

LAWBY WRITES

DECODING THE ACT SERIES



THE MEDIATION ACT, 2023

**Solving the puzzle of the pending cases
the Mediation way**



WHY SHOULD WE STUDY THE ACT?



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Founder

The **National Judicial Data Grid pegs the number of cases pending in India to more than 5 crore with most of them pending at the district level.** Vexatious litigation has become a regular, despite the Courts imposing costs and strictures on such miscreants for wasting the time of the courts. **The time available to attend a deserving case is taken over by unnecessary and petty issues.** The ADR method of settling disputes has come full circle given the number of interpretations by the High Courts and Supreme Court on the application of sections in the Arbitration and Conciliation Act, 1996 and the Mediation Act 2023. There is more clarity and consensus on resolving matters.

Earlier the greatest deterrent in using the tool of mediation was the lack of binding nature and the lack of trained mediators. At present the bigger picture is changing. **According to section 27 of the Mediation Act, 2023 a mediated settlement agreement is binding on the parties** involved and can be enforced as if it were a judgment or decree by a civil court. Section 31 provides for establishment of the Mediation Council of India to train mediators and **Section 30 provides for the recognition of online mediation** keeping in tune with changing technological trends. **Section 12A of the Commercial Courts Act, 2015 makes pre-litigation mediation mandatory for commercial disputes that do not require urgent interim relief.** The Mediation Act further demarcates where mediation is not permissible like disputes involving criminal prosecution, serious allegations of fraud, disputes involving minors, individuals with intellectual disabilities, or those of unsound mind, disputes affecting rights of third parties not a party to mediation, disputes related to SEBI, NGT and other regulatory bodies.

The bare truth behind the development of such alternate dispute resolution methods is the need for faster and judicially approved methods of closing litigious matters. **The attitude amongst lawyers must be to promote such mediation efforts and not prolong matters or promote appeals where unnecessary just for the sake of appeasing clients.** The legal community is already over burdened with multivarious issues like cybersecurity issues and AI intervention which are inevitable in the new world. **It would be best for lawyers to train and be mediators and arbitrators and not just be litigation specialists.** May the following quote of Mahatma Gandhi serve as a reminder to all of us who believe in peaceful settlement of disputes.

“My joy was boundless. I had learnt the true practice of law. I had learnt to find out the better side of human nature and enter men's hearts. I realised that the true function of a lawyer was to unite parties riven asunder. The lesson was so indelibly burnt into me that a large part of my time during the 20 years of my practice as a lawyer was occupied in bringing about private compromises of hundreds of cases. I lost nothing thereby, not even money, certainly not my soul.”

- Mahatma Gandhi



HOW THE ACT EMPOWERS?

Scope and Application of the Act (Sections 1(2), 2, 3)

The Mediation Act, 2023 applies when mediation is conducted within India. It covers disputes where all the parties involved either reside, are **incorporated**, or carry out their business in India. The Act is also applicable if the mediation agreement specifically states that the resolution will be governed by this Act. Importantly, it extends to international **commercial disputes** where at least **one party** is a foreign national, a foreign company or association, or a foreign government. Additionally, the Act applies to commercial disputes involving government entities, including the Central Government, State Governments, their agencies, public sector undertakings, or statutory bodies. Furthermore, the Central or State Governments have the **authority to notify** and bring other kinds of disputes under the ambit of this Act, provided they are one of the parties or the entities controlled or owned by them are involved.

Types of Mediation

- **Pre-litigation Mediation (Section 5)**

A mechanism aimed at resolving disputes amicably before any formal case is filed in court. It allows parties to settle their issues through mutual consent. This process encourages cooperation and provides an opportunity for dispute resolution outside the traditional courtroom setting. Provided that pre-litigation mediation in matters of commercial disputes of Specified Value shall be undertaken in accordance with the provisions of **Section 12A of the Commercial Courts Act, 2015**, and the rules made thereunder. Mediators may be registered with the Mediation Council of India or empanelled through courts, Legal Services Authorities, or recognized service providers.

- **Institutional Mediation (Section 3(f))**: This is carried out under the rules of an **established mediation** institution or service provider.
- **Online Mediation (Section 3(q))**: Can be conducted at any **stage of the dispute**, with written consent of all parties. Tools like **video/audio conferencing**, **encrypted chats**, or **emails** can be used. The focus is on confidentiality and data security.
- **Community Mediation (Section 43)**: Designed for local disputes affecting community peace. Requires prior mutual consent. A panel of three community mediators is formed by the Legal Services Authority, District Magistrate, or Sub-Divisional Magistrate. Settlements here aim at community harmony, but they do not carry the legal status of a court decree.

