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# Assessing the Future of Mediation: The Impact of the Mediation Act, 2023 on Dispute Resolution in India

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## ABSTRACT

*This paper examines the transformative impact of the Mediation Act, 2023, on dispute resolution in India. By institutionalizing mediation as a core alternative dispute resolution (ADR) mechanism, the Act seeks to alleviate the country's overwhelming judicial backlog and promote a culture of amicable settlements. The analysis begins by tracing the historical evolution of mediation in India, from ancient traditions to its resurgence post-independence. It further explores the pre-legislative framework, including key laws such as the Arbitration and Conciliation Act of 1996, and highlights the judiciary's pivotal role in promoting mediation. The core provisions of the Mediation Act, including pre-litigation mediation, enforceability of mediated settlements, and the establishment of mediation councils, are critically evaluated. Challenges related to the Act, such as implementation barriers and infrastructure needs, are also discussed, along with concerns about balancing party autonomy and judicial oversight. The paper concludes by assessing the potential future of mediation in India, emphasizing the role of technology, such as online dispute resolution (ODR), and suggesting reforms to enhance the effectiveness of the Mediation Act. Ultimately, this research underscores mediation's capacity to revolutionize India's legal landscape by fostering faster, more collaborative dispute resolution processes.*

**Keywords:** Mediation Act, 2023, Dispute Resolution, Alternative Dispute Resolution (ADR).

## I. INTRODUCTION

Mediation, as a means of resolving disputes, has deep roots in Indian culture. Its origins can be traced back to ancient India, where scholars like Yagnavalkya and Parashar promoted peaceful dispute resolution through negotiation and dialogue. During the **Vedic era**, mediation was considered an essential part of community life, with village councils (sabhas) and elders facilitating the resolution of conflicts without the need for adversarial litigation. The idea of amicable settlement aligned with the broader philosophy of **dharm**a, or moral duty, which encouraged harmonious relations among individuals and communities. Mediation also found its

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place in **Buddhist philosophy**, where the principle of non-violence (ahimsa) and reconciliation were strongly emphasized. Buddhist monks often acted as mediators, facilitating peaceful resolutions to conflicts both within and outside the monastic community. This approach continued through the Mughal period, where informal systems of justice coexisted with the formal court structures, and mediation served as a way to resolve disputes at the grassroots level. However, during the period of British colonialism, traditional dispute resolution mechanisms, including mediation, were largely overshadowed by the introduction of English common law and formal courts. British legal reforms, focused on codification and judicial uniformity, marginalized indigenous practices, leading to a decline in the use of mediation in India. After independence, there was a resurgence of interest in **Alternative Dispute Resolution (ADR)** mechanisms, including mediation, as the formal judicial system became overwhelmed with a backlog of cases. The Indian government and judiciary began recognizing the need for efficient, amicable alternatives to litigation, paving the way for the re-introduction of mediation as a formal legal mechanism. This evolution culminated in the passing of the **Mediation Act, 2023**, which seeks to institutionalize mediation and provide a robust framework for its practice across India. In the following sections, this paper will assess how the Mediation Act, 2023, aims to address these historical legacies and shape the future of dispute resolution in India.<sup>2</sup>

## **II. THE EVOLUTION OF MEDIATION LAW IN INDIA**

The evolution of mediation in India reflects the gradual transition from informal dispute resolution systems to a formalized legal framework for Alternative Dispute Resolution (ADR) mechanisms. This shift has been driven by a growing recognition of mediation's potential to reduce the burden on courts, provide timely relief to disputing parties, and foster harmonious settlements without the adversarial nature of litigation. The journey of mediation's legislative evolution in India can be categorized into two significant phases: the pre-legislative framework and the judiciary's active role in promoting mediation.

### **(A) Pre-Legislative Framework**

The first significant legislative recognition of mediation in India came with the **Industrial Disputes Act, 1947**, which provided for conciliation as a means of settling disputes between employers and employees in the industrial sector. This early framework acknowledged the value of non-adversarial dispute resolution methods but was limited to labour disputes.

