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A CRITICAL ANALYSIS OF THE MEDIATION ACT, 2023: SCOPE, STRENGTHS, AND CHALLENGES

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ABSTRACT

The introduction of the Mediation Act, 2023 is a big step in turning alternative dispute resolution (ADR) into a standard practice that the institution of a judge could be relieved of the previously significant part of its work (institutionalization of amicable settlements). This study focuses on scope, strengths and challenges of the Act and provides an in-depth analysis of the law of the Act, its procedural processes, and the factual implications. The study goes into a description of the Act, its objectives, definitions and applicability in civil, commercial and other non-criminal disputes. It goes on to consider the procedural framework, which includes positions of mediators and their confidentiality, interactions with the court, and the binding of settlements made in the mediation. A review shows that this Act is rather clear in the legal, standardized, and flexible sense, which encourages the use of ADR as a powerful alternative to lawsuits. It is also likely that it will be employed to resolve disputes because of its focus on confidentiality, party independence, and its alignment with the international mediation practices. Nonetheless, there are also considerable challenges associated with the Act such as the shortage of trained mediators, scopes ambiguity, structural limitation, cultural aversion to mediation and mediated agreement enforcement. The study suggests the way forward in the legal reform, capacity building as well as institutional strengthening with the implication that empirical evaluation and continuous monitoring is essential in maximising the implementation of the Act. This paper contributes to the scholarly community on ADR legislation and provides a critical, holistic overview of ADR legislation to identify the transformational potential of the Mediation Act, 2023 in terms of the accessibility, efficiency, and conciliability of the justice system.

Keywords: Mediation Act 2023, Alternative Dispute Resolution, Confidentiality, Settlement Agreements, Court-Referred Mediation, Private Mediation, Civil Disputes, Commercial Disputes

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BACKGROUND

The Mediation Act, 2023, which has been passed by the Indian Parliament and has been given the presidential assent on September 15, 2023, is a considerable piece of legislation to institutionalize the mediation as a leading form of ADR in India. It tries to take the pressure off the already overstretched judicial system through facilitating voluntary, efficient, and confidential resolutions of civil and commercial disputes. The Act is based on previous frameworks that include Sec. 89 of the Code of Civil Procedure, 1908, which proposed mediation but did not regulate it much. It is also consistent with the signing of the UN Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention) in which India remains pending to be ratified.[1]

In its 117th report, the Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice reviewed the Mediation Bill, 2021 and advised the development of the Act. In this state report, it was noted that there was a necessity of a special law that will help in eliminating backlog in judicial systems and encourage the use of ADR. According to the official data published by the National Judicial Data Grid (NJDG) which is a governmental initiative under the eCourts Project of the Department of Justice, the urgency is noted, As of April 27, 2024, there are approximately 4.48 crore pending cases across Indian courts including 1.11 crore civil cases and 3.37 crore criminal cases. Such backlog gives greater importance to the Act in promoting quicker resolutions, and mediation is perceived to be a mechanism of minimizing pendency and boosting access to justice under Art. 21 of the Constitution.[2]

The pre-Act potential of mediation is further demonstrated in governmental statistics of the National Legal Services Authority (NALSA), where between April 2022 and June 2023, only an estimated 0.11 million cases were resolved by mediation, which is small compared to the number of outstanding civil cases in that timeframe of over 10 million. Although post-Act statistics up to 2024 indicate a positive trend, 92,446 disputes were resolved in 20222023 (7.14% increase), and 48,480 in the first half of 2024 (only). These data are based on official ADR reports and demonstrate an increase in their use during the country of 460 ADR centers (425 operating) and more than 25,000 trained mediators (as at 2024).[3]

The Act is a wide but narrow applicant in that it only applies to mediations carried out in India, which concerns civil, commercial and some international disputes. It defines mediation inclusively under Sec. 2(h) as a voluntary process where a neutral third party facilitates amicable resolutions without imposing decisions, encompassing pre-litigation mediation, online mediation, community mediation, and conciliation (aligning with the Arbitration and Conciliation Act, 1996). Applicability extends to disputes where parties reside, are

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[1] Nikhilesh Koundinya & Mustafa Bohra, *Early Neutral Evaluation – A Much-Needed Form Of Alternate Dispute Resolution In India*, *Solomon & Co. (Insights)*, https://solomonco.in/early-neutral-evaluation-a-much-needed-form-of-alternate-dispute-resolution-in-india/ (last visited Nov. 15, 2023).

