



## **Examining the Landscape of Enforcement of Mediation Settlement Agreement: An Analysis of the Singapore Convention on Mediation and the Indian Mediation Bill, 2021**

**Ankit Kumar<sup>1</sup> Dr. Pradip Kumar Das<sup>2</sup> Poonam Kumari<sup>3</sup>**

### **Abstract**

The increase in global trade has resulted in more conflicts arising in cross-border business dealings. To deal with this, different methods have been developed to resolve disputes, such as litigation, arbitration, and mediation. Arbitration and mediation have become preferred options for international commercial disputes due to their advantages over litigation. However, mediation encounters difficulties, particularly in the absence of a consistent legal framework for recognizing and enforcing settlement agreements reached through mediation. The Singapore Convention on Mediation aims to promote the use of mediation in international commercial disputes as an effective approach. It is seen as a significant step towards establishing a unified legal framework for enforcing settlement agreements reached through mediation. This research paper assesses the current state of international commercial mediation after the implementation of the Singapore Convention and examines its impact on the adoption of mediation in international business transactions. The paper addresses the challenges involved in enforcing settlement agreements reached through mediation and proposes solutions to overcome these obstacles. Recently, the Mediation Bill, 2021 was introduced by the Indian government in the Parliament. The Bill does not address the enforcement of settlement agreements that originate from international mediations conducted outside India. On this note the Bill and implications shall be thoroughly analyzed contributing to the advancement of mediation in resolving international commercial disputes.

**Keywords:** Enforcement, Mediation, Mediation Bill (2021), Settlement agreements, Singapore Convention on Mediation.

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<sup>1</sup> Ph.D. Research Scholar, Department of Law and Governance, Central University of South Bihar, India. email: [ankitdss41@gmail.com](mailto:ankitdss41@gmail.com) ORCID ID- 0009-0001-8249-4969 (\*Corresponding Author).

<sup>2</sup> Associate Professor, Department of Law and Governance, Central University of South Bihar, Gaya, India

<sup>3</sup> Assistant Professor, Department of Law and Governance, Central University of South Bihar, Gaya, India

## **I. Introduction**

The proliferation of global trade has ushered in a surge in the multitude of cross-border commercial conflicts. In response to this quandary, an array of mechanisms for resolving disputes has been devised, encompassing litigation, arbitration, and mediation. Amidst these alternatives, arbitration and mediation has emerged as a favoured recourse in lieu of litigation and other alternatives when it comes to international commercial disputes. Although arbitration was formerly the method of choice for settling legal disagreements, its falling popularity has led to the rise of mediation as an acceptable substitute.<sup>4</sup> The tradition of mediation can be traced back to ancient civilizations, with its historical roots spanning across various ancient societies. Remarkably, mediation as a field has not only persevered but has also witnessed substantial growth and progress in modern times on a global scale.<sup>5</sup> The use of mediation to settle disputes arising out of international business transactions has gained widespread praise in recent years. In order to preserve business relationships and avoid the costs and delays of litigation, it provides the parties with a flexible, confidential, and private approach to resolve their issues peacefully. International commercial mediation presents a distinctive set of challenges that are akin to those encountered by other methods of conflict resolution. A major issue that mediation encounters is the absence of a consistent legal structure that facilitates the recognition and enforcement of settlement agreements reached through mediation. Mediation serves as an alternative modality aimed at resolving conflicts, wherein a neutral third party intervenes to facilitate the disputing parties in achieving a consensus that is acceptable to both sides.<sup>6</sup> A settlement agreement is the instrument employed to formally codify the terms and conditions of the settlement, signed by all parties involved. Nevertheless, in specific scenarios, there may arise a situation wherein one party adamantly declines to conform to the provisions delineated in the agreement.

Numerous studies have examined the role of mediation in resolving international commercial disputes, revealing its cost-effectiveness and efficiency, particularly in cross-border transactions. However, the absence of a standardized legal framework for recognizing and enforcing mediated settlement agreements poses a significant obstacle to the utilization of mediation in international commercial disputes. To address this concern, the Singapore

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<sup>4</sup> Jacqueline Nolan-Haley, "Mediation: The New Arbitration" 17:61 *Harvard Negotiation Law Review* 66 (2012).

