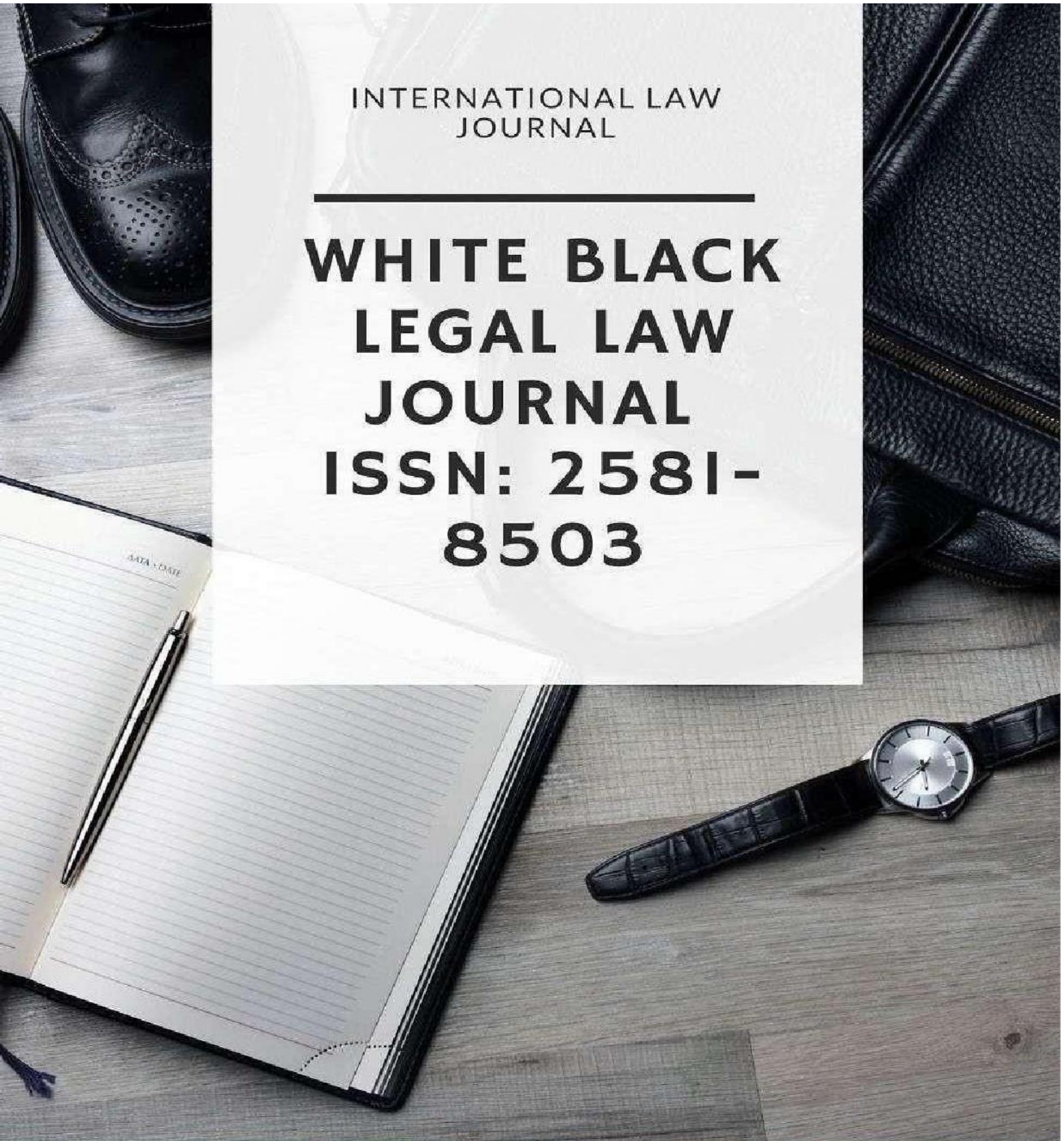




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MEDIATION AS A MECHANISM FOR RESOLVING PRIVATE SECTOR DISPUTES: A CRITICAL APPRAISAL OF THE MEDIATION ACT, 2023