[2] *Id.*

[3] *Litigation & Dispute Resolution Laws and Regulations 2025 – India*, Global Legal Insights (Aug. 14, 2023), https://www.globallegalinsights.com/practice-areas/litigation-and-dispute-resolution-laws-and-regulations/india/ (last visited Nov. 15, 2023).

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incorporated, or conduct business in India; where a mediation agreement specifies the Act; or in international mediations held in India (Sec. 2).[4]

Key inclusions cover commercial disputes involving the government (such as under the Commercial Courts Act, 2015) and allow central/ state governments to notify additional categories. However, Schedule I excludes serious matters, such as criminal offenses, disputes affecting third-party rights, tax/ land acquisition cases, and those involving minors or persons with disabilities, ensuring public interest protection. Pre-litigation mediation is encouraged (Sec. 5), with mandatory application in commercial suits per court ruling in *Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd.*,[5] though voluntary overall.

NJDG reports as of 2024 show 72.75% of civil cases (over 80 lakh) and 75.58% of criminal cases (over 2.77 crore) pending for more than a year, highlighting the need for ADR in non-criminal, consensual disputes. The Act's focus on institutional mediation via the Mediation Council of India (MCI) and Mediation Service Providers (MSPs) aims to standardize processes, but as of 2024, the MCI remains constituted, limiting full implementation.[6]

STRENGTHS OF THE MEDIATION ACT, 2023

The advantages of the Act are that it includes a comprehensive framework that fills in the gaps in ADR that have existed since ancient times and encourages efficiency. Key positives include:

- *Enforceability and Finality:* Mediated Settlement Agreements (MSA) may be enforced by a court finding (Sec. 27), with fraud, corruption, or impersonation being the only challenges that can be made during 90 days (Sec. 28). This will give it legal assurance, improving business confidence, and complying with international norms, including Singapore Convention.

- *Time Constrained and Open Process:* Mediation has to be finalized within 120 days (can be prolonged to 60) and the time taken is less than litigation, on average civil cases in NJDG data take 3-5 years to be disposed of. As a means of increasing accessibility, online mediation (Sec. 30) is particularly useful after the COVID crisis with 67.98% of pre-litigation cases that are still pending more than one year potentially serving a purpose through digital platforms.[7]

- *Confidentiality and Party Autonomy:* Strict confidentiality (Sec. 22) fosters open dialogue, while party-driven mediator selection and voluntary participation preserve autonomy, core to mediation's success.

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[4] Chakrapani Misra & Ananya Misra, Mediation in India: A Critical Analysis of Progress and Potential, *Khaitan Compass*, https://compass.khaitanco.com/mediation-in-india-a-critical-analysis-of-progress-and-potential (last visited Nov. 15, 2023).

[5] CIVIL APPEAL NO. ______ OF 2022 (Arising out of SLP (C)No. 14697 of 2021).

[6] *Supra* note 1.

[7] Shirin Khajuria, *Reimagining Justice Through Mediation – An Analysis of the Mediation Act, 2023*, Law School Policy Review, https://lawschoolpolicyreview.com/2025/08/08/reimagining-justice-through-mediation-an-analysis-of-the-mediation-act-2023/ (last visited Nov. 15, 2023).

- *Judicial Integration and Burden Reduction:* Courts can refer cases (Sec. 7), and pre-litigation mandates deter frivolous suits. In 2023-2024, resolutions increased by 7.14%, with over 48,000 in early 2024, per ADR reports. This supports SDG 16 goals, as noted in governmental policy documents.[8]

INSTITUTIONAL AND PROCEDURAL FRAMEWORK

The mediation process has been designed through the institutional and procedural framework of the Mediation Act, 2023, as such to set up a balance between the autonomy of parties and regulatory discipline. The mediation may be initiated either by a written mediation agreement, either a Mediation agreement as it is, or a provision in a contract, or where there is neither a mediation agreement nor a conditional agreement between the litigant and the mediation service provider by the date a consent to serve is given by the mediator or the mediator is appointed by a mediation service provider. This is a statutory mechanism of commencement which provides certainty as to the time when statutory factors, including confidentiality and chronologies, come into force. The mediation proceedings shall have a time limit of 120 days since the first appearance of the mediator which can be prolonged by a 60-day period with the mutual consent which provides much-needed time frame to the processes which have no formal time limits.[9]

Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. Pvt. Ltd.,[10] has underscored the court's role in facilitating out-of-court settlements, a jurisprudential posture that complements the Act's design to integrate mediation with existing court processes. Mediators, the secrecy of the settlement, and binding of the settlement agreements are also the key to the procedural integrity of the Act. They should require mediators to act unilaterally, neutrally, and impartially and they should disclose any conflict of interest and this should be done in writing, these standards are an imitation of the international standards, and these standards serve to promote procedural fairness and no adjudicatory capacity. The Act does not subject the mediators to the Code of Civil Procedure, 1908, which adds weight to the informality and flexibility that form the most appealing aspects of mediation. All communications made during mediation are confidential and discoverable in neither a court of law nor an arbitral procedure, which means that confidentiality and privilege are statutorily safeguarded, and, subject to a number of exceptions, including threats of violence or other safety considerations, candor is encouraged without risking legal bias to the case of an individual party.[11]

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[8] *Id.*
[9] *India – Litigation & Dispute Resolution Laws And Regulations 2024*, Conventus Law, at https://conventuslaw.com/report/india-litigation-dispute-resolution-laws-and-regulations-2024/ (last visited Nov. 15, 2023).
[10] (2010) 8 SCC 24.
[11] *Supra* note 9.

CHALLENGES AND CRITICISMS

The Act has its strong points, but has challenges to implementation and has design weaknesses, as it has been analyzed in governmental and analytical reports. Non-coverage of government non-commercial disputes neglects standing committee recommendation, creating the backlog as government entities generate much litigation. Specialized tribunals (like SEBI, TRAI) are omitted, although they are successful in their mediation. The voluntariness of pre-litigation mediation can break down in the case of low awareness; as of 2022, of the 43,698 commercial cases mediated in English by the Commercial Courts Act, 813 were successful. In ADRs of 2024, regional inequalities still exist, with such States as Maharashtra doing well, and Arunachal Pradesh doing poorly. The absence of MCI regulations on qualification/ remuneration of mediators stands a chance of inconsistency. Having 21 judges per million (compared to ideal 50), the transition of mediation relies on the need to train 25,000 or more mediators. The problem of affordability in private mediation occurs. No international enforcement on foreign MSAs in India will create international appeal in contrast to ratified Singapore Convention countries.[12]

The implementation of the Mediation Act, 2023, while ambitious in scope, is confronted with significant operational challenges. Foremost among these is the shortage of adequately trained mediators, which undermines the Act's capacity to facilitate efficient dispute resolution. Judicial pronouncements, such as in *Salem Advocate Bar Association v. Union of India*,[13] have repeatedly emphasized that the success of ADR mechanisms depends on the competency, impartiality, and good moral of mediators. Nevertheless, lack of standardisational accreditation and formalities of training still hinder practical application of the goals of the Act. A similarly disturbing fact is the absence of institutional infrastructure such as the court-annexed mediation centers and administrative support, which lowers the accessibility and the credibility of the mediation as a dispute resolution tool. The institutional preparedness gap tends to create delays in the procedures, which undermine the trust of litigants, and the likelihood of the wide adoption chance.

Legally and procedurally, there are some ambiguities and gaps in the Mediation Act, 2023 that can undermine its enforceability. The breadth of the Act, especially its exclusions and scope over particularized disputes is still prone to interpretational difference, and this might have to be decided by the courts on a case-by-case basis. For instance, judicial scrutiny in *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co.*[14] highlighted the challenges posed by overlapping procedural regimes in ADR and civil litigation. Moreover, even though the Act acknowledges the enforceability of the mediated settlements, there are uncertainties in the enforcement processes such as the certification process and the judicial control that creates practical challenges, which may jeopardize the enforceability of the agreements. This provides a condition where litigation can be chosen over mediation because there is no certainty of enforcement.

In addition to structural and procedural obstacles, the Act faces cultural and social obstacles that cannot facilitate its transformative value. There is still a tendency not to adopt non-adversarial processes (especially

[12] *Supra* note 4.
[13] (2005) 6 SCC 344.
[14] (2010) 8 SCC 24.