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<sup>2</sup> India's Big Policy Shift: Govt Seeks Mediation, Not Arbitration For Public Enterprises, <https://bwlegalworld.com/article/indias-big-policy-shift-govt-seeks-mediation-not-arbitration-for-public-enterprises-523266-523287> (last visited Sep 16, 2024).

Mediation and conciliation were employed to prevent strikes and lockouts by encouraging dialogue between disputing parties. This law laid the foundation for mediation to be considered as part of India's legal system, even though it was initially confined to industrial disputes. As the legal system in India grew more complex, the courts became overburdened with pending cases, prompting the need for more effective ADR mechanisms. This led to the enactment of the **Arbitration and Conciliation Act, 1996**, which was a landmark in formalizing ADR in India. The Act was modeled after the UNCITRAL Model Law on International Commercial Arbitration, reflecting a shift towards global standards in arbitration and conciliation. Though the focus of the Act was primarily on arbitration, it recognized **conciliation** as a formal mechanism for resolving disputes outside the courts. However, conciliation, which involves a neutral third party helping to mediate disputes, was limited in its application and didn't fully harness the potential of mediation as a distinct process. The **CPC Amendment Act, 1999** (Section 89 of the Code of Civil Procedure) marked a turning point in the development of mediation laws in India. This amendment provided the legal basis for court-referred mediation, wherein courts could refer disputes to ADR mechanisms such as mediation, conciliation, and arbitration, depending on the nature of the case. Section 89 was designed to reduce the burden on courts by allowing them to encourage parties to explore amicable solutions through mediation before pursuing litigation. It was a recognition of the need for formal ADR mechanisms and opened the doors for mediation to become an integral part of the Indian judicial process. In addition to legislative changes, the judiciary played a pivotal role in furthering the cause of mediation through its decisions and proactive approach to ADR.

### **(B) The Role of Judiciary in Promoting Mediation**

The Indian judiciary, particularly the Supreme Court, has been instrumental in shaping mediation's trajectory in the country. One of the most significant cases that underscored the judiciary's commitment to promoting ADR was the **Salem Bar Association case (2003)**.<sup>3</sup> In this case, the Supreme Court, while addressing the challenges of implementing Section 89 of the CPC, provided clarifications regarding the use of ADR mechanisms. The Court directed the framing of **model mediation rules** and underscored the importance of mediation as a tool for dispute resolution. The case was a watershed moment, as it led to the institutionalization of mediation in India and laid the groundwork for the establishment of mediation centers within the judicial framework. The Supreme Court's intervention in the **Salem Bar Association** case also led to the creation of court-annexed mediation centers across India. These centers provided

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<sup>3</sup> Salem Advocate Bar Association, Tamil Nadu vs. Union of India (UOI), MANU/SC/0450/2005.

a structured environment for the practice of mediation, with trained mediators facilitating the resolution of disputes. The judiciary's endorsement of mediation encouraged lower courts to refer cases to these centers, fostering a culture of dispute resolution outside the adversarial court process. Over time, these court-annexed centers have played a crucial role in popularizing mediation as a viable alternative to litigation, particularly in civil and family law disputes. The **judiciary's role** in promoting mediation extends beyond just establishing centers and framing rules. Through various judgments, the courts have consistently emphasized the benefits of mediation. In cases involving family law, commercial disputes, and even certain criminal matters, courts have encouraged parties to pursue mediation before engaging in lengthy litigation. The courts have also facilitated the training of mediators, ensuring that professionals guiding mediation processes are well-equipped to handle a wide range of disputes. This professionalization of mediation has been critical in establishing it as a credible alternative to litigation. One of the notable developments in the judiciary's approach to mediation was the establishment of **pre-litigation mediation**. This system encourages disputing parties to attempt mediation even before a case is filed in court, allowing for a resolution at an earlier stage and reducing the strain on the judicial system. The success of pre-litigation mediation in India has been notable, particularly in metropolitan cities where court-annexed mediation centers handle a significant volume of cases.

