

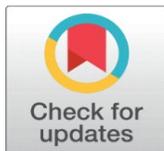
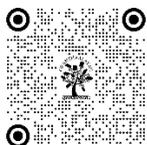
THE ROLE OF MEDIATION IN RESOLVING NATIONAL AND INTERNATIONAL DISPUTES: PAST, PRESENT AND FUTURE

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ABSTRACT

International conflicts are a natural part of the world, resulting from a variety of political, economic, and social issues. Such disputes emerge in the international regime for a variety of reasons. Conventional conflict resolution techniques, including litigation and arbitration, can involve drawn-out processes and combative exchanges, which might make tensions between parties worse. On the other hand, mediation provides a cooperative and adaptable method that promotes fruitful discussion and win-win solutions. This article explores the function of mediation as a method of settling international disputes, looking at how it is used in various legal systems and the difficulties it encounters in India.

Keywords: Mediation, ADR, Dispute Resolution Mechanism, International Mediation, Legal services, Mediation Rules, CPC

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1. INTRODUCTION

1.1. MEANING, NATURE, AND DEFINITION OF MEDIATION:

In India's legislative framework regulating alternative dispute resolution (ADR) procedures, the Mediation Act, 2023, represents a critical turning point. This Act seeks to create a thorough framework for the conduct of mediation procedures in order to foster a culture of resolution via communication and cooperation. In order to relieve the strain on the judiciary and promote quicker and more economical outcomes, it promotes the use of mediation rather than litigation for conflict resolution.

In Mediation, a neutral third person, known as the mediator, helps conflicting parties communicate with one another in order to enable them come to a mutually agreeable resolution. Because the mediator helps the parties reach their own

conclusion rather than forcing one on them, mediation is different from other conflict resolution procedures. The core values of mediation are its voluntary nature, confidentiality, and the autonomy of the parties to resolve their own conflicts. Mediation is a voluntary and confidential process wherein a neutral third party, the mediator, assists disputing parties in reaching a mutually acceptable resolution. Unlike arbitration, where the arbitrator imposes a binding decision, mediation empowers parties to actively participate in crafting solutions tailored to their interests. The mediator facilitates communication, identifies underlying issues, and encourages creative problem-solving, fostering a cooperative atmosphere conducive to settlement.

Since the mediation is a voluntary procedure, both parties ought to choose to participate. The aim of mediation is not to force any party to mediate. It is also Confidential in nature as the mediation procedure is carried out in a separate or private setting generally known as Caucuses. The aim of caucuses is to ensure that nothing discussed at the mediation may be revealed in a later court case or even before the mediating party. The intention of such private sitting is to have an open and sincere conversation. Since mediation usually does not adhere to rigid legal requirements or formalities, it can be flexible and customized to meet the interests of the parties. Rather than controlling the result, the mediator's primary responsibility is to help parties frame their problems and consider potential solutions. Additionally, through mediation, parties may effectively communicate their needs and interests and take charge of their conflict resolution process. However, a good mediator is supposed to control the whole mediation process the way in which he/she likes.

2. LEGAL FRAMEWORK OF MEDIATION IN INDIA

By the time, the Mediation Act, 2023 was enforced, the Code of Civil Procedure, 1908, the Consumer Protection Act, 2019, Supreme Court Mediation Rules 2018, Legal Services Authority Act, 1987 and the Arbitration and Conciliation Act, 1996, Companies Act, 2013 Real Estate (Regulation and Development) Act, 2016 and the Companies (Mediation & Conciliation) Rules, 2016 had been the main pieces of legislations that used to govern the process of mediation in India. The Act of 1996 gives mediation a legal foundation and acknowledges it as a unique type of alternative dispute resolution (ADR). The Supreme Court of India also established procedural criteria for conducting mediations in civil disputes in its 2018 Mediation Rules. The Supreme Court of India published a set of rules known as the Supreme Court Mediation Rules 2018 which governs the whole mediation process in civil matters. The goal of such Regulation is to promote mediation as an alternative dispute resolution (ADR) methods. The regulation offers a structure for selecting mediators, managing mediation process/sessions, and documenting settlement agreements. Along with outlining the procedures for settling any disagreements that may come up throughout the mediation process. These guidelines encourage openness and impartiality in the process by highlighting the voluntary nature of mediation and the secrecy of the proceedings. With regard to certain disputes. Cases which can be covered under the Consumer Protection Act, 2019, a detailed structure for mediation is included in the Consumer Protection Act of 2019. The Act fosters a culture of communication and prompt settlement in the field of consumer protection by instituting mediation procedures, permitting voluntary involvement, upholding confidentiality, and supplying enforceable agreements.

