

Original Article

The Mediation Act, 2023: A New Era for Alternative Dispute Resolution in India

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Abstract:

The Mediation Act, 2023 marks a significant milestone in India's developing legal system by establishing a comprehensive and standalone law focused on mediation as a key part of Alternative Dispute Resolution (ADR). Amid an overburdened judiciary, where over 4.7 crore cases are reportedly pending in various courts, the Act aims to institutionalize mediation as a mainstream, timely, cost-effective, and user-friendly way to settle civil and commercial disputes (SCHNABEL, 2019a). This research paper offers a detailed and critical analysis of the Act's structure, goals, and effects. It begins by examining the main provisions of the legislation, including the voluntary nature of pre-litigation mediation, the creation of the Mediation Council of India, the enforceability of mediated settlement agreements (MSAs), and the introduction of online and community mediation. The Act also seeks to simplify procedural timelines (with mediation to be completed within 180 days), guarantees confidentiality, and sets standards for mediator qualifications and institutional procedures (Chaisse & Ji, 2023). A significant portion of the paper is dedicated to evaluating the Act's alignment with international legal frameworks, particularly the Singapore Convention on Mediation and the UNCITRAL Model Law, and comparing Indian law with global best practices. While the Act is seen as a forward step toward improving access to justice and easing court congestion, several key challenges remain (YORK, 2024). The paper points out areas of concern and ambiguity, such as:

- The lack of recognition for international MSAs made outside India, despite India being a signatory to the Singapore Convention.
- Vague rules regarding "exceptional circumstances" to bypass mediation.
- Insufficient guidelines on mediator appointment, neutrality, and accreditation.
- Risks of judicial overreach in enforcement and appeals.
- The digital divide, which could hinder the success of online mediation, especially in rural and under-resourced regions.
- Exclusion of certain dispute types, which might limit mediation's reach for vulnerable populations.

In its concluding sections, the paper provides a set of policy recommendations aimed at strengthening the Mediation Act's implementation. These include greater clarity in procedural provisions, inclusion of international MSAs under enforceable categories, broader outreach and training programs to build public trust in mediation, and the need for infrastructural investment to enable inclusive and technology-driven dispute resolution (GARG, 2008).

Keywords: Mediation, MSA, ADR, Pre-litigation, Singapore Convention, UNCITRAL Model Law.

Introduction

Importance of ADR in a justice-delayed system

In many countries, the legal system is plagued by delays due to a backlog of cases, limited judicial resources, and procedural complexities. In such a **justice-delayed system**, **Alternative Dispute Resolution (ADR)** becomes not just an alternative, but often a necessity (Coben, 2019). Here's why ADR is crucial: ADR mechanisms like mediation, arbitration, and conciliation help divert a significant number of cases away from traditional courts.

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This reduces the caseload on judges and allows courts to focus on more serious or complex matters (Chaisse & Ji, 2023). Traditional litigation can take years or even decades to conclude. ADR processes are generally much faster, ensuring that parties get timely relief and justice. Court proceedings often involve high legal fees, court costs, and other expenses. ADR is typically less expensive because it is quicker and less formal, reducing financial burdens on the parties involved. For many, especially marginalized communities, the formal legal system may be inaccessible due to cost, language barriers, or complexity. ADR offers a more approachable and user-friendly alternative, enhancing overall access to justice. ADR allows parties to resolve disputes in a more flexible setting, with procedures tailored to their specific needs (SCHNABEL, 2019a). This informality can be less intimidating and more conducive to open dialogue. ADR methods like mediation and conciliation are non-adversarial and encourage cooperation (Stipanowich, 2021). This is especially important in disputes involving family, neighbours, or business partners, where maintaining ongoing relationships is key. In arbitration, the decision (award) is usually binding and enforceable in courts, giving it legal strength. This helps ensure that the resolution is respected and implemented, reducing the risk of prolonged disputes. Unlike court proceedings, ADR is private and confidential (Hioureas, 2019). This protects the reputations and sensitive information of the parties involved, making it ideal for business and personal disputes (SCHNABEL, 2019b). In a justice-delayed system, **ADR is not merely an alternative it is an essential supplement** to the traditional legal framework. It provides **speed, efficiency, accessibility, and flexibility**, ensuring that justice is **not only done but seen to be done in a timely manner** (*ADR Mechanism in India: Achievements and Challenges - The Legal Quorum*, n.d.). Promoting ADR can significantly improve the overall health and credibility of the justice system.

