

# Mediation Act, 2023: Scope, Structure, and Significance in India's Dispute Resolution System

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## Abstract

Mediation in India has historical roots, notably through Panchayats, which have long been a preferred method for resolving community conflicts. However, this practice waned during British rule, leading to an increase in disputes and delays in the adversarial legal system.

Under Section 89(1) of the Code of Civil Procedure, 1908, courts can suggest arbitration, conciliation, judicial settlement, or mediation for resolving disputes, a practice widely accepted and implemented by the judiciary. Despite the establishment of mediation centres across India, private mediation has lacked structure and legal recognition, which has deterred participation. To address these issues, the Mediation Bill 2021 was introduced to create a robust legal framework and enhance the effectiveness of mediation. India signed the Singapore Convention on Mediation on August 7, 2019, but has yet to ratify it. Consequently, the Mediation Act does not incorporate the Singapore Convention on Mediation, similar to how the Arbitration and Conciliation Act, 1996, adopted the New York Convention. The Singapore Convention aims to provide a framework for the cross-border enforcement of settlement agreements resulting from international mediation.

The Mediation Bill, 2021, was presented in the Rajya Sabha on December 20, 2021, and referred to the Standing Committee on Personnel, Public Grievances, Law & Justice for review on December 21, 2021. The Standing Committee released its 117th Report on the Mediation Bill on July 13, 2022, with several recommendations. The Union Cabinet approved some of these recommendations, and the Mediation Bill 2023 was passed by the Rajya Sabha on August 2, 2023, and by the Lok Sabha on August 7, 2023. The bill received presidential assent on September 15, 2023, becoming the Mediation Act 2023.

This paper will explore the historical evolution of mediation, emphasizing its fundamental objective and structural framework. It also examines contemporary developments such as online and community mediation as stipulated in the Mediation Act of 2023. Furthermore, it underscores the enforcement of mediated settlement agreements and the establishment of the Mediation Council of India.

**Keywords:** Mediation Council, Online Mediation, Community Mediation, Dispute Settlement, Confidentiality

## Introduction

Year 2023 marks a major milestone as the Mediation Act is introduced, signaling a new era in the field of resolving disputes. This groundbreaking legislation aims to simplify and encourage the utilization of mediation as a highly effective and efficient means of conflict resolution. Mediation has long been

recognized as an effective alternative dispute resolution mechanism rooted in the principles of consensual participation, confidentiality, and party autonomy, enabling disputants to resolve conflicts amicably without resorting to adversarial litigation. In India, mediation finds its historical origins in traditional community-based institutions such as Panchayats, which played a crucial role in maintaining social harmony at the grassroots level. However, with the advent of the formal judicial system during colonial rule, such indigenous practices gradually declined, leading to an overburdened court system characterized by delays, high costs, and procedural complexities.<sup>2</sup> Recognizing the need for a structured and efficient dispute resolution framework, the Indian legal system gradually incorporated mediation through judicial interventions and statutory provisions, notably Section 89 of the Code of Civil Procedure, 1908. This evolution culminated in the enactment of the Mediation Act, 2023, which provides a comprehensive legislative framework for mediation by institutionalizing pre-litigation mediation, recognizing online and community mediation, and ensuring the enforceability of mediated settlement agreements.<sup>4</sup> The Act signifies a transformative step toward promoting access to justice, reducing judicial backlog, and fostering a culture of cooperative dispute resolution aligned with both India's traditional ethos and modern legal developments.

### **Historical Background.**

Throughout Indian history, mediation has played a significant role in dispute resolution. The Village Council, known as the Gram Panchayat, has long served as a mediator at the community level, facilitating the resolution of various conflicts. While not a novel concept, mediation has always served as an alternative means of resolving disputes.

Indian Mythology has also reflected the dispute resolution process during the times of Mahabharata and Ramayana where Lord Krishna and Lord Hanuman tried to mediate between the affected parties. Buddhism also mentions about mediation Lord Buddha said better than a thousand hollow words is one word that gives peace. Buddhism also One of its standout features is its ability to be customized to the specific needs of those involved, making it a flexible and adaptable process. Historically, disputes were resolved through Panchayats, where respected elders of the village acted as neutral mediators to facilitate amicable settlements. These mechanisms emphasized consensus, social harmony, and restorative justice rather than adversarial outcomes.

However, during British colonial rule, the focus shifted towards a formal adversarial judicial system. This transition resulted in the decline of indigenous dispute resolution mechanisms, leading to increased litigation and delays. Despite this, traces of mediation continued to exist within the legal framework.