Mediation Agreement (Section 4)

A **mediation agreement** is a written understanding between parties (or anyone claiming through them) to resolve current or future disputes through mediation. It can either be:

- A **clause in a contract**, or
- A **separate agreement** altogether.

To be considered valid, the agreement must be in writing and may appear in:

- Documents **signed by the parties**,
- Communication exchanged through **letters or emails** (including those under the IT Act, 2000), or
- **Court pleadings**, where one party asserts its existence and the other doesn't deny it.

Even a **reference to a mediation clause** in a written agreement makes it a binding mediation agreement.

Importantly, such agreements can be made **before or after** a dispute arises and apply to both **domestic and international commercial disputes**.

Mediation Procedure and Conduct(Section 15-26)

Mediation under this Act must be completed within **120 days** from the first meeting with the mediator. If necessary, and if both parties agree, the period can be extended by up to **60 additional days**. Throughout the process, the mediator remains **neutral and impartial**, aiming to help the parties reach an **amicable settlement**. Unlike court proceedings, mediation does not follow strict legal procedures or rules of evidence, making it far more **flexible**. Mediators are also required to **disclose any circumstances** that might affect their impartiality.

Confidentiality is a cornerstone of mediation-**recordings are not permitted**, and statements made during sessions generally **cannot be used in court**, except in cases involving **threats, domestic violence or child abuse**, or **imminent threat to public health or safety** (Section 22 & 23).

Mediation may conclude in several ways (**Section 24**):

- If the parties **sign a settlement agreement**,
- If the mediator believes **no further progress** is possible,
- If either party **chooses to withdraw**, or
- If the **time limit expires** under **section 18**.

Typically, **the cost of mediation is shared equally** between the parties, unless they mutually decide otherwise (**Section 25**).

Mediated Settlement Agreements(Section 19, 22, 27)

Settlement agreements under the Mediation Act, 2023 must be in **writing**, signed by all the parties involved, and authenticated by the mediator. Once executed, these agreements are legally binding and final, carrying the same weight as a court judgment or decree under the Code of Civil Procedure, 1908. However, such agreements can be challenged only in specific circumstances, such as when they are obtained through fraud, corruption, impersonation, or if the subject matter was not eligible for mediation as outlined in Section 6 of the Act. Any challenge must be filed within **90 days** from the date of receipt of the agreement, with a possible extension of another 90 days if sufficient cause is shown. Importantly, the time spent during the mediation process is excluded when calculating the limitation period for initiating related legal proceedings.

Disputes Not Eligible for Mediation(Section 6, The First Schedule)

The Act clearly defines categories of disputes that are not suitable for resolution through mediation. These include matters that are explicitly prohibited by law, **cases involving minors, deities individuals with mental illness and intellectual disabilities, criminal offences**. Additionally, disputes that affect the rights of third parties are generally excluded, except in certain family-related matters involving the welfare of children. The Schedule also excludes disputes governed by specific laws such as the National Green Tribunal Act, the Competition Act, The Electricity Act, 2003, land acquisition legislations, etc. However, courts retain the discretion to refer compoundable offences, such as some matrimonial disputes, to mediation. It is important to note that any settlements in such cases will not carry the same legal weight as a court decree and will require subsequent judicial approval. If the Central Government is satisfied that it is necessary or expedient so to do, it may, by notification, amend the First Schedule.





WHEN CAN A MEDIATED AGREEMENT BE SET ASIDE?

1. Challenge against mediated settlement agreement (Section 28)

If the parties come to a **mediated settlement agreement** and if either of the party decides to challenge the agreement, such party may file an application before the court or tribunal of competent jurisdiction.

The mediated settlement agreement can only be challenged the grounds mentioned below-

- (i) Fraud
- (ii) Corruption
- (iii) Impersonation
- (iv) if the mediation or the mediated matter does not fit for mediation under Section 6 of the Act.





HOW THE COURTS HAVE INTERPRETED & ADJUDICATED?

1. Case Insight: Future Earning Potential & Mediation in Motor Accident Claims

Case title: *M.R. Krishna Murthi Vs. The New India Assurance Co. Ltd. & Others*
[Civil Appeal Nos. 2476–2477 of 2019]

Provisions involved: Section 166 of the Motor Vehicles Act, 1988; Section 89 (Mediation); Order XLVII Rule 1 (Review) of the Code of Civil Procedure, 1908

Legal Issue: Whether the future earning potential of a student victim should be considered while awarding compensation for permanent disability, and whether systemic mediation reforms are necessary in motor accident claims?

