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THE MEDIATION ACT, 2023: IMPACT, PRACTICAL CHALLENGES AND HOW TO WORK

"Mediation Subtracts Bitterness, Divides Burdens & Adds Hope to Broken Human Relations": *Hon'ble Sri Justice Surya KantGaru, Chief Justice of Hon'ble Supreme Court of India*

Introduction

The term "*mediation"* has gained significant prominence in the Indian judicial system in recent years. As courts continue to grapple with mounting case backlogs, prolonged litigation, escalating legal costs, and delays in the administration of justice, mediation has emerged as an effective alternative for resolving disputes. The word "Mediation" derived from the **Latin word "*Mediated*"**, which means "***to be in the centre***".The concept of amicable settlement of disputes is not new to India. In the ancient days, disputes used to be resolved by Panchayat where elder people used to resolve disputes. In tales of "*Maryada Ramanna*", "*Tenali Rama Krishna"*etc., people used to go to a gentleman who heard their disputes and settle amicably by applying common sense.Mediation in India evolved from moral persuasion (**Dharma**) to judicial recognition (**Nyaya**). Its transition reflects a synthesis of ancient ethical principles and modern legal doctrines. **Mediation is any process "*whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person referred to as mediator, who does not have the authority to impose a settlement upon the parties to the dispute*".** Unlike traditional litigation, mediation encourages parties to voluntarily reach mutually acceptable settlements, thereby preserving relationships and reducing future conflicts.

Mediation is one of the principal mechanisms under the umbrella of Alternative Dispute Resolution (ADR). Although its origins can be traced to India's traditional village panchayat system, its formal recognition in the legal framework came through Section 89 of the Code of Civil Procedure, 1908 (CPC), which empowered courts to refer disputes to ADR mechanisms such as Arbitration, Conciliation, Judicial settlement, Lok Adalat, and Mediation.

However, despite judicial endorsement and statutory recognition, mediation lacked a comprehensive and independent legislative framework. To address this gap, the Government of India introduced the Mediation Bill, 2021(Bill No. XLIII of 2021), by receiving the assent of the president on 14.09.2023 and has been enacted by the Central Government via **Notification No. CG-DL-E-15092023-248775** as **"The Mediation Act, 2023"**. The Act represents a significant transition from adversarial litigation to consensual dispute resolution and seeks to make justice more accessible, affordable, and efficient. It is applicable to the mediations which are conducted in India.

International Dimension: The Singapore Convention

"The United Nations Convention on International Settlement Agreements Resulting from Mediation", commonly known as the Singapore Convention on Mediation, was adopted to facilitate the enforcement of international mediated settlement agreements.

Objectives

- Promote international commercial mediation.
- Simplify cross-border enforcement.
- Enhance confidence in mediation as a global dispute resolution mechanism.

Relevance to India

The Mediation Act, 2023 reflects India's intention to align its domestic framework with international best practices.India, being a signatory to the Singapore Convention since 7th August 2019, makes a notable effort towards recognizing international mediation as a growing dispute resolution mechanism.

India has not yet ratified the convention and therefore, if an international mediation (as defined under section 3(g) of the Act), takes place within India and under the Mediation Act, a party to the mediated settlement agreement reached in this mediation cannot invoke the Singapore Convention for its enforceability.Further, the Mediation Act, also declares that all mediated settlement agreements reached through mediation done under the Act would be enforceable *"in accordance with the provisions of the Code of Civil Procedure, 1908, in the same manner as if it were a judgment or decree passed by a court…"*

Potential Benefits

- Increased foreign investment confidence.
- Strengthened international commercial dispute resolution.
- Positioning India as a global mediation hub.

Feature	Singapore Convention	India – Mediation Act, 2023
Scope	International commercial disputes	Domestic civil & commercial disputes
Enforceability	Direct enforcement in signatory states	Settlement enforceable as court decree (Sec. 27)
Institutional framework	SIAC, SIMC	Mediation Council (not yet operative)
Ratification status	56+ countries ratified	India signed, not ratified
Online mediation	Not explicit	Explicitly recognized (Sec. 30)

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Statutory Recognition of Mediation and ADR in India

The development of mediation in India has been gradual, evolving through various legislations that collectively laid the foundation for Alternative Dispute Resolution (ADR).

1. Code of Civil Procedure, 1908 – Section 89

The primary statutory recognition of mediation came through **Section 89 of the Code of Civil Procedure, 1908**, introduced by the Code of Civil Procedure (Amendment) Act, 1999. The provision Empowers courts to refer disputes for settlement through ADR mechanisms: Arbitration, Conciliation, Judicial settlement, Lok Adalat, Mediation.

Objective

To reduce the burden on courts and encourage amicable settlement of disputes before resorting to prolonged litigation.

2. Arbitration and Conciliation Act, 1996 – Foundation of Modern ADR

The **Arbitration and Conciliation Act, 1996** laid the groundwork for institutionalized ADR in India.

Significance

- Recognized conciliation as a formal dispute resolution mechanism.
- Encouraged consensual settlement outside traditional courts.
- Reflected the principles of party autonomy and voluntary dispute resolution.

