



## Mediation Act, 2023: Easing Judiciary Workload

This editorial is based on the article [A clear message to industry on dispute resolution](#) which was published in The Hindu on 23/09/2023. It talks about the Mediation Act, 2023 that aims to foster a link between the mediation and the arbitration of commercial disputes, thus reducing the burden on Indian courts.

**For Prelims:** [Mediation](#), [Supreme Court](#), [Arbitration](#), [Negotiation](#), [Conciliation](#), [Mediation Council](#), [Community Mediation](#), [Online Mediation](#), [NITI Ayog](#), [Artificial Intelligence](#), [Singapore Convention](#), [ADR](#), [Various laws Related to Mediation](#).

**For Mains:** [Key Features of Mediation Act](#), [Institutional Mediation](#), [Dispute Redressal Mechanisms](#), Mediation Process, Laws related to it, Issues and Way Forward.

In the recent monsoon session of Parliament, both Houses passed the **Mediation Bill, 2023**, and upon receiving the assent of the President of India, is referred to as the **Mediation Act, 2023**. This Act seeks to promote mediation, particularly institutional mediation, and provide a mechanism for enforcing mediated settlement agreements.

### What is Mediation?

- Mediation is a **voluntary, binding process** in which an impartial and neutral mediator facilitates disputing parties in reaching a settlement.
- A mediator **does not impose a solution** but creates a conducive environment in which disputing parties can resolve all their disputes.
- Mediation is a **tried and tested alternative method of dispute resolution**. It has proved to be a great success in the cities of Delhi, Ranchi, Jamshedpur, Nagpur, Chandigarh and Aurangabad.
- Mediation is a **structured process where a neutral person** uses specialized communication and negotiation techniques. Litigants participating in the mediation process have unequivocally endorsed it.
- Other than mediation there are some other dispute resolution methods such as [Arbitration](#), [Negotiation and Conciliation](#).

### What are the Key Features of the Act ?

- **Pre-litigation Mediation:**
  - Parties must attempt to settle civil or commercial disputes by mediation before approaching any court or certain tribunals.
  - Even if they fail to reach a settlement through pre-litigation mediation, the court or tribunal

may at any stage refer the parties to mediation.

▪ **Disputes not Fit for Mediation:**

- The Act contains a list of disputes which are not fit for mediation. These include disputes:
  - relating to claims against minors or persons of unsound mind,
  - involving criminal prosecution, and
  - affecting the rights of third parties.
- The central government may amend this list.

▪ **Applicability:**

- The Act will apply to mediations conducted in India:
  - involving only domestic parties,
  - involving at least one foreign party and relating to a commercial dispute,
  - if the mediation agreement states that mediation will be as per this Act.

▪ **Mediation Process:**

- Mediation proceedings will be confidential, and must be completed within 180 days (may be extended by 180 days by the parties).
- A party may withdraw from mediation after two sessions.

▪ **Mediators:**

- Mediators may be appointed by:
  - the parties by agreement, or
  - a mediation service provider.
- Mediators must disclose any conflict of interest that may raise doubts on their independence.

▪ **Mediation Council of India:**

- The central government will establish the Mediation Council of India.
- The Council will consist of
  - a chairperson,
  - two full-time members (with experience in mediation or ADR),
  - three ex-officio members (including the Law Secretary, and the Expenditure Secretary), and
  - a part-time member from an industry body.
- Functions of the Council include: (i) registration of mediators, and (ii) recognising mediation service providers and mediation institutes.

▪ **Mediated Settlement Agreement:**

- Agreements resulting from mediation (other than community mediation) will be final, binding, and enforceable in the same manner as court judgments.
- They may be challenged on grounds of:
  - fraud
  - corruption
  - impersonation
  - relating to disputes not fit for mediation.

▪ **Community Mediation:**

- Community mediation may be attempted to resolve disputes likely to affect the peace and harmony amongst residents of a locality.
- It will be conducted by a panel of three mediators.

## Why does India Need to Promote Mediation?

▪ **To Tackle Case Pendency:**

- As of May 2022, over 4.7 crore cases are pending in courts across different levels of the judiciary. Of them, 87.4% are pending in subordinate courts, 12.4% in High Courts.
- Thus to reduce the case pendency, the [Mediation and Conciliation Project Committee](#) of the Supreme Court of India describes mediation as a tried and tested alternative for conflict resolution

▪ **Absence of Standalone Laws on Mediation :**

- There are several statutes containing mediation provisions, such as
  - the Code of Civil Procedure, 1908,
  - the [Arbitration and Conciliation Act, 1996](#),
  - the [Companies Act, 2013](#), the Commercial Courts Act, 2015, and
  - the [Consumer Protection Act, 2019](#)

- Despite the presence of above statutes, there is no dedicated standalone mediation legislation in India.
- Various countries including Australia, Singapore, and Italy already have standalone laws on mediation.
- **Mediation as Tool for True Justice and Social Change :**
  - Mediation simplifies the delivery of justice through plain language and proves to be a cost-effective alternative to traditional methods.
  - The resolution arrived during mediation secures true justice for individuals where social norms are brought in consonance with Constitutional values through the exchange of ideas and flow of information.
- **Aspirations to Become an International Mediation Hub :**
  - The **Singapore Convention on Mediation** is a uniform and efficient framework for international settlement agreements resulting from mediation.
  - As India is a signatory to the **Singapore Convention on Mediation** (since 2019), it is appropriate to enact a law governing domestic and international mediation.
  - It will boost India's credential to become an International Mediation Hub.

