



What is Mediation?

Mediation is a voluntary, confidential process where a neutral third party assists disputing parties in reaching a mutually acceptable solution.



History of Mediation – Early Practices

Ancient Israel: Mediation used as early as 960 B.C., with King Solomon famously mediating disputes.

Sumerian Society: Ancient Mesopotamian civilization where the 'mashkim' helped resolve disputes without court intervention.

China: Confucian philosophy valued ethical reconciliation over legal conflict, establishing early mediation principles.

India: Panchayat system where local councils and respected elders settled community disputes.



Evolution of Mediation

- English Common Law: Initially integrated mediation as a preferred method for dispute resolution; 'Lovedays' were designated for mediation.
- Decline of Mediation: Development in law led to decline in mediation.
- Revival through U.S. Civil Rights Movement: Community mediation centers established to address social issues.
- Mediation and the Vietnam War: The activism surrounding the Vietnam War prompted social activists to explore constructive alternatives to conflict, leading to the rise of "participatory democracy" and community mediation initiatives
- Woolf Reforms (1990s, UK): Introduced mediation as a significant component of civil
 justice reform to address costs, delay, and complexity.

Mediation's Evolution in India

- Panchayat System in India: The Mediation as an institutionalized mechanism is deep rooted in Indian culture and heritage.
- Post-British Era Integration: Mediation introduced in the Industrial Disputes Act, 1947.
- Legal Services Authority Act, 1987: Establishment of Lok Adalats to promote mediation.
- CPC Amendment (1999): Section 89 of the Code of Civil Procedure allowed courts to refer cases for mediation.
- The draft Mediation Bill, 2021 to further concretise a statutory framework for compulsory mediation in certain cases of civil and commercial disputes.



Preamble 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.



Definition of Mediation

Section 3(h) of the Act:

"Mediation" includes a process, whether referred to by the expression mediation, prelitigation 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.



Definition of Mediation

May be referred by different names	Express, Pre-Litigation, Online, Community, Conciliation, etc.
Parties attempt to reach an amicable settlement	Of their dispute
With the assistance of a third person (mediator)	Does not have the authority to impose a settlement upon the parties.



Exclusions: What is not covered in the purview of mediation?

Section 6 r/w First Schedule of the Act:

- a) Disputes against minors or persons with intellectual disability or persons of unsound mind, etc.
- b) Prosecution of criminal offences.
- c) Complaints or disciplinary proceedings against practitioners.
- d) Disputes effecting rights of a third party, which is not privy to the mediation.
- e) Any dispute relating to levy, collection, penalties, direct/indirect tax refunds.
- f) Proceedings under NGT Act, Electricity Act, TRAI Act, PNGRB Act, SEBI Act, & Competition Act.
- g) Proceedings with respect to Land Acquisition.



Definition of a Mediator

Section 2(i) of the Act:

"mediator" means a person who is appointed to be a mediator, by the parties or by a mediation service provider, to undertake mediation, and includes a person registered as mediator with the Council.



Qualifications of a Mediator

Section 8 of the Act:

- Person of any nationality.
- Parties may agree upon the name of the person and procedure for appointment.
- In case of no agreement being reached, application be made to the mediation service provider.
- Mediator to be appointed within 7 days of making of said application.
- Preference of the parties to be sought to select mediator from the panel.



Conflict of Interest

Section 10 of the Act:

- Conflict of Interest whether personal, professional, financial, etc. to be disclosed by the Mediator to the parties before the conduct of Mediation.
- In case Conflict of Interest arises during mediation, the same is to be disclosed to the parties immediately.
- Express waiver may be granted on disclosure.
- If the conflict is not waived, parties may either remove the mediator or make application to the Mediation Service Provider for his removal.



Pre-Litigation Mediation

Section 5 of the Act:

"the parties before filing any suit or proceedings of civil or commercial nature in any court, may voluntarily and with mutual consent take steps to settle the disputes by prelitigation mediation in accordance with the provisions of this Act"

- Mediation Bill, 2021 sought to make it mandatory.
- However, Parliamentary Standing Committee recommended to make it voluntary.
- Has led to divergence of views:
 - Those in favor of voluntary mediation say that making it mandatory would take away its very essence.
 - Those against it say that making it mandatory would ensure a robust system to institutionalize mediation.



Effect of the Mediated Settlement Agreement

Section 27 of the Act:

- Final and binding on the parties.
- Enforceable in accordance with provisions of CPC.
- As if it were a judgment or decree of the Court.
- May be relied upon by parties or persons claiming through them.



Challenges to the Mediated Settlement Agreement

Section 28 of the Act: Challenge only on four grounds-

- (i) Fraud
- (ii) Corruption
- (iii) Impersonation
- (iv) Mediation conducted of disputes excluded under Schedule I



Online Mediation under the Mediation Act

Section 30 of the Act:

- May be conducted at any stage of the mediation, including pre-litigation.
- With written consent of the parties.
- Including Electronic Form or Computer Networks. E.g.:
 - E-mail Service
 - Secure Chat Rooms
 - Audio-Video Conferencing
- Integrity of Proceedings and Confidentiality to be maintained.