<sup>5</sup> Alexia Georgakopoulos, (Ed.) *The Mediation Handbook: Research, Theory, and Practice* 1 (Routledge, Taylor & Francis Group 2017).

<sup>6</sup> Jacob Bercovitch, & Jeffery Z. Rubin, (Eds.) *Mediation in International Relations: Multiple Approaches to Conflict Management* 4 (Palgrave Macmillan, UK, 1992).

Convention on Mediation came with the purpose of promoting the use of international commercial mediation as a viable approach for resolving cross-border commercial conflicts. The Convention has been widely acclaimed as a significant stride towards establishing a harmonized legal framework for recognizing and enforcing mediated settlement agreements.

## **II. Mediation: Background and Definition**

Mediation has historically suffered from a lack of information and been regarded as a practice shrouded in mystery. Both practitioners and scholars were doubtful about the feasibility of analyzing or making generalizations about mediation. However, there is now an increasing agreement to challenge this perception. Esteemed mediators have acknowledged the intricate nature of mediation, but a paradigm shift is underway. Mediation is now recognized as a subject amenable to analysis within the framework of bargaining negotiations. The role of mediators as facilitators of communication, driven by their own motivations, is acknowledged. This shift in perspective offers new opportunities for a more profound comprehension of mediation's dynamics and its potential for resolving conflicts.<sup>7</sup> The need for international mediation has grown as the nature of cross-border conflicts has evolved as a result of variables such as online transactions and global mobility. Consumers, small companies, families, and other interested parties from a wide range of sectors may all find themselves embroiled in a conflict. Due to its flexible nature, relaxed atmosphere, and cost-effectiveness, mediation has gained significant popularity as a preferred approach for resolving such conflicts. With the rise of globalization, an increasing number of individuals are turning to international mediation for efficiently and conveniently settling their disputes.<sup>8</sup> This trend has resulted in a global rise in the use of mediation as an ADR. With its adaptable and personable approach to conflict resolution and relationship preservation, mediation has become an integral feature of today's legal systems.<sup>9</sup> However, there are important distinctions in the various legal systems, levels of government involvement, and rates of mediation use among citizens in different parts of the globe.<sup>10</sup> Recently, numerous countries and international organizations have made efforts to improve the availability of various ADR

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<sup>7</sup> Jacob Bercovitch, & Jeffery Z. Rubin, (Eds.) *Mediation in International Relations: Multiple Approaches to Conflict Management* 4 (Palgrave Macmillan, UK, 1992).

<sup>8</sup> Nadja Alexander "Ten Trends in International Commercial Mediation" 31 *Singapore Academy of Law Journal* 486-487 (2019).

<sup>9</sup> Cedric de Coning, Ako Muto, *et al.*, (eds.) *Adaptive Mediation and Conflict Resolution: Peace-making in Colombia, Mozambique, the Philippines, and Syria* 4 (Springer International Publishing, 2022).

<sup>10</sup> Carlos Esplagues, Louis Marquis (Eds.) *New Developments in Civil and Commercial Mediation: Global Comparative Perspectives* 1 (Springer International Publishing, Switzerland, 2015).

methods, with special focus on mediation. Countries like Malaysia and India, have implemented measures to improve the accessibility and convenience of mediation for resolving different types of disputes. For instance, the Financial Mediation Bureau in Malaysia allows consumers to settle their financial disputes without legal proceedings or fees. In India, amendments made to the Consumer Protection Act that aims to establish a mediation and arbitration framework at the local level before resorting to court.<sup>11</sup>

A commonly accepted definition of mediation is “a process of conflict management where disputants seek the assistance of, or accept an offer of help from, an individual, group, state or organisation to settle their conflict or resolve their differences without resorting to physical force or invoking the authority of the law”.<sup>12</sup>

According to the European Union's Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters, “Mediation means a structured process, however it is named or referred to it, in which two or more parties to a dispute attempt by their own initiative, to reach an agreement on the settlement of their dispute with the assistance of a mediator. This process may be initiated by the parties or suggested or ordered by a court or prescribed by the law of a Member State”.<sup>13</sup>