AUTHORED BY - DR. SAMINA NAHID BAIG[#] & MRS. JOYTI KULKARNI^{*}

Abstract

The Mediation Act, 2023 marks a watershed in India's alternative dispute resolution architecture, according mediation formal statutory recognition for the first time and situating it as a preferred precursor to civil and commercial litigation. This article examines the applicability of the Act to disputes arising in the private sector, an area where mediation's consensual, non-adversarial character is best suited to preserving ongoing commercial relationships. Drawing on the statutory text, doctrinal analysis, and Supreme Court jurisprudence culminating in *Salem Advocate Bar Association v. Union of India* and *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co.*, the article argues that mediation law is not merely compatible with private commercial ordering but is substantially designed around it. It further interrogates structural limitations in the current framework — most notably the blanket exemption of non-commercial government disputes under Section 2(iv), India's non-ratification of the Singapore Convention on Mediation, and unresolved questions concerning the interaction between mediation clauses and interim relief under Section 9 of the Arbitration and Conciliation Act, 1996. The article concludes that while the Act represents meaningful institutional progress, its long-term efficacy for the private sector will depend on cross-border enforceability, consistent judicial interpretation, and expansion of mediation infrastructure.

Keywords: *Mediation Act 2023; alternative dispute resolution; private sector disputes; commercial mediation; enforceability of settlement agreements; Singapore Convention on Mediation; Section 89 CPC.*

[#]Assistant Professor of Law, Karnataka Law Society's Raja Lakhamgouda Law College, Belagavi

^{*}Lecturer (Management), Karnataka Law Society's Raja Lakhamgouda Law College, Belagavi

I. Introduction

Mediation as the Cornerstone of Private Sector Dispute Resolution in India: A Critical Evaluation of the Mediation Act, 2023 in the Context of Commercial Justice, Corporate Governance and Emerging Business Practices.

The enactment of the Mediation Act, 2023 marks a transformative moment in the evolution of India's dispute resolution system. For the first time, mediation has been accorded a comprehensive statutory framework that seeks not merely to regulate consensual dispute resolution but to reposition it as an integral component of India's civil justice architecture. While the legislation has generated considerable academic and professional interest, much of the existing discourse has concentrated on its procedural innovations, leaving insufficient attention to its wider implications for private sector governance, commercial relationships, and economic development.

This article critically examines the role of the Mediation Act, 2023 in resolving disputes arising within the private sector, including contractual disagreements, shareholder conflicts, employment disputes, intellectual property matters, partnership disputes, construction contracts, technology transactions, and corporate governance issues. It argues that the legislation should not be viewed merely as an alternative procedural mechanism but as an instrument capable of reshaping the philosophy of commercial justice by promoting collaboration over confrontation, business continuity over adversarial victory, and negotiated consensus over judicial coercion.

The article adopts a doctrinal, comparative, and policy-oriented methodology. It analyses the statutory framework of the Mediation Act, 2023 alongside judicial precedents of the Supreme Court of India, including *Salem Advocate Bar Association v. Union of India*, *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*, *M.R. Krishna Murthi v. New India Assurance Co. Ltd.*, and *K. Srinivas Rao v. D.A. Deepa*.

The discussion further evaluates India's mediation framework in comparison with international standards embodied in the Singapore Convention on Mediation, the UNCITRAL Model Law on International Commercial Mediation, and mediation regimes operating in jurisdictions such as Singapore, the United Kingdom, Australia, and the European Union.

Beyond doctrinal analysis, the article identifies several structural challenges affecting the implementation of mediation in India, including limited institutional infrastructure, inconsistent awareness among commercial stakeholders, uncertainty surrounding cross-border enforceability of mediated settlements, the unresolved interface between mediation and arbitration, confidentiality concerns in technology-enabled dispute resolution, and the continuing absence of India's ratification of the Singapore Convention.

