency and cost reduction.

India's Act aligns more closely with Australia and Canada than with the UK model.

IX. Structural Gaps and Doctrinal Uncertainties

While the Mediation Act, 2023 is comprehensive, certain structural ambiguities remain.

A. Scope of Disputes

The Act excludes certain disputes — such as criminal matters and disputes involving serious public law elements. However, borderline cases may generate interpretive uncertainty.

For example, disputes involving regulatory penalties or statutory rights may blur the line between private settlement and public interest adjudication.

Judicial interpretation will be crucial in defining arbitrability-like limits for mediation.

B. Power Imbalances and Procedural Safeguards

Mediation presupposes parity in bargaining power. In employment disputes, matrimonial conflicts, or small-business versus corporate disputes, asymmetry may distort voluntariness.

The Act does not extensively codify safeguards against coercive settlements. While mediator neutrality is assumed, institutional training and oversight will determine fairness.

Courts may be called upon to develop doctrines protecting substantive justice within consensual frameworks.

C. Mediator Immunity and Accountability

The Act provides certain protections to mediators acting in good faith. However, the contours of mediator liability remain underdeveloped.

Excessive immunity may reduce accountability, while excessive exposure may deter professionals.

Balanced judicial development is required.

D. Over-Institutionalisation Risk

Institutionalisation strengthens credibility but may also bureaucratise mediation.

If procedural formalities become rigid, mediation risks resembling arbitration-lite rather than flexible negotiation.

[2271] Civil Dispute Resolution Act 2011 (Cth) (Australia)
[2272] Ontario Rules of Civil Procedure, RRO 1990, Reg 194, r 24.1.

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 6 AND ISSUE 1 OF 2026

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

https://iledu.in

Maintaining procedural elasticity is essential.

X. Normative Evaluation: Is the Mediation Act Truly a Watershed?

To evaluate whether the Mediation Act, 2023 constitutes a watershed reform, one must examine structural transformation rather than mere statutory novelty.

The Act achieves five transformative shifts:

1. **Autonomous Recognition** — Mediation is no longer procedurally subordinate to civil litigation.
2. **Statutory Enforceability** — Settlements gain decree-like status without court conversion.
3. **Pre-Litigation Centrality** — Mediation precedes, rather than follows, litigation.
4. **Regulatory Architecture** — Establishment of a national Mediation Council.
5. **Technological Integration** — Recognition of online mediation.

However, transformation is incomplete without:

- Ratification of the Singapore Convention;
- Robust accreditation standards;
- Judicial interpretive consistency;
- Safeguards protecting voluntariness.

In doctrinal terms, the Act signals a shift from adversarial dominance to consensual centrality. Whether this shift materialises in practice depends on institutional integrity.

XI. Interaction Between the Mediation Act, 2023 and the Arbitration and Conciliation Act, 1996

The enactment of the Mediation Act, 2023 introduces a distinct statutory regime for mediation within Indian dispute resolution law. However, the Arbitration and Conciliation Act, 1996 (hereinafter "the 1996 Act") already contains a framework for conciliation under Part III, and arbitration clauses in commercial contracts frequently incorporate multi-tier dispute resolution mechanisms requiring negotiation or mediation prior to arbitration. The coexistence of these legislative frameworks necessitates careful doctrinal examination.

The interaction between the Mediation Act, 2023 and the 1996 Act raises four principal questions:
(1) Does the 2023 Act diminish or displace conciliation under the 1996 Act?
(2) How should hybrid or multi-tier dispute resolution clauses be interpreted post-2023?
(3) What is the relationship between mediated settlements and arbitral awards on agreed terms?
(4) Does mediation affect arbitral jurisdiction, limitation periods, or kompetenz-kompetenz principles?

A close doctrinal analysis suggests that the two statutes are complementary but structurally distinct.

A. Mediation and Conciliation: Conceptual and Statutory Distinctions

Part III of the 1996 Act governs conciliation. Under Section 61, parties may initiate conciliation proceedings by agreement. Section 73 provides that a settlement agreement resulting from conciliation shall have the same status and effect as an arbitral award on agreed terms under Section 30. This effectively grants conciliated settlements enforceability akin to arbitral awards.

At first glance, the Mediation Act, 2023 appears to overlap significantly with this framework. Both mediation and conciliation are consensual, non-adjudicatory processes culminating in negotiated settlements. Both grant enforceability to settlement agreements.