Relevance to Mediation

Although the Act primarily governs arbitration and conciliation, it established the legislative philosophy that disputes can be resolved through consensual processes rather than adjudication alone. This served as an important precursor to the development of mediation law in India.

3. Legal Services Authorities Act, 1987 – Lok Adalats

The **Legal Services Authorities Act, 1987** institutionalized **Lok Adalats**, which operate on the principles of compromise and settlement. The Andhra Pradesh State Legal Services Authority has published **The Andhra Pradesh alternative dispute resolution and Mediation rules, 2017** published by way of notification no.26/SO/2017 in ROC No.1013/ADR/SO/2005 dt:15-09-2017by consolidating the Civil Procedure, Alternate Dispute Resolution and Mediation Rules,2005.

Significance

- Provides free and speedy dispute resolution.
- Encourages negotiated settlements.
- Reduces litigation burden on courts.

Contribution to Mediation Culture

Lok Adalats familiarized litigants with non-adversarial dispute resolution and significantly contributed to the growth of settlement-oriented justice in India.

4. The Companies Act, 2013 -- Mediation and Conciliation Panel

Section 442of the Companies Act, 2013empowers the Central Government to maintain a panel of experts known as the ***"Mediation and Conciliation Panel"*** for resolving disputes pending before the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT). The provision encourages parties to settle disputes amicably without undergoing lengthy litigation proceedings.

Relevance to Mediation

- **Legal Recognition--**Section 442 provides statutory backing to mediation and conciliation, giving these processes legal legitimacy in corporate dispute resolution.

- **Corporate Dispute Resolution--**Many disputes involving shareholders, directors, creditors, and companies can be settled through mediation, reducing the need for adversarial litigation.
- **Support for NCLT and NCLAT Proceedings--**Matters pending before the National Company Law Tribunal and the National Company Law Appellate Tribunal may be referred for mediation, helping parties reach mutually acceptable settlements.
- **Promotion of Amicable Settlements --** Mediation encourages cooperation and negotiation rather than confrontation, which is particularly important in ongoing business relationships.
- **Efficiency and Cost Savings --** Corporate litigation can be lengthy and expensive. Mediation offers a quicker and more economical method of resolving disputes.
- **Alignment with Modern ADR Policies --** The Companies Act reflects the broader policy objective of promoting Alternative Dispute Resolution (ADR) mechanisms in India, complementing the framework established by the Mediation Act, 2023 and other ADR laws.

5. Commercial Courts Act, 2015 – Mandatory Pre-Institution Mediation

A major step toward mainstreaming mediation came through the **Commercial Courts Act, 2015**, particularly after the 2018 amendment introducing **Section 12A**.

Key Provision

- Mandatory pre-institution mediation for commercial disputes before filing a suit, unless urgent interim relief is sought.

Objectives

- Reduce commercial litigation.
- Preserve business relationships.
- Promote efficient dispute resolution.

Significance

This was India's first legislative attempt to make mediation a compulsory preliminary step in specific categories of disputes, paving the way for similar provisions under the Mediation Act, 2023.

Important case law under commercial Courts Act

- **3F Industries Limited vs $ Transparent Technologies solutions** on 18 May 2026 by the Hon'ble High Court of Andhra Pradesh.
  As per the Amendment to definition of specific value under Section 2(1)(i) of the Act 28 of 2018 (w.e.f. 03-05-2018) the pecuniary jurisdiction of the commercial courts is the value of the subject matter in respect of a suit as determined in accordance with section 12 **shall not be less than three lakh rupees** or such higher value, as may be notified by the Central Government.

6. Consumer Protection Act, 2019 – Mediation Cells

The **Consumer Protection Act, 2019** introduced mediation as an integral component of consumer dispute resolution.

Key Features of the act includes: Establishment of mediation cells attached to Consumer Commissions, Referral of consumer disputes to mediation when settlement appears possible.

Significance

- Enhances consumer access to justice.
- Encourages speedy and inexpensive dispute resolution.
- Reduces pendency before consumer forums.

7. Mediation Act, 2023 – Comprehensive Legal Framework

The culmination of these developments is the **Mediation Act, 2023**, which provides a dedicated statutory framework governing mediation in India.

Objectives

- Institutionalize mediation.
- Ensure enforceability of settlement agreements.
- Establish regulatory oversight through the Mediation Council of India.
- Promote domestic and international mediation.

Judicial Recognition of Mediation

The development of mediation jurisprudence in India has been significantly influenced by judicial pronouncements.

1. Salem Advocate Bar Association v. Union of India(AIR 2005 SC 3353)

The constitutional validity and implementation of Section 89 CPC were challenged before the Hon'ble Supreme Court.The Court held that:

- ADR mechanisms are essential for reducing delays in justice delivery.
- Courts should actively encourage settlements.
- Procedural frameworks should be developed for effective implementation of Section 89.

Relevance

The judgment laid the foundation for court-annexed mediation and institutional ADR mechanisms.

