

The Mediation “Act”, 2023

September 15, 2023

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Contents

- Mediation as defined under the Mediation Act
- Applicability of the Mediation Act
- Mediation Agreement
- Pre-Litigation Mediation
- Disputes Fit for Mediation
- Appointment of Mediators
- Role of Mediator
- Time limit

- Online Mediation
- Grounds of Challenging Mediation Agreement
- Registration of Mediation Agreement
- Enforcement of Mediation Agreement
- Mediation Council of India
- Mediation Service Providers

Objective of the Act

An Act to promote and facilitate mediation, especially institutional mediation, for resolution of disputes, commercial or otherwise, enforce mediated settlement agreements, provide for a body for registration of mediators, to encourage community mediation and to make online mediation as acceptable and cost-effective process and for matters connected therewith or incidental thereto.

Mediation as defined under the Mediation Act

"mediation" includes a process, whether referred to by the expression mediation, pre-litigation mediation, online mediation, community mediation, conciliation or an expression of similar import, whereby parties attempt to reach an **amicable settlement of their dispute with the assistance of a third person referred to as mediator**, who does not have the authority to impose a settlement upon the parties to the dispute;

Applicability of the Mediation Act

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all or both parties habitually reside in or are incorporated in or have their place of business in India; or

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the mediation agreement provides that any dispute shall be resolved in accordance with the provisions of this Act; or

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there is an international mediation; or

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wherein one of the parties to the dispute is the Central Government or a State Government or agencies, public bodies, corporations and local bodies, including entities controlled or owned by such Government and where the matter pertains to a commercial dispute; or

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to any other kind of dispute if deemed appropriate and notified by the Central Government or a State Government from time to time, for resolution through mediation under this Act, wherein such Governments, or agencies, public bodies, corporations and local bodies including entities controlled or owned by them, is a party

Mediation Agreement

- ✓ A mediation agreement can be part of a written agreement or a separate written agreement. As per the Mediation Act, a written agreement can be a document signed by the parties or an exchange of communications or letters, including electronic communication as allowed by **the Information Technology Act, 2000**.
- ✓ If one party claims the existence of a mediation agreement in any legal proceedings and the other party does not deny it, that would also be considered a valid written agreement
- ✓ Additionally, parties have the option to choose mediation for resolving a dispute even after **the dispute has already arisen between them**.

Pre-Litigation Mediation

- ✓ **Section 5 of the Act** requires **pre-litigation mediation** for civil or commercial cases, regardless of whether there is a mediation agreement in place. It states that parties have the option to voluntarily and mutually agree to resolve their dispute through mediation before filing a case in any court.
- ✓ However, this requirement does not apply to commercial disputes of a specified value that are subject to compulsory **pre-litigation mediation under the Commercial Courts Act, 2015**.
- ✓ Further, **any court/tribunal** may at any stage of a proceeding, refer the parties to undertake mediation, irrespective of **whether there is a mediation agreement or not**

Disputes Fit for Mediation

- ✓ A mediation under this Act shall not be conducted for resolution of any dispute or matter contained in the indicative list under the First Schedule Provided that nothing contained under the Act shall prevent any court, if deemed appropriate, from referring any dispute relating to compoundable offences including the matrimonial offences which are compoundable and pending **between the parties, to mediation**
- ✓ **Note** – The First Schedule lists disputes that cannot be mediated, such as those involving minors, criminal prosecutions, tax issues, matters before regulatory bodies, and cases under the Competition Act. **The Act also covers non-civil and non-commercial disputes, including compoundable offenses and matrimonial cases.** This provision clarifies which disputes can be mediated, improving upon the arbitration and conciliation Act reliance on judicial precedents

Appointment of Mediators

- ✓ Unless otherwise agreed upon by the parties, a person of any nationality may be appointed as a mediator, provided that they possess the qualifications, experience and accreditation prescribed. The parties also have the liberty to select the **mediator and the procedure for appointment.**
- ✓ If the parties are unable to select the mediator or the procedure, the claiming party may make an application to a mediation service provider to appoint a mediator **Within 7 days from the receipt of the application, the mediation service provider shall either appoint a mediator as agreed by the parties, or a mediator from the panel maintained by it, The person appointed as a mediator shall convey his willingness within 7 days from the receipt of such appointment communication**



