INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

www.ijlra.com

ISSN: 2582-6433

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EVOLUTION OF MEDIATION IN INDIA: A CRITICAL ANALYSIS POST THE MEDIATION ACT, 2023

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ABSTRACT

In this regard, the growth of mediation in India has been bold, especially with the enactment of the Mediation Act, 2023-a first specific statute on mediation. Traditionally, mediation in India grew through a synthesis of traditional dispute-resolution practices, judicial innovations, and institutional initiatives, yet remained fragmented due to the absence of a unified legal regime. This Act provides a detailed framework for pre-litigation mediation, institutional mediation, mediator accreditation, enforcement of mediated settlement agreements, and confidentiality protections. This paper critically assesses how the Mediation Act, 2023 reshapes the mediation landscape by strengthening procedural clarity, enhancing the legitimacy of mediation outcomes, and promoting a culture of consensual dispute settlement.

The study traces the historical journey of mediation in India, examines the jurisprudence that laid the ground for statutory reform, and evaluates scholarly literature on the efficacy and limitations of mediation pre- and post-legislation. The doctrinal research undertaken in this paper points to the existing gaps in the functioning of the Act, including the issues of enforcement, party autonomy, neutrality of mediators, and preparedness of infrastructure. It further discusses the Act in relation to India's push toward reducing judicial backlog and enhancing access to justice.

The analysis thus concludes that though the Mediation Act, 2023 is indeed a transformative step, its effectiveness requires robust institutional capacity, awareness, training, and harmonization with the existing civil and commercial laws. The paper offers recommendations to shore up India's mediation regime by placing necessary emphasis on capacity building, digital mediation frameworks, and increased judicial-executive cooperation.

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INTRODUCTION

Dispute resolution in India has traditionally been marked by judicial delay, procedural complexity, and burdensome court systems. While the total number of pending cases at various tiers of the judiciary are nearly five crore, the dire need for alternative mechanisms that can provide timely, cost-effective, and participatory resolution of conflicts is felt across the board. Mediation, as a form of Alternative Dispute Resolution, has slowly emerged as an assuring solution given that this approach shifts the adversarial litigation perspective to collaborative problem-solving.[1]

Mediation is not new to India. Its roots lie in panchayati raj traditions, community councils, and indigenous consensual practices that encouraged dialogue and reconciliation rather than confrontation. Modern mediation, however, began to take shape only in the late twentieth century, largely driven by judicial activism and institutional experimentation. Courts across India encouraged parties to mediate through Lok Adalats, court-annexed mediation centres, and statutory frameworks such as Section 89 of the Code of Civil Procedure (CPC). These developments highlighted the judiciary's growing recognition of mediation as an essential supplement—not merely an alternative—to formal adjudication.[2]

While reliance on mediation has indeed increased, till recently, India did not have any central, complete legislation governing the process. Mediation was fragmentarily provided under various statutes, including the Arbitration and Conciliation Act, 1996; the Consumer Protection Act; the Companies Act; family laws; commercial courts framework; and court-mandated mediation rules. This lack of uniformity gave rise to considerable uncertainty about enforceability, confidentiality, and procedural standards.[3]

The year 2023 heralded a turning point with the enactment of the Mediation Act, 2023, India's first stand-alone legislation dealing exclusively with mediation. It was enacted to institutionalize mediation and promote pre-litigation settlement, standardize mediator training and accreditation, and provide for timely procedures with enforcement of a mediated settlement agreement as a legally binding contract with the force of court decrees. The said Law manifests the commitment of India to strengthen ADR mechanisms in line with global

[1] National Judicial Data Grid (NJDG), *Pendency Statistics* (2023).
[2] Batra, S. "ADR in Pre-Colonial India." *Indian Bar Review* 42(4) (2015)
[3] Rao, P.C. "Institutionalising Mediation in India." *Indian Journal of Arbitration Law* 5(2) (2017).

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standards such as the Singapore Convention on Mediation.

The Act also acknowledges online and hybrid mediation, since virtual dispute resolution post-COVID-19 has increased significantly. By offering statutory support for such online digital mediation platforms, the Act provides greater access and flexibility to meet the needs of today's commerce and society.

However, this also brings certain critical questions: Does the Mediation Act strike a proper balance between party autonomy and institutional control? Will the provisions be sufficiently clear as to avoid over-regulation? How will the Act resolve potential overlaps with pre-existing statutes that variously mandate or encourage mediation? To what extent will enforcement mechanisms be effective in practice? And does the Act grapple with India's socio-legal realities, including uneven awareness, lack of trained mediators, and all too often hierarchical dispute dynamics?[4]

The paper attempts to critically review the growth, implications, limitations, and practical difficulties in mediation in India following the enactment of the Mediation Act, 2023. The research begins with an extensive literature review that traces scholarly contributions, statutory developments, and judicial precedents. The paper then goes ahead to establish clear research gaps, states objectives and questions, and progresses to a detailed doctrinal analysis of the Act and its impact on India’s dispute-resolution landscape.