2. Afcons Infrastructure Ltd. vs. Cherian Varkey Construction Co. (P) Ltd. (2010 (8) SCC 24)

The Hon'ble Supreme Court examined the practical implementation of Section 89 CPC.The Court:

- Clarified the scope and operation of Section 89.
- Identified disputes suitable for mediation.
- Encouraged courts to adopt mediation wherever feasible.

Relevance

This landmark judgment became the cornerstone of mediation jurisprudence in India and provided operational clarity regarding court-referred mediation.

3. Vikram Bakshi vs. Sonia Khosla (AIRONLINE 2014 SC 445)

This case highlighted the importance of structured mediation in resolving complex commercial and family-owned business disputes.The Court recognized that:

- Mediation can effectively address disputes involving ongoing business relationships.
- Structured negotiation helps preserve commercial interests while resolving conflicts.
- Settlement-oriented mechanisms often provide more practical solutions than adversarial litigation.

Relevance

The decision strengthened judicial confidence in mediation as an effective mechanism for resolving commercial disputes involving multiple stakeholders.

4. **M.R. Krishna Murthi vs. New India Assurance Co. Ltd., (2019) 4 SCC 767**.

The Hon'ble Supreme Court while deciding the Motor Accident Claims Observed that mediation offers a quicker, less adversarial, and more efficient mechanism for settlement of compensation claims. The court recognized that:

- prolonged litigation causes hardship to accident victims and their families.
- Recommended exploring the establishment of a **Motor Accident Mediation Authority (MAMA)** in every district to facilitate settlement of motor accident disputes.
- Recommended the Government examine the feasibility of a comprehensive mediation framework.
- Recognizing the global success of mediation, the Court stressed the need for greater institutional support, trained mediators, and awareness among litigants and legal practitioners.

Relevance

The decision reinforced the view that mediation should form an integral part of the justice delivery system rather than merely function as an alternative to litigation. The Court's recommendations provided a strong judicial impetus for mediation reforms and substantially influenced subsequent policy developments, ultimately contributing to the enactment of the Mediation Act, 2023.

5. Recent Development**– The Hon'ble Supreme Court Samadhan Samaroh Orders (2026)**

Background

The Hon'ble Supreme Court launched a large-scale dispute resolution initiative emphasizing mediation and hybrid settlement mechanisms.

Outcome

- Approximately **94,000 cases** were reportedly resolved through mediation and settlement drives conducted across various courts and institutions.
- The initiative extensively utilized **hybrid mediation models**, combining physical and virtual proceedings.

Significance

The initiative demonstrated:

- The scalability of mediation in reducing judicial backlog.
- The effectiveness of technology-assisted dispute resolution.
- The growing acceptance of mediation within India's justice delivery system.

Relevance

The Samadhan Samaroh initiative showcased mediation as a practical tool for mass dispute resolution and highlighted its role in achieving speedy and accessible justice.

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Salient Features of the Indian Mediation Act, 2023

The Act consists of XI Chapters, 65 Sections and Ten Schedules. The long title of the Act says: "An Act to promote and facilitate mediation, especially institutional mediation, for resolutionof disputes, commercial or otherwise, enforce mediated settlement agreements, provide for abody for registration of mediators, to encourage community mediation and to make onlinemediation as acceptable and cost-effective process and for matters connected therewith or incidental thereto."

Provisions that came into force on 9-10-2023:

1. Section 1 which lays down the "Short Title, extent and commencement of the Act".

2. Section 3 enumerates various "Definitions".

3. Section 26 relates to "Proceedings of Lok Adalat and Permanent Lok Adalat not to be affected".

4. Sections 31 to 38: Chapter VIII relating to "Mediation Council of India" consisting of 9 Sections out which 8 has been enforced:

    - Section 31 relates to "Establishment and incorporation of Mediation Council";
    - Section 32 relates to "Composition of Council";
    - Section 33 relates to "Vacancies, et., not to invalidate proceedings of Council";
    - Section 34 relates to "Resignation";
    - Section 35 relates to "Removal";
    - Section 36 relates to "Appointment of experts and constitution of Committees";
    - Section 37 relates to "Secretariat and Chief Executive Officer of Council";
    - Section 38 relates to "Duties and functions of Council".

5. Sections 45 to 47:
    - Section 45 relates to "Mediation Fund";
    - Section 46 relates to "Accounts and Audit";
    - Section 47 relates to "Power of Central Government to issue directions".

6. Sections 50 to 54
    - Section 50 relates to "Protection of action taken in good faith";
    - Section 51 relates to "Power to make Rules";
    - Section 52 relates to "Power to make Regulations";
    - Section 53 relates to "Laying";
    - Section 54 relates to "Power to remove difficulties".

7. Sections 56 to 57
    - Section 56 relates to "Act not to apply to pending proceedings";
    - Section 57 relates to "Transitory provision".

Applicability of the Act (Section 2):

The Act Applies to Mediation conducted in India, Commercial and civil disputes, International commercial mediation, Parties agreeing to mediation. International Mediation will be applicable where one party resides abroad, is a foreign corporation, or foreign government entity.