Objectives of the Study

- To Examine the Legislative Intent Behind the Mediation Act, 2023.
- To Study the Key Provisions and Features of the Mediation Act, 2023
- To Assess the Potential Impact of the Act on the Indian Justice Delivery System
- To Compare the Indian Mediation Framework with International Practices
- To Identify Challenges and Limitations in the Implementation of the Act
- To Suggest Reforms and Policy Recommendations for Strengthening Mediation in India

Historical context: From Section 89 CPC to the Mediation Act, 2023

The evolution of **Alternative Dispute Resolution (ADR)** in India reflects a growing recognition of the need for timely, accessible, and less adversarial forms of justice (Godavari & Agencies, 1972). The journey from **Section 89 of the Civil Procedure Code (CPC), 1908**, to the enactment of the **Mediation Act, 2023**, marks a significant shift toward institutionalizing and strengthening ADR mechanisms especially **mediation** in the Indian legal framework (*THE CODE OF CIVIL PROCEDURE (AMENDMENT) ACT, 2002*, 2002). In response to the mounting backlog in Indian courts and the need for alternative means of dispute resolution, **Section 89** was introduced through the **CPC (Amendment) Act, 1999**, and came into force in **2002** (Nadu & Chatterjee, 2005). Section 89 empowers courts to refer cases for **settlement outside the court** through:

- Arbitration
- Conciliation
- Judicial settlement (including Lok Adalats)
- Mediation

The impact of these methods are remarkable. It provided **statutory recognition** to ADR processes. However, lack of clarity in procedural rules, inconsistent implementation, and inadequate infrastructure limited its effectiveness in promoting structured mediation (*The Legal Services Authorities Act, 1987, 2003*). In **Salem Advocate Bar Association v. Union of India (2003 & 2005)** The Hon'ble Supreme Court upheld the constitutional validity of Section 89 CPC. It directed the formulation of **model mediation rules** and training programs for mediators (*THE LEGAL SERVICES AUTHORITIES ACT, 1987, 1987*). Following judicial directions, several **court-annexed mediation centres** were established across the country, especially at district and High Court levels. The **National Legal Services Authority (NALSA)** played a key role in promoting mediation and Lok Adalats for amicable settlement of disputes (*The Legal Service Authorities (Amendment) Act 1994, 1994*).

Challenges in the implementation U/S 89

- **Ambiguity in Law:** Lack of clear procedural guidelines for referral and conduct of mediation.
- **Lack of Uniformity:** States followed different rules, leading to inconsistencies.
- **Non-binding Nature:** Mediation outcomes often lacked legal enforceability unless made part of a court decree.

- **Training and Infrastructure Gaps:** Limited availability of trained mediators and institutional frameworks.

The Mediation Act 2023: A Landmark Reform

The journey from **Section 89 CPC to the Mediation Act, 2023** represents India's progressive embrace of ADR, particularly mediation, as a **core component of its justice delivery system**. While Section 89 laid the foundation, the Mediation Act, 2023 builds a robust legal structure around it is promoting **timely, cost-effective, and harmonious dispute resolution** in a justice-delayed environment. The Act was enacted in month of August with the objective to provide a **comprehensive legal framework** for mediation, ensuring consistency, credibility, and enforceability. Following are the key features of the Act.

Key Features of the Mediation Act, 2023

- **Pre-litigation mediation :**

Pre-litigation mediation is one of the most significant and progressive features introduced by the **Mediation Act, 2023**. It reflects a proactive approach to dispute resolution by encouraging parties to resolve their conflicts **before resorting to formal court proceedings**. Pre-litigation mediation refers to a **structured process of dispute resolution** where parties attempt to settle their civil or commercial disputes **voluntarily and amicably**, through the assistance of a neutral third-party mediator, **before filing a case in court** (Brain et al., 2025).

- **Role of the Mediation Council of India (MCI)**
The **Mediation Council of India (MCI)** is a central regulatory and oversight body created

under the **Mediation Act, 2023**. Its primary role is to **institutionalize mediation practices**, ensure **professional standards**, and **promote mediation as a credible dispute resolution mechanism** across India. The MCI plays a crucial role in realizing the Mediation Act's vision of a **faster, fairer, and more accessible justice system**.