### III. KEY PROVISIONS OF THE MEDIATION ACT, 2023

The **Mediation Act, 2023**, marks a significant step forward in formalizing and institutionalizing mediation as an alternative dispute resolution (ADR) mechanism in India. The Act builds upon prior legislative efforts and judicial interventions to create a comprehensive framework that governs the mediation process, ensuring greater clarity, uniformity, and professionalism in its application. With the increasing caseload of courts and the demand for faster, more cost-effective dispute resolution methods, the Mediation Act seeks to streamline the mediation process while providing robust mechanisms for the enforcement of mediated settlement agreements. This section will discuss the legislative features of the Act, including the distinction between voluntary and mandatory mediation and its alignment with international practices.<sup>4</sup>

#### (A) Legislative Features

The Mediation Act, 2023, introduces several key provisions designed to make mediation a more attractive, effective, and credible means of dispute resolution. These provisions aim to create a

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<sup>4</sup> Mediation Act 2023, International mediation, Mediation Council, Legal Services Act, ADR, <https://www.livelaw.in/articles/mediation-act-2023-international-mediation-mediation-council-legal-services-act-adr-247652> (last visited Sep 10, 2024).

structured environment in which disputes can be resolved amicably while ensuring fairness and adherence to professional standards. Some of the most significant features of the Act are discussed below.

### **(B) Pre-Litigation Mediation**

One of the cornerstones of the Mediation Act, 2023, is the introduction of **pre-litigation mediation**. The Act mandates that, before approaching the courts, disputing parties should attempt mediation as a first step. This provision is aimed at reducing the number of cases that reach the courts, thus alleviating the immense burden on the judicial system. Pre-litigation mediation provides an opportunity for disputing parties to resolve their issues outside the adversarial court process, with the assistance of a trained mediator who facilitates dialogue and negotiation. The Act encourages pre-litigation mediation by making it accessible to all parties and stipulates that it should be completed within a set timeframe, typically within 180 days, which can be extended by a maximum of 90 days with the mutual consent of the parties. By imposing time limits, the Act ensures that the mediation process does not become unnecessarily prolonged, offering parties a quicker resolution than traditional litigation.

### **(C) Enforceability of Mediated Settlement Agreements**

A key innovation introduced by the Mediation Act, 2023, is the provision regarding the **enforceability of mediated settlement agreements**. Under this provision, mediated agreements have the same legal status as a court decree. Once the parties reach a settlement through mediation, the agreement can be presented before the relevant court, which can then issue a decree based on it. This gives the settlement legal enforceability, ensuring that the parties are bound by the terms of the agreement, thereby reducing the chances of subsequent disputes or non-compliance. The enforceability of mediated settlement agreements is a significant development in the mediation landscape of India, as it provides legal certainty and assures the parties that their agreement is binding. This provision not only boosts the credibility of the mediation process but also encourages more parties to choose mediation as a viable option for dispute resolution.

### **(D) Confidentiality Clauses**

Another important feature of the Mediation Act, 2023, is the emphasis on **confidentiality** during the mediation process. Confidentiality is a critical element in ensuring the success of mediation, as it allows the parties to engage in open and honest discussions without fear that their statements or negotiations will be used against them in future litigation. The Act mandates that all communications and discussions that take place during mediation must remain confidential,

and mediators are prohibited from disclosing any information revealed during the process. This provision enhances trust in the mediation process, as parties can feel secure that their disclosures will not be made public or used to their disadvantage. The emphasis on confidentiality also aligns the Mediation Act with international best practices, where confidentiality is considered a cornerstone of successful mediation.

#### **(E) Role of Accredited Mediators**

The Mediation Act, 2023, also introduces a formal system for the accreditation of mediators, thereby professionalizing the mediation field in India.<sup>5</sup> The Act establishes guidelines for the training, certification, and accreditation of mediators to ensure that only qualified and trained professionals are entrusted with the task of mediating disputes. The creation of a pool of **accredited mediators** enhances the credibility and efficiency of the mediation process, as parties can be confident that the mediator possesses the necessary skills and expertise to guide the dispute resolution process. In addition, the Act establishes **mediation councils** to oversee the training and accreditation process, ensuring that mediators adhere to high professional and ethical standards. These mediation councils will play a crucial role in maintaining the quality of mediation services in India and fostering the growth of mediation as a respected ADR mechanism.