Mediation Council of India

Chapter VIII of the Act:

- Promote domestic and international mediation in India.
- Make guidelines for continuous education, certification and assessment of mediators.
- Provide for the manner of conduct of mediation proceedings.
- Provide manner of registration of mediators and renew, withdraw, suspend or cancel registration.
- Lay down standards for professional and ethical conduct.
- Hold trainings, workshops and courses.
- Enter into memoranda of understanding or agreements.
- Recognise mediation institutes and mediation service providers and renew, withdraw, suspend or cancel such recognition.
- Maintain an electronic depository of the mediated settlement agreements made in India.



Mediation Service Providers

Section 40 of the Act:

A body or an organisation that provides for the conduct of mediation under this Act and the rules and regulations made thereunder and is recognised by the Council

Deemed MSPs:

- an Authority constituted under the Legal Services Authorities Act, 1987.
- a court-annexed mediation centre.
- any other body as may be notified by the Central Government.



Mediation Service Providers – Functions

Section 41 of the Act:

- Accredit mediators and maintain panel of mediators.
- Provide the services of mediator for conduct of mediation.
- Provide all facilities, secretarial assistance and infrastructure for the efficient conduct of mediation.
- Promote professional and ethical conduct amongst mediators;
- Facilitate registration of mediated settlement agreements.



Mediation Institutes

Section 3(I) of the Act:

"mediation institute" means a body or organisation that provides training, continuous education and certification of mediators and carries out such other functions under this Act.



Community Mediation

Section 43 of the Act:

"Any dispute likely to affect peace, harmony and tranquillity amongst the residents or families of any area or locality may be settled through community mediation with prior mutual consent of the parties to the dispute."

- Application be made to Legal Services Authority, DM or SDM.
- Three Community Mediators panel to be constituted, which may include:
 - Person of standing and integrity who are respectable in the community.
 - Any local person whose contribution to the society has been recognized.
 - Representative of area or resident welfare associations.
 - Person having experience in the field of mediation.
 - Any other person deemed appropriate.





Rule 4 of Mediation Rules, 2016

- a) has been judge of the Supreme Court of India; or
- b) has been a judge of High Court; or
- c) has been a District or Sessions judge; or
- d) has been a Member or Registrar of Tribunal constituted as a National Level under any law for the time being in force; or
- e) has been an officer in Indian Corporate Law Service or Indian Legal Service with fifteen years experience; or
- f) is a qualified legal practitioner for not less than ten years; or
- g) is or has been a professional for atleast fifteen years of continuous practice as a Chartered Accountant or Cost Accountant or Company Secretary; or
- h) has been a Member or President of any State Consumer Forum; or
- i) is an expert in mediation or conciliation who has successfully undergone training in mediation or conciliation.



SEBI on Mediation



SEBI's ADR Mechanism

- **ODR Mechanism**: SEBI launched an Online Dispute Resolution (ODR) platform in 2023, integrating mediation, conciliation, and arbitration to handle investor complaints.
- **SCORES and ODR**: Investors can use either the legacy SCORES system or the new ODR platform for dispute redressal.
- Choice of ADR Pathways: Parties can select SEBI's ODR or an independent ADR institution.
- Automated Case Allocation: ODR cases are assigned via a round-robin system.
- **Streamlined Timelines**: SEBI's ODR mandates quick resolutions with strict timelines.





Statistics on Mediation



Success rate of Mediation Process in India

Annual Mediation Statistics 2023

Mediation Statistics from 01.01.2023 to 31.12.2023

During the period from January 2023 to December 2023, 40525 cases were mediated in 77 mediation centres and 15963 cases were settled.

Total Cases Pending in the begining (Opening)	Cases Referred	Cases Settled	Cases Not Settled	Not Mediated	Total Cases Pending at the end (Closing)	Success Rate (%)	
10567	49126	15963	24562	8356	10812	39.4%	

- Bangalore and Delhi Mediation Centres: Show varying success rates, generally indicating the effectiveness of mediation in clearing backlogs.
- Factors Affecting Success: Awareness, infrastructure, and the willingness of parties to resolve disputes through mediation.



International Comparisons

- Higher Success Rates in Developed Nations: U.S. and Europe report success rates between 60%-80%.
- Reasons for Variation: Stronger legal frameworks, greater awareness, and established mediation cultures.
- Outcome: Highlights potential for growth in Indian mediation success rates by addressing these factors.





Why to go for Mediation – Career Aspect

- Career Flexibility: Mediation offers part-time or contract-based work.
- Conflict Resolution Skills: Enhances communication and negotiation skills, valuable in many professions.
- Growing Demand: As mediation becomes more common, demand for skilled mediators is expected to increase.



Opportunities in Corporate Mediation

- Corporate Dispute Resolution: Many corporations prefer mediation for confidentiality and cost-effectiveness.
- Corporate Mediator Role: Acts as an in-house or freelance mediator to resolve workplace or business disputes.
- Companies Act, 2013: Section 442 formalizes corporate mediation, creating opportunities for professionals with corporate experience.





THANK YOU

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