- **Mediated Settlement Agreement (MSA) enforceability**

Once parties reach an agreement via mediation, the **Mediated Settlement Agreement (MSA)** in writing, signed by all parties, and authenticated by the mediator is considered **final and binding**. Crucially, such an agreement is **enforceable in the same manner as a court decree** under the Code of Civil Procedure, 1908. Parties can rely on it as a defences, set-off, or for any other legal purpose in proceedings. There are very limited grounds to challenge MSA, such as: **Fraud, Corruption, Impersonation, and Dispute which is not fit for mediation** as per the Act (e.g., certain criminal matters, third-party rights, SEBI-related disputes).

That the challenge must be filed **within 90 days** from receiving the MSA. The Courts **may grant an extension of up to another 90 days** if sufficient cause is shown. Parties **may optionally register** the MSA with the designated authority **within 180 days** of receiving the authenticated copy. Though not mandatory, registration enhances enforceability and creates an additional legal safeguard

Timelines and procedural structure

Process	Timeline	Remarks
Initiation of Mediation	Voluntary or court-referred	Mediation can be started before or during court proceedings
Completion of Mediation	120 days from first appearance	Can be extended by 60 days by mutual consent (Max total: 180 days)
Challenge to Mediated Settlement Agreement (MSA)	Within 90 days from receipt	Extension possible by another 90 days for sufficient cause
Registration of MSA (Optional)	Within 180 days from receipt	Not mandatory, but enhances enforceability
Pre-litigation Mediation (for commercial matters)	Before filing suit	Compulsory for commercial disputes with a mediation clause

Mediation can be initiated voluntarily by parties, referred by a court, or be mandatory (e.g., in pre-litigation commercial disputes). The mediation agreement must be in writing, which includes electronic formats also, and it can be a clause within a larger contract or a standalone

agreement. The Mediator is appointed by mutual consent of the parties and if parties cannot agree, the mediator is appointed by an institution or the court. The Proceedings of the mediations are confidential, neutral, and non-binding. The mediation can be conducted online or in person.

However it must be completed within **120 days**, with a possible **60-day extension** by mutual agreement. If parties reach an agreement, a **Mediated Settlement Agreement (MSA)** is prepared, signed by the parties, and authenticated by the mediator. The MSA is enforceable in the same manner as a court decree. The parties may optionally register the MSA within **180 days** for official record. MSA can be challenged only on limited grounds such as **fraud, corruption, or impersonation**. The challenge must be filed within **90 days** of receiving the MSA, extendable up to **180 days** for sufficient cause.

Confidentiality and Neutrality in Mediation:

The **strict confidentiality** is a cornerstone of mediation under the Mediation Act 2023. That all **communications, disclosures, documents, and proceedings** during mediation are **confidential** (For & Page, 2023). These cannot be used as evidence in any court or tribunal nor can disclosed to third parties without consent. That the audio or video recordings of mediation are **prohibited**, ensuring privacy and openness in dialogue. **Mediator**, parties, and even observers are **legally bound** to maintain confidentiality, with exceptions only in cases like fraud, threats, or when disclosure is mandated by law. The **mediator must be impartial and independent** throughout the process. Before appointment, the mediator is required to **disclose any conflict of interest** or bias. That the mediator's role is to **facilitate negotiation** between parties and not to impose decisions or favour any side. The process is **voluntary**, and parties must feel confident that the mediator is neutral.

Online and Community Mediation:

That the Mediation conducted through digital platforms using audio/video conferencing or other electronic means. While conducting online mediation both the parties must agree to online mediation. The online mediation is recognized under the Act and has the same legal status as physical mediation. The online mediation is a suitable for, long-distance parties, time-sensitive disputes, Corporate or commercial cases. However during the process of online mediation confidentiality and data protection must be ensured. Some are the key features of online mediation i.e. Remote participation via secure platforms, Electronic communication is considered valid, Efficient and cost-effective