#### **(F) Voluntary vs. Mandatory Mediation**

One of the most debated aspects of the Mediation Act, 2023, is the shift in approach from mandatory pre-litigation mediation, as originally proposed in the **Mediation Bill**, to a more **voluntary** system. The original bill mandated pre-litigation mediation for certain types of disputes, requiring parties to attempt mediation before filing a lawsuit. However, after significant public and legal community feedback, the final version of the Act adopts a more flexible approach, promoting voluntary mediation while encouraging parties to consider mediation as a first step.

#### **(G) The Debate on Mandatory Mediation**

The debate between **mandatory** and **voluntary** mediation has been central to the discourse surrounding the Mediation Act. Proponents of mandatory mediation argue that making mediation compulsory, particularly in certain types of civil and commercial disputes, would lead to quicker resolutions, reduce the burden on courts, and promote a culture of amicable settlement. However, critics of mandatory mediation contend that mediation is most effective

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<sup>5</sup> Pavani Reddy & Natalie Armstrong, *MEDIATION AS A FORM OF DISPUTE RESOLUTION* (2024).

when it is voluntary and when both parties are genuinely willing to negotiate and resolve their issues outside the court process. Forcing parties into mediation may result in insincere negotiations, ultimately prolonging the dispute resolution process.

The Mediation Act, 2023, reflects a compromise between these two viewpoints. While pre-litigation mediation is encouraged, the Act makes it clear that parties are free to choose whether they wish to engage in mediation. This approach recognizes that mediation is most successful when parties enter into the process willingly and are committed to finding a solution. However, the Act also emphasizes that judges have the authority to encourage or refer cases to mediation at various stages of litigation, especially in matters where amicable settlement appears feasible.<sup>6</sup>

#### **IV. CHALLENGES AND CRITICISMS OF THE MEDIATION ACT, 2023**

While the **Mediation Act, 2023** introduces a promising framework for the promotion of mediation as an alternative dispute resolution (ADR) mechanism, it is not without its challenges and criticisms. Various stakeholders, including legal scholars and practitioners, have raised concerns about specific provisions in the Act, its implementation, and whether it can effectively balance the needs of mediation with judicial oversight. This section will explore some of the key challenges and criticisms, focusing on the limitations presented by the First and Second Schedules, the tension between judicial oversight and party autonomy, and the practical issues of implementing the Act across India's diverse legal landscape.

##### **(A) Limitations and Concerns**

The **First and Second Schedules** of the Mediation Act, 2023, have been identified as areas of concern by legal commentators. The **First Schedule** outlines the types of disputes that are eligible for mediation, while the **Second Schedule** lists those that are excluded from mediation, such as criminal offenses, family matters, and cases involving serious violations of fundamental rights. Critics argue that these exclusions limit the scope of the Act and may prevent mediation from being a more widely utilized tool for dispute resolution in areas where it could be beneficial.

##### **(B) Concerns with the First and Second Schedules**

One significant criticism is that the **Second Schedule** restricts mediation in certain types of disputes where mediation could still be a viable alternative to litigation. For example, while criminal offenses and family disputes are complex and often require formal adjudication,

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<sup>6</sup> Will the Mediation Act, 2023 change the way parties resolve disputes? - The Hindu BusinessLine, <https://www.thehindubusinessline.com/business-laws/will-the-mediation-act-2023-change-the-way-parties-resolve-disputes/article67395541.ece> (last visited Sep 16, 2024).



mediation can still play a crucial role in cases involving interpersonal disputes, family matters like custody agreements, or even minor criminal matters like defamation. By categorically excluding these areas, the Act may inadvertently limit the use of mediation in scenarios where it could lead to faster, more amicable resolutions.

Moreover, the **First Schedule**, which designates which types of disputes are eligible for mediation, has been criticized for its lack of flexibility. While the intention is to encourage mediation in civil and commercial disputes, the rigid categorization could discourage parties from seeking mediation in cases that don't fall neatly into these categories. A more flexible, case-by-case approach to mediation eligibility could enhance the effectiveness of the Act.