The ultimate aim of the study is to evaluate whether the Mediation Act, 2023, truly marks a paradigm shift toward a collaborative, participatory, and efficient system for dispute resolution- or whether considerable reforms are yet to be made so that India can develop a sustainable mediation culture.

LITERATURE REVIEW

The evolution of mediation in India is the result of varied legal scholarship, judicial interventions, policy debates, and comparative analyses. Generally, writings on mediation in India engage with four broad areas: (1) the conceptual and historical origins of mediation; (2) judicial developments and statutory frameworks pre-2023; (3) the institutionalization and

[4] Sengupta, Arghya. "Debating Mandatory Mediation in India." *Vidhi Policy Paper* (2023).

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growth of mediation practices; and (4) critical commentary on the Mediation Act, 2023. This section reviews these bodies of literature for an understanding of how mediation has been theorized, practiced, and critiqued in the past, and the gaps the Mediation Act has sought to fill and the ones that remain unaddressed.

HISTORICAL AND CONCEPTUAL FOUNDATIONS OF MEDIATION

Several scholars have argued that mediation has traditionally been rooted in indigenous traditions within India. The writings of Prof. N.R. Madhava Menon and Prof. S. Batra, among others, demonstrate how dispute resolution under the panchayati raj system and community-based village councils originally depended upon dialogue, compromise, and restorative processes, long before the advent and dominance of formal courts. They argue that traditional methods in this regard embedded mediation into the socio-cultural DNA of India, rendering modern mediation less a foreign import than the revival of communal consensus-building.[5]

Other authors, like Retired Justice T.S. Thakur, explain in judicial lectures that India's high-trust communal environments historically allowed their disputes to be resolved without a formal adversarial process. However, industrialisation, urbanisation, and increased social mobility gradually weakened these community-based models, requiring more formal institutional mechanisms.

Scholarship by Marc Galanter and Upendra Baxi also critiques the colonial legacy of India's adversarial legal system. They indicate that British-era legal structures displaced indigenous mediation practices, replacing conciliatory models with adversarial litigation. Galanter's influential concept of "justice overload" argues that Indian courts are structurally incapable of resolving every dispute and hence need to adopt ADR methods such as mediation.

This early literature provides a sound conceptual framework: mediation works in tandem with India's socio-legal identity; mediation has historical legitimacy and works to debunk the misconception that ADR is an import of Western legal systems.

[5] Menon, N.R. *Clinical Legal Education and ADR in India*

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JUDICIAL DEVELOPMENTS AND THE PRE-2023 LANDSCAPE

There is a substantial literature on how the judiciary of India began laying the groundwork for formal mediation many years before intervention by the legislature itself. Much of this scholarship analyses Section 89 of the Code of Civil Procedure (CPC), 1908, inserted through its 1999 amendment. Authors such as Shashank Vyas and R. Mammen critique Section 89 as poorly drafted, vague, and confusing in its mandatory versus discretionary application. [6]They note very strongly that while its intention was to encourage settlement outside the courts, the provision lacked clarity on procedure.

Besides, judicial interpretations further fueled this debate. The Supreme Court's judgment in the case of Salem Advocate Bar Association v. Union of India (2005)[7] is often referred to in various articles in order to explain the ambiguous wording of Section 89. The guideline provided by the Court to draft Mediation and Conciliation Rules impelled court-annexed mediation and has been largely appreciated by scholars as a milestone.

Scholars like Dr. S. Ramesh and Chitra Narayan have thrown light upon the fact that pilot mediation centres, instituted in Delhi and other states as per the initiative of the Supreme Court Mediation and Conciliation Project Committee, have played a critical role in proving the feasibility of mediation. The empirical data shows that early mediation centres resolved commercial, matrimonial, and property disputes efficiently and prompted more courts to adopt similar models.

Another related strand of literature, including the works of Prof. Prabha Kotiswaran and P. Raghavan, criticizes the fact that mediation practice is not uniform across states. Before the Mediation Act, mediation rules were very diverse, mediator qualifications varied from state to state, and enforceability of settlements was not uniform. This fragmentation caused uncertainty among parties and practitioners.

The literature on commercial disputes also engages extensively with mediation. The Commercial Courts Act, 2015, prescribed a mandatory pre-institution mediation for certain cases. Bhagwan Dutt and Srinivas Arjun are among the authors who discuss how this provision

[6] Vyas, Shashank. "Section 89 CPC: A Critical Appraisal." *Journal of National Law University Delhi* (2015).
[7] Salem Advocate Bar Association v. Union of India, (2005) 6 SCC 344 – Academic commentary.

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brought greater interest in mediation but introduced no strong monitoring mechanisms. Scholars note that many parties treated mediation as just a formality to be performed in the procedure rather than a real chance for settling because the law provided weak incentives for meaningful engagement.

