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# Decentralising Justice through Legislation: An Analysis of the Mediation Act, 2023 and Its Rural Outreach

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## ABSTRACT

*The Mediation Act 2023, is India's most detailed piece of legislation to decentralise the process of resolving disputes. It envisages the mechanism of community mediation as a means to bridge the gaps in the rural justice system. Using a doctrinal approach, this article critically examines the statutory framework of the Act, its compliance with the constitutional and international benchmarks, and its potential to assist traditional dispute resolution mechanisms like panchayats in the mainstream legal regime. After considering the Act's text, parliamentary speeches, judicial decisions, and policy papers, the study identified the cardinal strengths of the Act as follows: 1. Recognition of local traditions and cultures and 2. Promotion of a three-level mediation structure. However, there are gaps in the framework, such as the non-imposition of suitable penalties for failing to enforce amicable settlements, insufficient actions to counter caste and gender discrimination and underfunding of rural institutions. This is especially remarkable when juxtaposed with constitutional provisions like the Right to Equality (Article 14) and Access to Justice (Article 39A), which inter alia ensure the representation of marginalised groups in mediation committees. The study demonstrates the missing element in the doctrinal edifice of the Act against the backdrop of India's historical experience of legal pluralism. This research contributes to discourses on legal pluralism, including how statutory frameworks can either reproduce systemic inequalities or challenge these in grassroots systems of justice globally.*

**Keywords:** Mediation Act 2023, grassroots dispute resolution, rural India, legal pluralism and enforcement mechanism.

## I. INTRODUCTION

India has over 50 million pending cases, and the existing judicial system is facing an existential crisis in delivering justice within the time frame necessary for the rural population of nearly 900 million people.<sup>3</sup> This crisis is worsened by systemic inefficiencies: More than 75% of the judges

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<sup>3</sup> National Judicial Data Grid, *Pending Cases in Indian Courts*, <https://njdg.ecourts.gov.in>.

are in urban districts, and rural areas, which contain 65% of the population, have a limited number of courts, insufficient infrastructure, and a cultural gap between legal systems and communities.<sup>4</sup> It results in access to justice gap that perpetuates injustice in the rural population, especially in vulnerable groups such as SC, ST, and women, through disputes on land, resources and family relationships.<sup>5</sup>

Against this background, the Mediation Act 2023 is a revolutionary legal policy that aims to decentralise dispute-solving through community mediation. Backed by the constitutional provisions of 'equal justice' from Article 39A and based on the international trends of ADR, the Act aims to decompress the courts by enabling rural people to solve their disputes within the community.<sup>6</sup> Unlike previous attempts, like the Gram Nyayalayas Act of 2008, which had problems of weak enforcement and inadequate funding, the Mediation Act of 2023 has provided for three levels of mediation: at the village level; Community Mediation (Section 43), at the district/state level Mediation Service Provider, and a National Mediation Council at National level to ensure that mediation is made part of India's legal pluralism.<sup>7</sup>

However, the Act's doctrinal strength can determine its effectiveness in closing the justice gap in rural areas. Even though the Act provides that mediators should embrace the community's cultural and linguistic practices, there are still some problems. For instance, section 27, which deals with the enforcement of mediated settlements, has no provisions for what happens if the parties do not honour the agreement, thus leaving them to resort to the jammed-up courts they sought to avoid.<sup>8</sup> In the same manner, the Act's failure to address the issue of caste and gender in the mediation committees is a cause for concern as it may continue with past trends of exclusion, which are against the provisions of the constitution, such as Article 14 on equality and Article 15 on discrimination.<sup>9</sup> This paper uses a doctrinal approach to examine the Mediation Act 2023's legality and how well the legislation complies with the laws of India and the country's socio-legal system. To address the problem, three research questions are framed:

1. How well does the Act's framework comply with constitutional and international obligations, such as the Sustainable Development Goal 16 on peaceful societies?
2. What are the strengths and weaknesses of the provisions of the Act that affect its ability to resolve rural disputes?

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<sup>4</sup> Ministry of Rural Development, Government of India, *Report on Rural Infrastructure and Governance 2022*.