Context:

An 18-year-old student from a family of Supreme Court lawyers suffered a permanent disability (40%) in a car accident. Though later he became a practising advocate, he claimed that the accident severely impaired his potential earning capacity. While the Motor Accident Claims Tribunal (MACT) awarded ₹8.48 lakhs, the quantum did not reflect his future legal prospects. The High Court marginally increased the amount. On appeal, the Supreme Court evaluated both the personal injury compensation and broader systemic issues.

Final Verdict:

The Supreme Court enhanced the compensation for future loss of income to ₹10.8 lakhs by applying a multiplier of 18 and assuming a reasonable future annual income of ₹60,000. Importantly, the Court emphasized the need for **systemic reform in motor accident compensation** and **strongly endorsed mediation mechanisms**, recommending the establishment of **Motor Accident Mediation Authorities (MAMA)** in every district. The Court urged the Government to consider enacting a **dedicated “Indian Mediation Act”** to streamline alternative dispute resolution, particularly in compensation matters, highlighting mediation’s benefits of speed, accessibility, and reduced litigation burden. This case significantly **influenced India’s mediation landscape**, laying the judicial foundation for institutionalizing mediation in accident claims, and became part of the discourse that led to **the Mediation Act, 2023**.

2.Case Insight: Limits of Mediation in Quashing Serious non-compoundable Offences like economic offenses

Case title: *Yashpal Chaudhrani & Ors. Vs. State [NCT of Delhi] & Anr. (CRL.M.C. 5765/2018)*

Provisions involved: Sections 320 and 482 of The Code of Criminal Procedure, 1973, and the Legal Services Authorities Act, 1987

Legal Issue: Whether serious criminal cases involving economic offences can be quashed solely on the basis of a mediated settlement between the complainant and the accused?

Context:

The petitioners were accused in multiple cases of credit card fraud registered by HDFC Bank in 2003, involving sophisticated financial crimes such as cloning cards using stolen international data. After 15 years of pendency and limited progress, the parties arrived at a **settlement agreement through court-annexed mediation** at the Patiala House Mediation Centre. Based on this, the accused approached the High Court under Section 482 CrPC for quashing the FIRs.

Final Verdict:

The Delhi High Court **refused to quash** the FIRs despite the mediated settlement. The Court held that serious economic offenses affecting the public at large, especially where the source of the stolen data remains untraced, **cannot be resolved merely through private settlement or mediation**, even if facilitated by a judicial mediation center. The Court emphasized that while mediation is a valuable tool for dispute resolution, it **cannot override public interest in criminal matters**, especially those involving deep-rooted conspiracies and systemic abuse.

3. Case Insight: Judicial Endorsement of Mediation in Family Disputes & Its Role in Shaping the Mediation Act, 2023

Case title: *B.S. Krishna Murthy & Anr. v. B.S. Nagaraj & Ors. (S.L.P. (Civil) No. 2896 of 2010)*

Provisions involved: **Section 89 of the Code of Civil Procedure, 1908**

Legal Issue: Whether disputes between close relations, such as family members, be resolved through mediation rather than adversarial litigation, especially when prolonged court battles risk irreparable personal and financial harm?

Context:

This case concerned a **family property dispute between brothers**, which had escalated into prolonged litigation. Observing the emotional and financial toll such cases impose, the Supreme Court intervened at the Special Leave Petition (SLP) stage and emphasized the need for a non-adversarial resolution.

Final Verdict:

Rather than proceeding with the legal arguments, the **Supreme Court directed the parties to mediation**, specifically referring the matter to the **Bangalore Mediation Centre**. The Court underscored that **mediation is not just a procedural step but a value-driven approach** to justice, especially in cases involving family or business relationships. Citing Mahatma Gandhi's personal experiences with dispute resolution, the Court highlighted how lawyers and litigants should prefer **mediation and arbitration to adversarial litigation**. The judges reiterated that **Section 89 of the Civil Procedure Code** supports such alternatives and must be proactively used.

4. Case insight: 'Mediation' as a non-binding dispute resolution process

Case Title: *Afcons Infrastructure Ltd. & Anr. Vs. Cherian Varkey Construction Co. (P) Ltd. & Ors. [Civil Appeal No. 6000 of 2010 (Arising out of SLP (C) No. 760 of 2007)]*

Provisions involved: Section 89 of the Code of Civil Procedure, 1908, and Order 10 Rules 1A, 1B, and 1C of the Code.

Legal issue: Whether section 89 of the Code of Civil Procedure empowers a court to refer parties to a suit for arbitration without their consent?