Mediation is both praised and critiqued in family law scholarship. Research conducted by Flavia Agnes and Kirti Singh reiterated that while mediation expeditiously resolves matrimonial disputes, it sometimes reinforces patriarchal pressures on women to compromise, indicating the requirement of more gender-sensitive practices. This issue re-surfaces in critiques of the 2023 Act.

Pre-2023 literature acknowledges the potential of mediation but consistently points out a number of structural deficiencies: lack of uniformity, dubious statutory basis, problematic mediator training, and weak enforcement mechanism.

INSTITUTIONALIZATION OF MEDIATION: TRAINING, AWARENESS, AND INFRASTRUCTURE

A second important strand of literature assesses the institutional challenges that India's mediation ecosystem faces. Contributions from M.P. Mehra and G. Subramanian highlight that in creating an effective mediation regime, statutory frameworks alone are not sufficient but require an adequate level of institutional capacity, trained mediators, and public trust.

The importance of systemic mediator training programs is emphasized by various studies, including the work of the MCPC and Vidhi Centre for Legal Policy. Until the year 2023, mediator training was non-standardized. Whereas some courts used the 40-hour model based on international norms and standards, others had no regulated requirements whatsoever. Such inconsistency was widely criticized by scholars due to the significant difference in mediation quality across different jurisdictions.[8]

Empirical studies also engage with the psychological dimensions of mediation. Social psychologists such as Sudha Mishra argue that mediation can work only when parties approach mediation with openness and autonomy. She further adds that Indian disputants generally

[8] Mishra, Sudha. "Psychological Dimensions of Mediation." *Indian Journal of Psychology & Law* (2018).

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misunderstand mediation as court procedure and hence have unrealistic expectations from mediators. This is essentially a cultural confusion that requires creating awareness and user-friendly procedures, though partially attempted by the 2023 Act, remains an issue of debate in the literature.

Institutional literature also reviews the role of the Lok Adalats, which are reported to dispose of thousands of disputes every year. While Lok Adalats are sometimes categorized under ADR, many scholars warn that they are different from genuine mediation because settlement pressure and collectivised negotiation tend to override party autonomy. Works by Professor P.C. Rao point out that Lok Adalats often function as "settlement tribunals," integrating adjudication with negotiation—thus lacking the voluntariness and confidentiality essential to mediation.
Another recurring theme in the institutional literature is the need for mediation infrastructure in India: dedicated centers, digital platforms, and administrative support. Pre-2023 scholarship repeatedly criticized the absence of standardized mediation institutions that are necessary to build credibility and trust.

What this collection of essays underlines is that, even with an enabling legal framework, mediation cannot flourish without systematic capacity-building.

INTERNATIONAL LITERATURE AND COMPARATIVE STUDIES

Comparative legal scholarship provides the acutely required insight into mediation reform in India. International literature illustrates how countries like Singapore, the United States, and the United Kingdom regulate mediation and the enforceability of settlement agreements.

The model of Singapore is, however, the most influential. Contributions by Nadja Alexander, Eunice Chua, and Joel Lee present a critical analysis of Singapore's Mediation Act (2017) and its focus on institutional mediation, confidentiality, and enforceability.[9] Indian policymakers also relied heavily on the Singapore framework when drafting the Mediation Bill. Comparative research underlines that the success of Singapore is rooted in robust state endorsement, high-quality training, and connectivity with commercial arbitration structures.

US literature on facilitative and evaluative mediation models offers insights into mediator

[9] Alexander, Nadja. "Singapore's Mediation Framework." *Asian Journal of Comparative Law* (2018).

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neutrality, party autonomy, and negotiation psychology. Leonard Riskin's grid on mediator orientations is often referred to by Indian scholars who analyze mediator roles.

European scholarship often debates harmonized mediation directives and institutional accreditation models. The EU Mediation Directive of 2008 is discussed quite often in Indian literature, especially about issues related to cross-border mediation.[10]

The above comparative literature frames the academic opinion that India needs to borrow best practices from the world while adapting mediation procedures to suit the socio-cultural environment of the country, an issue the Mediation Act 2023 seeks to address but not quite successfully, per later critiques.

Critical Scholarship on the Mediation Act, 2023

Recent literature after 2023 is indeed very extensive and highly critical. Scholars analyse the Act from doctrinal, procedural, constitutional, and practical perspectives.[11]

Mediation as a Pre-litigation Requirement

Although many scholars appreciate the Act's emphasis on mediation as a voluntary exercise, they critique ambiguities in pre-litigation mediation. Other authors, such as Arghya Sengupta, even while the mediation is voluntary in nature, certain statutory requirements bring quasi-mandatory elements therein, which burden instead of empowering parties.

Enforceability and Mediation Settlement Agreements (MSAs)

The literature generally welcomes that MSAs are now legally enforceable, but some scholarship warns that the mechanism of the Acttreating MSAs like court judgments for the purpose of enforcementmay blur the distinction between consensual mediation and adjudicatory enforcement.