However, doctrinal differences remain significant.

First, conciliation under the 1996 Act is embedded within the broader arbitration statute. It is frequently used in commercial

contexts connected to arbitration clauses. Mediation under the 2023 Act, by contrast, is autonomous and applies broadly across civil and commercial disputes.

Second, the conciliator under the 1996 Act is permitted to actively propose settlement terms (Section 67). Mediation under the 2023 Act emphasises facilitative neutrality. While the mediator may assist parties, the statutory tone favours dialogue rather than evaluative proposal.

Third, conciliation settlements derive enforceability by analogy to arbitral awards. Mediated settlements derive enforceability directly from statute as decree-equivalent instruments.

Thus, the Mediation Act does not repeal or impliedly override conciliation under the 1996 Act. Rather, it establishes mediation as a parallel and broader mechanism, leaving conciliation intact for arbitration-linked contexts.

B. Multi-Tier Dispute Resolution Clauses

Modern commercial contracts frequently contain multi-tier clauses requiring negotiation, mediation, and then arbitration. The Mediation Act, 2023 affects the interpretation of such clauses.

Prior to 2023, the enforceability of pre-arbitration mediation clauses depended largely on contractual interpretation. Courts sometimes treated such clauses as directory unless sufficiently precise. However, the statutory recognition of mediation strengthens the enforceability of mediation-first clauses.

A key question arises: If a contract mandates mediation prior to arbitration, does failure to mediate affect arbitral jurisdiction?

Under the doctrine of kompetenz-kompetenz[2273], arbitral tribunals may rule on their own jurisdiction. Post-2023, arbitral tribunals may be more inclined to treat mandatory mediation clauses as jurisdictional preconditions.

However, Indian jurisprudence has traditionally distinguished between procedural conditions precedent and substantive jurisdictional bars. Courts may interpret mediation clauses as procedural obligations whose breach does not nullify arbitral jurisdiction but may result in cost consequences or temporary stay.

The Mediation Act strengthens the normative weight of mediation clauses, but it does not automatically transform them into absolute jurisdictional barriers unless the contractual language is unequivocal.

C. Settlement Enforceability: Decree Status versus Arbitral Award

A critical doctrinal comparison lies between mediated settlement agreements under the 2023 Act and arbitral awards on agreed terms under Section 30 read with Section 73 of the 1996 Act.

Under the 1996 Act:

- A conciliation settlement has the status of an arbitral award.
- Such award may be challenged under Section 34 on specified grounds including public policy.

Under the 2023 Act:

- A mediated settlement agreement is enforceable as if it were a decree of court.
- Grounds for challenge are narrower (fraud, corruption, impersonation, incapacity).

This divergence reflects legislative design. The Mediation Act prioritises finality and minimal judicial interference, whereas arbitration law preserves broader supervisory review.

Doctrinally, this raises a question: Is a mediated settlement less susceptible to judicial review than a conciliated settlement under the 1996 Act?

If so, parties may strategically prefer mediation under the 2023 Act over conciliation under the 1996 Act to minimise challenge exposure. Courts

[2273] Arbitration and Conciliation Act 1996, s 16

will need to harmonise these regimes to prevent forum-shopping distortions.

D. Limitation and Suspension Issues

Another important interaction concerns limitation periods. Under arbitration law, Section 43 of the 1996 Act applies the Limitation Act to arbitral proceedings.

The Mediation Act, 2023 must be read harmoniously with limitation principles. If mediation is undertaken prior to arbitration or litigation, limitation must either be suspended or excluded during mediation proceedings. Otherwise, mandatory mediation could prejudice substantive rights.

Although the Act provides a framework for pre-litigation mediation, judicial clarification may be necessary to confirm whether mediation proceedings constitute "prosecution of a proceeding" for purposes of Section 14 of the Limitation Act[2274].

Without such protection, parties may hesitate to engage in mediation due to limitation risk.

E. Kompetenz-Kompetenz and Judicial Referral

The Arbitration and Conciliation Act embodies minimal judicial intervention (Section 5) and kompetenz-kompetenz under Section 16. The Mediation Act introduces structured pre-litigation mediation but does not displace arbitral autonomy.