Context:

Afcons Infrastructure Ltd. sub-contracted work to Cherian Varkey Construction Co. (P) Ltd. A dispute arose, and Cherian Varkey filed a suit for recovery, subsequently applying under Section 89 of the Code to refer the matter to arbitration. Afcons objected, stating they were not agreeable to arbitration or other Alternative Dispute Resolution (ADR) processes. The trial court, affirmed by the High Court of Kerala, referred the matter to arbitration, holding that Section 89 allowed the court to refer even unwilling parties to arbitration and that a pre-existing arbitration agreement was not necessary for references under this section.

Final Verdict:

The Supreme Court **allowed the appeal**, setting aside the orders of the trial court and the High Court that referred the matter to arbitration. The Court unequivocally held that a civil court exercising power under Section 89 of the Code **cannot refer a suit to arbitration unless all parties to the suit agree for such reference**. Arbitration, being an adjudicatory process, requires the mutual consent of parties, similar to conciliation. The Court noted that Section 89 pre-supposes no pre-existing arbitration agreement, but for a reference under this section, parties must jointly agree.

The Court further clarified that Section 89 was intended to encourage ADR processes to provide speedy relief and reduce court burden, despite its imperfections. It identified anomalies, including the **mixing up of definitions for 'mediation' and 'judicial settlement'** in Section 89(2)(c) and (d), proposing an interchange of these terms for coherent implementation. The Court adopted a widely understood definition of **'mediation' as a non-binding dispute resolution process where a neutral third party helps disputing parties arrive at a negotiated settlement**. Unlike arbitration and conciliation, **mediation (along with Lok Adalat and judicial settlement) does not require the consent of all parties for reference** by the court. The Court provided a detailed procedure, stating that for simple cases, Lok Adalat is preferred, while **complicated cases requiring several rounds of negotiations are suitable for mediation**. If mediation results in a settlement, it must be presented to the court for recording and disposal as a decree.

5. Case insight: Draft Rules for ADR and Mediation

Case Title: *Salem Advocate Bar Association, Tamil Nadu Vs. Union of India [AIR 2005 S.C. 3353]*

Provisions involved: Section 26(2), Rule 15(4) and Order VI, Rule 15, Order XVIII, Rule 4, Order VIII, Rule 1, Order VI, Rule 17, Section 35, Section 80, Section 148, and Section 89 of the Civil Procedure Code, 1908

Legal issue: Whether the 1999 and 2002 Amendments to the Civil Procedure Code were constitutionally valid?

Context:

A committee was formed to ensure the effective implementation of the 1999 and 2002 Amendments to the Civil Procedure Code (CPC), aiming for quicker dispense of justice. This committee submitted a three-part report, which specifically included "**Draft Rules for ADR and mediation**". The validity of both this report and the amendments was subsequently challenged before the Supreme Court.

Final verdict:

The Supreme Court **affirmed the amendments and upheld the committee's report**, a decision largely appreciated as a landmark judgment in furtherance of speedy justice and effective judicial functioning.

However, the judgment suffered from certain flaws, particularly concerning **mediation**. Report Two of the committee's report focused on "**Draft Rules for ADR and mediation**", specifically addressing Section 89 of the CPC, which deals with settlement of disputes outside courts. The judgment was criticised for creating an "**anomaly between definitions of 'mediation' and 'judicial settlement'**" under Clause (c) and (d) of Section 89(2).

This judicial stance deviated from the established definition of mediation, where a **neutral third party assists parties to reach an amicable solution without resorting to trial**. The Court's approach was seen as giving it "the upper hand". Furthermore, the procedure outlined effectively allowed the judge to "step into the shoes" of the arbitrator or mediator, as the entire settlement process was handled by the Court, leaving minimal scope for the designated dispute resolution mechanism. This was identified as going against the fundamental premise of Alternative Dispute Resolution (ADR).

6. Case insight: Marital Discord and Legal Redress: A Mediation Imperative

Case title: *K. Srinivas Rao v. D.A. Deepa (Civil Appeal No. 1794 of 2013 (Arising out of Special Leave Petition (Civil) No. 4782 of 2007), dated 22 February 2013)*

Provisions involved: Sections 13(1)(i-a) and (b) (cruelty, desertion), Section 9 (restitution of conjugal rights) of the Hindu Marriage Act, 1955, Section 498-A (dowry harassment) of the Indian Penal Code (IPC), 1860 and Section 9 (settlement efforts) of the Family Courts Act, 1984

Legal issue: Whether the High Court correctly set aside a divorce decree, specifically regarding the determination of mental cruelty as a ground for divorce, considering the parties' prolonged separation and the concept of irretrievable breakdown of marriage?

