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The Mediation Act, 2023: a guide for businesses and lawyers

What India's Mediation Act, 2023 provides: mediated settlement agreements, confidentiality, timelines, online mediation and the Mediation Council of India.

For years mediation in India grew through court-annexed centres and the commitment of individual judges and lawyers, without a statute of its own. The Mediation Act, 2023 gave it one. The Act is being brought into force in stages.

What mediation is

A structured negotiation in which a neutral third person helps the parties reach their own settlement. The mediator does not decide. Nothing is binding unless the parties agree and sign.

Key features of the Act

Mediated settlement agreements are enforceable. A signed and authenticated settlement is final and binding, and can be enforced in the same manner as a judgment or decree of a court. It can be challenged only on narrow grounds such as fraud, corruption or impersonation.

Confidentiality. What is said and produced in mediation is confidential and cannot be used in later proceedings, with limited exceptions.

Time limit. Mediation is to be completed within 120 days, extendable by a further 60.

Pre-litigation mediation. Parties may attempt mediation before approaching a court. Under the Act as passed, this is voluntary.

Online mediation is recognised, with the parties' consent.

Community mediation is provided for local disputes affecting peace and harmony in a neighbourhood.

A Mediation Council of India is to register mediators and recognise service providers and training institutes.

What is excluded

Certain matters are not fit for mediation under the Act, including serious criminal offences, disputes affecting the rights of third parties, and some regulatory matters.

Why businesses should use it

- **Speed.** Weeks or months, not years.
- **Cost.** A fraction of contested litigation.
- **Control.** The parties shape the outcome.
- **Relationships.** Commercial partners can continue to do business.
- **Privacy.**

How to prepare

- Bring a decision-maker with authority to settle.
- Know your best and worst alternatives to settlement.
- Identify what the other side actually needs.
- Draft settlement terms precisely.

Putting it into contracts

Include a tiered dispute clause: negotiation between senior executives, then mediation under named rules or an institution, then arbitration or court.

The lawyer's role

Some lawyers fear that mediation reduces work. Experience elsewhere shows the reverse: clients value and return to advisers who resolve their problems. Mediation advocacy is a skill of its own, and firms should train for it.

The larger picture

With more than five crore cases pending, India cannot decide its way out of the backlog. A mature mediation culture is one of the few reforms that can take cases out of the queue altogether.

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