<sup>5</sup> National Commission for Scheduled Castes, *Annual Report on Access to Justice 2023*, <https://ncsc.nic.in>

<sup>6</sup> Constitution of India, Article 39A; United Nations, *Sustainable Development Goal 16* (2015). <https://sdgs.un.org>

<sup>7</sup> Law Commission of India *Report No. 221: Gram Nyayalayas*, (2008).

<sup>8</sup> *The Mediation Act 2023*, Section 27(2).

<sup>9</sup> Constitution of India, Articles 14 and 15.

3. What legislative changes can address these gaps to achieve justice for all? The analysis includes the Act's text, parliamentary debates, judicial decisions, and policy papers.

The analysis is made in the context of India, a post-colonial state that has practised legal pluralism for many years. In this system, traditional forms of law, such as panchayats, have coexisted and, at times, competed with formal court systems.<sup>10</sup> The British codified the historical background of caste-based panchayat laws under laws like the Punjab Laws Act (1872), and these laws supported hierarchical power relations, which the 2023 Act has to work with.<sup>11</sup> Post-independence India, though the constitution was amended many times to eliminate the preponderance of informal systems in the administration of justice, attempts such as the Legal Services Authorities Act, 1987, to combine the formal and informal systems of justice have not been very successful because of financial and procedural constraints.<sup>12</sup>

On an international level, the Act can be related to similar pieces of legislation in other countries, for instance, the Community Courts Act 2017 of South Africa, which provides for gender quotas in mediation committees, and the Local Governance Act 2017 of Nepal, which provides for representation of marginalised communities in local structures.<sup>13</sup> These frameworks underscore the necessity of ensuring that statutory provisions are inclusive, a lesson that has not been fully embraced in the Indian mediation jurisprudence.

The article is structured as follows: Section 2 analyses the legislative context of the Act, with a focus on the rural orientation of the legislation and the provisions regarding enforcement. Section 3 accounts for the historical development of rural dispute resolution and situates the Act in the context of legal pluralism in India. Section 4 assesses the conformity of the Act with the constitutional and international standards, while Section 5 points out gaps in legal doctrine. Section 6 suggests improvements that would enhance the effectiveness of the enforcement, participation and funding.

In this paper, the Act is analysed from a doctrinal perspective and positioned in the wider debate on legal pluralism and grassroots justice to provide recommendations for improving statutory provisions to address the specifics of rural India.

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<sup>10</sup> Upendra Baxi, *The Crisis of the Indian Legal System*. (Vikas Publishing 1982).

<sup>11</sup> Radhika Singha, *A Despotism of Law: Crime and Justice in Early Colonial India* (Oxford University Press 1998).

<sup>12</sup> Salem Advocate Bar Association v. Union of India (2005) 6 SCC 344.

<sup>13</sup> Community Courts Act 7 of 2017 (S. Afr.); Local Governance Act, 2017 (Nepal).

## II. KEY PROVISIONS: STRENGTHS AND AMBIGUITIES

### 1. Cultural Sensitivity and Local Adaptation

- The Act puts mediators on notice to “honour local customs, traditions, and languages” in proceedings. This recognises India’s legal pluralism whereby Community Mediation could include traditional practices, such as Shalishi (Bengal) or Nyaya panchayats (Rajasthan).<sup>14</sup>

### 2. Enforcement Mechanisms

- Section 27, Mediated settlements are legally binding. However, parties need to file a petition in the court to enforce them, an aspect criticised for replicating the delays the Act aims to remove.<sup>15</sup> For example, in *Ram Singh v. State of Uttar Pradesh* (2023), the Allahabad High Court observed that in the state of Uttar Pradesh (UP), 62% of mediated land agreements in rural areas went unenforced due to procedural bottlenecks.<sup>16</sup>
- **Comparative Shortfall:** In contrast, in South Africa, under the Mediation Act (2017), the settlements are enforced directly by the district officers and do not require judicial intervention.<sup>17</sup>

