

*THE MEDIATION  
ACT  
&  
IT'S INTERPLAY  
WITH THE  
SINGAPORE  
CONVENTION*



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## **ABSTRACT:**

The Mediation Act 2023 and its interplay with the Singapore Convention on Mediation represents a significant shift in India's approach to alternative dispute resolution (ADR). This research explores how the Mediation Act 2023 aligns with the principles of the Singapore Convention, aiming to streamline the enforcement of international mediated settlement agreements in India.

The Act introduces key provisions such as mandatory-

- pre-litigation mediation for certain commercial disputes,
- establishment of mediation institutions
- accreditation of mediators which compliments the Convention's framework for cross-border dispute resolution.

By integrating these global standards, the Act seeks to enhance India's readiness for international trade and investment procedures and standards. The research also examines potential challenges in harmonizing domestic mediation practices with international norms, emphasizing the importance of mediator training, legal infrastructure, and public awareness.

This paper argues that while the Mediation Act and the Singapore Convention offer substantial opportunities to elevate mediation as a preferred dispute resolution mechanism, the success hinges on effective implementation and widespread adoption by legal practitioners and businesses.

Conclusion:-

The study concludes that the interplay between the Mediation Act and the Singapore Convention has the potential to significantly improve the efficacy and appeal of mediation in resolving both domestic and cross-border commercial disputes in India.

*Keywords: Mediation Act, Singapore Convention on Mediation, Mediation Settlement Agreements, ADR*

## **I. OVERVIEW OF THE SINGAPORE CONVENTION ON MEDIATION:**

The United Nations Convention on International Settlement Agreements Resulting from Mediation (often referred to as the Singapore Convention on Mediation) constitutes a significant advancement in the domain of international dispute resolution. The Convention was ratified by the United Nations General Assembly on December 20, 2018, and became effective on September 12, 2020. Its principal objective is to furnish a legal framework for the enforcement of international mediated settlement agreements, analogous to the legal structure established by the New York Convention for arbitral awards. Prior to the establishment of the Singapore Convention, parties involved in mediation in order to resolve transnational disputes frequently encountered substantial obstacles regarding the enforcement of their settlement agreements. These impediments arose from the reliance on the domestic regulations of various jurisdictions, which were often inconsistent and insufficient for transnational cases. The Singapore Convention endeavours to mitigate these challenges by instituting a streamlined, uniform mechanism for the enforcement of settlement agreements among its signatory nations. The Convention is specifically applicable to settlement agreements derived from mediation that possess an international character and are commercial in nature. It does not encompass agreements pertaining to personal, familial, inheritance, or employment issues. Furthermore, the Convention is not applicable to settlement agreements that are enforceable as judgement or arbitral award, as these fall under distinct legal regimes. By providing a dependable and systematic approach for the enforcement of transnational mediation agreements, the Singapore Convention aspires to enhance the utilization of mediation in international commerce.

Mediation as a dispute resolution technique, is generally quicker, less contentious, and more cost-efficient than litigation or arbitration. Consequently, the Convention possesses the potential to revolutionize international dispute resolution by rendering mediation as a more appealing option for parties engaged in cross-border dealings.

## **II. INDIA'S ADOPTION OF THE SINGAPORE CONVENTION:**

India was among the initial signatories of the Singapore Convention upon its opening for signature on August 7, 2019. This action was broadly perceived as part of India's comprehensive strategy to advocate for alternative dispute resolution (ADR) mechanisms, which have gained increasing significance considering the nation's overloaded judicial

infrastructure. The Convention is coinciding with India's legal reforms aimed at enhancing the facilitation of business operations, particularly concerning international transactions.

Historically, India's legal system has been marked by protracted delays and substantial backlogs, especially in commercial litigation. This scenario has engendered a heightened awareness of the necessity for effective ADR mechanisms, including mediation, to alleviate the burden on the courts. The endorsement of the Singapore Convention is a component of this extensive initiative, which also encompasses domestic reforms such as the Mediation Act, 2023.