A significant statutory recognition of mediation can be found in Section 89(1) of the Code of Civil Procedure, 1908, introduced through the Civil Procedure Code (Amendment) Act, 1999. This provision empowers courts to refer disputes for arbitration, conciliation, judicial settlement, including mediation. Judicial initiatives, particularly by the Supreme Court and High Courts, further strengthened court-annexed mediation centres across India.

The Mediation Act, 2023 builds upon this historical foundation and judicial experience, providing mediation with a dedicated legislative identity. Its introduction has been met with praise and hailed as a progressive step by both the industry and legal community.

### **Concept of Mediation**

Mediation is a voluntary and binding process in which an impartial and neutral mediator facilitates com-

munication between disputing parties to help them reach a mutually acceptable settlement. Unlike adjudication or arbitration, a mediator does not impose a decision but assists parties in exploring options for resolution. Mediation is a structured yet flexible process that relies on specialized communication and negotiation techniques. Its success in cities such as Delhi, Ranchi, Jamshedpur, Nagpur, Chandigarh, and Aurangabad demonstrates its growing acceptance among litigants and legal professionals.

### Objectives of Mediation Act, 2023

The **Mediation Act, 2023** marks a significant shift in India's dispute resolution framework by formally recognizing mediation as a preferred and institutionalized method of dispute settlement. The Act aims to strengthen **Alternative Dispute Resolution (ADR)** mechanisms and promote a culture of consensual justice. The key objectives of the Act are explained below:

#### 1. Institutionalizing Mediation as a Mainstream Dispute Resolution Mechanism

One of the foremost objectives of the Mediation Act, 2023 is to **institutionalize mediation** by granting it statutory recognition. Prior to this Act, mediation in India was largely court-referred under **Section 89 of the Code of Civil Procedure, 1908**, or governed by fragmented rules and judicial precedents.

The Act establishes a **comprehensive legal framework** that standardizes mediation processes, defines the roles of mediators, and recognizes mediation as an **independent and structured mechanism** rather than an informal or ad hoc process. This objective reflects the legislative intent to place mediation on equal footing with litigation and arbitration in the Indian justice system.

#### 2. Reducing the Burden on Courts and Tribunals

The Indian judicial system faces a persistent challenge of **pendency and delay**, with millions of cases pending across various courts and tribunals. The Mediation Act, 2023 seeks to address this systemic issue by diverting suitable disputes away from courts and toward mediation.

By encouraging early settlement of disputes through mediation—especially in civil, commercial, family, and contractual matters—the Act aims to **reduce judicial workload**, allow courts to focus on complex and contentious cases, and improve overall efficiency in the administration of justice.

#### 3. Promoting Consensual, Speedy, and Cost-Effective Resolution of Disputes

Another crucial objective of the Act is to promote dispute resolution that is:

- **Consensual**, where parties actively participate and control the outcome,
- **Speedy**, avoiding prolonged litigation and procedural delays, and
- **Cost-effective**, minimizing legal expenses and court fees.

Mediation emphasizes cooperation rather than confrontation, preserving relationships between parties—particularly important in **family disputes, commercial partnerships, and community conflicts**. The Act reinforces the idea that justice need not always be adversarial and that mutually acceptable solutions often yield more sustainable outcomes.

#### 4. Ensuring Enforceability of Mediated Settlement Agreements

A major concern with mediation prior to the Act was the **uncertain legal status and enforceability** of mediated settlements. The Mediation Act, 2023 addresses this gap by providing that a **mediated settlement agreement shall be final, binding, and enforceable as a judgment or decree of a court**, subject to limited exceptions.

This objective enhances **legal certainty and confidence** in the mediation process, encouraging parties to opt for mediation without fear that the outcome will lack legal force or require fresh litigation for enforcement.

### 5. Encouraging Pre-Litigation Mediation to Prevent Unnecessary Litigation

The Act strongly promotes **pre-litigation mediation**, requiring parties to attempt mediation before initiating certain types of civil and commercial litigation, unless urgent interim relief is sought.

This objective seeks to:

- Prevent avoidable disputes from escalating into formal litigation,
- Encourage early dialogue and settlement, and
- Foster a culture of dispute avoidance rather than dispute escalation.

Pre-litigation mediation aligns with global best practices and reflects a proactive approach to justice delivery, emphasizing **prevention over cure**.

### 6. Establishing Regulatory and Accreditation Mechanisms for Mediators and Mediation Service Providers

To ensure professionalism, credibility, and quality in mediation, the Act provides for the establishment of the **Mediation Council of India**. This body is tasked with:

- Accrediting mediators and mediation institutions,
- Laying down standards of training, ethics, and conduct,
- Promoting uniformity and best practices in mediation services.