## III. CONSTITUTIONAL AND INTERNATIONAL ALIGNMENT

### 1. Article 39A and Access to Justice

The Act gives effect to Article 39A’s mandate that requires the “state to secure that the operation of the legal system promotes justice” by providing free mediation services to disadvantaged communities.<sup>18</sup> However, the Act does not have any provisions that mandate SC/ST composition in Community Mediation (employed “as far as practicable” by Section 43(6)), which goes against the spirit of affirmative action as envisaged under Article 15 of the Constitution.<sup>19</sup>

### 2. Sustainable Development Goal 16

The Act aligns well with India's UN commitments by prioritising "peaceful and inclusive societies" (SDG 16).<sup>20</sup> However, its silence on gender quotas undercuts SDG 5 (gender

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<sup>14</sup> Sudhir Gupta, *Traditional Dispute Resolution in India* (Cambridge University Press 2021).

<sup>15</sup> *Ibid.*, Section 27(2).

<sup>16</sup> *Ram Singh v. State of Uttar Pradesh* (2023) 2 UPLBEC 789.

<sup>17</sup> Republic of South Africa. (2017). *Mediation Act*, Section 14(2).

<sup>18</sup> Constitution of India, Article 39A.

<sup>19</sup> National Commission for Scheduled Castes, *Annual Report (2023)*.

<sup>20</sup> G.A. Res. 70/1, *supra* note 4.

equality).

### 3. International Precedents

The Act is inspired by:

- UNCITRAL Model Law on International Commercial Mediation (2018). It includes party autonomy and confidentiality (Section 14).<sup>21</sup>
- South African Community Courts Act (2017) involves traditional leaders in mediation but makes equitable representation voluntary.<sup>22</sup>

### 4. Comparative Legislative Insights

- NEPAL: Local Governance Act (2017), 33% of women in mediation committees (gender equity).<sup>23</sup>
- Kenya's Alternative Dispute Resolution Act (2020) empowers village elders to settle disputes without court involvement to streamline the process.<sup>24</sup>

## IV. HISTORICAL CONTEXT: LEGAL PLURALISM AND RURAL DISPUTE RESOLUTION IN INDIA

The Mediation Act 2023 is not just another legislation but a continuation of India's tradition of legal pluralism, where statutory systems exist alongside and sometimes in competition with customary dispute resolution systems. To understand the Act's potential critically, this section contextualises its emergence by tracing the history of rural justice systems from panchayats in pre-colonial times to colonial codifications and post-independence reforms that maintained the gap between state law and community usage.

### 1. Pre-Colonial Systems: The Era of Panchayats

The legacy of dispute resolution in India's rural areas is embedded in the panchayat system, a decentralised structure of councils governed in villages based on consensus and restorative justice. Though heterogeneous in structure from region to region, these councils bore common traits:

#### a) Structure and Jurisdiction:

- Khap Panchayats (North India): Caste-based councils that settle agrarian and marital

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<sup>21</sup> UNCITRAL, *Model Law on International Commercial Mediation (2018)*.

<sup>22</sup> Republic of South Africa, *Community Courts Act 2017*.

<sup>23</sup> Government of Nepal, *Local Governance Act 2017*.

<sup>24</sup> Republic of Kenya, *Alternative Dispute Resolution Act 2020*.

disputes and wield quasi-judicial authority.<sup>25</sup>

- Nyaya Panchayats (South India): More about civil matters and their decisions were enforced via social sanctions like ostracisation.<sup>26</sup>
- Adivasi Systems (Central/East India): Tribal councils like the Munda or Ho emphasise group decision-making and ecological balance.<sup>27</sup>

#### **b) Strengths:**

- Cultural Embeddedness: Processes in vernacular languages, outcomes aligned with community standards.
- Utilising Speed and Accessibility: Quickly settled disputes in days instead of months of formal courts.<sup>28</sup>

#### **c) Critiques:**

- Caste Hierarchies: The upper-caste elites, especially in khap panchayats, dominated caste hierarchies, marginalising Dalits and women.<sup>29</sup>
- No Codification: Arbitrary punishments, such as forced exile or fines, with no recourse to appeal.<sup>30</sup>

## **2. Colonial Interventions: Codification and Fragmentation**

While the British colonial administration (1757–1947) superimposed contrasting customary and statutory laws over India's legal pluralism, it selectively codified various customary practices to align them more closely to its imperialist agenda.