## What are the Key Issues and Concerns with the Act ?

- **Mandating Pre-litigation Mediation:**
  - According to the Act, pre-litigation mediation is mandatory for both parties before filing any suit or proceeding in a court, whether or not there is a mediation agreement between them.
  - However, as per Article 21 of the Constitution, access to justice is a fundamental right which cannot be fettered or restricted.
- **Limited Relevant Experience of Mediators:**
  - While the full-time members of the Council must possess knowledge or experience pertaining to mediation or ADR laws and mechanisms, they may not necessarily be practicing mediators with significant experience.
  - For instance, the Act would permit an arbitrator to be appointed as a full-time member of the Council. An arbitrator may not be best suited to perform functions such as prescribing standards of professional conduct of mediators.
- **Requiring Central Government Approval before issuing Regulations:**
  - Under the Act, the Council will discharge its major functions by issuing regulations. It must take approval from the central government before issuing such regulations.
  - Thus, Council's effectiveness could be limited if it requires central government approval for its core functions. Similar organizations don't require prior approval before issuing regulations. e.g. [National Medical Commission](#) and the [Bar Council of India](#).
- **Challenges in Enforcing International Settlements:**
  - The Act considers international mediation to be domestic when it is conducted in India with the settlement being recognised as a judgment or decree of a court.
  - The [Singapore Convention](#) does not apply to settlements that already have the status of judgments or decrees. As a result, conducting cross-border mediation in India will exclude the tremendous benefits of worldwide enforceability.
- **Multiple registration needed for Mediators:**
  - Mediators must be registered/ empanelled at all four places:
    - Mediation Council of India,
    - Empanelled by a court annexed mediation center,
    - A recognised mediation service provider, and
    - A Legal Services Authority .
  - It is unclear why satisfying any one of these conditions is not sufficient for such mediators.
- **Undefined Terminology:**
  - Clause 8 of the Act entitles a party to move the Court, before the commencement or during mediation, for interim relief, only in **"exceptional circumstances"**.
  - The term "exceptional circumstances" is undefined in the Act.
- **Issues with Online Mediation:**
  - A recent [NITI Aayog](#) report reveals that only 55% of India have access to the internet and only 27 % possess compatible devices.
  - This poses an accessibility problem for a significant portion of the population.

### ▪ **Issues with Community Mediation :**

- As for community mediation, the Act makes it mandatory to have a panel of three mediators.
  - Community Mediation is a powerful tool that offers an opportunity for people to resolve disputes through managed communication.
- This requirement seems unnecessary and impinges on the flexibility that mediation brings.

## What are the Steps Ahead ?

### ▪ **Phased Introduction of Mandatory Pre-litigation :**

- Rolling out mandatory pre-litigation mediation in a phased manner, first for certain categories of disputes and then eventually to cover a wide range of disputes.

### ▪ **Reduce Time Frame:**

- The [Parliamentary Standing Committee Report on Mediation Bill, 2021](#) recommended reduction in the time for concluding a mediation from 180 to 90 days.

### ▪ **Capacity Building :**

- [NITI Aayog](#) noted that a framework for mandatory pre-litigation mediation in India must be planned keeping in mind the number of mediators available and the ecosystem's ability to provide a large number of mediators.
- The [Mediation and Conciliation Project Committee](#), Supreme Court of India, has recommended steps to lay down model mediation codes, facilitate training of mediators across the country and regulate the process across all districts.

### ▪ **Scaling Accessibility:**

- For online mediation to be a success, we will have to scale our bandwidth accessibility to remote parts of the country.
- Setting up legal aid or access to justice clinics with adequate IT infrastructure could address this issue.

### ▪ **Use of Disruptive Technologies :**

- International Arbitration (IA) and Artificial Intelligence (AI) are leading alternatives to conventional practices. IA replaces conventional dispute resolution methods, while AI replaces traditional performance approaches.
- Artificial Intelligence could provide immense benefits for the arbitration process and its users. By augmenting human cognitive abilities, AI powered services could assist lawyers in drafting, identification of better authorities, reviewing of documents, etc.

## Conclusion:

The future of mediation in India lies in its ability to impact social change in a manner that law does not. The Act should be implemented more in spirit than in form as a famous jurist rightly held that, "it is the spirit and not the form which keeps justice alive."

### **Drishti Mains Question:**

Despite having numerous advantages of mediation as a mechanism for dispute resolution, it remains unutilized in India. Analyze this statement while placing special reference to the Mediation Act, 2023.

## UPSC Civil Services Examination, Previous Year Questions (PYQs)

### **Prelims**

#### **Q1. With reference to Lok Adalats, which of the following statements is correct? (2010)**

**(a)** Lok Adalats have the jurisdiction to settle the matters at pre-litigative stage and not those matters pending before any court

**(b)** Lok Adalats can deal with matters which are civil and not criminal in nature

**(c)** Every Lok Adalat consists of either serving or retired judicial officers only and not any other person

**(d)** None of the statements given above is correct

**Ans: (d)**

**Q2. With reference to Lok Adalats, consider the following statements: (2009)**

1. An award made by a Lok Adalat is deemed to be a decree of a civil court and no appeal lies against thereto before any court.
2. Matrimonial/Family disputes are not covered under Lok Adalat.

**Which of the statements given above is/are correct?**

**(a)** 1 only

**(b)** 2 only

**(c)** Both 1 and 2

**(d)** Neither 1 nor 2

**Ans: (a)**

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### **Mains**

**Q.** What are the major changes brought in the Arbitration and Conciliation Act, 1996 through the recent Ordinance promulgated by the President? How far will it improve India's dispute resolution mechanism? Discuss. **(2015)**

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