Context:

The couple married on 25 April 1999 but separated on 27 April 1999 without consummation due to family disputes. The wife lodged a criminal complaint for dowry harassment and sought restitution of conjugal rights; the husband counter-claimed for divorce based on cruelty and desertion. The Family Court granted divorce, but the High Court reversed this, stating a police complaint was not a divorce ground and that prolonged separation precluded cruelty.

Final verdict:

The Supreme Court **set aside the High Court's judgment** and **dissolved the marriage** by a decree of divorce. The Court found the wife's conduct, including filing unfounded and defamatory allegations against her mother-in-law and repeated complaints to have the husband jailed and removed from his job, constituted **mental cruelty**. It clarified that **mental cruelty can occur even when spouses do not live together**.

The Court also held that the marriage had **irretrievably broken down** due to over ten years of separation and persistent litigation, which itself could amount to mental cruelty, even though it is not a direct statutory ground for divorce. The Court further recommended **mediation for matrimonial disputes**. All mediation centres shall set up pre-litigation desks/clinics; give them wide publicity and make efforts to settle matrimonial disputes at pre-litigation stage.



CASE TITLE	LEGAL QUESTION	FINAL VERDICT	RELEVANT PROVISION
M.R. Krishna Murthi Vs. The New India Assurance Co. Ltd. & Ors. [Civil Appeal Nos. 2476–2477 of 2019]	Should future earning potential be considered in compensation for permanent disability? Should systemic mediation reforms be introduced in motor accident claims?	The Supreme Court enhanced compensation to ₹10.8 lakhs, recognizing the future legal earning capacity of the victim. It also strongly endorsed mediation in accident cases and recommended setting up Motor Accident Mediation Authorities (MAMA) in each district. The Court called for the enactment of a comprehensive Indian Mediation Act to institutionalize mediation.	- Section 166, Motor Vehicles Act, 1988- Section 89, CPC, 1908- Order XLVII Rule 1, CPC
Yashpal Chaudhrani & Ors. Vs. State [NCT of Delhi] & Anr. [CRL.M.C. 5765/2018]	Can serious economic offences be quashed solely based on a mediated settlement?	The Delhi High Court refused to quash FIRs despite the settlement, holding that mediation cannot override public interest in cases involving serious financial crimes. The Court clarified that private mediation is not suitable for grave criminal matters, especially when public trust and security are at stake.	- Sections 320 & 482, CrPC, 1973- Legal Services Authorities Act, 1987
B.S. Krishna Murthy & Anr. v. B.S. Nagaraj & Ors. [S.L.P. (Civil) No. 2896 of 2010]	Should family property disputes be resolved through mediation instead of prolonged litigation?	The Supreme Court referred the matter to mediation and emphasized its suitability in family disputes, stating that mediation offers a value-based, non-adversarial approach . It urged greater use of mediation in emotionally sensitive cases and cited Mahatma Gandhi’s legacy of amicable resolution.	- Section 89, CPC, 1908
Afcons Infrastructure Ltd. & Anr. Vs. Cherian Varkey Construction Co. (P) Ltd. & Ors. [Civil Appeal No. 6000 of 2010]	Can a court refer unwilling parties to arbitration under Section 89 CPC?	The Supreme Court held that arbitration and conciliation require consent , but mediation, judicial settlement, and Lok Adalat do not . The Court clarified that mediation is a non-binding, court-referred process suitable for complex negotiations, and outlined the scope and applicability of each ADR mechanism under Section 89.	- Section 89, CPC, 1908- Order 10 Rules 1A, 1B & 1C, CPC
Salem Advocate Bar Association, Tamil Nadu Vs. Union of India [AIR 2005 SC 3353]	Are the 1999 and 2002 CPC amendments constitutional, particularly regarding ADR?	The Supreme Court upheld the validity of the amendments and the Draft Rules for ADR and mediation , while acknowledging confusion in Section 89 between ‘mediation’ and ‘judicial settlement’. The Court promoted ADR to improve court efficiency but warned against the judge-driven approach dominating mediation processes.	- Section 89 & other CPC provisions (Order VI Rule 15, Order XVIII Rule 4, etc.)
K. Srinivas Rao v. D.A. Deepa [Civil Appeal No. 1794 of 2013]	Can mental cruelty and long separation justify divorce, and should mediation be encouraged in such cases?	The Supreme Court dissolved the marriage citing mental cruelty and irretrievable breakdown. The Court recommended mandatory pre-litigation mediation clinics in all mediation centres to resolve matrimonial disputes early and avoid prolonged litigation.	- Sections 13(1)(i-a), (i-b), Hindu Marriage Act, 1955- Section 498A, IPC- Section 9, Family Courts Act, 1984

LAWBY WRITES

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