The purpose of the community mediation is to resolve local or neighbourhood disputes affecting peace, harmony, or public order (*Commercial Dispute Mediation*, 2025). A group of people (five or more people) from community or local authorities can initiate community mediation. That the panel of three trained community mediators selected from the local area can conduct the community mediation. However participation in community mediation is voluntary, it is not compulsory parties must agree to the process. The settlement in community mediation is not binding and enforceable as a court decree unless parties choose to register it or convert it into a formal MSA. The community mediation is suitable for minor civil disputes, family or neighbourhood disagreements, and property boundary or access issues

(Delhi, 2023)

Exclusions and limitations

Certain types of disputes are expressly excluded from mediation under *The Mediation Act, 2023*, these are *not eligible for mediation* due to their sensitive, public, or criminal nature. These include:

Criminal offenses (especially those involving serious penalties)
Matters relating to prosecution for criminal offences
Matrimonial disputes involving serious allegations of domestic violence
Disputes relating to minors or persons of unsound mind , unless legally represented
Matters affecting third-party rights without their consent
Cases involving public interest or public policy concerns
Disputes under SEBI, Insolvency & Bankruptcy Code (IBC) , or similar regulatory frameworks
Tax matters or cases involving sovereign functions of the State

The Mediation cannot be imposed on parties they must **consent** (except in some pre-litigation commercial cases). The process of mediation is non-binding unless a **Mediated Settlement Agreement (MSA)** is reached and signed. There is limited Challenge to MSA, MSAs can only be challenged on narrow grounds of fraud,

corruption, impersonation, etc. The mediators do **not have adjudicatory powers**, they only facilitate discussions. The settlements from community mediation are **not automatically enforceable** like a court decree unless formalized. The **Registration of MSA is Optional** and not mandatory, which may affect long-term enforceability in some scenarios.

Comparative Perspective

Singapore Convention on Mediation

The Singapore Convention on Mediation does not apply to certain types of settlement agreements (*The Mediation Act, 2023*, n.d.).

- I. **Consumer Disputes:** disputes between a business and an individual consumer (e.g., a customer complaining about a faulty product). It is excluded because of consumer protection laws differ across countries; the Convention focuses on **commercial disputes between businesses**.
- II. Family, Inheritance, and Employment Matters: **Family:** Divorce, child custody, alimony, etc. **Inheritance:** Disputes over wills, property of deceased persons. **Employment:** Issues between employers and employees. These are excluded from the scope of the convention because these areas often involve **personal rights and social policies**, which are **not commercial** in nature and vary widely across legal systems.
- III. Settlements Approved by a Court or Enforceable as a Court Judgment: **Excluded** mediated settlements that have been **approved by a court**, or are already **converted into a court judgment or decree** (like a consent order). It is excluded for the reason that these **don't need the Convention's help** they can already be enforced under **existing laws or treaties** (like the Hague Convention or domestic laws).

UNCITRAL Model Law on Mediation:

The **UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation (2018)** is a legal framework developed by the **United Nations Commission on International Trade Law (UNCITRAL)**. Its purpose is to assist countries in implementing consistent and effective legislation for **mediation** in international commercial disputes. It is promoting the use of **mediation** as a method of dispute resolution and provide a **uniform legal framework** for mediation and enforcement of mediated settlement agreements across borders. This Model Law updated the earlier 2002 Model Law on International Commercial Conciliation and included provisions to enforce **international mediated settlement agreements**, aligning with the **Singapore Convention on Mediation** (Ali, 2021). This Model Law applies to **international commercial mediation** and it is also applicable to **non-commercial and domestic** disputes if a state chooses to adopt it for those. The Model Law is important to encourage the use of **alternative**

dispute resolution (ADR) methods. It promotes **predictability** and **legal certainty** in international commercial relations. This model law provides a **flexible and cost-effective** dispute resolution process.

Where India Aligns and where it Diverges from the Model Law / Singapore Convention:

The India's **Mediation Act, 2023** aligns with and diverges from the **UNCITRAL Model Law on International Commercial Mediation**, including the related **Singapore Convention**.