Mediation is described in the UN Commission on International Trade Law (UNCITRAL) Model Law as: “a process, whether referred to by the expression mediation, conciliation or an expression of similar import, whereby parties request a third person or persons (“the mediator”) to assist them in their attempt to reach an amicable settlement of their dispute arising out of or relating to a contractual or other legal relationship. The mediator does not have the authority to impose upon the parties a solution to the dispute.”<sup>14</sup>

Mediation is an elective and legally binding procedure wherein an impartial third party, known as the mediator, assists disputing parties in reaching a mutual agreement. The mediator maintains neutrality, establishing a secure environment where the parties can

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<sup>11</sup> Matthew Rand "International Mediation" 49 *Year in Review: An Annual Survey of International Legal Developments and Publications of the ABA / Section of International Law* 175-178 (2015).

<sup>12</sup> Tobias Böhmelt, *International Mediation Interaction: Synergy, Conflict, Effectiveness* 15 (University of Essex, Germany, 2011).

<sup>13</sup> Art. 3 Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008.

<sup>14</sup> A/73/17 - Report of the United Nations Commission on International Trade Law, Fifty-first Session (25 July-13 July 2018), Annex II - *UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, 2018* (amending the UNCITRAL Model Law on International Commercial Conciliation, 2002) Article 1(3), available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/V18/052/21/PDF/V1805221.pdf?OpenElement>

address their disparities. This method follows a structured approach, employing specialized communication and negotiation techniques to facilitate the resolution of conflicts between the involved parties. It serves as a means of guiding disputing parties towards reaching a mutually agreeable settlement.<sup>15</sup> Mediation offers the parties the ability to control the outcome while providing a structured and fair process, typically voluntary but with a focus on issue resolution.<sup>16</sup> So it can be concluded as mediation is a cooperative and guided procedure where a neutral third party, known as the mediator, aids disputing parties in reaching an agreement that satisfies all involved. The mediator supports effective communication, fosters comprehension, and directs the parties towards discovering shared interests and creating their own resolutions, without enforcing any judgments.<sup>17</sup> Mediation offers a confidential and adaptable platform where the parties can express their desires and concerns, explore various possibilities, and strive for a viable solution that upholds their relationships.

### **III. Mediation Settlement Agreement**

In the realm of mediation, the parties involved willingly consent to engage in the procedural framework, wherein they appoint a mediator and establish the mode for conducting the mediation. Nevertheless, it typically lacks an obligation to ultimately attain a conclusive resolution solely through the medium of mediation. The resulting mediation agreement can address some or all of the disputed issues and may involve the parties giving up certain sought benefits. If the mediation is successful, the parties formalize their agreement in a contract. The courts should enforce this agreement since the parties willingly agree to the enforcement procedures of mediation. The purpose of the mediation agreement is to make it legally binding and enforceable in nature, as the involved parties willingly consent to participate in mediation bound by agreement they ultimately reach. In arbitration, decisions are made by an arbitrator, but mediation grants the parties themselves the authority to make decisions pertaining to the resolution of their disputes. The enforcement of a mediated

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<sup>15</sup> Mediation and Conciliation Project Committee, Supreme Court of India 2005, *available at*: <https://main.sci.gov.in/pdf/mediation/Brochure%20-%20MCPC.pdf>

<sup>16</sup> Emily Holland, "Is Mediation Mandatory?" ADR Times, *available at*: [https://www.adrtimes.com/is-meditation-](https://www.adrtimes.com/is-meditation-mandatory/#:~:text=Mediation%20will%20often%20be%20mandatory%20in%20the%20following,case%20is%20brought%20to%20court.%20...%20More%20items)

[mandatory/#:~:text=Mediation%20will%20often%20be%20mandatory%20in%20the%20following,case%20is%20brought%20to%20court.%20...%20More%20items](https://www.adrtimes.com/is-meditation-mandatory/#:~:text=Mediation%20will%20often%20be%20mandatory%20in%20the%20following,case%20is%20brought%20to%20court.%20...%20More%20items)

<sup>17</sup> "What is mediation? – ADR" ADR, *available at*: <http://firstadrkit.org/what-is-mediation/>

agreement directly relates to the mediated contract, acknowledging the general principle that contracts are binding and enforceable.<sup>18</sup>