The article further explores emerging dimensions of mediation, including Online Dispute Resolution (ODR), Artificial Intelligence-assisted mediation, Environmental, Social and Governance (ESG) disputes, digital commerce, fintech transactions, and technology-driven commercial conflicts. It argues that the future success of the Mediation Act, 2023 depends not merely upon legislative enactment but upon sustained institutional reform, judicial support, professional training, corporate acceptance, and the cultivation of a culture of consensual dispute resolution.

The article concludes that although the Mediation Act, 2023 represents one of the most significant legislative reforms in India's contemporary justice system, its transformative potential can be fully realised only through continuous policy development, international harmonisation, robust institutional capacity, and an evolving jurisprudence that balances party autonomy with procedural fairness and commercial certainty.

The twenty-first century has witnessed a profound transformation in the philosophy of dispute resolution across legal systems worldwide. Courts are increasingly recognising that access to justice cannot be measured solely by the availability of adjudication but must also encompass mechanisms that deliver timely, cost-effective, relationship-preserving, and commercially practical outcomes. Against this backdrop, mediation has evolved from a peripheral alternative to litigation into a central pillar of modern dispute resolution. It reflects a broader jurisprudential movement that seeks to replace adversarial confrontation with collaborative problem-solving, thereby aligning legal processes with the realities of contemporary commercial life.

India's civil justice system has long struggled with extensive case backlogs, escalating litigation costs, procedural delays, and diminishing public confidence in the efficiency of

judicial processes. While the constitutional promise of justice under the Preamble and Articles 14 and 21 of the Constitution of India remains foundational, prolonged litigation frequently undermines the effective enjoyment of legal rights. Commercial enterprises, in particular, require mechanisms capable of resolving disputes expeditiously without disrupting long-term business relationships, commercial goodwill, or investor confidence. In such circumstances, mediation offers an attractive alternative by facilitating negotiated settlements that preserve autonomy, confidentiality, and commercial continuity.

The enactment of the Mediation Act, 2023 therefore represents far more than a procedural reform. It reflects a significant shift in legislative policy towards institutionalising consensual dispute resolution as a mainstream component of India's justice delivery system. Unlike the fragmented framework that previously existed under Section 89 of the Code of Civil Procedure, 1908, the Arbitration and Conciliation Act, 1996, and various sector-specific statutes, the Mediation Act establishes a comprehensive legal framework governing domestic, international, online, community, and pre-litigation mediation, while providing statutory recognition and enforceability to mediated settlement agreements.

From a commercial perspective, the significance of the legislation extends well beyond procedural efficiency. Modern businesses operate in highly interconnected environments characterised by long-term contractual arrangements, global supply chains, digital transactions, intellectual property portfolios, employment relationships, shareholder agreements, technology collaborations, and cross-border investments. Disputes arising within these complex commercial ecosystems seldom produce absolute winners or losers. Instead, adversarial litigation frequently destroys commercial relationships, increases transaction costs, and discourages future cooperation. Mediation, by contrast, seeks to preserve business value while enabling parties to design mutually beneficial solutions that conventional adjudication cannot easily provide.

One of the most significant yet underappreciated contributions of the Mediation Act, 2023 lies in its recognition that the ultimate objective of commercial justice is not merely the adjudication of legal rights but the preservation of economically productive relationships. In the author's considered opinion, successful dispute resolution should not be measured solely by the delivery of legally correct judgments but by the extent to which it restores commercial confidence, minimises economic disruption, and enables businesses to continue productive

engagement after conflict. This broader conception of justice represents the true philosophical foundation of modern mediation law.

The increasing complexity of private sector disputes has further reinforced the necessity for mediation. Contemporary commercial conflicts frequently involve specialised technical issues, confidential business information, multinational stakeholders, regulatory compliance obligations, and rapidly evolving digital technologies. Traditional litigation, with its rigid procedural framework and public nature, is often ill-suited to address these multifaceted disputes efficiently. Consequently, mediation has emerged internationally as an essential component of corporate risk management and strategic business governance rather than merely an alternative dispute resolution mechanism.