A. **Statutory Recognition of Mediation**: The Act legally recognizes
    a) Pre-litigation mediation (Sections 3(u), 5),
    b) Court annexed mediation (Sections 3(e), 7),
    c) Online mediation (Section 3(q), Section 30),
    d) Community mediation(Chapter X, Section 43),
    e) Institutional mediation (Sections 3(f)),
    f) International mediation(Section 3(g)) and
    g) Conciliation.

Definition of Mediation: **Section 3(h)**: "mediation" includes a process, whether referred to by the expression mediation, pre-litigation mediation, online mediation, community mediation, conciliation or an expression of similar import, whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person referred to as mediator, who does not have the authority to impose a settlement upon the parties to the dispute.

a. **Mandatory Pre-Litigation Mediation**(**Section 5)**:Before filing a civil or commercial suit, parties must attempt mediation unless, urgent interim relief is required, dispute falls under non-mediable category. Pre-litigation mediation in matters of commercial disputes of Specified Value shall be undertaken in accordance with the provisions of section 12A of the Commercial Courts Act, 2015.

b. **Court-Annexed Mediation** (**Section 7**):- Courts or tribunal may pass interim order and refer disputes to mediation. Court or tribunal may direct parties toward mediation at any stage.

c. **Online Mediation**: - **Section 30** Permits mediation through video conferencing, electronic communication and digital platforms. Significance of online mediation is Cost effective, Accessible and Technology-driven dispute resolution.

d. **Community Mediation**: - **Chapter X** Allows mediation for neighborhood disputes, family/community conflicts, local disputes affecting harmony being conducted by Panel of three community mediators.

e. **Institutional Mediation**: - (**Section 3(f))** The Act strongly promotes mediation through recognized mediation service providers. The institutions i.e., Mediation Service Providers (MSPs) appoint mediators, maintain panels, conduct proceedings and provide infrastructure.

f. **International Mediation: - (Section 3(g))** International mediation under the Act means resolving commercial disputes in India that involve a foreign element. It applies when at least one party is foreign—such as an individual living abroad, a company or Limited Liability Partnership (LLP) with business outside India, an association based overseas, or even a foreign government. In essence, if a commercial dispute under Indian law has any party connected to another country, it is treated as *international mediation*.

B. **Mediation Council of India (Chapter VIII): -** The establishment of a dedicated regulatory body is a unique institutional feature.

C. **Mediation Agreement:** As per **Section 4** of Mediation Act, 2023, A mediation agreement must be in writing, may be a clause in contract, may arise before or after dispute which must be essential in Clear intention to mediate, Written form and Identifiable disputes.

D. **Who is a Mediator:** A person who facilitates communication between the parties. He is neither a Judge nor an arbitrator.

E. **Appointment of Mediators**: Parties may mutually appoint mediator or seek appointment from panel through mediation institution. Mediator should possess integrity, impartiality, requisite training. As per **section 8** of the Act, within 7 days of date of receipt of appointment mediator should communicate his willingness.

F. **Duties/Role of Mediator (Section 16):** Mediator shall remain neutral, facilitate communication, assist settlement, maintain confidentiality. Mediator cannot impose decision, act as arbitrator/judge in same dispute.

G. **Place of Mediation: Section 13** of the Act states that mediation shall ordinarily take place within territorial jurisdiction of court or tribunal having jurisdiction over the dispute. Or with the consent of the parties or as per Section 30, it may also be conducted in an online mode.

H. **Confidentiality in Mediation (Section 22)**: One of the strongest features of mediation. Confidential Information Includes communications, proposals, admissions, settlement discussions. Exceptions disclosure allowed only by consent, for implementation and to prevent serious illegality.

I. **Time Limit for Mediation** (**Section 18**): 120 days from first appearance. Extendable by 60 days which ensures importance of speedy disposal, efficiency and reduced delay.

J. **Mediated Settlement Agreement (MSA)** (**Section 19**): If settlement is reached written agreement is prepared, signed by parties and mediator. The Legal Status is Equivalent to court decree. International mediated settlement agreements may require registration.

K. **Registration of Agreement** (**Section 20**): A mediated settlement agreement, at the option of the parties, may be registered within 180 days from the date of receiving the authenticated copy of the agreement. Even after the limitation period they may register, subject to prescribed amount of fee.

L. **When no settlement is arrived (Section 21):** Where no agreement is arrived at between the parties within the prescribed time period under Section 18, or where the mediator is of the opinion that no settlement is possible between the parties, the mediator is required under Section 21 to submit a non-settlement report to the Mediation Service Provider in case of an institutional mediation and in all other cases submit to the parties.

M. **Enforceability of Settlement Agreements** (**Section 27)**: Mediated settlement agreement has the same status as a judgment, or decree of court. The challenge of settlement of agreements allowed only on limited grounds i.e., fraud, corruption, impersonation, and relating to disputes not fit for mediation.

N. **Binding nature of Agreement** (**Section 27**): A mediated settlement agreement is final and binding on the parties. Further, it shall be enforceable as a decree or judgment of a court.