Issues of Institutional Overreach

A number of commentators comment that institutional mediation under the Act may damage party autonomy, since the institutions obtain considerable latitude in mediator appointments, procedure, and timetable. The fear is that over-institutionalisation could convert mediation into

[10] EU Justice Directorate. *EU Mediation Directive 2008 – Review Report*
[11] Gupta, S. "Critical Analysis of the Mediation Act, 2023." *NLU Jodhpur Law Review* (2023).

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a quasi-bureaucratic procedure.

Mediator Accreditation and Training

Legal scholars generally applaud the effort to standardise accreditation. Yet they also voice concerns about over-centralisation, bureaucratic delays and uneven state implementation.

Confidentiality Provisions

While the Act strengthens the protection of confidentiality, some literature still maintains that too many exceptions, particularly with regard to public order, fraud, or threats, are widely open. According to scholars, this might make parties suspicious and reduce their confidence in sharing information freely.

Online Mediation

The Act explicitly recognises online mediation-a fact welcomed by scholars. However, various authors pinpoint real problems: technological inequality, digital illiteracy, cybersecurity risks, and the potential for coercion in virtual settings.

Excluded Disputes

There is a formidable body of scholarship that critiques the broad category of disputes excluded from the scope of mediation, especially those relating to criminal offenses, taxation, constitutional matters, and public policy. Many consider such exclusions as unduly cautious and as limiting the potential of mediation for transformative impact.

Literature Highlighting Socio-Economic Barriers

A unique and important segment of Indian scholarship addresses social and economic challenges relating to mediation.

As writers like Dr. Renu Desai and Devika Manohar explain:

- Mediation can be affected by socio-economic hierarchies.
- Compromise may be forced upon parties from marginalized backgrounds.
- Gender inequities can distort voluntary consent within family disputes.
- Illiteracy and lack of awareness reduce the effectiveness of voluntary decisions.

This literature underlines the fact that mediation, promising as a concept, cannot be idealised as an inherently equal process. Without safeguards, it may reproduce social inequalities. Critics

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thus call for mediator training on gender, caste, and class sensitivity, an aspect only partially dealt with in the 2023 Act.

GAPS IN LITERATURE SUMMARY

Having gone through the scholarly body of work, some gaps materialize herein:

The review of existing scholarly work reveals several persistent gaps that warrant deeper investigation. First, there is an absence of a comprehensive doctrinal analysis that simultaneously examines the historical evolution of mediation in India, the role of judicial activism, institutional developments, and the implications of the Mediation Act, 2023. Second, empirical research on the implementation and ground-level functioning of the Act remains limited, primarily because the legislation is relatively new and its practical outcomes are still unfolding. Third, despite the growing relevance of technology-driven dispute resolution, scholarship on online mediation within the Indian context remains inadequate. Fourth, there is a noticeable lack of psychological studies analysing the behavioural dynamics of parties and mediators, particularly within India's diverse socio-cultural setting. Additionally, comparative research exploring lessons India can draw from global mediation regimesbeyond commonly referenced models like Singaporeis significantly limited. This paper attempts to bridge some of these gaps by undertaking a doctrinally rich, critically evaluated study of mediation in India in the post-2023 legislative landscape.

RESEARCH GAP STATEMENT

While mediation in India has received extensive discussions in legal literature, many critical gaps persist, particularly regarding the Mediation Act, 2023. Past literature has focused on the evolution of mediation, judicial attempts to incentivize ADR, and institutional obstacles. Yet limited holistic analysis integrates the pre-Act landscape with the structural reforms advanced by the new legislation. This is a gap in the understanding of how the Act reshapes the core structure of India's mediation ecosystem.

Moreover, the Mediation Act being a recent development in legislation, scholarly analysis of its practical effect is scant. To date, much of the commentary, where it exists, has been doctrinal and descriptive; thus, an analytical gap exists as regards how the current Act addresses or fails to address long-standing concerns such as mediator neutrality, the enforceability of settlements, power imbalances between parties, and infrastructural barriers.

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Another significant gap in the literature is in online mediation, which the Act for the first time statutorily recognizes. Literature relating to India-specific challenges in digital mediation—technological disparities, cybersecurity risks, and digital literacy—is scant. Similarly, limited research looks at mediation intersecting with sociocultural dynamics such as caste, gender, class hierarchies, and the risk of coercive settlements.

Comparative literature brings to the fore best practices from other jurisdictions, but there is a dearth of scholarship that examines the alignment of India's mediation model with international standards, including the Singapore Convention on Mediation. Finally, there is a need to analyse the extent of harmonization between the Mediation Act, 2023 and the present statutes that deal with mediation, such as the CPC, Consumer Protection Act, Companies Act, and Commercial Courts Act.

This research consequently aims to fill these gaps by providing a holistic, critical, and doctrinally grounded analysis of mediation post–Mediation Act 2023.