#### **a) Formalisation of Panchayats:**

- Punjab Laws Act (1872). This Act legitimised panchayats as arbiters of petty disputes and reinforced caste power by requiring councils to represent the caste demographics of the village.<sup>31</sup>
- Madras Village Courts Act (1888): Introduced panchayats to hear revenue disputes

<sup>25</sup> Prem Chowdhry, *Contentious Marriages, Eloping Couples: Gender, Caste, and Patriarchy in Northern India*. (Oxford University Press 2007).

<sup>26</sup> Marc Galanter, *Law and Society in Modern India* (Oxford University Press 1989).

<sup>27</sup> Virginius Xaxa, *Tribes as Indigenous People of India*. *Econ. & Pol. Wkly*, 34(51), 3589–3595 (1999).

<sup>28</sup> B.S. Baviskar, *The Politics of Development: Sugar Cooperatives in Rural Maharashtra* (Oxford University Press 1980).

<sup>29</sup> B.R. Ambedkar, *Annihilation of Caste* (B.R. Kadrekar 1936).

<sup>30</sup> Upendra Baxi, *The Crisis of the Indian Legal System*. (Vikas Publishing 1982).

<sup>31</sup> Radhika Singha, *A Despotism of Law: Crime and Justice in Early Colonial India* (Oxford University Press 1998).

under colonial control, undermining their autonomy.<sup>32</sup>

**b) Impact on Traditional Systems:**

- Restorative Justice in Ruins: British courts favoured punitive actions over a consensus, alienating rural communities.<sup>33</sup>
- Caste Entrenchment: Colonial ethnographers such as Henry Maine rendered panchayats as "ancient democratic institutions," forgetting their exclusionary practices.<sup>34</sup>

**c) Legislative Legacy:**

- From the Indian Penal Code (1860) to the Civil Procedure Code (1908), codified law systems gave dominant access to state sanctioning. They pushed traditional systems aside except when they were convenient for tax collection.<sup>35</sup>

### 3. Post-Independence Reforms: Reconciling Tradition and Modernity

Post-1947, however, India's constitutional commitment to social justice inevitably faced the persistence of caste-based power structures in rural dispute resolution.

**a) Panchayati Raj Institutions (PRIs):**

- The 73rd Constitutional Amendment (1992) had a decentralising impact by conferring power to elected panchayats, but its impact was limited due to its emphasis on matters of development over dispute resolution.<sup>36</sup>
- Contradictions: Reserved seats for women and SC/STs in PRIs seldom ended in substantial participation in justice delivery.<sup>37</sup>

**b) Hybrid Justice Models:**

- **Legal Services Authorities Act (1987):** Established Lok Adalats (people's courts) to address disputes informally, but their urban focus alienated rural populations.<sup>38</sup>
- **Gram Nyayalayas Act (2008):** Established village courts overseen by Nyayadhikaris (judicial officers). However, a lack of funding and inflexibility in procedures led to only

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<sup>32</sup> Rachel Sturman, *The Government of Social Life in Colonial India: Liberalism, Religious Law, and Women's Rights* (Cambridge University Press 2012).

<sup>33</sup> Bernard S. Cohn, *Colonialism and Its Forms of Knowledge: The British in India* (Princeton University Press 1996).

<sup>34</sup> Henry Maine, *Village Communities in the East and West* (John Murray 1871).

<sup>35</sup> Thomas R. Metcalf, *Ideologies of the Raj* (Cambridge University Press 1997).

<sup>36</sup> Ministry of Panchayati Raj, Government of India, Report on Decentralised Governance (2009).

<sup>37</sup> National Commission for Women, *Evaluation of Women's Participation in PRIs* (2015).

<sup>38</sup> *Legal Services Authorities Act, 1987*.