A “Settlement Agreement” can be defined as an official agreement signed during mediation between the parties, indicating the resolution of their conflict.<sup>19</sup> It may be achieved by both parties agreeing on the parameters of the settlement, the mediator deciding that no further mediation is required, the parties declaring an end to the mediation, or a party declaring they want to cease the mediation. The settlement agreement acts as a legally binding agreement between the parties and signals the end of the mediation procedure.<sup>20</sup> Mediated settlement agreements are the result of mutual agreement between the parties. Parties who genuinely believe there is a better alternative would not choose to settle. Therefore, they should have confidence in the enforceability of their agreement.<sup>21</sup> The Mediation Settlement Agreement is a legally binding contract that is enforced in court if one party fails to comply with it. Before the enactment of Singapore Convention, enforcing a settlement agreement required expensive and time-consuming litigation to prove the existence of a valid contract. However, with the entry into force of the Singapore Convention, parties can now take the settlement agreement to a designated court or authority for enforcement it directly as long as the Convention requirements are met.<sup>22</sup>

#### IV. The Singapore Convention on Mediation

The Singapore Convention on Mediation, also known as the United Nations Convention on International Settlement Agreements Resulting from Mediation, promotes the recognition and enforcement of mediation settlement agreements globally.<sup>23</sup> It allows parties to directly apply

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<sup>18</sup> Bruno Zeller and Leon Trakman “Mediation and arbitration: the process of enforcement” 24 *Uniform Law Review* 451-452 (2019), available at: <https://academic.oup.com/ulr/article/24/2/449/5511632>

<sup>19</sup> A/73/17 - Report of the United Nations Commission on International Trade Law, Fifty-first Session (25 July-13 July 2018), Annex I - United Nations Convention on International Settlement Agreements Resulting from Mediation, Article 1.1, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/V18/052/21/PDF/V1805221.pdf?OpenElement>

<sup>20</sup> Article 12. Termination of mediation proceedings of UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, 2018, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/V18/052/21/PDF/V1805221.pdf?OpenElement>

<sup>21</sup> James Claxton “The Singapore Convention: Mediation in a New York State of Mind” (2019), available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3416116](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3416116)

<sup>22</sup> Vakhtang Giorgadze and Nadja Alexander, *A Handbook on the Singapore Convention on Mediation* 13 [Singapore International Dispute Resolution Academy (SIDRA) UNCITRAL Academy 2021], available at: <https://www.singaporeconvention.org/sites/singaporeconvention.org/files/SMU%20SOL%20Singapore%20Convention%20Mediation%20Handbook.pdf>

<sup>23</sup> Leonardo D’Urso, Blazo Nedic, Ana Desic “Promoting Cross-Border Mediation in Resolving Civil and Commercial Disputes in the Western Balkans” 22 (Regional Cooperation Council 2021), available at: <https://www.rcc.int/pubs/126/promoting-cross-border-mediation-in-resolving-civil-and-commercial-disputes-in-the-western-balkans>

to the courts of ratifying states for enforcement without the need for additional legal proceedings. The Convention, opened for signature in August 2019, has been signed by 55 countries so far.<sup>24</sup> Its purpose is to simplify the enforcement of mediation settlements, which currently require costly and time-consuming litigation. This development aims to make mediation a more effective tool for resolving international disputes, similar to the New York Convention for arbitration awards, thereby encouraging the use of mediation in international dispute resolution.<sup>25</sup> The primary aim of the Convention is to enhance the significance of a mediated settlement agreement, elevating it beyond being just a regular contract. It achieves this by establishing provisions for the enforcement of mediated settlement agreements in a manner that is similar to how arbitral awards are enforced.<sup>26</sup> The Convention attempts to define the scope of its applicability, imposes certain obligations on states regarding enforcement and invocation of settlement agreements, outlines formalities for relying on such agreements, sets out grounds for court refusal of relief, attempts to preserve existing rights, allows parties to make reservations and declarations, and applies only to agreements concluded after the Convention's entry into force. However, the Convention's efficacy and practical implementation are still unresolved, despite its stated goal of improving the status of mediated settlement agreements and establishing an international framework for their acceptance and enforcement on par with arbitral verdicts. The success of mediation as a means of resolving international conflicts will depend on the clarity and efficacy of its rules and the willingness of governments to fully accept and adhere to them.