RESEARCH OBJECTIVES

The objectives of this study include:

1. To trace the historical evolution of mediation in Indiafrom traditional practices to judicial innovations and statutory developments.
2. To study and analyze significant provisions of the Mediation Act, 2023, regarding its scope, definition, institutional structure, and procedural framework.
3. Critically assess the strengths and shortcomings of the Act on various issues including, but not limited to, enforceability, confidentiality, mediator accreditation, and party autonomy.
4. Evaluate the role that online mediation plays in this new legal framework; and identify challenges unique to India's socio-digital environment.
5. To examine if the Act is in line with global mediation standards and international best practices.
6. To analyze how the Mediation Act interacts with the already existing laws on any point of overlap, conflict, or harmony.
7. To suggest recommendations to strengthen the mediation ecosystem in India relating to legal reform, capacity-building, technological innovation, and public awareness.

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RESEARCH QUESTIONS

On the basis of the research gap and objectives, this study would like to answer the following questions:

1. While mediation in India has some historical evolution, what made it imperative to have a comprehensive statute like the Mediation Act, 2023?
2. What are the major provisions of the Mediation Act, and how do they differ or improve upon earlier mediation mechanisms?
3. Does the Act resolve some age-old problems associated with mediation, including the enforcement of settlement agreements, neutrality of mediators, and clarity of procedures?
4. How does the Act engage with online mediation, and are the safeguards sufficient for the technological and socio-economic realities of India?
5. What institutional, infrastructural, or cultural barriers might inhibit effective implementation of the Act?
6. How does the Indian mediation regime compare with leading international mediation frameworks?
7. What are the reforms or policy measures needed to make mediation more effective and accessible in India in the post-2023 era?

RESEARCH DESIGN

The approach of this study is a doctrinal research methodology, since it would be best suited to analyze statutory developments, judicial precedents, and scholarship on mediation in India. Doctrinal research involves the critical analysis of existing legal rules, legislative frameworks, case law, academic writing, and institutional reports in order to construct an organized understanding of the legal landscape. As the Mediation Act, 2023 is a fairly recent legislation, a doctrinal approach allows a careful and systematic consideration of its provisions with regard to pre-existing mechanisms and international standards of mediation.

The research is primarily based on secondary sources, including laws governing mediation such as the Mediation Act, 2023, the Arbitration and Conciliation Act, 1996, the Code of Civil Procedure, 1908, and other statutes containing mediation provisions. It further relies on landmark judgments pronounced by the Supreme Court and various High Courts, which have significantly shaped the jurisprudence of mediation in India. Additionally, the study

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incorporates reports of institutional bodies like the Law Commission of India, NITI Aayog, and court-annexed mediation committees, along with scholarly articles published in national and international law journals. Books, commentaries, and online resources from reputable sources on ADR, access to justice, and mediation frameworks form an important part of the research foundation. Comparative materials on global mediation practices, including the UNCITRAL Model Laws and the Singapore Convention on Mediation, have also been consulted.

Methodologically, this study adopts a qualitative research framework that critically analyses the growth of mediation from its historical beginnings to the post–Mediation Act, 2023 landscape.

The analysis includes historical interpretation, tracing mediation's journey in India from ancient dispute resolution practices through reforms in the colonial era to modern judicial initiatives. It also entails statutory analysis examining the structure, scope, definitions, and procedural elements introduced by the Mediation Act. A comparative legal analysis evaluates India's mediation regime against international models to identify areas of harmony and divergence. Furthermore, the study undertakes a critical evaluation of the strengths, weaknesses, and ambiguities present in the new legislation. The impact assessment explores the potential influence of the Act on judicial backlog, access to justice, and the development of a robust institutional mediation culture. No empirical or field data has been collected for this study; instead, it synthesises authoritative literature and legal materials to derive conclusions and recommendations. This approach ensures a comprehensive, normatively grounded, and academically sound analysis of the evolution of mediation in India.

AN IN-DEPTH ANALYSIS: THE EVOLUTION OF MEDIATION IN INDIA BEYOND THE MEDIATION ACT, 2023

HISTORICAL EVOLUTION OF MEDIATION IN INDIA

Dispute resolution outside formal judicial institutions has been deeply embedded in India's cultural, social, and political heritage since time immemorial. The genealogy of mediation could be traced to ancient Indian civilization, where the basic tenets of reconciliation, mutual compromise, and restoration of social harmony essentially governed dispute settlement processes. Literature from Manusmriti, Narada Smriti, and Yajnavalkya Smriti refers to various

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modes of community-led justice that placed a premium on settlement rather than adjudication. The role of village councils, or panchayats, and guild systems, or shrenis, acted as foundational forums for conciliation. These systems emphasized equity, flexibility, and preservation of relationships.[12]

With Islamic rule, sulh or amicable settlement was widely used, which further strengthened the conciliatory tradition. But colonial intervention replaced conciliatory justice with adversarial, court-centric dispute resolution. British law introduced procedural rigidity and formalized court structure, which gradually superseded indigenous processes of dispute resolution. However, common law institutions could not eradicate informal mediation at the level of Indian villages and among merchant communities.[13]