Role of Mediator

The mediator's responsibility is to help the parties involved in a dispute reach a voluntary resolution. This involves assisting them in identifying the problem, improving their understanding of the situation, clarifying what is most important, exploring potential agreements, and emphasizing that the ultimate decision regarding their claims is up to them. **Importantly, the mediator must not force a resolution upon the parties or guarantee that mediation will lead to a settlement**



Time Limit

The mediation process must be completed within **120 days** from the mediator's first appearance, but this can be extended by up to **60 days if both parties agree**.



Online Mediation

Under this Act, online mediation, including pre-litigation mediation, is permissible at any stage of the mediation process with the written consent of all parties involved. Online mediation may be conducted using various electronic platforms or video/audio conferencing. The specific manner in which online mediation is conducted will be determined as specified. **It is crucial that the integrity of the proceedings and confidentiality are upheld throughout the online mediation process.** The mediator has the authority to take appropriate measures to ensure these essential elements are maintained



Grounds of Challenging Mediation Agreement

A mediated settlement agreement may be challenged only on all or any of the following grounds, namely:

- (i) fraud
- (ii) corruption
- (iii) impersonation
- (iv) where the mediation was conducted in disputes or matters not fit for mediation under section 6 of the Act.

An application for challenging the mediated settlement agreement shall not be made after ninety days have elapsed from the date on which the party making that application has received the copy of mediated settlement agreement.

Provided that if the court or tribunal, as the case may be, is satisfied that the applicant was prevented by sufficient cause from making the application **within the said period of ninety days, it may entertain the application within a further period of 90 days.**



Registration of Mediation Agreement

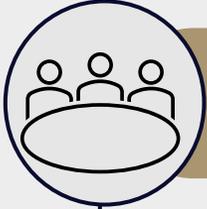
Parties involved in a mediated settlement agreement, except for those reached through court or tribunal mediation or Lok Adalat awards, have the option to register their agreement. They can register with an Authority established under the **Legal Services Authorities Act, 1987**, or any other notified body by the Central Government. The registration process involves obtaining a unique registration number for the settlement agreement. **This must be done within 180 days, with a possible extension, after receiving the authenticated copy of the agreement.**

It's important to note that registration is not mandatory. The Explanation clarifies that the registration process does not affect the parties' rights to enforce the mediated settlement agreement **under section 27 or challenge it under section 28**



Enforcement of Mediation Agreement

Once parties in mediation sign and the mediator authenticates a mediated settlement agreement, it becomes legally binding and conclusive for the parties involved. This agreement will be enforced following the provisions outlined in the **Code of Civil Procedure, 1908**, just like a court judgment or decree. Therefore, any party or individuals claiming through them can rely on the agreement as a defense, set off, or in any other legal proceedings.



Mediation Council of India

The Mediation Bill proposes the creation of the **Mediation Council of India (MCI)** as a corporate body. The MCI's main responsibility is to develop India as a strong center for both domestic and international mediation. It will establish guidelines for conducting mediation proceedings and handle the recognition, renewal, cancellation, or suspension of **Mediation Service Providers**.

Additionally, the **MCI will maintain an electronic depository for storing mediated settlement agreements** and submit an annual report on the implementation of the Mediation Act to the Central Government. The MCI will also have the authority to create rules and regulations that align with the provisions of the Mediation Bill



Mediation Service Provider

According to **Clause 40 of the Mediation Bill**, mediation proceedings can be conducted by a **Mediation Service Provider**. This provider can be a body, organization, an authority established under the Legal Services Act, 1987, a court annexed mediation center, or any other notified body. However, they must be recognized by the **Mediation Council of India (MCI)** as **authorized to conduct mediation proceedings under the Mediation Bill**.

The **Mediation Service Providers** have various responsibilities, including accrediting mediators and maintaining a panel of mediators. They are also responsible for providing necessary facilities such as secretarial assistance and infrastructure for the mediation proceedings. Additionally, they facilitate the registration of mediated settlement agreements.