The global movement towards institutional mediation is evidenced by significant developments such as the United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention on Mediation), the UNCITRAL Model Law on International Commercial Mediation, and the expansion of mediation frameworks across jurisdictions including Singapore, the United Kingdom, Australia, Canada, and the European Union. These developments collectively demonstrate an international consensus that consensual dispute resolution enhances commercial certainty, promotes investment, and strengthens economic development. India's enactment of the Mediation Act, 2023 must therefore be viewed not as an isolated legislative reform but as part of a broader global transition towards collaborative justice.

Nevertheless, despite the progressive aspirations of the Act, significant questions remain regarding its practical implementation. The absence of India's ratification of the Singapore Convention continues to limit the cross-border enforceability of mediated settlements. Ambiguities persist regarding the interaction between mediation clauses and arbitration proceedings, particularly concerning interim relief under the Arbitration and Conciliation Act, 1996. Furthermore, the success of institutional mediation depends upon adequate infrastructure, professional accreditation, judicial support, public awareness, and the willingness of commercial entities to embrace consensual dispute resolution as a genuine alternative to litigation.

A recurring misconception in Indian legal discourse is that mediation derives its

legitimacy solely from legislative endorsement. Such an understanding is incomplete. The enduring success of mediation depends less upon statutory enactment than upon the cultivation of trust among judges, lawyers, corporations, government agencies, and society at large. No statute, irrespective of its sophistication, can compel parties to negotiate in good faith. Accordingly, the Mediation Act, 2023 should be understood as providing the institutional framework within which a broader culture of dialogue, cooperation, and consensual justice may gradually evolve.

Against this background, the present study critically evaluates the legal, institutional, and policy dimensions of the Mediation Act, 2023 with particular emphasis on its application to private sector disputes. Moving beyond descriptive statutory analysis, it examines the theoretical foundations of mediation, judicial interpretation, comparative international developments, emerging technological challenges, and the broader implications of mediation for commercial governance and sustainable economic development. Through doctrinal analysis, comparative legal research, and critical policy evaluation, the article seeks to demonstrate that the future of commercial justice in India will depend not merely upon strengthening adjudicatory institutions but equally upon embedding mediation as a foundational principle of legal and corporate culture.

Litigation in India remains a slow and resource-intensive process, and this reality has, over the past two decades, pushed courts, the legislature, and commercial actors toward alternative dispute resolution ("ADR") mechanisms. Among these, mediation occupies a distinctive position: unlike arbitration, it is non-adjudicatory in character, and unlike litigation, it is structured around consensus rather than adversarial contest. A neutral third party, the mediator, facilitates negotiation between disputing parties but possesses no authority to impose an outcome; the resulting mediated settlement agreement, once it satisfies statutory formalities, is enforceable in the same manner as a court decree.

The enactment of the Mediation Act, 2023 ("the Act"), which received presidential assent on 14 September 2023, is the most significant legislative intervention in this field to date. The Act consolidates what was previously a fragmented patchwork of court-annexed mediation under Section 89 of the Code of Civil Procedure, 1908 ("CPC"), sector-specific mediation clauses, and ad hoc institutional practice, into a single statutory framework of general application. A recurring question in both practice and scholarship is whether this

framework meaningfully applies to disputes among private commercial actors, as distinct from disputes involving the State or matters of public law. This article argues that the private sector is, in fact, the principal constituency the Act is designed to serve, and undertakes a doctrinal and critical examination of the statutory provisions, judicial precedent, and empirical trends that bear on this proposition.

The analysis proceeds in five parts. Part II sets out the conceptual foundations of mediation. Part III examines the architecture of the Mediation Act, 2023, including its scope, definitional provisions, and treatment of mediation agreements. Part IV addresses the applicability of mediation law specifically to private sector disputes, distinguishing voluntary from mandatory mediation and examining the enforceability regime. Part V surveys the relevant Supreme Court jurisprudence. Part VI reviews available empirical data on India's mediation infrastructure, and Part VII offers a critical assessment of the framework's limitations before concluding.