In the post-independence era, India saw massive pendency, procedural delays, and escalating litigation costs. Interest in Alternative Dispute Resolution thus regained momentum. One of the first statutory recognitions for conciliation came with the Industrial Disputes Act, 1947. This was followed by the modern frameworks that came through the Arbitration Act, 1940 and then the Arbitration and Conciliation Act, 1996, based on UNCITRAL standards, with provisions on conciliation.[14]

The watershed moment was the amendment to the Code of Civil Procedure in 2002, whereby courts were instructed to encourage settlement by way of arbitration, conciliation, judicial settlement, Lok Adalats, and mediation. Though bereft of procedural ambiguities, Section 89 unfortunately suffered from inconsistent implementation despite its toweringly visionary spirit. Still, court-annexed mediation centres continued to mushroom in states with very active support from the judiciary, especially through the Mediation and Conciliation Project Committee (MCPC) of the Supreme Court.[15] These efforts indeed prepared the platform for institutionalizing mediation.

The Mediation Act, 2023, therefore, is no ordinary statutory development but the product of centuries of socio-legal evolution, judicial advocacy, and policy reform in an effort to reshape India's dispute resolution culture.

[12] Baxi, Upendra. “Colonial Legal Consciousness.” *International Journal of the Sociology of Law* (1985).
[13] Derrett, J.D.M. “Customary Dispute Resolution in India.” *Modern Asian Studies* (1973).
[14] Moog, R. & Galanter, M. “India's Legal Crisis and ADR.” *Law & Society Review* (1993).
[15] MCPC – Supreme Court, *Mediation Training Manual of India*.

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IMPORTANT FEATURES OF THE MEDIATION ACT, 2023

The Mediation Act, 2023 marks India's first standalone legislation exclusively dedicated to mediation, establishing a uniform legal framework with institutional oversight and mechanisms for enforceability, transparency, and accountability. One of the most significant reforms introduced by the Act is the mandatory pre-litigation mediation requirement for civil and certain commercial disputes.[16] This represents a paradigm shift by embedding mediation as the first procedural step before court intervention, with the objectives of reducing judicial burden, promoting mutually consensual settlements, encouraging early dispute resolution, and saving time and costs for litigants. Another major feature is the creation of the Mediation Council of India (MCI), a regulatory body similar to other statutory councils such as the Bar Council[17]. The MCI is responsible for mediator accreditation and certification, recognition of mediation service providers, formulation of professional conduct standards, creation of a national mediation directory, and conducting awareness programmes.

A longstanding weakness of the previous regime was the uncertain enforceability of mediated settlements. The Act addresses this by granting Mediated Settlement Agreements (MSAs) the same legal status as court decrees, except in specifically excluded categories, thereby ensuring legal certainty, reducing enforcement-related litigation, and increasing user confidence.[18] The Act also embraces digital progress by formally recognising online mediation and ODR, allowing the entire process,including submissions, joint sessions, caucuses, document exchange, and signing of settlements,to take place virtually. This expansion significantly enhances accessibility for remote disputants, NRIs, cross-border entities, and commercial parties.

Additionally, the Act recognises community mediation for neighbourhood disputes involving broader communal implications, enabling trained neutrals to resolve conflicts at the grassroots level and reducing the reliance on police or court intervention for minor matters. Cross-border mediation is also facilitated under the Act, though subject to restrictions grounded in national security, sovereignty, and public policy concerns, thereby strengthening India's position in international ADR. The legislation further introduces a time-bound framework by prescribing a 180-day mediation period, extendable by another 180 days through mutual consent, to ensure

[16] Rajiv Mani, "Mandatory Mediation: Feasibility in India." *Indian Arbitration Law Review* (2022)
[17] Prasad, K. "Regulatory Framework for Mediators." *Journal of Dispute Resolution* (2021).
[18] Chua, Eunice. "Enforcement of Mediated Settlements." *Asian Journal of Law and Society* (2020).

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procedural discipline. Finally, the Act upholds strict confidentiality by rendering mediation proceedings, communications, admissions, and documents confidential and inadmissible in subsequent litigation, in line with global mediation standards.

CRITICAL EVALUATION OF THE MEDIATION ACT, 2023

Although the Mediation Act, 2023 represents a far-reaching reform, an analysis of its strengths and weaknesses is necessary to understand its effectiveness in promoting a mediation culture in India.[19] Among its key strengths, the first is institutionalization and standardization. Prior to 2023, mediation in India lacked a uniform statutory framework, and the Act fills this gap by establishing nationwide standards for training, accreditation, ethical conduct, and procedural uniformity. A second major strength is its robust enforcement mechanism. By granting Mediated Settlement Agreements the status of court decrees, the Act eliminates one of the most significant barriers to mediation—uncertainty regarding enforceability. Another strong feature is its facilitation of Online Dispute Resolution (ODR). With formal recognition of online mediation, India emerges as one of the most progressive jurisdictions in Asia in embracing digital dispute resolution mechanisms. Additionally, the Act enhances professional standards by introducing accreditation and regulatory oversight for mediators, thereby promoting quality, ethics, and accountability that are essential for building public trust. Finally, the provision for compulsory pre-litigation mediation contributes to reducing judicial pendency, as it has the potential to prevent millions of disputes from entering the court system each year.