O. **Challenge to Settlement Agreement** (**Section 28**): Challenge allowed only on the grounds i.e., Fraud, Corruption, Impersonation, Subject matter non-mediable under section 6 of 2023 Act. Such challenge can be made within a **period of ninety days** (90 days) from the date of receipt of copy of mediated settlement agreement by the parties. The court or tribunal may further entertain the application with a further period of ninety days (90 days).

P. **Limitation (Section 29):** When calculating the limitation period (the legally allowed time to file a case or proceeding), the time spent in mediation under the Mediation Act, 2023 will not be counted.The clock for limitation pauses from the date mediation begins (under Section 14). It remains paused until either:

i. The mediator submits the report (Section 21), or
ii. The mediation is terminated (Section 24).

Disputes Not Fit for Mediation: - As per Section 6 plus (+) First Schedule of Mediation Act, 2023 certain disputes are excluded.

S.No.	Non-Mediable Disputes
1.	Disputes involving prosecution for criminal offences
2.	Tax assessment litigation
3.	Matters affecting rights of third parties
4.	Proceedings before National Green Tribunal
5.	Serious fraud allegations/ impersonation/ coercion disputes
6.	Matters involving minors/persons of unsound mind, deities or rights in rem
7.	Electoral disputes
8.	Suits for declaration of title against government
9.	Regulatory Authority Proceedings (TRAI, SEBI, RBI)
10.	Land Acquisition and compensation matters

Stages of Mediation Proceedings-

(1) Agreement to Mediate- Parties consent.
(2) Referral order from referral court- In suitable and fit cases with intimation to parties and counsels.
(3) Appointment of Mediator-Chosen mutually/institutionally.
(4) Preliminary Session - Mediator explains procedure.
(5) Joint Sessions - Discussion between parties.
(6) Caucus Meetings - Private discussions separately.
(7) Negotiation - Settlement options explored.
(8) Settlement Agreement - Drafted and signed.

Criticism and Challenges: -

(A) Mandatory Pre-Litigation Mediation, may delay urgent litigation, where in some cases forced mediation may fail.

(B) Government Exemption: - Government disputes partly excluded.

(C) Over-Regulation: - Too much institutional control may reduce flexibility, increase bureaucracy.

(D) Enforceability Issues Cross-border enforcement remains challenging.

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Government and Judiciary Initiatives

Strengthening Mediation in India

The success of the Mediation Act, 2023 depends not only on legislative recognition but also on sustained institutional support from the judiciary and the government. As pointed out by the Hon'ble President of India – Smt. Droupadi Murmu -- ***Mediation becomes the key instrument to realize the vision of Viksit Bharat by 2047.***

Over the last two decades, several initiatives have played a crucial role in promoting mediation culture, developing infrastructure, training mediators, and encouraging settlement-oriented dispute resolution. These initiatives collectively laid the groundwork for the modern mediation framework in India.

(I). Mediation and Conciliation Project Committee (MCPC), 2005

The **Mediation and Conciliation Project Committee (MCPC)** was constituted by the Hon'ble Supreme Court of India in 2005 under the leadership of the then Hon'ble Chief Justice of India to facilitate the implementation of Section 89 of the Code of Civil Procedure, 1908 and institutionalize mediation across the country.

- **Objectives**

The MCPC was established to:

- Promote mediation as an effective dispute resolution mechanism.
- Develop uniform mediation practices nationwide.
- Train judges and mediators.
- Establish mediation centers in courts.
- Create standards for mediation proceedings.

- **Major Contributions**

A. Training and Capacity Building

The MCPC has conducted extensive training programs for:

- Judicial officers

- Advocates
- Mediators
- Legal Services Authorities

It introduced structured mediation training modules and helped create a nationwide pool of certified mediators.

B. Accreditation and Standardization

The Committee developed:

- Accreditation standards for mediators.
- Ethical guidelines.
- Model mediation rules.
- Institutional mediation protocols.

These efforts ensured consistency and professionalism in mediation practices throughout India.

C. Research and International Collaboration

The MCPC coordinates with international mediation organizations, conducts research, organizes conferences, and promotes best practices in dispute resolution.

❖ **Significance**

The MCPC is widely regarded as the foundational institution responsible for mainstreaming mediation within the Indian judiciary and creating the infrastructure that later supported the enactment of the Mediation Act, 2023.

(II). Delhi High Court Mediation and Conciliation Centre (Samadhan)

The **Delhi High Court Mediation and Conciliation Centre**, popularly known as **Samadhan**, was established as a court-annexed mediation institution through a collaborative initiative of the Hon'ble Delhi High Court and the legal fraternity. It emerged as one of India's earliest and most successful institutional mediation centers.

Meaning of "Samadhan"

The term *Samadhan* literally means *resolution*, reflecting the objective of amicable dispute settlement.

Functions

The Centre handles:

- Commercial disputes
- Contractual disputes
- Consumer disputes
- Family and matrimonial matters
- Employment disputes
- Intellectual property disputes
- Banking and insurance disputes
- Property and landlord-tenant conflicts

It provides services for both:

- Court-referred mediation.
- Pre-litigation mediation.