However, Section 55 of the Mediation Act, 2023, the Indian Contract Act, 1872, Section 89 read with Order X, Rule-1A, 1B of the Code of Civil Procedure, 1908, the Legal Service Authorities Act, 1987, the Arbitration and Conciliation Act, 1996, the Micro, Small and Medium Enterprises Development Act, 2006, the Companies Act, 2013, the Commercial Courts Act, 2015, and the Consumer Protection Act, 2019 makes the provisions for mediatin either directly or indirectly. The Maintenance and Welfare of Parents Act of 1987, the Industrial Disputes Act of 1947, the Brahmaputra Board Act of 1980, the Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act of 1981, the Finance Act of 2016, or the Industrial Relations Code of 2020, will all be superseded and will have an overriding effect over all these legislations.

3. SALIENT FEATURES OF MEDIATION ACT, 2023

- 1) Establishment of the Mediation Council of India (MCI): One of the most important provisions under the Act is, the establishment of the Mediation Council of India. The MCI is assigned with the tasked of promoting mediation and supervising training programs for mediators to ensure a consistent and standard of practice. This authoritative body aims at enhancing public confidence in mediation by ensuring mediators get adequate training and adhere to ethical standards while practicing the same.

- 2) **Mandatory Mediation for Specific kinds of Disputes:** The Mediation Act 2023 also makes the provisions for certain special categories of disputes, including family law matters and certain commercial disputes. Section-5 of the Act also mandates the circumstances under which mediation is mandatory. This provision also aims at making the pre-litigation mediation a mandatory and compulsory scheme for promoting speedy disposal of disputes.
- 3) **Confidentiality Protections-** The Act, specifically under Section 22 stipulates the confidentiality of mediation proceedings. All discussions, offers, and acknowledgements made during mediation must in every circumstances, be kept private by the mediator, mediation service provider, and all the concerned parties. This covers any paperwork made specifically for the mediation. Neither parties nor participants may record the mediation on audio or video. To ensure that mediations remain private and that the court does not take any such information into consideration, information from the mediation cannot be used as evidence in court or other tribunals. As long as it doesn't name any particular parties or conflicts, the mediator may divulge broad information regarding mediation subjects for study or training. However, mediated settlement agreement is exempt from the confidentiality clauses if its disclosure is required for Information shared during mediation cannot be disclosed in subsequent court proceedings, which encourages parties to speak freely without fear of prejudice in case the mediation fails.
- 4) **Qualifications of Mediators:** The Act sets out qualifications and ethical standards for mediators, aimed at ensuring the professionalism of practitioners in the field. Mediators must meet certain criteria, undergo training, and adhere to a code of conduct established by the Mediation Council. This feature seeks to maintain the integrity and effectiveness of the mediation process.
- 5) **Enforcement of Mediation Agreements:** The agreements reached during mediation hold significant legal weight. Section 18 of the Act allows mediation settlements to be recorded in writing and filed in court for enforcement⁶. Once filed, these agreements are treated as decrees of a court, making them enforceable under the law.
- 6) **Online and time bound Mediation:** Recognizing the need for flexibility, the Mediation Act, 2023 includes provisions for online mediation. This is particularly important in the current digital age, where remote dispute resolution can increase accessibility for parties residing in different geographical locations. Regardless of what is stated in any other already enacted legislation, mediation under this Act must be finished within a hundred and twenty days following the scheduled date of the initial mediator appearance. However, the mediation period specified in sub-section (1) may be extended for an additional time frame that the parties agree upon, but that should not exceed sixty days. However, the role of the court cannot completely be negated in Mediation Process. Additionally, courts may enforce mediated settlements as consent orders, lending legal validity to the agreements reached through mediation.