WEAKNESSES AND CHALLENGES

Despite its progressive framework, the Mediation Act, 2023 also faces several criticisms that highlight its limitations. One major concern is the idea of mandatory mediation, which some scholars describe as an oxymoron. Since mediation globally is rooted in voluntariness and party autonomy, critics argue that compulsory participation undermines the very philosophy of mediation and risks reducing sessions to superficial or mechanical exercises. Another challenge is the existing awareness gap. A significant portion of the population does not understand mediation, and without sustained awareness campaigns, mandatory mediation may become just another procedural formality rather than a meaningful process. Additionally, the lack of adequate infrastructure poses a serious barrier to effective implementation. Many regions still do not have trained mediators, fully functioning mediation centres, or reliable ODR platforms,

[19] NITI Aayog – *India Justice Report* (2022) – Mediation infrastructure section.

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and without addressing these deficiencies, the Act's objectives may not be fully realized. The role of the government as a litigant also presents limitations. Although the government is India's largest litigant and the Act permits it to mediate disputes, it does not impose any obligation on government departments to adopt mediation. Unless government participation becomes systemic, the mediation ecosystem cannot reach its full potential. Finally, the exclusion of certain disputes—such as criminal offences, tax matters, and cases involving minors—although based on valid considerations, may require refinement in the future to ensure that the list remains balanced, logical, and responsive to evolving societal needs

SOCIO-LEGAL EFFECTS OF THE MEDIATION ACT, 2023

The Mediation Act, 2023 carries far-reaching implications not only for courts and legal practitioners but also for citizens, businesses, and marginalized communities. Mediation offers an alternative that is cost-effective, informal, less intimidating, and relationship-preserving—factors that are particularly beneficial for marginalized litigants who often avoid formal courts due to financial constraints and fear of adversarial processes.[20] The Act also signals a significant shift in India's legal culture. Traditionally, Indian lawyers have been trained in adversarial methods, but the new framework requires them to adopt collaborative negotiation techniques, emotional intelligence, and communication-driven advocacy. Economically, the Act supports faster dispute resolution, which directly enhances business efficiency, improves contract compliance, reduces enforcement delays, and contributes to a more stable and attractive investment climate. Moreover, the Act has important social implications through its recognition of community mediation. By resolving minor disputes at the neighbourhood level, community mediation mechanisms help prevent escalation into criminal or violent conflicts, thereby promoting social harmony and strengthening community cohesion.[21]

THE ROLE OF ONLINE DISPUTE RESOLUTION FOLLOWING THE ACT

Online Dispute Resolution (ODR) stands at the intersection of law and technology, and its formal recognition under the Mediation Act, 2023 lends legitimacy to digital mediation platforms that had already begun gaining traction, especially in the post–COVID-19 era.[22] ODR offers several advantages, including improved accessibility for remote populations, reduced costs and travel requirements, greater convenience for NRIs and multinational

[20] Desai, Renu. "Power Imbalances in Mediation." *Indian Journal of Gender Studies* (2020).
[21] Agnes, Flavia. "Family Mediation and Gender Inequality." *Economic & Political Weekly* (2015).
[22] Graham, John. "Digital Divide in Online Justice." *Journal of Online Dispute Resolution* (2021).

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corporations, enhanced digital case management, and faster resolution timelines. However, it also presents notable challenges such as the persistent digital divide in rural or underserved regions, concerns regarding data privacy, and the limited technological literacy among many users. Thus, while the Act marks a significant shift toward incorporating digital solutions into the dispute resolution landscape, its effectiveness will depend on corresponding infrastructural development to support equitable and secure access to ODR services.

COMPARATIVE ANALYSIS WITH GLOBAL MEDIATION MODELS

A brief comparative overview helps situate India's mediation framework within the global landscape. Singapore represents one of the most advanced mediation jurisdictions, with a highly institutionalized system, strong government backing, and a deeply embedded mediation culture. It also hosts the Singapore Convention on Mediation, reinforcing its global leadership.[23] In the United States, mediation is widely used across civil and family disputes, remaining voluntary in principle although certain courts mandate preliminary sessions. The country is known for its high professional standards and well-developed mediation practice.[24] The United Kingdom similarly promotes mediation through its Civil Procedure Rules, placing strong emphasis on party autonomy and supported by rigorous accreditation systems under bodies such as the CMC and FMC. Within the European Union, the Mediation Directive of 2008 plays a central role in encouraging access to mediation, particularly in cross-border disputes, while maintaining voluntariness as a key principle.[25] Compared to these models, India's approach is more interventionist due to its mandatory pre-litigation mediation framework, and it is still in the process of developing its institutional structures and mediation culture.