II. Conceptual and Definitional Foundations of Mediation

Mediation is best understood as a facilitated negotiation. The parties retain complete control over both process and outcome; the mediator's function is confined to structuring dialogue, narrowing issues, and assisting parties toward a mutually acceptable resolution. This distinguishes mediation sharply from arbitration, where a tribunal renders a binding determination on the merits, and from judicial adjudication, where an outcome is imposed by the coercive authority of the State. Because mediation is consensual at every stage — from the decision to mediate, to the choice of mediator, to the terms of eventual settlement — it is generally regarded as better suited than adversarial processes to disputes where the parties have an interest in preserving an ongoing relationship, as is frequently the case in commercial, employment, and partnership contexts.

Mediation's appeal is not confined to India. Its cross-border currency is evidenced by instruments such as the United Nations Convention on International Settlement Agreements Resulting from Mediation (the "Singapore Convention on Mediation"), opened for signature on 7 August 2019, which seeks to do for mediated settlements what the New York Convention, 1958 does for arbitral awards — namely, provide a uniform mechanism for cross-border recognition and enforcement. India's relationship with the Singapore Convention, discussed

further below, remains incomplete, a fact with direct consequences for private parties engaged in cross-border commercial dealings.

III. The Mediation Act, 2023: Institutional and Normative Framework

A. Legislative Object and Structure

The Act is framed as legislation "to promote and facilitate mediation, especially institutional mediation, for resolution of disputes, commercial or otherwise," to provide for the enforcement of mediated settlement agreements, to establish a body for the registration of mediators, to encourage community mediation, and to accord recognition to online mediation as a cost-effective process. Section 5 lays down the framework for the conduct of mediation in India and signals a legislative intent to position mediation as a default precursor to civil and commercial litigation. Section 27 confers enforceability on mediated settlement agreements by treating them as equivalent to a court decree. Section 31 institutionalizes mediation through the creation of a central regulatory body, the Mediation Council of India, while Section 30 extends formal recognition to online mediation, aligning the statute with the technological realities of contemporary dispute resolution, including the growth of online dispute resolution ("ODR") platforms.

B. Territorial and Subject-Matter Scope

Section 1 confines the Act's application to mediations conducted within the territorial boundaries of India, whether domestic or international in character. Section 2 further specifies that the Act governs mediations conducted in India where all parties are Indian, where the parties have agreed by a mediation agreement to conduct the mediation under the Act, or where the mediation is international in nature with at least one foreign party. A significant consequence follows: the Act does not extend recognition to settlement agreements arising from mediations conducted outside India. Although India signed the Singapore Convention on Mediation in 2019, it has not ratified the instrument, and the Convention has not been domesticated through the Act in the manner that the New York Convention has been incorporated into the Arbitration and Conciliation Act, 1996 for the recognition of foreign arbitral awards. This asymmetry leaves cross-border mediated settlements without a clear statutory enforcement pathway in India, a gap of particular consequence for multinational commercial actors.

Section 2(iv) further narrows the Act's reach by exempting disputes from its application where

the Central Government, a State Government, or an entity controlled by such government is a party, unless the dispute is "commercial" in nature — a term incorporated by reference from Section 2(1)(c) of the Commercial Courts Act, 2015. The practical effect is that government entities remain free to litigate non-commercial disputes outside the mediation framework. Given that government bodies are, by a wide margin, the largest litigants before Indian courts, this exemption represents a missed opportunity to relieve docket congestion; the case for revisiting it is considered further in Part VII.

C. The Statutory Definition of "Mediation"

Section 2(h) defines mediation broadly as a process that includes pre-litigation mediation, online mediation, community mediation, conciliation, or any process of similar import, whereby parties attempt an amicable settlement with the assistance of a mediator who lacks authority to impose a settlement. Three consequences follow from this inclusive definition. First, Part III of the Arbitration and Conciliation Act, 1996, which separately regulated conciliation, is rendered largely redundant, since conciliation now falls within the Act's ambit. Second, the definition's breadth accommodates technological development, extending naturally to online mediation and to ODR platforms that combine mediation with arbitration. Third, because the definition is inclusive rather than exhaustive, courts are likely to construe even an implied intention to mediate — discernible from a dispute resolution clause — as sufficient to bring a dispute within the statutory framework.