Where a dispute is subject to an arbitration agreement, courts referring parties to arbitration under Section 8 of the 1996 Act must consider whether mediation should precede arbitration.

The 2023 Act does not expressly mandate mediation prior to arbitration. Therefore, unless contractually stipulated, mediation does not override arbitration agreements.

This preserves party autonomy in arbitration while expanding mediation's availability in non-arbitral disputes.

F. Normative Coexistence: Complementarity Rather than Conflict

The Mediation Act, 2023 should be interpreted as complementary to the 1996 Act rather than competitive.

Arbitration remains adjudicatory and binding. Conciliation remains available within arbitration frameworks. Mediation now stands as an autonomous, facilitative alternative.

The three mechanisms may be conceptualised as forming a spectrum:

- Mediation — facilitative and dialogue-driven.
- Conciliation — facilitative with evaluative capacity.
- Arbitration — adjudicatory and binding.

This structural spectrum enhances party choice and strengthens India's ADR architecture.

However, careful judicial harmonisation is required to:

- Avoid doctrinal overlap,
- Clarify challenge mechanisms,
- Protect limitation rights,
- Prevent procedural abuse.

XII. Conclusion

The Mediation Act, 2023 marks a decisive structural shift in Indian dispute resolution jurisprudence. For decades, mediation functioned as a procedural adjunct — embedded within Section 89 of the Code of Civil Procedure or scattered across judicially framed rules. The 2023 Act transforms this fragmented landscape into a coherent statutory architecture. Mediation is no longer derivative of litigation; it is recognised as an autonomous, enforceable, and institutionally regulated mechanism.

Three structural consequences follow from this transformation.

[2274] Limitation Act 1963, s 14

First, mediation acquires statutory legitimacy independent of judicial ratification. The conferral of decree-like enforceability upon mediated settlement agreements elevates consensual outcomes to the same enforcement plane as adjudicatory decrees. This reform enhances certainty, reduces transactional risk, and aligns India with international mediation standards.

Second, the institutionalisation of pre-litigation mediation reorders the dispute resolution sequence. By positioning mediation as a preliminary step rather than a post-institution referral, the Act signals a normative shift from adversarial primacy toward consensual resolution. This recalibration reflects legislative recognition that adjudication should be the culmination of dispute resolution, not its default starting point.

Third, the creation of the Mediation Council of India introduces regulatory coherence into a previously decentralised ecosystem. Standardisation of accreditation, recognition of mediation service providers, and structured oversight collectively address historical fragmentation.

Yet, the Act's transformative ambition is accompanied by doctrinal tensions.

Mandatory pre-litigation mediation tests the constitutional boundaries of access to justice under Article 21. While the reasoning in *Patil Automation* provides strong jurisprudential support for structured procedural preconditions, the constitutional legitimacy of the Act ultimately depends upon proportional implementation. Mediation must remain an opportunity for dialogue, not a procedural obstacle.

Similarly, the conferral of decree status upon mediated settlements narrows judicial review. While finality promotes efficiency, courts must remain attentive to situations involving coercion, structural inequality, or informational imbalance. The legitimacy of mediation rests upon genuine consent.

The interaction between the Mediation Act and the Arbitration and Conciliation Act, 1996 further illustrates the layered architecture of Indian ADR. Mediation 7, occupies a facilitative space distinct from both conciliation and arbitration. If harmonised carefully, this plurality enhances party autonomy and diversifies dispute resolution pathways without generating institutional conflict.

Comparatively, India's model aligns more closely with structured pre-litigation regimes in Australia and Canada than with the historically cautious approach of the United Kingdom. However, full integration into the global mediation ecosystem will require ratification of the Singapore Convention and sustained institutional investment.

Whether the Mediation Act, 2023 ultimately becomes a watershed reform depends not merely on statutory text but on interpretive practice. If courts preserve voluntariness, ensure proportionality, and maintain doctrinal coherence across ADR regimes, mediation may emerge as a central pillar of Indian civil justice. If, however, institutionalisation ossifies into bureaucratic rigidity, the Act risks converting a flexible consensual process into procedural formality.

The Mediation Act, 2023 therefore represents not the end of reform, but the beginning of doctrinal development. Its success will be measured not only by reduced case backlogs, but by the extent to which it preserves the foundational ethos of mediation — autonomy, fairness, and consensual justice.