4. INDIA VS OTHER COUNTRY AND ROLE OF MEDIATION (SOME NOTABLE DISPUTES)

1) African Civil Wars

Africa has had a large number of intrastate conflicts and these conflicts have either been between African states or between the government and the people who are fighting for a better living circumstance. A number of attempts have been made to resolve these conflicts through the method of mediation, but the most of them have failed either due to the mediators' bias and alignment of their interests or enmity and lack of trust with any of the parties. Early attempts at international mediation and negotiation have failed. When dispute led by Charles Taylor attempted to overthrow Samuel Doe, who had taken over in a coup eleven years prior, Liberia was thrown into civil war in 1989. To settle the dispute, five countries of the Economic Community of West African States (ECOWAS) established a very effective Standing Mediation Committee. The Committee tried to create the ECOWAS Ceasefire Monitoring Group (ECOMOG) or group putting pressure to stop the dispute, It was a military group tasked with maintaining and enforcing peace, after its first attempt at peace-making failed. ECOMOG became involved in the conflict resolution for a period of six years, which prolonged the conflict and added to the instability in the region. By attacking Taylor and equipping opposing groups, it undermined its claim to neutrality and was dominated by Nigeria, which had earlier supported the autocratic. As per the view of former Special Representative of the UN Secretary-General to Liberia the enmity between Taylor and Nigeria was the primary obstacle in achieving a sustainable peace deal.

2) Bangladesh and India

The boundary dispute between Bangladesh and India was the root of the problem. The problem arose when the two nations were divided. When the nations decided to divide and become independent, resource distribution became a major source of conflict. It was the partition of the jute-rich regions that was the primary issue resolved by mediation and negotiation. Because of the region's tremendous economic benefits, both countries desired to possess it. India made the same claim in the region since it owned the resources and jute processing mills, while Bangladesh asserted that it should have them in order to maintain its just established state. After a protracted period of disagreements and talks, the region was ultimately split between the two nations.

3) India-Pakistan the Run of Kutch

Soon after India and Pakistan were divided in 1947, the question of the boundary and ownership of the Run of Kutch came into focus. Both the countries wanted a portion of the region and to retain its own control over it. Therefore, both sides decided to resolve the dispute out-of-court settlement and mediation. The facts were fabricated by the nations to support their claims. Pakistan presented a sizable area of land that, if left out of its borders, would cause portions of its landscape to spread out. The Tribunal is not aware of a sizable area in this region that forms a belt of border and is close to 9,000 square miles in size. However, the Tribunal would not have the authority to draw the "width less line" even if it were to conclude that the last claim is true because, it would create a boundary alignment that had not existed on the crucial date and dividing a no man's land that had not been divided before then. The matter was brought to a Tribunal because to the historically position and circumstances that had transpired. Both the claims of Pakistan to rule the whole Run of Kutch were denied despite they had a number of conferences and talks. Then, ultimately, the matter was brought to a Tribunal because to the historical antagonism between the parties and the circumstances that had transpired. By mediating the boundary conflict, India was able to effectively establish consular ties with Pakistan and meet some of its requests and the dispute was finally settled.

4) India Pakistan Tashkent Declaration

Soon after independence, India and Pakistan's Kashmir dispute arose which resulted in several clashes and uncontrollable circumstances between the two nations. In addition to ruining their ties with other countries, it also negatively impacted on the economic condition of both the countries. The USSR (now known as Russia) agreed to mediate the issue in light to lessen the parties' growing border tension. In order to guarantee that the parties are in agreement and to promote their well-being, peace talks started in 1965. Both sides presented their desire to have Kashmir and subsequent administration of the region. The USSR stepped in by demanding and insisting on a peace deal between the two nations since neither party was ready to lower their defenses or ready leave its claim. Indo-Pakistani War of 1965 was ended on January 10, 1966, when India and Pakistan signed the Tashkent Declaration, a peace treaty which was a part of mediated settlement.