### **(C) Balancing Judicial Oversight with Party Autonomy**

Another critical concern is the **paradox** of balancing judicial oversight with the core principles of mediation, namely **voluntariness** and **party autonomy**. Mediation thrives on the willingness of parties to negotiate and resolve their disputes outside the court system. However, under the Act, there is a degree of judicial oversight, particularly in court-referred mediations, where judges may encourage or direct parties to attempt mediation before litigation proceeds. This has raised concerns about the dilution of party autonomy. While judicial encouragement can be useful in promoting the benefits of mediation, there is a fine line between encouragement and coercion. If parties feel compelled to mediate due to judicial pressure, the core values of voluntariness and good faith negotiations may be compromised, leading to ineffective mediation outcomes. Critics argue that mediation must remain a voluntary process to preserve its integrity, and judges must exercise caution to ensure that parties do not feel obligated to settle simply because of judicial encouragement.

### **(D) Implementation and Infrastructure Issues**

The successful implementation of the Mediation Act, 2023, will require substantial **infrastructure** development, **training of mediators**, and public awareness campaigns. Without adequate support structures, the Act may struggle to achieve its intended objectives.

### **(E) Training and Accreditation of Mediators**

One of the major challenges in implementing the Act is the **training and accreditation** of mediators. While the Act introduces a formal system for accrediting mediators, ensuring a large pool of qualified mediators across India is a significant undertaking. Mediators must not only be well-trained in the process of mediation but also understand the nuances of the legal and cultural contexts in which they operate. The availability of skilled mediators is uneven across India, with urban areas having better access to resources than rural areas. Bridging this gap is

critical for the Act's success.

Additionally, the **mediation councils** established under the Act must ensure that training programs are uniform and consistent across the country. Ensuring that mediators meet a high standard of professionalism and ethics is essential to maintaining the credibility of the mediation process. Without proper training, the mediation process risks becoming inefficient and undermining the trust of the parties involved.

#### **(F) Infrastructure and Public Awareness**

Another significant challenge is the **infrastructure** required to support the widespread use of mediation. India's legal system is diverse, with significant variations in legal practices and resources across different states and regions. Establishing mediation centers, particularly in remote and underserved areas, will require substantial investment in both physical infrastructure and human resources. These centers must be easily accessible to the public and equipped with the necessary technology and support staff to facilitate mediations. Furthermore, the success of the Mediation Act, 2023, depends heavily on **public awareness**. Despite the advantages of mediation, many litigants and legal professionals are still unfamiliar with its benefits or are hesitant to choose mediation over litigation. To change this mindset, comprehensive awareness campaigns are needed to educate the public, lawyers, and the judiciary about the benefits of mediation, particularly its potential for saving time, costs, and maintaining relationships. Public awareness must also focus on the enforceability of mediated settlement agreements, which, as discussed earlier, gives mediation a distinct advantage over informal negotiations. Informing the public that mediated agreements are legally binding will help build trust in the process and encourage more parties to choose mediation as a viable option.

### **V. THE FUTURE OF MEDIATION IN INDIA**

The Mediation Act, 2023, represents a significant step forward in strengthening mediation as a viable alternative dispute resolution (ADR) mechanism in India. Its impact on the legal landscape is expected to be transformative, particularly in terms of reducing the overwhelming burden on courts. India's judiciary faces a mounting backlog of cases, and by formalizing and streamlining mediation, the Act aims to alleviate this pressure. Mediation offers a pathway to quicker resolutions, which could foster a more collaborative and less adversarial legal culture, promoting amicable settlements over protracted litigation. One of the major contributions of the Mediation Act is that it is likely to change perceptions about dispute resolution in India. By providing a clear legal framework that includes pre-litigation mediation, enforceable agreements, and regulatory oversight, the Act positions mediation as a credible and accessible

option for a broad range of disputes. As a result, its use in civil disputes—whether familial, commercial, or contractual—may increase significantly, potentially reducing dependency on the overburdened court system. Additionally, the Act can pave the way for cross-border mediation, which is particularly relevant in commercial disputes involving multinational parties. With India's increasing role in the global economy, having a robust and clear mediation framework could attract foreign businesses seeking efficient dispute resolution mechanisms. The Act's alignment with international best practices will enhance India's standing as a venue for mediation in international commercial disputes. As globalization continues to influence Indian business and legal environments, the Act's provisions for enforceable mediation agreements will further encourage its adoption in cross-border disputes.