D. What Constitutes a Valid "Mediation Agreement"

Section 4 requires that a mediation agreement, whether freestanding or embedded as a clause within a broader contract, be in writing. Section 4(3) adopts an expansive conception of what satisfies this requirement, recognizing as "in writing" a document signed by the parties, physical or electronic correspondence exchanged between them, or a pleading in which one party has alleged the existence of a mediation agreement and the other has not denied it. This formulation reflects a deliberate legislative choice to maximize the field of application of the Act, and correspondingly strengthens the position of courts in referring parties with even loosely drafted dispute resolution clauses toward mediation, whether under Section 7 of the Act or through case management directions during pending proceedings.

E. Interface with Multi-Tier Arbitration Clauses

A more difficult interpretive question concerns multi-tier dispute resolution clauses that

prescribe mediation as a mandatory precondition to arbitration. Parties bound by such clauses may invoke Section 4 of the Act to resist a premature request for arbitration. A related, and as yet unsettled, question concerns whether a party may nonetheless approach a court for interim measures of protection under Section 9 of the Arbitration and Conciliation Act, 1996 before the mediation stage has run its course. Given that the Act, read as a whole, preserves the voluntary character of mediation, Indian courts are likely to hold that recourse to Section 9 is not barred merely because a contractual mediation step has not been exhausted, even as Section 7 of the Act empowers courts to recommend mediation wherever the nature of the dispute makes such recommendation appropriate. This question is likely to receive further judicial elaboration as multi-tier clauses become more common in commercial contracts.

IV. Mediation and the Private Sector: Scope of Applicability

A. Nature of Private Sector Disputes

Private sector disputes typically arise from contractual, commercial, employment, partnership, shareholder, real estate, and intellectual property relationships. They are, in the main, civil in character and concern private rights and obligations rather than questions of public law. Because such disputes frequently arise between parties who have an interest in continuing a commercial or professional relationship — a supplier and a manufacturer, an employer and an employee, co-shareholders in a closely held company — the consensual and non-adversarial character of mediation renders it particularly well suited to their resolution.

B. Statutory Coverage

The Act applies broadly to civil and commercial disputes, and its coverage extends, unless expressly excluded, to:

- a) commercial and contractual disputes between private parties;
- b) employment and workplace disputes, excluding certain statutory violations that fall outside the scope of private compromise;
- c) partnership, shareholder, and joint venture disputes; and
- d) disputes involving private companies, firms, and individuals.

The statutory design therefore reflects an orientation toward private commercial ordering rather than public law adjudication, reinforcing the proposition that the private sector is a central, rather than incidental, beneficiary of the Act.

C. Voluntary and Mandatory (Pre-Litigation) Mediation

Mediation in the private sector may proceed on either a voluntary or a mandatory basis, depending on statutory provisions and contractual arrangement. The great majority of private sector mediations remain voluntary, initiated either by mutual consent or pursuant to a contractual mediation clause; the Act supports party autonomy in this context by permitting parties to select their mediator, determine procedure, and control the substantive outcome. At the same time, Indian law increasingly encourages, and in defined categories of dispute requires, pre-litigation mediation, with courts empowered to refer parties to mediation and to encourage its use in order to reduce docket congestion. It is important to note, however, that even within mandatory or pre-litigation frameworks, what is compelled is good-faith participation in the process, not agreement to any particular outcome; settlement itself remains voluntary throughout.

D. Enforceability of Mediated Settlement Agreements

The enforceability of the resulting settlement is, for private commercial actors, the single most consequential feature of the statutory scheme. Under Section 27, a mediated settlement agreement that satisfies the formal requirements of the Act carries the same legal status as a decree of an Indian civil court, and is enforceable accordingly. This confers on mediation an important practical advantage over informal settlement, which typically requires a fresh cause of action — for breach of the settlement itself — before it can be enforced. By contrast, statutory enforceability under the Act provides private businesses with a predictable and relatively swift route to finality, without the delay and expense associated with prolonged litigation.