Where India Aligns:

- IV. **Facilitation of Institutional Mediation & Party Autonomy:** The Mediation Act encourages institutional mediation, recognizes party autonomy in appointing mediators, and sets standards for neutrality and disclosure. These closely reflect the foundational principles of the UNCITRAL Model Law.
- V. **Recognition of Mediated Settlement Agreements (MSAs) as Enforceable:** The Act treats MSAs as final, binding, and enforceable akin to court decrees following UNCITRAL's emphasis on giving mediated outcomes similar legal effect.
- VI. **Support for Online Mediation & Confidentiality:** It formally recognizes online or electronic mediation (including encrypted communications), with the same enforceability as in-person mediation. Confidentiality remains central again, consistent with international models.
- VII. **Time-bound Proceedings:** The Act mandates that mediation conclude within 120 days extendable by 60 days, fostering efficiency similar in spirit to UNCITRAL's emphasis on procedural timelines (*United Nations Commission On International Trade Law*, n.d.).

Where India diverges:

- I. **Limited International Enforcement:** Although India signed the Singapore Convention in 2019, the Mediation Act 2023 does not cover international mediations conducted outside India for enforcement in India. The Act treats MSAs from mediations done within India as court decrees, making them ineligible for enforcement abroad under the Singapore Convention. This creates asymmetry: foreign parties may enforce MSAs in India. Still, Indian parties face limits when enforcing outside, and cross-border settlements reached outside India have no framework for enforcement here.
- II. **Exclusions of Certain Disputes:** The Act expressly excludes disputes involving minors, unsound minds, criminal prosecutions, serious fraud, third-party rights, etc., a broader non-

referable list than under UNCITRAL's more flexible approach.

III. Mandatory Registration & Central Control: India's Mediation Council requires mediators to register with multiple bodies (MCI, court centers, institutions, Legal Services Authority) and mandates that MCI regulations obtain Central Government approval. This contrasts with UNCITRAL's emphasis on procedural neutrality and self-regulation.

IV. Unspecified Mechanism for Interim Relief: Although the Act permits court-ordered interim relief, it lacks a clear framework or criteria, unlike UNCITRAL's detailed provisions for interim measures.

V. Grounds for Challenge & Limitation Period: Challenges to MSAs are narrowly defined (fraud, corruption, impersonation, or unfit-for-mediation disputes); there's ambiguity over whether extension of the 90 or 180 day limitation is possible. UNCITRAL offers broader challenge grounds and clarity on timelines.

Critical Analysis:

The Mediation Act, 2023, marks a significant shift in India's dispute resolution landscape by providing statutory support to mediation. It formalizes the process through the creation of a Mediation Council of India, encourages pre-litigation mediation, and recognizes online and community mediation, thereby aligning with global ADR trends.

Positives include:

- Enforceability of mediated settlement agreements as court decrees.
- Time-bound resolution (120–180 days).
- Emphasis on confidentiality, voluntariness, and party autonomy.
- Support for online and cross-border mediation within India.

Critical gaps remain:

- The Act excludes certain disputes (e.g., involving fraud or third-party rights), limiting its scope.
- It does not implement the Singapore Convention, restricting the enforceability of international mediated settlements outside India.
- Excessive centralization and bureaucratic control over mediator registration and institutions could hinder flexibility.
- No detailed provision for interim relief or confidentiality breach remedies.
- The requirement for mandatory pre-litigation mediation might delay urgent matters.

Impact on the Justice System

The Mediation Act, 2023, has the potential to significantly ease the load on Indian courts by promoting early and friendly dispute resolution. By requiring pre-litigation mediation for certain civil and commercial cases, it shifts a large number of cases away from litigation. The act encourages quicker, more affordable, and less confrontational dispute resolution, improving access to justice for individuals and small businesses. The official recognition of online mediation further enhances accessibility and efficiency. However, its success relies on proper implementation, adequate mediator training, and raising public awareness. If implemented effectively, the Act could boost judicial efficiency, lower case backlog, and encourage dialogue over litigation.

Recommendations

- Incorporate international mediation under the Act
- Clarify definitions and procedural ambiguities
- Promote mediator training and public awareness
- Strengthen digital infrastructure for online mediation
- Expand access for marginalized communities

Conclusion

The Mediation Act, 2023, is a significant reform aimed at transforming India's dispute resolution system by making mediation a standard, structured, and enforceable process. It aligns with international practices to promote alternative dispute resolution, enhances access to justice, and reduces the load on courts. However, to realize its full potential, the Act must address challenges such as limited enforceability internationally, procedural uncertainties, and the need for strong institutional backing. With careful implementation and ongoing improvements, the Act can play a key role in fostering a culture of resolution over litigation in India.

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