### **(A) Role of Technology in Mediation**

Technology has already begun transforming traditional modes of dispute resolution, with online dispute resolution (ODR) emerging as a practical solution during the COVID-19 pandemic. The forced shift to digital platforms accelerated the acceptance of technology in mediation. The Mediation Act, 2023, provides an opportunity to incorporate these advances, creating a modern and accessible framework for resolving disputes online. The widespread adoption of ODR could bridge geographical gaps, allowing mediation to reach underserved regions of India. Incorporating technology into mediation processes also enhances convenience and reduces costs for disputing parties, as remote mediations reduce the need for physical presence. This can democratize access to justice by making dispute resolution more affordable and accessible for individuals and small businesses. Moreover, technology can help in reducing human biases through AI-assisted tools, allowing more objective decisions or facilitating streamlined negotiations. Despite its advantages, the integration of ODR presents several challenges. One major concern is ensuring that technology is adequately supported by infrastructure, especially in rural areas, where access to stable internet may be limited. Moreover, the Mediation Act does not yet fully explore the potential or regulation of ODR platforms. There needs to be clarity on how ODR can be governed, whether it will be treated similarly to traditional mediation, and what safeguards will be in place to protect data privacy and confidentiality during online proceedings. While the Act brings mediation into the mainstream, specific provisions related to technology integration would enhance its future readiness.

### **(B) The Path Forward**

While the Mediation Act, 2023, marks a progressive step in the evolution of ADR in India, there

remain areas that would benefit from reform. The First and Second Schedules of the Act have raised concerns regarding their potential limitations on the flexibility and effectiveness of the mediation process. For example, exemptions and exclusions listed in the schedules may unduly limit the kinds of disputes eligible for mediation. Future amendments to the Act may consider revisiting these exclusions, particularly as the practice of mediation becomes more entrenched in both civil and commercial contexts.

Moreover, the success of the Mediation Act will largely depend on its implementation. Effective mediation requires not just legal backing but also a strong ecosystem of trained mediators, well-equipped mediation centers, and public awareness about the advantages of mediation. To achieve this, further investments in training programs and infrastructure development are necessary, particularly in underrepresented areas of India. Such efforts would ensure that the benefits of mediation reach all segments of the population, not just urban centers where ADR mechanisms are already more prevalent. Judicial support is also crucial to the Act's long-term success. Courts will need to continue promoting mediation, both through formal referrals and by fostering a pro-mediation mindset among judges and litigants. The judiciary's role as a gatekeeper in ensuring that parties explore mediation in good faith will be essential. Without consistent judicial endorsement, the full potential of the Mediation Act may not be realized.

## **VI. CONCLUSION**

The Mediation Act, 2023, represents a pivotal shift in India's approach to dispute resolution, positioning mediation as a central tool for addressing the country's burgeoning judicial backlog. By providing a clear legal framework for pre-litigation mediation, enforceability of settlement agreements, and confidentiality, the Act fosters greater confidence in mediation as a viable alternative to litigation. The Act's emphasis on party autonomy and voluntary participation reinforces mediation's core principles, promoting amicable resolutions over adversarial court battles. Mediation offers numerous advantages, including faster resolution of disputes, reduced court congestion, and a more collaborative approach to justice. The Act's provisions for a regulatory framework and the establishment of mediation councils aim to ensure quality and consistency in mediation practices across the country. Furthermore, with technology's growing role and the potential for online dispute resolution, mediation is poised to become even more accessible and efficient. In the years ahead, mediation, supported by ongoing legal reforms and growing public acceptance, will play a transformative role in India's justice system. As mediation becomes more embedded in both civil and commercial disputes, it will contribute to a more harmonious, efficient, and inclusive system of dispute resolution.

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