This objective addresses concerns regarding inconsistent quality and lack of accountability in mediation practices and seeks to build **public trust** in the mediation ecosystem.

### 7. Promoting Online and Community Mediation to Enhance Accessibility

Recognizing India's vast geography and diverse population, the Act encourages:

- **Online mediation**, leveraging digital platforms to resolve disputes remotely, and
- **Community mediation**, particularly for disputes at the grassroots level.

These measures aim to enhance **access to justice**, especially for individuals in rural areas, marginalized communities, and those who may find traditional litigation inaccessible due to cost, distance, or social barriers. Online mediation also aligns with the vision of **digital justice** and modernization of the legal system.

### Scope of Mediation Act.

The Mediation Act, 2023 has been designed with a wide and inclusive scope to ensure that mediation becomes an integral part of India's dispute resolution framework. The Act applies to disputes where all parties habitually reside in India or are incorporated or carry on business within the country, thereby covering a broad range of domestic civil and commercial disputes. It also applies where the parties have expressly agreed, through a mediation agreement, to resolve their disputes in accordance with the provisions of the Act, reinforcing the principle of party autonomy. Significantly, the Act extends to international mediation, enabling resolution of cross-border disputes involving Indian and foreign parties and aligning Indian mediation law with global standards. Further, the Act applies to disputes involving the Central Government, State Governments, their agencies, public bodies, corporations, and local authorities, particularly in commercial matters, with the objective of reducing excessive government litigation and promoting efficient dispute management. Additionally, the Act empowers the Central and State Governments to notify specific categories of disputes as suitable for mediation, allowing flexibility and future expansion of its application. Through this expansive applicability, the Mediation Act, 2023 ensures that mediation is not confined to limited sectors but functions as a mainstream, effective, and accessible mechanism for both domestic and international dispute resolution involving Indian parties.

## Key Features of the Mediation Act, 2023

### Pre-litigation Mediation

Pre-litigation mediation (PLM) means a process where prospective litigants to a commercial or civil dispute attempt to resolve their dispute using mediation before they approach any court in India for filing a suit or proceeding.<sup>1</sup> Section 5 of the Act introduces pre-litigation mediation, enabling parties to voluntarily attempt mediation before filing civil or commercial suits. This provision reflects a shift from reactive to preventive justice. In commercial disputes governed by the Commercial Courts Act, 2015, pre-litigation mediation is mandatory unless urgent interim relief is sought.

The mediation process must be completed within 120 days, extendable by 60 days with the consent of parties, without affecting limitation periods.

NIRNAYA" a novel project of the Kerala State Mediation & Conciliation Centre (KSMCC) is launched by Mr. Justice Ashish J. Desai, the Hon'ble the Chief Justice of Kerala on the 5th of August 2023 at the High Court Auditorium. For mitigating and resolving the umpteen number of disputes involving the real estate sector and especially the construction sector, the KSMCC has initiated the scheme for easier and faster resolution of disputes through the people friendly mediation process. NIRNAYA is a robust mechanism to resolve the disputes through mediation at a pre-litigation stage as well.<sup>2</sup>

### Mediation Council of India

The Act establishes the Mediation Council of India (MCI) under Section 31. The Council comprises a Chairperson, full-time members with ADR expertise, ex-officio government members, and a part-time industry representative.

The functions of the Council include: - Registration and accreditation of mediators. - Recognition of mediation service providers and institutes. - Promotion of domestic and international mediation. - Conducting training, education, and certification programs. - Maintaining a depository of mediated settlement agreements.

### Online Mediation

Section 30 formally recognizes online mediation, allowing parties to conduct mediation through electronic communication tools such as encrypted emails, secure chat rooms, and video or audio conferencing. Online mediation can be conducted at any stage, including pre-litigation mediation, subject to written consent of the parties.

the current environment is full of uncertainty as clients and lawyers adjust to increased remote working and reluctance to attend in-person meetings. Online and telephone mediation can help you continue with business as usual and progress your litigation matters to a negotiated settlement.

The Online Consumer Mediation Centre (OCMC) is established at NLSIU, Bengaluru, under the aegis of the Ministry of Consumer Affairs, Government of India in 2016. The Centre aims to provide for a state-of-the-art infrastructure for resolving consumer disputes both through physical as well as online mediation through its platform.

