

THE MEDIATION ACT, 2023



The Government of India notified the Mediation Act, 2023 (**Act**) on 15 September 2023. This landmark legislation codifies the laws pertaining to mediation, an alternative dispute resolution mechanism. By enacting a statute to regulate mediation across a broad spectrum of disputes, the legislature has taken a commendable step toward alleviating the mounting pressures on the judicial system. In this FAQ, we have set out below some key features of the Act.

1. What is mediation under the Act?

Under the Act, Mediation is defined expansively to include any process in which parties seek an amicable resolution to their dispute with the help of a third-party mediator. It is noteworthy that the mediator lacks the authority to impose a settlement on the parties. This process may take various forms, including pre-litigation mediation, online mediation, community mediation, conciliation or any other expression having a similar meaning.

2. What is the applicability of the Act?

This Act applies to mediations conducted in India where:

- a) Both parties habitually reside, or are incorporated, or have their place of business in India; or
- b) The mediation agreement specifies this Act's provisions for dispute resolution; or
- c) There is an international mediation; or
- d) One party is the Central Government, a State Government, or related entities in commercial disputes.

The Central Government or the concerned State Government are empowered to designate other disputes for mediation under this Act, where they are a party.

3. What constitutes a mediation agreement?

A mediation agreement is an agreement to submit *inter-se* disputes to mediation. A mediation agreement can be a clause in a contract, a separate contract, a pleading in a court proceeding, a reference in an agreement or any exchange of communications.

4. Who is a mediator?

A mediator is an individual appointed by the parties or a mediation service provider to conduct mediation. Mediator includes a person registered as a mediator with the Mediation Council of India

5. Who can be appointed as a mediator?

Subject to the mediation agreement between the parties, any person (belonging to any nationality) having suitable qualification, experience, and accreditation can be appointed as a mediator.

6. Which disputes cannot be submitted to mediation?

The following disputes cannot be submitted to mediation:

- a) disputes which are barred from being submitted to mediation under a statute (such as matters falling under Rule 30 of the Companies (Mediation and Conciliation) Rules, 2016 etc;
- b) disputes relating to claims against minors, deities, persons with intellectual disabilities, persons with mental illness, persons of unsound mind;
- c) disputes relating to suits for declaration of title against Government;
- d) disputes relating to criminal offences;
- e) disputes which have effects on rights of third parties to the mediation agreement (except matrimonial disputes which involve interests of a child);
- f) disputes in regulated subjects like competition, telecom, electricity, securities, environment, and taxation.

7. Is pre-litigation mediation mandatory under the Act?

No, the Act provides a choice to the parties to a dispute to opt for pre-litigation mediation for all civil or commercial suits or proceedings, regardless of whether there is a pre-existing mediation agreement. However, it's important to note that there is a requirement of mandatory pre-litigation mediation for commercial disputes under the Commercial Courts Act, 2015. Please click [here](#) to read our FAQ on Commercial Courts Act, 2015.

8. Are there any time limits for completion of the mediation process?

Yes, the entire process of mediation should be completed within 120 days (which may be extended to 180 days) from the date of first appearance of the parties before the mediator.

9. Can a party withdraw from mediation?

Yes, a party can withdraw from the mediation after communicating its intention to withdraw to the party(ies) of the mediation and the mediator, in writing.

10. Can the court or tribunal refer parties to mediation even if they fail in pre-litigation mediation?

Yes, at any stage of a dispute, the court or the tribunal may refer the parties to mediation upon their request.





11. Who bears the costs of pre-litigation mediation?

Unless agreed otherwise, all mediation costs, including mediator fees and other charges, are shared equally by the parties.

12. Is mediation confidential?

Yes, the mediator, mediation service provider, parties, and participants are required to maintain confidentiality regarding mediation proceedings.

13. Are there any provisions under the Act for granting interim protection to the mediating parties?

Yes. Interim protection can be granted by a Court or a Tribunal while referring the parties to undertake mediation. However, there is no provision in the Act for granting interim protection to mediations instituted by the parties themselves and are not referred by any Court / Tribunal.

14. When can a mediator's mandate be terminated?

The mandate of a mediator can be terminated in the event (i) the mediator withdraws from the mediation; (ii) the mediator has a conflict of interest; or (iii) any party to the dispute applies to the mediation service provider for replacement of the mediator subsequent to disclosures made by the mediator.

15. What is a mediated settlement agreement?

A mediated settlement agreement is a written agreement, authenticated by the mediator, between some or all parties involved in mediation. It settles disputes and can encompass issues beyond those originally referred to mediation.

16. Is the mediated settlement agreement required to be registered?

Under the Act, it is not mandatory to register a mediated settlement agreement for the purpose of its validation. However, a mediated settlement agreement (except the agreements arising out of mediation referred by a Court of Tribunal or Lok Adalat) can be registered for the purpose of record. However, it is noteworthy that on registration of a mediated settlement agreement, the mediated settlement agreement will be treated as a public document.

17. How are mediated settlement agreements enforced?

They are enforceable in accordance with the provisions of the Code of Civil Procedure, 1908, on the same lines as a decree passed by a civil court.

18. What happens if parties do not reach a settlement through mediation?

Where parties do not reach a settlement through mediation, the mediator prepares a non-settlement report, withholding specific details or reasons, and submits it to the parties or the mediation service provider (in case of institutional mediation).



19. What are the grounds on which the mediated settlement agreement can be challenged?

As per the Act, a mediated settlement agreement can be challenged on the limited grounds of fraud, corruption, impersonation, or if the dispute was not fit for mediation under the Act.

20. What is the timeline for challenging the mediated settlement agreement?

Either party involved in mediation can challenge the agreement within 90 days from the date of receiving it. If the court or tribunal finds that the applicant had a valid reason for not applying within the initial 90-day period, it may extend the time by an additional 90 days.

21. Will the Act apply to mediation proceedings commenced before the Act?

No, the Act applies only to mediation proceedings commenced after the Act comes into force.

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