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when litigants are used to the old-fashioned adversarial systems). Judicial commentary in *Hindustan Construction Co. Ltd. v. State of Bihar*[15] acknowledges that socio-legal attitudes significantly influence the efficacy of ADR mechanisms. Also, the asymmetry of power among the sides can make the mediated settlement not to be so fair and questions the substantive justice. The interaction between the Act and other legal regimes, such as the codes of civil procedure and specific dispute resolution frameworks utilized in particular sectors, makes its application even more complicated, which creates the risk of conflict or duplication of the procedure. The fact that these issues are not evaluated empirically and lacking systematic observation of their effects, the judicial system and policy makers do not have the solid data on mediation results, implementation level, and contentment of the parties and, therefore, cannot implement any changes in a manner that would improve the effectiveness of the Act.

COMPARATIVE ANALYSIS

Comparative law jurisdictions (Singapore, UK and India) provide a contrasting view of legislative philosophy and judicial interpretation in the context of the Mediation Act, 2023, that highlights the opportunities and the traps of the Mediation Act, 2023. The mediation system in Singapore is one of the most institutionalized and globally integrated, in addition to domestic Mediation Act and well developed institutional infrastructure (such as Community Mediation Centres and Singapore Mediation Centre), Singapore has incorporated the Singapore Convention on Mediation into the national law under the Singapore Convention on Mediation Act, 2020, making international commercial settlement agreements have a clear and treaty based enforcement mechanism across the states of the contract. This regime lowers uncertainty in cross border disputes and makes mediation a major dispute resolution vehicle in international business, providing an example of enforceability and institutional assistance that is still a dream in many jurisdictions. By contrast, UK has built its mediation infrastructure based on procedural legislative structures led by courts instead of on a statute-only basis. Courts are now prolific in encouraging, and under some circumstances, enforcing, mediation under the Civil Procedure Rules (CPR), with cost penalties being applied by the courts to litigants unwilling to engage in ADR, reasonably or otherwise, thus mediation has been a trend being reinforced by the recent amendments to the CPR. Judicial decisions, such as in *DKH Retail Ltd. & Ors. v. City Football Group Ltd.*,[16] reflect an evolving willingness of English courts to order mediation and integrate ADR into litigation strategy, a development that promotes efficiency while preserving party autonomy. Further, mediation of settlement agreements in the UK are generally being enforced using contractual and procedural methods as opposed to enforcing treaties, which limits their use in comparison to the Singapore Convention regime and puts the subject of cross border enforceability and uniformity in question.

These jurisdictional lessons can be used to recommend informative best practices on how to enhance the Mediation Act, 2023. Institutionalization of mediation, via formalized accreditation of mediators,

[15] (2011) 13 SCC 689.
[16] [2024] EWHC 3231 (Ch).

professional organizations, and specific centres (as the case in Singapore and facilitated in the UK by bodies, such as Civil Mediation Council) may, first, improve professional standards, public trust, and predictability of results. Second, the existing gaps in cross border enforceability as observed by commentators including gaps in international enforcement frameworks like the Singapore Convention can be addressed by making the mediated settlements considered as court judgments not gap subject to the framework as it potentially limits its applicability in international commercial disputes. Third, the judicial encouragement model of UK puts more emphasis on the usefulness of procedural incentives, like cost sanctions of non-engagement, that contribute to the adoption of mediation without interfering with the voluntariness.[17]

CONCLUSION & A WAY FORWARD

Although the Mediation Act, 2023, is a promising move towards institutionalizing alternative dispute resolution as a new law, it also reflects itself as a law with potential and limitations. The fact that it codifies mediation processes, identifies settlement agreements and focuses on confidentiality all make it a systematic framework that promotes access to justice and judicial effectiveness. The positives of the Act are that it has helped to promote party autonomy, reduced the litigation backlog and accords with the global best practice in ADR. However, a critical evaluation demonstrates that there are systemic and procedural gaps, deficiencies in the scope, a few enforcement mechanisms, insufficient mediator capacity and sociocultural obstacles to voluntary dispute resolution that limit its effectiveness in operational performance. These predicaments highlight the incongruity between legislative intention and practice and is one of the long-running conflicts between formal legal frameworks and the forces of dispute settlement in a plural socio-legal context.

An institutional and normative change is required to take a wide-looking strategy. What should be legally done is to shed more light on the scope of the Act, increase the enforceability of mediated settlements and align the provisions of the Act with the current law of procedure and to give it the necessary doctrinal certainty. At the institutional level, the organization of accredited mediating centers, strong training to become a mediator and the possibility of the constant monitoring of the process are the keys to the maintenance of procedural fidelity and credibility. At the same time, evidence-based policy development would be encouraged through public awareness and education campaigns to encourage cultural acceptance of mediation and empirical studies of their results.

[17] *Id.*