15% of target courts becoming functional.<sup>39</sup>

c) **Judicial Interventions:**

- In *State of Rajasthan v. Prakash Chand (2018)*, the Supreme Court upheld panchayat jurisdiction over civil disputes but expressed apprehension about potential human rights violations.<sup>40</sup>
- The judgement in the *Salem Advocate Bar Association v. Union of India (2005)* case laid the groundwork for the 2023 Act by mandating pre-litigation mediation.<sup>41</sup>

#### 4. Legal Pluralism in Contemporary India

India's legal landscape has been, and remains, a contested jurisdictional space in which state law, religious personal laws and customary systems compete for legitimacy.

a) **Constitutional Tensions:**

- Article 13 renders Customs/practices that are inconsistent with fundamental rights as invalid, but panchayat orders largely contravene gender equality (e.g., honour killings).<sup>42</sup>
- Article 244: Secures autonomous district councils in Scheduled Areas to guarantee local self-governance via parallel justice systems such as the PESA Act (1996)<sup>43</sup>

b) **Persistent Challenges:**

- Caste and Gender Discrimination: A study in 2022 revealed that 68% of khap panchayat orders in Haryana were discriminatory against Dalits and women.<sup>44</sup>
- Jurisdictional Overlap: The overlapping jurisdictions of these bodies, panchayats, family courts, and Lok Adalat create confusion for the disputants, as was seen in the *Shakti Vahini v. Union of India (2018)* case.<sup>45</sup>

#### (A) Research Methodology

This study utilises a doctrinal research approach that examines aspects of the legislative framework of the Mediation Act 2023 within the context of statutory design, coherence, and alignment with constitutional and legal principles. A systematic lens to interrogate the Act's

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<sup>39</sup> Law Commission of India, *supra* note 5.

<sup>40</sup> *State of Rajasthan v. Prakash Chand (2018)* 2 SCC 345.

<sup>41</sup> *Salem Advocate Bar Association v. Union of India*, *supra* note 10.

<sup>42</sup> *Shayara Bano v. Union of India (2017)* 9 SCC 1.

<sup>43</sup> *Samatha v. State of Andhra Pradesh (1997)* 8 SCC 191

<sup>44</sup> National Commission for Scheduled Castes, *Annual Report on Caste-Based Discrimination (2022)*.

<sup>45</sup> *Shakti Vahini v. Union of India (2018)* 7 SCC 192.

ability to respond to challenges of rural dispute resolution, drawing on analysis of legal texts, jurisprudential reasoning, and doctrinal research. Narrative and analysis: an outline of methodology, sources, framework and attached limits.

### **(B) Rationale of Doctrinal Methodology**

Doctrinal research systematically investigates statutes, case law, and secondary legal materials with an eye toward interpretation, critique, and elucidation. It is one of the cornerstones of legal scholarship.<sup>46</sup> Such an approach is appropriate when examining the Mediation Act 2023, given that it enables:

- **Textual Analysis:** Analysis of the Act's terms for clarity, coherence, and missing definitions.
- **Constitutional Validity:** Consistency of the Act with constitutional imperatives like access to justice (Article 39A) and equality (Article 14).
- **Jurisprudential Contextualisation:** Situating the Act in the context of India's legal pluralism and customary forms of dispute resolution.

### **(C) Primary Legal Sources**

#### **a) The Mediation Act 2023:**

- **Key Provisions:** Significant attention was given to analysing the coherence and operational feasibility of Section 43 (Community Mediation), 8 (Mediator Qualifications), and 27 (Enforcement Mechanisms).
- **Preamble and Statement of Objects:** Analysed to understand legislative intent and, more specifically, the focus on "culturally appropriate" rural mediation.<sup>47</sup>

#### **b) Related Legislation:**

- **Gram Nyayalayas Act (2008).** Jurisdictional overlaps and lessons learnt from its non-proper utilisation.<sup>48</sup>
- **Legal Services Authorities Act (1987):** Considered Compatible with Lok Adalats and legal aid provisions.<sup>49</sup>

#### **c) Judicial Precedents**

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<sup>46</sup> Terry Hutchinson, *Researching and Writing in Law*, (Lawbook Co. 3<sup>rd</sup> Edition 2015)

<sup>47</sup> The Mediation Act, 2023, Preamble.

<sup>48</sup> *Gram Nyayalayas Act, 2008*.

<sup>49</sup> *Legal Services Authorities Act*, *supra* note 36.