❖ **Institutional Significance**

A. Model Mediation Centre

Samadhan became a model for similar mediation centers established across India.

B. Professional Training

The Centre regularly conducts mediation training programs and contributes to the development of professional mediation standards.

C. Successful Settlement Rates

The Centre demonstrated that mediation could successfully resolve a large number of disputes while simultaneously reducing related litigation. Early settlement outcomes significantly influenced judicial confidence in mediation.

❖ **Contribution to Mediation Jurisprudence**

The Delhi High Court Mediation Centre showcased how institutional mediation can function efficiently within the judicial system while maintaining flexibility, neutrality, and accessibility.

(III). Hon'ble Supreme Court Initiative: SAMADHAN SAMAROH, 2026

In 2026, the Hon'ble Supreme Court of India launched a nationwide dispute resolution initiative known as **SAMADHAN SAMAROH** (*Supreme Court Action for Mediated Adjudication and Disputes Harmonization Across Nation*). The program was designed to advance the vision of participative justice and doorstep delivery of justice through consent-based dispute resolution.

○ **Objectives**

The initiative sought to:

- Reduce pendency of cases.
- Promote amicable settlements.
- Encourage mediation and Lok Adalats.
- Improve access to justice.
- Strengthen alternative dispute resolution mechanisms.

❖ **Hybrid Mediation Model**

One of the most notable aspects of the programme was the adoption of a **hybrid mediation framework**, allowing parties to participate through:

- Physical hearings.
- Virtual proceedings.
- Online settlement platforms.

This approach expanded access to mediation while reducing geographical barriers.

○ **Scope of Disputes Covered**

The initiative included disputes relating to:

- Banking matters

- Consumer disputes
- Family law
- Labour disputes
- Service matters
- Tax disputes
- Land acquisition cases
- Negotiable Instruments Act matters
- Property disputes
- Rent disputes

- **Impact**

The Hon'ble Supreme Court identified tens of thousands of pending matters as suitable for settlement through mediation and Lok Adalat mechanisms. The initiative demonstrated the scalability of mediation as a tool for mass dispute resolution and highlighted the judiciary's commitment to consensual justice.

- **Significance**

The Samadhan Samaroh initiative represents one of the largest mediation-driven judicial settlement programs in India and illustrates the practical implementation of the principles underlying the Mediation Act, 2023.

(IV). MSME-Focused Mediation and Settlement Mechanisms

Micro, Small and Medium Enterprises (MSMEs) often face prolonged payment disputes, contractual conflicts, and resource constraints that make traditional litigation impractical.

Recognizing these challenges, the government has increasingly promoted mediation and conciliatory mechanisms for commercial dispute resolution involving MSMEs.

- **MSME Facilitation Framework**

Under the **Micro, Small and Medium Enterprises Development Act, 2006**, disputes relating to delayed payments may be referred to the **Micro and Small Enterprises Facilitation Councils (MSEFCs)**.

- **Process**

The Councils initially attempt:

- Conciliation.
- Negotiated settlement.
- Mediation-oriented resolution.

Only if settlement fails does the matter proceed toward arbitration. This reflects a mediation-first approach to commercial dispute resolution.

❖ **MSME Samadhan Portal**

The Government introduced the **MSME Samadhan Portal** to facilitate resolution of delayed payment disputes involving MSMEs.

Functions

The portal enables:

- Filing of claims against delayed payments.
- Digital tracking of disputes.
- Referral to Facilitation Councils.
- Settlement-oriented proceedings.

❖ **Significance for Commercial Mediation**

A. Reducing Litigation Costs

MSMEs often lack the financial capacity for prolonged litigation. Mediation-based mechanisms provide faster and more affordable remedies.

B. Preserving Business Relationships

Unlike adversarial court proceedings, mediation promotes continued commercial cooperation between contracting parties.

C. Enhancing Ease of Doing Business

Efficient dispute resolution strengthens contractual confidence and improves the business environment.

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Collective Impact of The Mediation Act, 2023 and the Initiatives

The Mediation Act, 2023 represents a significant legislative milestone by providing a comprehensive statutory framework for mediation in India.Unlike litigation, mediation allows parties to maintain control over the outcome and arrive at mutually acceptable solutions, thereby preserving commercial, familial, and social relationships.The Act encourages settlement before the commencement of formal legal proceedings, which can significantly reduce judicial pendency and save valuable judicial resources. Its recognition of online mediation further improves access to justice by enabling parties from different geographical locations to participate conveniently. Additionally, the enforceability of mediated settlement agreements provides legal certainty and minimizes the risk of future disputes. Consequently, the Act strengthens India's ADR framework, promotes a culture of consensual dispute resolution, and contributes to a more efficient and accessible justice system.

The combined efforts of:

- The Hon’ble Supreme Court through MCPC,
- Institutional mediation centres such as Samadhan,
- Nationwide programmes like Samadhan Samaroh,
- MSME-focused dispute resolution schemes,

have significantly contributed to the development of mediation culture in India.