The Mediation Act, 2023, serves an essential function in assimilating the principles of the Singapore Convention into India's domestic legal framework. It stipulates the acknowledgment and enforcement of international mediated settlement agreements and delineates procedures for pre-litigation mediation, which is obligatory for certain categories of commercial disputes. The Act also articulates provisions for the accreditation of mediators and the creation of mediation institutions, which are vital for guaranteeing the quality and uniformity of mediation services within India. India's ratification of the Singapore Convention is compatible with its overarching international trade and investment strategies. By establishing a dependable framework for the enforcement of mediated agreements, India augments its appeal as a locus for foreign investment and global commerce. This aspect is particularly salient in light of the government's dedication to initiatives such as "Make in India," which aspires to establish the nation as a preeminent global manufacturing centre. Nevertheless, although the ratification of the Singapore Convention constitutes a constructive advancement, its efficacy will hinge on the proficient execution of the Mediation Act and the establishment of a comprehensive mediation infrastructure within India. This encompasses not merely the creation of mediation bodies and the certification of mediators but also the education and training of legal practitioners and enterprises regarding the merits of mediation and the stipulations of the Convention.

### **III. INTERNATIONAL RECOGNITION AND ENFORCEABILITY OF MEDIATED SETTLEMENTS:**

The Singapore Convention on Mediation is crafted to instil assurance in parties that their mediated agreements will be acknowledged and enforced transnationally, without necessitating

supplementary judicial processes. This significance is magnified within the realm of international trade, where enterprises frequently encounter considerable risks and uncertainties when engaging in cross-border transactions. Pursuant to the Convention, a party seeking the enforcement of a mediated settlement in a foreign jurisdiction must submit the settlement agreement along with proof that the agreement was derived from mediation to the pertinent authority. The competent authority is mandated to enforce the agreement unless one of the narrowly defined grounds for refusal is applicable. These grounds encompass the incapacity of a party, the agreement being rendered null and void, or the agreement contravening public policy. Moreover, the Convention permits mediated settlement agreements to serve as a defence against claims initiated in violation of the agreement. This provision guarantees that mediated settlements receive equivalent legal recognition to arbitral awards under the New York Convention, thereby enhancing the status of mediation as a credible dispute resolution method.

A principal advantage of the Singapore Convention lies in its capacity to diminish the duration and costs associated with the enforcement of mediated settlements in foreign jurisdictions. Prior to the enactment of the Convention, parties often found themselves compelled to initiate separate legal actions in each jurisdiction where enforcement was pursued, a process that could be both laborious and financially burdensome. The Convention simplifies this procedure by offering a uniform legal framework applicable across all signatory nations. However, the success of the Singapore Convention in fostering international acknowledgment and enforceability of mediated settlements will be contingent upon its extensive adoption by nations globally. Despite the Convention being endorsed by numerous significant economies, including the United States, China, and India, there remain several pivotal jurisdictions that have yet to sign or ratify it. The Convention's efficacy in providing a global framework for the enforcement of mediated settlements will ultimately rely on its endorsement by a critical mass of countries.

#### **IV. KEY DIFFERENCES BETWEEN INDIA'S MEDIATION ACT 2023 AND THE SINGAPORE CONVENTION ON MEDIATION**

The Mediation Act 2023 of India and the Singapore Convention on Mediation are both aimed at promoting mediation as an effective dispute resolution mechanism, particularly in the context of international and commercial disputes. However, there are key differences between

the two, primarily because the Singapore Convention is an international treaty while the Mediation Act is a domestic law. Below are the main distinctions and deviations between the two:

<b>FEATURE</b>	<b>MEDIATION ACT</b>	<b>SINGAPORE CONVENTION</b>
<b>SCOPE OF APPLICATION</b>	Covers both domestic and international mediations. Includes pre-litigation mediation for specific commercial disputes.	Applies to international commercial settlement agreements arising from mediation. Excludes family, inheritance, and employment matters.
<b>ENFORCEMENT MECHANISM</b>	Provides a domestic framework for the enforcement of settlement agreements, which are treated as court decrees. Incorporates enforcement of international mediated settlements but within the domestic judicial system.	Establishes an international mechanism for the recognition and enforcement of mediated settlement agreements across signatory countries, bypassing extensive legal procedures.
<b>LEGAL FRAMEWORK</b>	Embedded in India's domestic legal system, with judicial oversight. Establishes detailed provisions for the accreditation of mediators and mediation institutions.	Provides an international framework for enforcement, with minimal grounds for refusal, such as public policy or incapacity.
<b>MEDIATED SETTLEMENT AGREEMENTS</b>	Applies to both domestic and international settlements, including those derived from pre-litigation mediation.	Applies only to international commercial settlements. Excludes agreements already enforceable as arbitral awards or judgments.
<b>INSTITUTIONAL DEVELOPMENT</b>	Focuses on the development of a domestic mediation infrastructure, including the accreditation of mediators and creation of mediation institutions.	Does not prescribe institutional development but provides a uniform enforcement mechanism for international settlements.
<b>OBLIGATIONS ON SIGNATORIES AND PARTIES</b>	Domestic obligations include mandatory pre-litigation mediation for certain disputes and enforcement within the Indian legal framework.	Obligates signatory countries to enforce mediated settlements across borders. Enforcement depends on a country's ratification of the Convention.
<b>PUBLIC POLICY AND REFUSAL OF ENFORCEMENT</b>	Allows refusal of enforcement on grounds like fraud, coercion, or public policy, with judicial oversight.	Enforcement can be refused on narrow grounds such as public policy, incapacity, or if the agreement is null and void.

<b>PRE-LITIGATION MEDIATION</b>	Mandatory pre-litigation mediation for specific commercial disputes before they can proceed to court.	No provision for pre-litigation mediation; focuses solely on enforcing mediated settlements.
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## **V. IMPACT ON CROSS-BORDER COMMERCIAL DISPUTES:**

The Singapore Convention on Mediation is anticipated to significantly influence the resolution of international commercial conflicts. By establishing a definitive legal structure for the enforcement of mediated settlement agreements across national boundaries, the Convention tackles one of the principal challenges confronting enterprises engaged in global trade and commerce.

One of the most noteworthy effects of the Singapore Convention is its promotion of mediation as a preferred mechanism for dispute resolution. Traditionally, enterprises have frequently been dependent on litigation or arbitration to settle international disagreements, chiefly due to the enforceability of judicial rulings and arbitral awards as stipulated by international accords such as the New York Convention. Nevertheless, the advent of the Singapore Convention instils greater assurance in businesses opting for mediation, with the understanding that their settlement agreements will be recognized and enforceable internationally. Mediation presents numerous advantages compared to litigation and arbitration, particularly in the realm of cross-border disputes. Generally, it is swifter, less confrontational, and more economical than alternative dispute resolution methods. Additionally, mediation allows parties to retain authority over the resolution of the dispute, rather than relinquishing the decision-making power to a judge or arbitrator. By offering a dependable mechanism for the enforcement of mediated settlements, the Singapore Convention renders mediation a more appealing alternative for enterprises engaged in global trade and commerce. The Convention is especially advantageous for small and medium-sized enterprises (SMEs), which may be devoid of the means to participate in protracted and costly litigation or arbitration processes. Mediation provides a more budget-friendly and effective approach to dispute resolution, and the Singapore Convention guarantees that SMEs can uphold their mediated settlement agreements in foreign jurisdictions without the necessity of resorting to litigation.

The influence of the Singapore Convention on international commercial disputes is further heightened by the increasing utilization of Online Dispute Resolution (ODR) platforms. ODR platforms, which integrate technological advancements with conventional mediation practices, furnish parties with a convenient and effective avenue for resolving disputes without necessitating physical assemblies. This is especially beneficial in cross-border disputes, where parties might be situated in different nations and encounter logistical impediments in



organizing in-person mediation meetings. The Singapore Convention also fosters consistency and predictability within the international legal framework for mediation. By instituting a unified set of regulations for the acknowledgment and enforcement of mediated settlements, the Convention diminishes the uncertainty and variability that have historically characterized cross-border mediation. Consequently, this bolsters the credibility and dependability of mediation as a conflict resolution technique and promotes its broader application in international commerce. Nonetheless, the triumph of the Singapore Convention in reshaping cross-border commercial disputes will hinge on its execution and acceptance by the global business sector. While the Convention offers a lucid legal framework for the enforcement of mediated settlements, its efficacy will ultimately be determined by the readiness of businesses and legal practitioners to adopt mediation as a favoured dispute resolution approach. This necessitates continuous educational initiatives and outreach efforts to enhance awareness of the advantages of mediation and the stipulations of the Convention.