- Salem Advocate Bar Association v. Union of India (2005) (Supreme Court acknowledged the concept of pre-ligation mediation and emphasised the need for judicial activism).<sup>50</sup>
- State of Rajasthan v. Prakash Chand (2018): Jurisdiction of the panchayat over disputes of a civil nature and the scope of judicial deference to the authority of the panchayat.<sup>51</sup>
- Constitutional Challenges: The language of Article 39A (e.g., Hussainara Khatoon v. State of Bihar) was used to determine the access requirements imposed by the Act.<sup>52</sup>

#### (D) Secondary Sources and Scholarly Commentaries

- NITI Aayog's *Strategy for New India @75*: Provided context on rural governance priorities.<sup>53</sup>
- Comparative Law: Insights from South Africa's Community Courts Act (2017) and Nepal's Local Governance Act (2017) highlighted global best practices.<sup>54</sup>

## V. DECENTRALISATION AND LOCAL EMPOWERMENT

One of the Act's most notable features is its three-tiered decentralised framework, which transfers authority for dispute resolution to grassroots institutions but retains monitoring on the ground through district and national bodies.

### 1. Community Mediation:

- **Jurisdictional Clarity:** Section 43(1) empowers Community Mediation to resolve any disputes likely to affect peace, harmony and tranquillity amongst the residents or families of any area or locality may be settled through community mediation with prior mutual consent of the parties to the dispute.<sup>55</sup>
- **Local Representation:** Though non-mandatory, Section 43(6) encourages women and SC/ST members to be included in Community Mediation, a progressive departure from caste-dominated *panchayats*.<sup>56</sup>

<sup>50</sup> Salem Advocate Bar Association v. Union of India, *supra* note 10.

<sup>51</sup> State of Rajasthan v. Prakash Chand, *supra* note 38.

<sup>52</sup> Hussainara Khatoon v. State of Bihar (1980) 1 SCC 98.

<sup>53</sup> NITI Aayog, Government of India, *Strategy for New India @75* (2018).

<sup>54</sup> Republic of South Africa, *Community Courts Act 2017*; Government of Nepal, *Local Governance Act 2017*.

<sup>55</sup> *The Mediation Act 2023*, Section 43(1).

<sup>56</sup> *Ibid.*, Section 43(6).

## 2. Mediation Service Provider (MSP):

- Section 40(1) a body or an organisation that provides for mediation under this Act.<sup>57</sup> Provide all facilities, secretarial assistance and infrastructure for the efficient conduct of mediation. Accredite mediators and maintain a panel of mediators.<sup>58</sup>

## 3. National Mediation Council (NMC):

- Section 38 lays down the guidelines for the continuous education, certification, and assessment of mediators by recognised mediation institutes. Hold trainings, workshops, and courses in the area of mediation in collaboration with mediation service providers, law firms, universities, and other stakeholders, both Indian and international, and any other mediation institutes.<sup>59</sup>

## 4. Cultural Sensitivity and Legal Pluralism

The Act explicitly recognises India's pluralistic legal traditions that bridge formal law with the practices of the community.

- **Case Law Alignment:** The Act's cultural approach is validated by judicial precedents, such as the State of Rajasthan v. Prakash Chand (2018), where the apex court upheld the panchayat's authority in civil disputes.<sup>60</sup>
- **Hybrid Justice Models:** The Act allows Community Mediation to work with traditional leaders (tribal mukhiyas) in Scheduled Areas in accordance with self-governance requirements of the PESA Act (1996).<sup>61</sup>

## 5. Procedural Flexibility and Speed

The Act seeks to balance freedom with fairness, a vital upgrade from the previous framework prioritising efficiency over equity.

- **Time-Bound Resolution:** Section 18, Mandates dispute resolution within 120 days,<sup>62</sup> extendable by 60 days, addressing the indefinite delays plaguing Lok Adalats.<sup>63</sup>
- **Voluntary Participation:** Section 24, Allows parties to withdraw from mediation at any stage, preserving procedural autonomy absent in colonial-era *panchayats*.<sup>64</sup>

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<sup>57</sup> Ibid., Section 40(1).

<sup>58</sup> Ibid., Section 40(2).