These initiatives have:

- Increased public awareness.
- Expanded mediation infrastructure.
- Developed professional mediator training systems.
- Encouraged pre-litigation settlement.
- Reduced judicial burden.
- Strengthened access to justice.

The Hon’ble Supreme Court's proactive jurisprudence and the enactment of the Mediation Act, 2023 have collectively transformed mediation into a central pillar of India's dispute resolution framework.

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Practical Challenges Faced by the Mediation Act, 2023 and Practical Solutions

The Mediation Act, 2023 is a landmark legislation aimed at institutionalizing mediation as a primary mode of dispute resolution in India. As rightly observed by Hon'ble Justice Gavai, ***"The future of mediation will be determined by the commitment of judges, lawyers, mediators, community leaders, and ordinary citizens alike to embrace dialogue and collaborative solutions over confrontation."***

While the Act has the potential to reduce judicial backlog, promote access to justice, and strengthen consensual dispute resolution, its effectiveness depends largely on successful implementation. Several legal, institutional, social, and technological challenges continue to impede the widespread adoption of mediation. Addressing these concerns is crucial for realizing the objectives of the Act.

Challenge 1: Time limit for completion of Mediation under Section 18

Mediation being a consensual process giving every right to one or all of the parties to withdraw from the mediation, placing a time limit for completion hampers the freedom of the parties to continue with the process if they feel the need for it.

Solutions:

- **Extendable Time Frames:** Allow courts or mediation institutions to grant extensions upon joint request of the parties. This way, the statutory limit ensures discipline, but genuine willingness to continue is respected.
- **Party Autonomy Clause:** Insert a provision that if *all parties consent in writing*, mediation may continue beyond the statutory period. This safeguards voluntariness while keeping misuse in check.
- **Institutional Oversight:** Mediation centers or councils could monitor extensions to ensure they are not abused for stalling litigation, but still allow flexibility when progress is genuine.

- **Hybrid Approach:** Fix a default time limit for completion, but exclude it from being "mandatory" if parties demonstrate ongoing constructive dialogue. Courts could recognize such mediation as valid even beyond the limit.

<u>Challenge 2</u>: The First Schedule of the Act --- exempts certain disputes from being mediated.

Many of the disputes listed are amenable to mediation and there is no point in placing a statutory restriction on mediating those disputes. The applicability of the act should not be unduly restricted and must embrace a broad category of disputes.

Solutions:

- **Judicial Interpretation:** Courts can adopt a liberal interpretation, allowing mediation in excluded categories where parties consent and no public policy concerns arise. This ensures flexibility without waiting for legislative change**.**
- **Opt-in Mechanism:** Allow parties to voluntarily opt into mediation for excluded disputes, provided they sign informed consent agreements. This respects autonomy while safeguarding against coercion.
- **Periodic Review Clause:** Insert a statutory requirement that the Schedule be reviewed every 3–5 years, ensuring adaptability to evolving social and legal contexts.

<u>Challenge 3</u>: Unclear Jurisdictional Provisions for online Mediation

The Act clarifies where the parties agree to conduct the mediation at any place outside the territorial jurisdiction or online, for enforcement, challenge and registration of the mediated settlement agreement, the same shall be deemed to have been undertaken within the territorial jurisdiction of the court or tribunal of competent jurisdiction. This deeming provision is unclear relating to the jurisdictional implications of online settlements, especially concerning cross-border enforcement.

Solutions:

- **Explicit Statutory Clarification:** Amend the Act to specify that online mediation settlements will be deemed to fall under the jurisdiction of the court where:
    1. The agreement is registered, or
    2. The parties designate by contract, or
    3. The subject matter of the dispute substantially arises. This removes ambiguity and ensures predictability.
- **Choice of Court Agreements:** Allow parties to expressly agree in writing on the competent jurisdiction for enforcement of online mediated settlements. This contractual autonomy aligns with international practice and avoids forum shopping disputes.
- **Technology-Specific Guidelines:** Issue rules that define jurisdiction for online mediation based on factors like server location, mediator's seat, or parties' residence. This mirrors arbitration's "seat" concept and provides clarity.

<u>Challenge 4</u>: Reluctance by Lawyers

Some of the lawyers are not facilitating for mediation as they are under the wrong apprehension that if the dispute resolved through mediation, then it will have impact on their income and they will lose their clients.

Solution:

- **Mandatory Training & Awareness:**
    1. Conduct awareness programs to all the members of the legal fraternity in their respective Bar Associations.
    2. Equip lawyers with skills and knowledge to see mediation as a professional tool.
    3. Provide certified mediation training through bar associations.
- **Reframe Mediation as Value-Adding**
    1. Help lawyers see mediation as an opportunity to expand services, not lose clients.
    2. Emphasize that lawyers can act as party advisors during mediation that builds client's trust and preserve long-term relationship.
- **Integrate Mediation into Legal Practice:** Encourage lawyers to embed mediation into their client advisory model.

<u>Challenge 5</u>: Role of Referral Judges

Some of the referral judges sending the referral orders for mediation mechanically and without the knowledge of the parties and their advocates, without mentioning the date of appearance before the mediation center, without filling all the columns in the referral order etc.