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<sup>1</sup> <https://legalblogs.wolterskluwer.com/mediation-blog/the-mediation-act-2023-india-paves-the-way-for-a-new-mediation-law-part-ii/>

<sup>2</sup> <https://ksccc.keralacourts.in/index.php/content/pre-litigation-mediation>

Objects of the Mediation Centre is to provide for an innovative online mediation tool that affords consumers better access to justice through quick, secured and easy redressal mechanism to new and pending consumer cases and at the same time provide opportunity for businesses to maintain good customer relations. This project is first of its kind in India to strive towards Digital India Dream.

The Act emphasizes confidentiality, integrity of proceedings, and data security in online mediation.

### **Community Mediation**

Section 43 introduces community mediation to resolve disputes affecting peace, harmony, and tranquillity within a locality. Community mediation is conducted by a panel of three mediators, including respected community members, social contributors, and persons with mediation experience. Community mediation is an interesting foray to increase the footprint of mediation. That its contours are ambiguous is best illustrated by the caution with which it has been introduced. That the settlement will not be legally enforceable does not undermine the fact that it will remain morally binding. A good first step, which could see a change with time in the direction experience dictates. That it provides a possible alternate safety release valve in a heated atmosphere cannot but illustrate the importance of community mediation.<sup>3</sup>

In India, with the dawn of the new legislation, it will be interesting to witness people evolve and embrace the change towards participatory mechanisms as ends in themselves and benefit from the Act. The Mediation Act is best understood as a stepping stone to affordable justice and most importantly regaining of confidence by disputants towards quicker means to resolution. Time is ripe to reduce litigation overload through mutual support and minimize the accumulation of court matters.<sup>4</sup>

### **Mediation Service Providers and Appointment of Mediators**

Mediation proceedings may be conducted by recognized Mediation Service Providers, including: - Bodies recognized by the Mediation Council of India, - Authorities under the Legal Services Authorities Act, 1987, - Court-annexed mediation centers, - Bodies notified by the Central Government.

The parties are free to appoint mediators of their choice, irrespective of nationality, subject to prescribed qualifications in case of foreign mediators. In the absence of agreement, the Mediation Service Provider appoints a mediator from its panel.

The mediator must act independently, impartially, and disclose any conflict of interest. The mandate of a mediator terminates in case of bias or conflict.

### **Confidentiality in Mediation**

Another important feature of this Act is Confidentiality. Section 22 of the Act mandates strict confidentiality of mediation proceedings. Statements, proposals, documents, and communications exchanged during mediation cannot be disclosed or used as evidence in any legal proceedings.

Audio or video recording of mediation proceedings is expressly prohibited. This statutory protection strengthens the 'without prejudice' principle and fosters open and candid negotiations.

### **Conclusion**

Chief Justice of India Surya Kant on Friday said mediation is not a sign of the law's weakness but its highest evolution. Calling mediation an issue close to his heart, the CJI said it was not a Western concept

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<sup>3</sup> <https://www.livelaw.in/law-firms/law-firm-articles-/community-mediation-zeus-law-associates-260553>

<sup>4</sup> Ibid

but “the genius of our soil.”<sup>5</sup>

“Mediation is not a sign of the weakness of the law, but rather the mediation is the highest evolution. It is the true transition from the culture of adjudication, where we merely manage conflicts. Rather, we are shifting to a culture of participation where we actively cultivate harmony,” he said.<sup>6</sup>

The Mediation Act, 2023 marks a significant paradigm shift in India’s dispute resolution landscape by institutionalizing mediation through a comprehensive statutory framework while clearly delineating disputes unsuitable for mediation, such as criminal prosecutions, matters involving vulnerable persons, regulatory disputes, and issues affecting third-party rights, thereby preserving public interest and legal accountability. At the same time, the Act promotes pre-litigation mediation, recognizes online and community mediation, and ensures the enforceability of mediated settlement agreements, reflecting an effort to balance traditional consensual dispute resolution mechanisms with contemporary legal and technological advancements. However, the success of the Act depends upon overcoming practical challenges, including lack of awareness, shortage of trained mediators, maintenance of uniform mediation standards, effective functioning of the Mediation Council of India, and the delicate balance between confidentiality and transparency. If these concerns are addressed through robust institutional support and sustained stakeholder engagement, the Mediation Act, 2023 has the potential to transform mediation into a preferred and effective mode of dispute resolution, thereby enhancing access to justice, reducing judicial burden, and fostering a more participatory and harmonious justice system in India.

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<sup>5</sup> <https://www.hindustantimes.com/india-news/mediation-is-not-law-s-weakness-but-its-highest-evolution-cji-surya-kant-101766774871570.html> accessed on Sat Dec 27, 2025

<sup>6</sup> Ibid