5) Rohingya Muslim Issue

The legal status of Rohingya Muslims in India, particularly in the light of current debate, had been a complicated and divisive area that combines elements of refugee rights, humanitarian law, and national security. Due to persecution and violence, the Rohingya, a primarily Muslim ethnic community from Rakhine State in Myanmar, have fled in large numbers to neighboring countries, particularly India. The Rohingya refugees' current unclear legal status in India is a reflection of a larger worldwide issue involving refugees and asylum seekers. The dispute started after just after the crisis of Bangladesh-Myanmar refugee started. The then ruling party i.e. Bangladesh Awami League and the Chinese Communist Party (CPC) inked a memorandum of understanding (MoU) Notably, Song Tao, the visiting foreign development minister for the CPC Central Committee, revealed, after meeting with Bangladesh Prime Minister Sheikh Hasina, the fact that Chinese mediation was part of the negotiations to ensure the return of the Rohingya refugees from Bangladesh. He ruled that government of Myanmar were having discussions on this. The Refugee Convention of 1951 and its 1967 Protocol, which offer a legal framework for refugee protection, has not yet been ratified by India because of which there is no clear entitlement to asylum or refugee status under Indian law. Rather, India's legal instance on refugees is mostly based on administrative policy and domestic regulations, such as the Indian Constitution.

The Indian Constitution forbids the discrimination on the basis of religion, race, caste, sex, or place of birth and protects the right to equality. However, the Rohingya are not automatically granted legal status or privileges as a result of these safeguards. The Indian government has reportedly considered deporting Rohingya migrants to their own country in especially in the recent year, citing the reasons of security concerns and legal infractions. In 2021, for example, the Indian government had reaffirmed its intention to deport Rohingya refugees in spite issues and concerns of Human Rights from every corner of the world. Recently, the Supreme Court of India recognized the need of defending the rights of marginalized communities, such as refugees, in its ruling. For Rohingya refugees, the two kinds of strategy of emphasizing security concerns and simultaneously acknowledging humanitarian needs to protect them, creates a risky situation. To ensure the safety and dignity of the Rohingya minority, a more precise legislative framework addressing their rights in India is essential especially with respect to international human rights standards.

Thus, in order to meet humanitarian needs, maintain political stability, attract international assistance, and develop long-term solutions, the method of mediation is essential to resolve the issue permanently between India and Bangladesh. Through positive communication and cooperation mechanism, both nations may endeavour to protect the rights, safety, and dignity of the Rohingya people by handling properly the consequences and in consequences of their presence.

5. CHALLENGES FOR THE ENFORCEMENT OF INTERNATIONAL MEDIATION UNDER 2023 ACT.

Mediation as a form of conflict settlement acquired more traction with the implementation of the United Nations Convention on International Settlement Agreements Resulting from Mediation (often known as the Singapore Convention or "Convention"), especially for international disputes. One of the first countries to sign the Convention was India. Therefore, it was believed that a mediation statute would represent India's eagerness to engage international mediation. But as it is, foreign parties can't do much with the 2023 Act. The following section discusses a few clauses that demonstrate the new Act's breadth.

The implementation of the United Nations Act does applicable to some international mediations, notwithstanding its narrow purview. Below is an excerpt of the pertinent sections of the clause that pertain to its application. This Act will be applicable in cases where mediation takes place in India and— (i) either or both parties regularly reside in, are incorporated in, or have their place of business in India; (ii) the mediation agreement stipulates that any disagreement will be settled in line with this Act's provisions; (iii) an international mediation is taking place. Additionally, "international mediation" is defined as follows in section 3"(g) defines International Mediation" that refers to mediation conducted under this Act that deals with a business dispute resulting from a contractual or other legal relationship under any currently enacted Indian law, where at least one of the parties is— (i) a person who resides in a nation other than India or is a citizen of that nation; or (ii) an organization that operates outside of India, including a Limited Liability Partnership of any kind; or (iii) an organization or group of people with a commercial location outside of India; or