## **VI. CHALLENGES AND OPPORTUNITIES:**

While the Singapore Convention on Mediation offers significant opportunities for the resolution of cross-border commercial disputes, it also presents several challenges that need to be addressed. One of the primary obstacles is the maintenance of uniformity and quality in mediation services across various jurisdictions. The efficacy of mediation as a mechanism for dispute resolution is contingent upon the skill and neutrality of mediators. Nonetheless, the criteria for mediator accreditation and training exhibit considerable disparity among different nations. This lack of uniformity can diminish the efficacy of mediation and introduce uncertainties for parties endeavouring to resolve international disputes. To counter this issue, it is imperative to pursue enhanced harmonization of mediator accreditation standards alongside the formulation of international guidelines pertaining to mediator training and practice.

Another significant challenge lies in the potential conflicts that may arise between the stipulations of the Singapore Convention and domestic legal frameworks in certain jurisdictions. While the Convention establishes a coherent structure for the enforcement of mediated agreements, its application may necessitate amendments to pre-existing domestic laws, particularly in nations where mediation is not yet firmly established. Such modifications could engender legal ambiguities and hinder the timely enforcement of mediated agreements.

To alleviate this concern, it is crucial for governments to meticulously evaluate the ramifications of the Convention and ensure that their domestic legal frameworks are consistent with its stipulations. Notwithstanding these challenges, the Singapore Convention on Mediation also offers considerable prospects for the evolution of mediation as a global mechanism for dispute resolution. By establishing a dependable framework for the enforcement of mediated agreements, the Convention augments the appeal of mediation for enterprises involved in international trade and commerce. Consequently, this fosters new opportunities for the expansion of mediation services and the establishment of mediation institutions across diverse jurisdictions. Specifically, the Convention harbours the potential to facilitate the creation of mediation hubs in regions such as Asia, where international trade and investment are experiencing rapid growth. Nations that have embraced the Singapore Convention, including Singapore and India, are strategically positioned to evolve into regional mediation centres, providing businesses with a dependable and economical means of resolving cross-border disputes. This could catalyse the expansion of mediation industries within these nations, thereby generating new opportunities for mediators, legal practitioners, and mediation institutions.

## **VII. CONCLUSION:**

The Mediation Act of 2023, when viewed in tandem with the Singapore Convention on Mediation, represents a transformative shift in India's approach to dispute resolution, particularly in the realm of international commerce. By incorporating international standards into its domestic framework, India is better positioned to handle cross-border disputes efficiently and cost-effectively. The Singapore Convention provides a crucial global framework for the enforcement of mediated settlements, ensuring that businesses engaged in international trade can confidently utilize mediation as a viable alternative to arbitration or litigation.

The success of both the Mediation Act and the Singapore Convention depends on their effective implementation and widespread adoption, not only in India but also across the globe. While challenges such as harmonizing mediator standards and aligning domestic laws with international norms persist, the opportunities for establishing mediation as a central dispute resolution mechanism are immense. In particular, as India continues to develop its mediation infrastructure, it stands to benefit from the growing international trend favouring alternative dispute resolution mechanisms, thus enhancing its appeal as a hub for foreign investment and

international business. Ultimately, the Mediation Act of 2023 and the Singapore Convention on Mediation are key steps toward creating a more efficient, predictable, and globally recognized system for resolving international disputes. As more countries ratify the Convention and embrace mediation, it is likely to play a pivotal role in reshaping the landscape of cross-border commercial disputes, fostering a more collaborative and less adversarial approach to international conflict resolution.

In summary, the Singapore Convention on Mediation signifies a noteworthy enhancement in the international legal architecture for mediation. By offering a standardized mechanism for the enforcement of mediated agreements across borders, the Convention bolsters the credibility and dependability of mediation as a dispute resolution method. This is particularly salient in the realm of international commerce, where the demand for consistent and predictable mechanisms for dispute resolution is of utmost importance. However, the success of the Convention is contingent upon its broad acceptance and effective execution by nations globally. Governments, enterprises, and legal professionals must collaborate to advocate for the advantages of mediation and ensure that the provisions of the Convention are comprehended and applied uniformly. Should these challenges be effectively addressed, the Singapore Convention possesses the potential to revolutionize the resolution of cross-border commercial disputes and encourage the broader adoption of mediation as a global dispute resolution methodology.

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