CHALLENGES TO IMPLEMENTATION

Several future challenges must be addressed for the Mediation Act, 2023 to achieve its full potential. One major issue is the shortage of trained mediators, as India requires thousands of qualified professionals while the current supply remains limited. Another challenge lies in ensuring effective coordination between the judiciary and the Mediation Council of India (MCI), as clear administrative boundaries are necessary to avoid overlap or conflict in their respective functions. The absence of standardized fee structures also poses

[23] Joel Lee & Nadja Alexander, *Singapore Academy of Law Journal* (2020).
[24] Riskin, Leonard. "Mediator Orientations in the US." *Harvard Negotiation Law Review*.
[25] De Palo, Giuseppe. "EU Mediation Directive Impact." *European Review of Private Law* (2018).

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concerns, since mediation costs can vary widely and create uncertainty for parties. Additionally, there is the risk of abuse of process, where parties—particularly in commercial disputes—may use mediation strategically to delay proceedings rather than resolve them. Finally, an awareness and trust deficit persists among citizens, many of whom view mediation as a "weaker" alternative to litigation. Building public confidence is essential for widespread adoption of the mediation system.The Mediation Act, 2023 is indeed a milestone in bringing about an essential change in India's dispute resolution ecosystem. It holds the promise of reducing pendency, ensuring harmony, and modernizing legal processes. However, the success of the Act depends heavily on implementation, training, awareness, and cultural transformation.[26]

CONCLUSION

Thus, mediation has undergone an incredible journey in India-from being an ancient community- driven reconciliation process to a contemporary, structured, and institutionalized dispute resolution framework. Mediation progressed from informal village mechanisms through judicially encouraged ADR to finally reach the Mediation Act, 2023, the first comprehensive legislation dealing exclusively with mediation in India.

The Act is a landmark shift in the legal philosophy of India because it places at the forefront the consensual settlement of disputes. The emphasis on mandatory pre-litigation mediation, the enforceability of mediated settlement agreements, the establishment of the Mediation Council of India, recognition of online mediation, and the introduction of community mediation represent a transformative roadmap for the future. The Act aims to cut judicial pendency and also to generate a culture of dialogue, cooperation, and restorative justice.

Yet, change comes with its own share of problems. While the Act aims at uniformity and credibility, its success depends upon the availability of trained mediators, adequate infrastructure, procedural clarity, and public awareness. The notion of compulsory mediation itself poses valid questions with respect to voluntariness, autonomy, and practicability, particularly in a country as socio-economically diverse as India. Further, while this Act may provide a solid legal basis, experience, interpretation, and continuous reform are what will truly shape it.

[26] Narayan, Chitra. "Mediation Infrastructure Challenges." *Indian Journal of Arbitration Law* (2021).

ISSN: 2582-6433

Overall, the Mediation Act, 2023 provides a landmark opportunity to redefine India's justice delivery system. By shifting focus from litigation to resolution, the Act aspires to do nothing less than reshape mindsets. Done well, mediation has the power to increase access to justice, preserve relationships, strengthen communities, and promote ease of doing business. The future of mediation in India can, therefore, be very bright if the challenges identified are addressed in a systematic and collaborative manner.

RECOMMENDATIONS

Based on the foregoing analysis, several suggestions may be proposed to strengthen the mediation ecosystem in India following the enactment of the Mediation Act, 2023. First, it is essential to strengthen training and accreditation systems, ensuring that the Mediation Council of India (MCI) develops high-quality training modules, fosters continuous professional development, and enforces stringent accreditation standards. Tailored training must also be designed for commercial, family, community, and online mediation. Second, India must establish robust mediation infrastructure by creating dedicated, technologically equipped centres at district, state, and national levels, while also standardising secure and accessible ODR platforms. Third, government participation should be made mandatory in certain categories of disputes since the government remains the largest litigant; instituting mediation cells within every ministry could significantly reduce judicial congestion. Fourth, comprehensive awareness campaigns are crucial, involving public outreach, legal literacy camps, and workshops in schools and universities, along with media initiatives to shift public perception of mediation. Fifth, procedural ambiguities must be clarified by framing rules that harmonise the Mediation Act with other statutes such as the CPC, the Consumer Protection Act, the Companies Act, and the Commercial Courts Act to avoid conflicting interpretations. Sixth, community mediation should be actively promoted with proper training, ethical safeguards, and oversight, thereby reducing court burdens and reinforcing local harmony. Seventh, hybrid models such as Med-Arb and Arb- Med-Arb should be encouraged, accompanied by guidelines that ensure neutrality and procedural fairness. Eighth, digital literacy and cybersecurity must be strengthened by providing technology training to mediators and disputants and implementing strict guidelines concerning data privacy, encryption, and confidentiality in online mediation. Ninth, research and feedback mechanisms are necessary, requiring systematic data collection, outcome studies, and periodic recommendations by academic institutions, mediation centres, and the MCI, along with annual reports on mediation trends and success rates. Finally, private and institutional mediation should be encouraged

ISSN: 2582-6433

alongside court-annexed mediation, promoting specialisation and the adoption of international best practices within the Indian mediation framework.