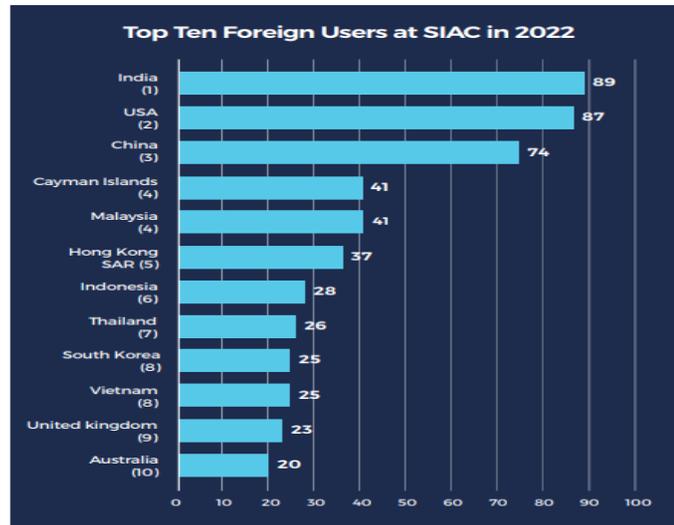
In order to make mediation a more practical and superior alternative to litigation, the new Mediation Act recognizes that it is essential to take into account the convenience of the parties involved. Therefore, mediation can occur outside the geographical jurisdiction of the competent court according to the explanation provided in Section 13 of the Act. It will be assumed, therefore, that the mediated settlement agreement was executed within the geographical jurisdiction of the court or tribunal of competent authority for the purposes of enforcement, challenge, and registration. One interpretation of this deeming rule is restricted, while the other is more open. While the second part of the definition makes it sufficiently wide, its application is limited insofar as it applies to commercial disputes arising from legal relationships "...under any law for the time being in force in India...". What is further intriguing, is this definition's similarity with that of 'international arbitration' in India. As Mr Sen pointed out: "In my view, this definition of International Mediation is heavily influenced by the Arbitration and Conciliation Act, 1996.

6. FUTURE OF INDO-INTERNATIONAL DISPUTE AND ROLE OF MEDIATION

Although the Mediation Act of 2023 mostly deals with mediation in India, it also includes a number of clauses and guidelines that make it easier to settle conflicts across countries. Through acknowledging global norms, encouraging online mediation, and offering a legal framework for mediators, the Act improves India's ability to manage cross-border conflicts. The effective application of this Act in the context of international disputes would be essential for drawing in

foreign investment and settling disputes in a way that is both fair and efficient as India develops as a major player in the world economy.

The Act does not recognize international mediated settlement agreements in its current form, nor does it permit their registration in a court or tribunal of competent jurisdiction in India. According to Ms. Ollapally , "this Act is only for mediations within India; it will not work for international mediation." During the reading of the Mediation Bill in the Lower House of Parliament in August 2023, Mr. Arjun Ram Meghwal, Minister of Law and Justice, made reference to the Singapore Convention. He added that proper action will be done in due course of time, but that the law was necessary to provide mediation with more assistance. However, some concrete steps still are waited to make provisions for dealing with all sorts of international disputes and its enforcement.



Source: [SIAC Annual Report 2022](#), page 24

But so far as other alternative dispute resolution like Arbitration is concerned the data shows that, the frequency, value, and prominence of arbitrations involving Indian parties are rising by leaps and bounds. One example is Amazon's challenge against the sale of an Indian retail company to Reliance. Nearly 300 Indian parties attended SIAC during the last two years, and India has led the list of international users for four consecutive years. Among the top 10 users of ICC arbitration are Indian parties as well. Singapore continues to be the most common location for arbitrations pertaining to India, however London and Dubai are also frequently selected. In 2024 and beyond, we anticipate that this tendency will continue.

So far as establishment of Court Annexed Mediation in all India courts and mediation Council are concerned, it is still not established and it still needs the special focus of the government. The Similar, attention of the world community towards the Mediation is expected in very near future to make India the hub of mediation and Indians the best mediators.

CONFLICT OF INTERESTS

None.

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None.