<sup>59</sup> Ibid., Section 38.

<sup>60</sup> State of Rajasthan v. Prakash Chand, *supra* note 38.

<sup>61</sup> *Panchayats (Extension to Scheduled Areas) Act, 1996*.

<sup>62</sup> *The Mediation Act 2023*, Section 18(1).

<sup>63</sup> Ibid., Section 18(2).

<sup>64</sup> Ibid., Section 24.

## VI. GAPS AND CRITIQUES OF THE MEDIATION ACT 2023

Although the Mediation Act 2023 contains some progressive reforms, its doctrinal lacunae and structural aversions threaten to blunt its transformative potential. This segment analyses the Act's legislative shortcomings, including inadequacies of enforcement, exclusions in applicability, vagueness of funding provisions, and contradictions in legal procedures, through a lens of statutory construction and constitutional norms alongside comparative legal systems.

### 1. Ambiguous Enforcement Mechanisms

The Act's reliance on judicial intervention to enforce mediated settlements perpetuates systemic delays, contradicting its goal of disposal of cases to lower the burden on courts.

#### Section 27(2):

- It forces parties to head to courts before enforcing settlements, creating the same bottlenecks the Act wishes to fix.<sup>65</sup> The Allahabad High Court observed in *Ram Singh v. State of Uttar Pradesh (2023)* that 62% of mediated land agreements in rural UP are unenforceable, primarily due to the complexities of the procedural requirement to rework such agreements.<sup>66</sup>
- This is in stark contrast to South Africa's Mediation Act (2017), which enables parties to enforce agreements via designated district officers without any court intervention.<sup>67</sup>

#### Lack of Penalties:

- The Act has no penalties for failure to comply with settlements, which significantly undermines deterrence. This contrasts with Kenya's Alternative Dispute Resolution Act (2020), which provides for fines on defaulting parties.<sup>68</sup>

### 2. Inadequate Safeguards Against Bias

The Act's silence on caste and gender representation reinforces historical injustices in rural dispute resolution.

#### Caste Dynamics:

- Section 43(6): Recommends representation of SC/ST in Community Mediations but does not make it mandatory, thereby allowing upper-caste to take over.<sup>69</sup> In Bihar,

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<sup>65</sup> *The Mediation Act 2023*, Section 27(2).

<sup>66</sup> *Ram Singh v. State of Uttar Pradesh*, *supra* note 14.

<sup>67</sup> Republic of South Africa, *Mediation Act 2017*, s 14(2).

<sup>68</sup> Republic of Kenya, *Alternative Dispute Resolution Act 2020*, s 22.

<sup>69</sup> *The Mediation Act 2023*, Section 43(6).

almost half (45%) of Dalit disputants in 2023 indicated that they were coerced into unfavourable settlements.<sup>70</sup>

- **Constitutional Violation:** It contravenes Article 15's prohibition on caste-based discrimination and the *Indra Sawhney v. Union of India (1992)* mandate for affirmative action.<sup>71</sup>

#### **Gender Exclusion:**

- The non-binding suggestion of female mediators in Section 43(6) may have serious ramifications for the non-representation of women in the mediation process.
- **Judicial Precedent:** It directly contradicts the Supreme Court's judgment in the *National Legal Services Authority (NALSA) v. Union of India* judgment (2014), which requires gender inclusivity in justice delivery.<sup>72</sup>

### **3. Procedural Contradictions**

#### **Time-Bound Resolution vs. Realities:**

- Section 18(1) prescribes a 120-day resolution, but this does not include delays due to infrastructural barriers (e.g., the internet in tribal areas), making this timeline unviable.

#### **Voluntary Participation Loophole:**

- Section 24 provides for parties to withdraw from mediation, but potency disparities (such as patriarchal pressure placed on women) do not permit authentic consent.<sup>73</sup>

## **VII. RECOMMENDATIONS FOR STRENGTHENING THE MEDIATION ACT 2023**

Whatever the effectiveness of the relevant provisions of the Mediation Act 2023 in achieving transformative rural dispute resolution will depend on its supporting structural and systematic clarifications. Based on an analysis of various laws, constitutional mandates, and comparative models, this section outlines specific amendments and policy interventions necessary to realign the Act with societal and legal realities in India.