### ***A. Enforcement under the Singapore Convention***

Article 4 of the Convention outlines the prerequisites for the implementation of a mediated settlement agreement.<sup>27</sup> The document outlines the requirements for enforcing a mediated settlement agreement, including the parties' signatures and the mediator's signature on the settlement agreement, as well as a signed document from the mediator attesting to the

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<sup>24</sup> "About the Convention" Singapore Convention on Mediation, *available at*: <https://www.singaporeconvention.org/convention/about>

<sup>25</sup> Linklaters, "The Singapore Convention on Mediation | Commercial mediation – a global review" (24 May 2022), *available at*: <https://www.linklaters.com/en/insights/publications/commercial-mediation-a-global-review/global-guide-commercial-mediation/the-singapore-convention-on-mediation>

<sup>26</sup> Timothy Schnabel, "The Singapore Convention on Mediation: A Framework for the Cross-Border Recognition and Enforcement of Mediated Settlements" 19.1 *Pepperdine Dispute Resolution Law Journal* 9 (2019).

<sup>27</sup> A/73/17 - Report of the United Nations Commission on International Trade Law, Fifty-first Session (25 July-13 July 2018), Annex I - *United Nations Convention on International Settlement Agreements Resulting from Mediation*, Article 4, *available at*: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/V18/052/21/PDF/V1805221.pdf?OpenElement>

evidence that mediation took place and an attestation from the institution that administered the mediation. The specific enforcement procedures are determined by each enforcing state in accordance with its own rules of procedure and the terms of the Convention<sup>28</sup>, unlike the New York Convention, which does not mandate formalities for arbitral rulings.<sup>29</sup> The Convention allows enforcing states to decide how they enforce mediated settlement agreements, which provides flexibility. This flexibility is beneficial because it can accommodate different legal systems and practices. However, this flexibility can also create problems by causing inconsistency and uncertainty in the enforcement process. As a consequence of this, there is a possibility that the Convention's efficiency and predictability may be impacted.

In addition, Article 5 of the Convention details the circumstances under which a state might decline to provide a remedy, including the need that the party seeking relief prove the existence of such circumstances.<sup>30</sup> These include if a party to the settlement agreement was under some incapacity, the agreement is null and void, not binding or final, obligations are unclear or incomprehensible, granting relief would be contrary to the terms of the agreement, serious breach by the mediator, or if the mediator failed to disclose circumstances that raise justifiable doubts as to their impartiality. Additionally, relief may be refused if it goes against the public policy of the state or if the dispute is not capable of settlement by mediation under the law of that state.<sup>31</sup> It is important to acknowledge that the listed grounds offer clarity and guidance for refusing relief in specific situations. These grounds encompass various aspects, such as incapacity, validity and fulfillment of the settlement agreement, obligations, mediator behavior, and considerations of public policy. However, the complexity and technicality of these grounds may pose difficulties in interpreting and uniformly applying them across different jurisdictions. For instance, the determination of whether a settlement agreement is null and void could vary depending on the applicable law, leading to differing interpretations. Moreover, the public policy ground for refusal is somewhat ambiguous and open to interpretation, introducing an element of uncertainty. Similarly, defining what constitutes a

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<sup>28</sup> *Id.* Article 3.1.

<sup>29</sup> Mary Walker and Lim Tat, "The Introduction of the United Nations Convention on International Settlement Agreements Resulting from Mediation: The Third Piece in the International Framework of Dispute Resolution" 14.2 *Dispute Resolution International* 170 (2020).

<sup>30</sup> A/73/17 - Report of the United Nations Commission on International Trade Law, Fifty-first Session (25 July-13 July 2018), Annex I - *United Nations Convention on International Settlement Agreements Resulting from Mediation*, Article 5, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/V18/052/21/PDF/V1805221.pdf?OpenElement>

<sup>31</sup> Linklaters, "The Singapore Convention on Mediation | Commercial mediation – a global review." (24 May 2022) available at: <https://www.linklaters.com/en/insights/publications/commercial-mediation-a-global-review/global-guide-commercial-mediation/the-singapore-convention-on-mediation>



matter unsuitable for mediation may present challenges, as it relies on the specific laws of each participating state. Though the listed grounds provide some guidance, their effective implementation and consistent application may necessitate further clarification and harmonization to establish a strong and efficient enforcement framework under the Convention.