Solutions:

- **Digital Referral System:** Implement an online referral mechanism where judges must complete all required fields before submission. This prevents incomplete orders and creates a digital record for accountability.
- Sensitization and frequent training,
- Awareness program over mediation to understand the process of referring, use, advantages of the mediation have to be enlightened.

<u>Challenge 6</u>: Lack of Public Awareness, Acceptance and Cultural Barriers

Many people still view litigation as the only legitimate form of justice, perceive settlement as a weakness, and lack awareness about the benefits and legal validity of mediation.

Solutions:

- Conduct nationwide awareness campaigns, legal literacy drives, and media outreach.
- Introduce mediation as a compulsory component in legal education and judicial training.
- Publicize successful mediation outcomes to build trust and confidence.

Challenge 7: Shortage of Skilled and Accredited Mediators

India faces a shortage of trained mediators, inconsistent quality of services, and limited specialization in complex disputes.

Solutions:

- Establish uniform accreditation and certification standards.
- Expand MCPC-led training programs nationwide.
- Introduce continuous professional development and specialist mediator panels.

Challenge 8: Digital Divide and Technological Barriers

Limited internet access, digital literacy, and technological infrastructure hinder participation in online mediation, particularly in rural areas.

Solutions:

- Improve digital infrastructure and rural connectivity.
- Institutionalize hybrid mediation (physical + online).
- Develop multilingual, user-friendly, and accessible mediation platforms**.**

Challenge 9: Enforcement and Compliance Issues

Despite Section 27 making settlement agreements enforceable, issues such as non-compliance, execution delays, and poorly drafted settlements remain.

Solutions:

- Create standardized settlement agreement templates.
- Establish fast-track enforcement mechanisms.
- Increase awareness about the binding nature of mediated settlements.

Challenge 10: Absence of a Strong Mediation Culture

India's legal culture remains litigation-oriented, with parties often preferring court judgments over negotiated settlements**.**

Solutions:

- Provide incentives such as reduced court fees and priority case processing.
- Encourage lawyers to embrace mediation as a professional opportunity.
- Increase judicial referrals to mediation at early stages.

Challenge 11: Inadequate Mediation Infrastructure

Many districts lack dedicated mediation centers, trained staff, and modern facilities.

Solutions:

- Establish mediation centers in every district court.
- Allocate dedicated funding for mediation infrastructure.
- Introduce digital scheduling, e-filing, and case management systems.

Challenge 12: Challenges in Commercial and International Mediation

India lacks sufficient international mediation expertise and globally recognized institutions, while competing with established centers such as Singapore and London.

Solutions:

- Establish specialized international mediation centers.
- Collaborate with global institutions for training and accreditation.
- Strengthen implementation of the Singapore Convention framework.

Challenge 13: Regulatory and Institutional Challenges

The effectiveness of the Mediation Council of India depends on its independence, professionalism, and transparency.

Solutions:

- Ensure institutional autonomy.
- Include judges, lawyers, mediators, academics, and industry experts in governance.
- Adopt transparent and merit-based accreditation systems**.**

Challenge 14: Monitoring and Data Deficiency

India lacks comprehensive data on mediation referrals, settlement rates, enforcement outcomes, and user satisfaction.

Solutions:

- Develop a National Mediation Portal for data collection.
- Conduct periodic audits and performance reviews.
- Use empirical data to guide policy reforms and resource allocation.

Conclusion

"The Mediation Act, 2023" is a revolutionary development in the realm of Alternative Dispute Resolution (ADR) as it establishes parameters for practice, elevates confidentiality and ensures enforceability. The mediation act 2023 is a progressive step toward enhancing ADR framework and fostering a mediation- centric approach to resolving disputes.Unlike litigation which focuses on victory, mediation fosters dialogue, collaboration, and mutual understanding, enabling parties to retain control over both process and outcome.As this Act takes place in India's legal framework it is expected to usher in a new era of dispute resolution and contribute to the nation's commitment to ease the burden on the courts and the timely justice delivery.

The Mediation Act*, 2023* marks a decisive step in India's journey toward institutionalizing consensual dispute resolution. By embedding salient features such as enforceability of settlement agreements, mandatory pre-litigation mediation, recognition of online platforms, and the creation of the Mediation Council of India, the Act seeks to transform access to justice and ease the burden on courts. Yet, its success depends on overcoming challenges—awareness gaps, shortage of trained mediators, digital divides, and cultural resistance to compromise. The way forward lies in sustained capacity building, robust technological integration, and a cultural shift that views mediation not as weakness but as empowerment. If implemented with vision and inclusivity, the Act can redefine justice delivery in India, positioning the country as a credible global hub for mediation while ensuring that resolution, rather than prolonged litigation, becomes the norm.

> ***"Mediation seeks equilibrium and that is not compromise. Compromise means both sides lose something, equilibrium means both sides find something. A restored balance." -****Hon'ble Sri Justice Vikram Nath Garu, Judge, Hon'ble Supreme Court of India cum Executive Chairman of NALSA.*

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