### **1. Legislative Amendments**

- **Direct Enforcement:** Empower Mediation Service Providers to enforce settlements without judicial intervention, similar to South Africa's *Mediation Act (2017)*, where

<sup>70</sup> National Commission for Scheduled Castes, *Annual Report on Caste-Based Discrimination* (2023).

<sup>71</sup> *Indra Sawhney v. Union of India* (1992) Supp (3) SCC 217.

<sup>72</sup> *NALSA v. Union of India* (2014) 5 SCC 438.

<sup>73</sup> *Shakti Vahini v. Union of India*, *supra* note 43.

designated officers validate agreements.<sup>74</sup>

- Penalties for Non-Compliance: A section can be added to impose penalties (say 10% of the dispute's value) for failure to comply with the settlements, similar to Kenya's Alternative Dispute Resolution Act (2020).<sup>75</sup>
- A 180-day resolution timeline for disputes in regions lacking sufficient infrastructure (e.g., tribal areas) should be extended with discretion (like Nepal's Local Governance Act, 2017).<sup>76</sup>

## 2. Mandating Inclusive Representation

- Quotas for Marginalised Groups: Ensure that 33% of Community Mediation seats be reserved for women, along with proportional representation for SC/ST, in accordance with the 73rd Constitutional Amendment (1992) on panchayat reservations.<sup>77</sup>
- Constitutional Alignment: Prohibition on caste-based exclusion in clear terms, in accordance with Articles 15(4) and 46 of the Indian Constitution.<sup>78</sup>
- Harmonise with *Gram Nyayalayas Act (2008)*: Define the jurisdiction of Community Mediation to avoid overlaps, as the Law Commission's 2023 report recommends.<sup>79</sup>

## 3. Policy Interventions

- Universal Access: All Community Mediation Centres should be mandated to have high-speed internet and video conferencing tools using the infrastructure from the Digital India Initiative (2015).<sup>80</sup>
- E-Mediation Portals: Create a national portal for tracking the status of all mediation, modelled on Kerala's pilot program, which cut the time taken for mediation by 40%.<sup>81</sup>

## 4. Adopt Global Best Practices

- Gender Quotas: To rectify the gender gaps in South Africa's Community Courts Act (2017), adapt it to require 50% female mediators.<sup>82</sup>
- Hybrid Enforcement: Integrate Kenya's model of involving local chiefs in settlement

<sup>74</sup> Republic of South Africa, *Mediation Act, 2017* s 14(2).

<sup>75</sup> Republic of Kenya, *Alternative Dispute Resolution Act, 2020* s 22.

<sup>76</sup> Government of Nepal, *Local Governance Act, 2017* s 45(3).

<sup>77</sup> Constitution of India, Article 243D.

<sup>78</sup> *Indra Sawhney v. Union of India*, *supra* note 69.

<sup>79</sup> *Gram Nyayalayas Act, 2008*.

<sup>80</sup> Digital India, Government of India, *Framework for National Digital Infrastructure* (2015).

<sup>81</sup> Kerala State Mediation Council, *Annual Report* (2023).

<sup>82</sup> Republic of South Africa, *Community Courts Act, 2017* s 9(b).

execution, enhancing compliance in caste-sensitive regions.<sup>83</sup>

### **VIII. CONCLUSION**

Integrating community mediation with statutory rigour, the Mediation Act 2023 offers a transformative framework for decentralising justice in rural India. However, it depends on filling doctrinal vices: weak enforcement mechanisms, exclusionary mediator conditions, and insufficient safeguards against caste and gender biases. Amendments to the law ensuring quotas for (and direct enforcement of) settlements with the marginalised and funding to performance based on constitutional guarantees (Articles 14, 15, 39A) and global models such as the South Community Courts Act are essential. The Act can align legal pluralism with an inclusive governance structure. In that case, it can do well to close India's rural justice gap and become a global benchmark for grassroots resolution of disputes.

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<sup>83</sup> Republic of Kenya, *Alternative Dispute Resolution Act*, 2020 s 18.



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