It is worth noting that the convention takes a decentralized approach, allowing any state party to enforce or set aside a mediated settlement agreement. This approach recognizes the importance of involving multiple jurisdictions, potentially enhancing accessibility and effectiveness across different legal systems. The principle of each state enforcing a settlement agreement based on its own procedural rules and the conditions of the convention aligns with the principle of respecting the autonomy of each jurisdiction, known as *lex fori*. However, this decentralized approach raises concerns about the consistency and predictability of enforcement outcomes. The presumption that mediated settlement agreements are binding places a higher burden of proof on the party objecting to enforcement. While this presumption promotes agreement enforcement, it may limit opportunities for parties to challenge the validity or binding nature of an agreement, potentially compromising fairness and due process in certain cases. Additionally, challenges arise in cross-border enforcement, particularly in jurisdictions that are not party to the convention, which poses difficulties for the recognition and enforcement of mediated settlement agreements. The convention's decentralized approach and presumption of binding effect have benefits, concerns remain about enforcement consistency, fairness, and cross-border enforcement challenges, especially in jurisdictions not party to the convention.

### ***B. Limitation for Enforcement of Mediation Settlement Agreements under Singapore Convention on Mediation***

Article 1 of the Singapore Convention on Mediation excludes settlement agreements associated with disputes arising from consumer transactions for personal, family, or household purposes, as well as those related to family, inheritance, or employment law. These exclusions have a significant impact on the reach of the Singapore Convention, given that mediation is commonly utilized in resolving family law and employment law disputes. Consequently, a substantial number of potential disputes that could benefit from the

enforcement provisions of the Singapore Convention are effectively excluded.<sup>32</sup> This limitation raises concerns about the overall effectiveness and applicability of the Convention, particularly considering the importance and prevalence of family law and employment law matters in various jurisdictions.

The Singapore Convention excludes agreements to mediate from its provisions for enforcement. Consequently, if one party violates an agreement to mediate, the other party will not have the protection or means to enforce it through the Convention. Instead, the party wishing to enforce the agreement would need to pursue alternative and potentially time-consuming methods, similar to those used for enforcing any other type of agreements.<sup>33</sup> By not extending enforcement provisions to agreements to mediate, the Convention may overlook an important aspect of dispute resolution and fail to provide a complete framework for the enforcement of all types of mediated settlements.

The lack of existing national laws on mediation highlights the complexities and challenges involved in effectively implementing the Singapore Convention. In order to fully implement the Convention, members would need to pass domestic legislation that reflects its principles. The United Nations Commission on International Trade Law (UNCITRAL) Model Law on Mediation was recently issued to help signatories of the Convention develop legislation that are appropriate for their circumstances and supplement the Convention. The process of creating and implementing new laws specific to mediation and aligned with the Convention's requirements can be lengthy and intricate, involving legislative and administrative procedures in each country that has signed the Convention. This could result in delays and inconsistencies in how the Convention is implemented across different jurisdictions.

## **V. Measures for Improvement of the Singapore Convention on Mediation**

Settlement agreements in the areas of consumer and employment law should be considered for inclusion in the Singapore Convention. Mediation is a useful tool for settling disagreements in these contexts because of the complexity of the issues and a wide range of cross-border transactions are involved. More parties would have access to the Convention's enforcement provisions if such agreements were included within its framework.

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<sup>32</sup> Robert Butlien, "The Singapore Convention on Mediation: A Brave New World for International Commercial Mediation" 6.1 *Brooklyn Journal of International Law* 207 (2020).

<sup>33</sup> Ashutosh Ray, "Is Singapore Convention to Mediation what New York Convention is to Arbitration?" *Kluwer Arbitration Blog* (31 August 2019), available at: <https://arbitrationblog.kluwerarbitration.com/2019/08/31/is-singapore-convention-to-mediation-what-new-york-convention-is-to-arbitration/>

The Convention should give explicit recommendations on the enforcement methods to promote uniformity and predictability across various jurisdictions, since there is currently an absence of such standards. The enforcement process may be made more efficient and streamlined by creating a central authority or mechanism to monitor the execution of mediated settlement agreements.