E. Limitations and Statutory Exclusions

While the Act applies broadly to private sector disputes, certain categories are excluded from mediation, reflecting the principle that mediation is appropriate only where the underlying rights are capable of lawful compromise between the parties. These exclusions ordinarily include:

- Criminal offences;
- Matters involving serious allegations of fraud;
- Disputes affecting public policy or the exercise of sovereign functions; and
- Certain statutory or regulatory violations that the legislature has placed beyond private settlement.

V. Judicial Endorsement: An Analysis of Case Law

Even prior to the enactment of the Mediation Act, 2023, the Supreme Court of India had, through a sequence of judgments interpreting Section 89 of the CPC, developed a substantial body of jurisprudence supportive of mediation as a mechanism for resolving private disputes. This jurisprudence continues to inform the interpretation and application of the 2023 Act.

1. Salem Advocate Bar Association v. Union of India¹

In this decision, the Supreme Court upheld the constitutional validity of the 1999 and 2002 amendments to the CPC, including Section 89, which empowers courts to refer civil disputes to alternative dispute resolution mechanisms, among them mediation. The Court went on to direct the constitution of a committee, chaired by Justice M. Jagannadha Rao, to formulate practical modalities for the operation of Section 89, recognizing that the provision's effective implementation required both procedural clarity and institutional infrastructure. The judgment laid the constitutional and procedural foundation on which subsequent court-referred mediation, including in commercial and contractual disputes between private parties, has developed.

2. Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.²

This judgment remains the leading authority on the categorization of disputes suitable for reference under Section 89 of the CPC. The Supreme Court held that a civil court could not refer a suit to arbitration or conciliation without the consent of all parties, since these are consensual processes under the Arbitration and Conciliation Act, 1996, but clarified that other ADR mechanisms enumerated in Section 89 — including mediation — did not carry the same consent requirement for a court-directed reference. The Court further identified categories of disputes, including those arising from contracts, commercial transactions, and other private civil relationships, as ordinarily suitable for ADR reference, while excluding matters involving serious fraud, minors, or questions of public interest. The decision thus provided the operative framework within which Indian courts continue to route private commercial disputes toward mediation.

¹ (2005) 6 SCC 344

² (2010) 8 SCC 24

3. M.R. Krishna Murthi v. New India Assurance Co. Ltd.³

Although arising from a motor accident compensation claim rather than a commercial dispute in the strict sense, this decision is significant for its broader institutional recommendations. The Supreme Court observed that mediation, deployed even before a dispute crystallizes into adversarial litigation, holds considerable value for the expeditious resolution of claims, and recommended that the Union Government examine the establishment of a dedicated Motor Accident Mediation Authority. The judgment reflects the Court's wider institutional confidence in mediation infrastructure and lent momentum to the eventual enactment of the 2023 Act.

4. K. Srinivas Rao v. D.A. Deepa⁴

This decision, while concerned with matrimonial cruelty and divorce rather than a private commercial dispute, is frequently cited for its broader observations on the utility of mediation in disputes arising from ongoing relationships. The Court directed family courts and mediation centres to make consistent efforts to settle matrimonial disputes at the pre-litigation stage. Its precise holding is confined to matrimonial law, and it should not be overstated as direct authority on commercial or employment mediation; its value for the present analysis lies instead in the underlying judicial philosophy — that disputes rooted in continuing relationships benefit disproportionately from consensual resolution — which has since found more direct application in commercial and employment contexts.

Read together, these decisions demonstrate a consistent judicial trajectory in favour of mediation as a legitimate and, in appropriate cases, preferred mechanism for resolving private disputes, and they form the doctrinal backdrop against which the Mediation Act, 2023 must now be read and applied.

VI. Empirical Trends: Mediation Infrastructure and Caseload⁵

India's mediation infrastructure has expanded considerably in recent years. Reported figures indicate approximately 460 ADR centres nationwide, of which around 425 are fully operational, supported by a pool of over 3,950 trained mediators, in addition to 12,640 lawyer-mediators and 8,672 other professionals engaged in mediation practice. Caseload data reflects

³ 2019 SC 2019 SCC Online SC 315.