The Singapore Convention will only be effective if the signatory nations also enact national laws that fully support and complement the international agreement. Important issues including the enforceability of mediated settlement agreements, the training and certification of the mediators and the privacy of mediated conversations should all be addressed in such a law. The Convention's implementation in each country may be strengthened and clarified via the passage of mediation-specific legislation.

In order to promote the involvement of non-party states, the Convention should actively interact with them, especially those that have major international business activity. In order to increase the efficacy of the Convention as a whole, it is necessary for a larger number of nations to ratify it and make mediated settlement agreements enforceable across the world.

## **VI. An Analysis of the Mediation Bill, 2021 of India**

The Mediation Bill, 2021 was introduced by the Centre in the Rajya Sabha in late December 2021 and was referred to the Parliamentary Standing Committee for evaluation of its provisions, and the committee subsequently submitted its report in July 2022.<sup>34</sup> The scope of the Bill is limited to international mediations conducted within India, and it does not encompass the enforcement of settlement agreements that arise from international mediations conducted outside the jurisdiction of India.<sup>35</sup> "Experts felt that the provisions of the Bill should be consistent with the requirements of Singapore Convention in respect of international commercial mediation since India is a signatory to it and that the Bill should also cover international civil matters."<sup>36</sup> India has not rectified the Convention yet and the government is suggesting that they will consider ratifying the convention once it gains greater acceptance internationally and its implications are fully understood.<sup>37</sup> It is crucial to strike a balance between being cautious and taking advantage of opportunities for India to actively

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<sup>34</sup> "The Mediation Bill, 2021" PRS India, *available at*: <https://prsindia.org/billtrack/the-mediation-bill-2021>

<sup>35</sup> *Ibid.*

<sup>36</sup> Bhat, Shri Niranjana, and Kanakamedala Ravindra Kumar. "PARLIAMENT OF INDIA." *PRS Legislative Research*, (14 December 2021), Para 3.28, *available at*:

[https://prsindia.org/files/bills\\_acts/bills\\_parliament/2021/SC%20Report\\_Mediation%20bill.pdf](https://prsindia.org/files/bills_acts/bills_parliament/2021/SC%20Report_Mediation%20bill.pdf)

<sup>37</sup> *Ibid.*, Para 3.35

engage in international mediation. There is a risk of being left behind in establishing a strong framework for recognizing and enforcing settlement agreements. One concern is how to enforce settlement agreements if a foreign party does not comply with the decision. By ratifying the convention, Indian service providers will have the chance to enforce settlement agreements in other countries and contribute to creating a better environment for international mediation.

In international arbitration Indian parties often opt for arbitration institutions outside India, notably the Singapore International Arbitration Centre (SIAC), favoured by Indian corporations.<sup>38</sup> In 2020, Indian parties accounted for approximately 67.7% of the international cases handled by SIAC, while in 2021, it was about 46.2% and in 2022, Indian parties represented 28.4% of the international cases.<sup>39</sup> But Indians are the top contributor of SIAC. These figures demonstrate that despite India's substantial arbitration centres, Indian parties typically prefer arbitration seats outside the country. Therefore, parties who prefer to have mediation conducted outside of India may face potential disadvantages or limitations as the Bill does not recognise and enforce the settlement agreements that arise from international mediations conducted outside the jurisdiction of India. This could limit Indian parties to select mediation institutions within India. "Conducting an International Mediation in India may deprive the parties of the benefit of the Singapore Convention, and parties would then prefer to have the Mediation conducted out of India."<sup>40</sup> Based on these statements, it can be concluded that parties conducting international mediation in India may face a double deprivation. On one hand, they may be deprived of the benefits of the Singapore Convention if the mediation takes place in India. On the other hand, if they choose a foreign mediation, the settlement agreement may not be enforced according to the provisions of the Bill. This highlights a significant concern as parties may feel disadvantaged regardless of the choice they make, potentially leading them to seek alternative jurisdictions or methods for their mediations.

The Mediation Bill acknowledges the significance of online mediation<sup>41</sup> in a digitally interconnected world, where e-commerce has facilitated global trade across borders. As

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<sup>38</sup> Pradip Kumar Das and Ankit Kumar, "Transforming India into a Center for International Commercial Arbitration: Challenges and Opportunities" 1 *Calcutta Law Times* 8-9 (2022).

<sup>39</sup> "Annual Reports" Singapore International Arbitration Centre, *available at*: <https://siac.org.sg/annual-reports>

<sup>40</sup> Bhat, Shri Niranjan, and Kanakamedala Ravindra Kumar. "PARLIAMENT OF INDIA." *PRS Legislative Research*, (14 December 2021), Para 3.30 (Shri J.P. Sengh), *available at*:

[https://prsindia.org/files/bills\\_acts/bills\\_parliament/2021/SC%20Report\\_Mediation%20bill.pdf](https://prsindia.org/files/bills_acts/bills_parliament/2021/SC%20Report_Mediation%20bill.pdf)

<sup>41</sup> The Mediation Bill, 2021, s. 32.

cross-border transactions continue to rise, the likelihood of disputes also increases, making mediation a favourable and economical method for resolving small claims. Additionally, India's expanding exports<sup>42</sup> and its potential to become a prominent regional and international mediation hub further emphasize the importance of adopting mediation as a preferred approach to dispute settlement.

The Mediation Bill includes Chapter 8, which provides for establishment the Mediation Council of India with the aim of developing India as a strong center for both domestic and international mediation<sup>43</sup>. However, this provision seems to contradict the non-enforcement of settlement agreements resulting from international mediations conducted outside India. By limiting the application of the Bill to international mediations conducted within India, it creates a narrow framework for resolving cross-border disputes. Consequently, this restriction may discourage parties from selecting India as their preferred mediation venue for international disputes. India has the potential to become a regional and global hub for mediation due to its advantageous geographic location, legal expertise, and large economy. Nonetheless, by confining the enforcement of settlement agreements to those conducted within India, India may miss out on opportunities to attract international mediations and establish itself as a favoured destination for resolving cross-border disputes.

The Mediation Bill poses a limitation on the enforcement of settlement agreements in international mediations conducted outside India, potentially undermining the effectiveness of mediation in cross-border disputes. To enhance India's potential as a mediation hub, aligning the legislation with international standards, such as the Singapore Convention, is crucial. India should consider allowing for the enforcement of settlement agreements from international mediations, irrespective of the jurisdiction in which they occur.

## **VII. Conclusion**

Mediation is a powerful tool for resolving disputes and has faced challenges when it comes to enforcing the settlement agreements reached through this process. Jurisdictions have varied approaches, treating mediation settlement agreements differently and lacking clarity and formal enforcement mechanisms. This has made it difficult to ensure the enforceability of these agreements. To address these hurdles, the Singapore Convention on Mediation marks a

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<sup>42</sup> In January 2022, India's combined merchandise and services exports were estimated at USD 61.41 billion, showing a growth of 36.76% compared to the previous year, *available at*:

<https://www.pib.gov.in/PressReleasePage.aspx?PRID=1798469>

<sup>43</sup> The Mediation Bill, 2021, s. 40 (b).

significant milestone in promoting the enforceability of mediated settlement agreements in cross-border disputes. However, there is still room for improvement to enhance its scope, enforcement mechanisms, and overall effectiveness. The Convention recognizes and affirms the value of commercial mediation on an international scale. Beyond its practical impact, the Convention aims to legitimize international mediation among different jurisdiction and deepen understanding of its unique features. By embracing the recommendations provided, the Convention can be fortified, offering the parties a more comprehensive and dependable framework for enforcing mediated settlement agreements. Ongoing efforts to promote the mediation, develop domestic legislation, and raise awareness will contribute to the growth and success of the Singapore Convention on Mediation. These endeavours will solidify mediation's position as a trusted and effective method of resolving disputes, transcending borders and fostering global harmony. The Indian Mediation Bill of 2021 provides a potential deprivation of the benefits of the Singapore Convention and the non-enforcement of settlement agreements. To establish a strong framework for recognizing and enforcing settlement agreements, India should consider ratifying the convention and embracing international mediation practices. It is crucial to strike a balance between caution and seizing opportunities to actively engage in international mediation, given India's potential as a regional and global mediation hub.