⁴ (2013) 5 SCC 226

⁵ Statistical figures on mediation infrastructure and caseload are drawn from secondary reporting current as of 2024 and should be verified against the Mediation Council of India's official data once published.

a corresponding upward trend: approximately 92,446 disputes were resolved through mediation in the 2022–2023 period, rising to approximately 99,033 in 2023–2024 — an increase of roughly 7.14 percent — with a further 48,480 cases resolved in the first half of 2024 alone. While these figures are encouraging as an indicator of growing institutional capacity, publicly available data does not disaggregate outcomes by sector, making it difficult to assess with precision the extent to which this growth is attributable specifically to private commercial mediation as opposed to matrimonial, motor accident, or other civil categories. This is an area meriting further empirical research and more granular data disclosure by the Mediation Council of India once fully operational.

VII. Critical Analysis: Structural Gaps and Reform Considerations

Notwithstanding the Act's evident achievements in consolidating and formalizing India's mediation framework, several structural limitations warrant critical attention, particularly from the standpoint of private sector users.

A. The Government Exemption

The exclusion of non-commercial government disputes from the Act's ambit under Section 2(iv) is difficult to justify on policy grounds. Government bodies constitute the largest single category of litigants in Indian courts, and a substantial proportion of government litigation — service disputes, land acquisition compensation, and similar matters — could plausibly benefit from mediation even where not strictly "commercial" in character. Extending the Act, or a parallel framework, to at least a defined subset of non-commercial government disputes would likely yield disproportionate returns in terms of docket relief.

B. Non-Ratification of the Singapore Convention

India's failure to ratify the Singapore Convention on Mediation, despite having signed it in 2019, leaves cross-border mediated settlements without the kind of uniform enforcement mechanism that the New York Convention provides for arbitral awards. For private multinational actors — an increasingly significant constituency given the growth of cross-border commercial transactions — this gap diminishes the comparative attractiveness of mediation relative to arbitration as a mechanism for resolving international commercial disputes. Ratification, coupled with corresponding amendments to the Act to give the Convention domestic effect, would materially strengthen mediation's standing as a genuine

alternative for cross-border private sector disputes.

C. Multi-Tier Clauses and Interim Relief

As noted in Part III.E, the interaction between contractual mediation preconditions and a party's right to seek interim relief under Section 9 of the Arbitration and Conciliation Act, 1996 remains judicially unsettled. Clearer statutory or judicial guidance on this question would reduce transactional uncertainty for parties negotiating multi-tier dispute resolution clauses, a drafting practice of growing prevalence in commercial contracts.

D. Confidentiality and Voluntary Participation

The efficacy of mediation, particularly in the private sector, depends heavily on the credibility of confidentiality protections and on genuine good-faith participation rather than mere procedural compliance with mandatory reference requirements. Robust enforcement of confidentiality obligations, and mechanisms to discourage the use of mandatory pre-litigation mediation as a dilatory tactic, will be necessary if the institutional gains reflected in Part VI are to be sustained over the longer term.

VIII. Conclusion

The Mediation Act, 2023 represents a considered legislative effort to institutionalize mediation within India's dispute resolution architecture, and the statutory text, read together with two decades of Supreme Court jurisprudence beginning with *Salem Advocate Bar Association* and culminating in *Afcons Infrastructure*, leaves little doubt that private sector disputes — commercial, contractual, employment, and partnership matters among them — sit at the core of the Act's intended application. The statutory recognition of enforceable mediated settlements, the accommodation of online mediation, and the steady expansion of India's mediation infrastructure together represent a meaningful shift away from adversarial litigation and toward consensual dispute resolution for private commercial actors.

That said, the framework remains a work in progress. The exemption of non-commercial government disputes, the unresolved status of the Singapore Convention on Mediation, and continuing uncertainty at the interface between mediation and arbitration all represent areas requiring further legislative and judicial attention. As cross-border commercial transactions grow in complexity and volume, the long-term success of mediation as an

instrument of private dispute resolution in India will depend on the extent to which these structural gaps are addressed. Subject to that caveat, the trajectory of both statutory reform and judicial endorsement suggests that mediation is likely to occupy an increasingly central place in the resolution of private sector disputes in the years ahead.

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