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Redefining Dispute Resolution: India's Bold Leap from Arbitration to Mediation

Ayush Verma[a] Lakshya Hartiwal[b] Priyamvada Nema[c]

[a]National Law Institute University Bhopal, India [b]National Law Institute University Bhopal, India [c]National Law University, Odisha, India

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As of February 2024, India faces a staggering backlog of over 51 million pending cases.[1] *Historically reliant on arbitration for dispute resolution, India has recently made a bold shift towards mediation, as mandated by the Mediation Act 2023 ('MA 2023')*[2]*. This Act requires public sector undertakings (PSUs) to incorporate mediation agreements into contracts and promotes mediated settlements, which are legally binding once authenticated. Recent guidelines*[3] *from the Ministry of Finance emphasize mediation over arbitration, especially in public procurement contracts, aiming to streamline and reduce costs in dispute resolution. However, this shift has sparked concerns about the effectiveness of mediation, especially given its non-binding nature and the additional administrative burdens it imposes. Critics argue that mediation may not be as efficient as arbitration, particularly in*

[1] 'National Judicial Data Grid' (*e-Courts*) <https://njdg.ecourts.gov.in/njdgnew/index.php> accessed 09 February 2025

[2] Mediation Act 2023

[3] Department of Expenditure, '*Guidelines for Arbitration and Mediation in Contracts of Domestic Public Procurement*' (*Ministry of Finance,* 03 June 2024) <https://doe.gov.in/files/circulars_document/Guidelines_for_Arbitration_and_Mediation_in_Contracts_of_Domestic_Public_Procurement.pdf> accessed 11 January 2025

international disputes, and fear it could deter foreign investment and strain India's judicial system[4]*. Furthermore, the lack of provisions for enforcing international mediated settlement agreements (MSAs) under the Singapore Convention on Mediation (SCM) limits India's ability to position itself as a global ADR hub. The government's preference for mediation is seen as a response to perceived issues with arbitration, including high costs, delays, and questionable decisions. However, this policy shift risks complicating dispute resolution and undermining India's ease of doing business rankings. The article suggests a policy reevaluation and highlights the need for a balanced approach to ADR mechanisms in India.*

Keywords: *mediation act 2023, arbitration, dispute resolution, public procurement, mediation guidelines.*

INTRODUCTION

An ounce of mediation is worth a pound of arbitration and a ton of litigation.

- Joseph Grynbaum[5]

Indian judicial system has been grappling with a staggering backlog of cases, prompting significant legal reforms to streamline dispute resolution and bolster the nation's economic prospects.[6] Over time, laws have evolved to allow courts to direct parties toward alternative dispute resolution (ADR)[7]. The 2010 National Litigation Policy aimed to reduce government litigation by promoting arbitration and the Law Commission's 246th report highlighted arbitration's role in attracting foreign investment. The Amendments to the Arbitration and Conciliation Act were introduced to expedite contract enforcement and reduce court backlogs, promoting India's investment and economic goals[8].

[4] Vivek Narayan Sharma, 'New Arbitration Guidelines: Putting Sand in the Gears of India's Economic Engine?' *The Times of India Blogs* (11 June 2024) <https://timesofindia.indiatimes.com/blogs/lawtics/new-arbitration-guidelines-putting-sand-in-the-gears-of-indias-economic-engine/> accessed 11 January 2025

[5] Farhan Ahmed, 'Is Mandatory Mediation the Future' (*The Barrister Group*, 26 September 2024) <https://thebarristergroup.co.uk/blog/is-mandatory-mediation-the-future#_ftn1> accessed 11 January 2025

[6] National Judicial Data Grid (n 1)

[7] Code of Civil Procedure 1908, s 89

[8] Justice B N Srikrishna, *Report of the High-Level Committee to Review the Institutionalisation of Arbitration Mechanism in India* (2017)

India improved its World Bank 'Ease of Doing Business' ranking from 142 in 2014 to 63 in 2019[9], thanks to stronger dispute resolution mechanisms, including arbitration, and initiatives like the Insolvency and Bankruptcy Code, Goods and Service Tax Network, and Digitization. However, India ranked poorly at 163rd in 'Enforcing Contracts' in 2019. While India's progress and challenges in improving its business environment can be measured from the rankings the poor performance in 'Enforcing Contracts' underscores ongoing issues within the judicial system that still hinder efficient contract enforcement, despite the improvements. These parameters reflect the lackadaisical efforts on the part of the judiciary to resolve commercial disputes in India.

To tackle the exponentially increasing cost of such commercial disputes[10] and the pendency of cases across the country, the Supreme Court's Mediation and Conciliation Project Committee enacted the Mediation Act 2023 to promote institutional mediation and enforce mediated settlements. On June 3, 2024, the Ministry of Finance, Department of Expenditure ('Memo'), issued a memorandum titled 'Guidelines for Arbitration and Mediation in Contracts for Domestic Public Procurement' offering insight into the government's stance on arbitration in domestic public procurement contracts.

CONCERNS RAISED ABOUT THE EFFECTIVENESS OF ARBITRATION IN GOVERNMENT DISPUTES

The government criticizes arbitration, saying it's a long, expensive, and unfair process with transparency concerns. They worry about collusion and improper conduct due to its contractual nature, limited appeal options, incorrect factual findings, and misapplications of the law making it hard to accept arbitration awards. It is indicated that when managed properly, arbitration can be a cost-effective and efficient dispute resolution method but these benefits are significantly reduced in government-related disputes due to a preference for ad-hoc arbitration which increases costs and delays.[11] Government officials frequently fail to adhere to agreed schedules,

[9] Department for Promotion of Industry and Internal Trade, 'DPIIT Coordinates Initiatives for Ease of Doing Business Creating a Conducive Business Environment' *(Press Information Bureau,* 07 February 2024) <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=2003540> accessed 11 January 2025

[10] Government of India, *Economic Survey 2020-21* (2021)

[11] Naresh Thacker et al., 'Arbitration is great. Just not for us, says the Government' (*Bar & Bench*, 18 June 2024*)* <https://www.barandbench.com/law-firms/view-point/arbitration-is-great-just-not-for-us-says-government> accessed 11 January 2025

resulting in arbitration proceedings taking twice as long as those involving private parties. Furthermore, the government's regular adjournment requests contribute to these delays, with arbitral tribunals often being lenient towards the government.

The memorandum emphasizes the potential disadvantages of arbitrators in comparison to judges, particularly in terms of their appointment, scrutiny, and accountability. It raises concerns about the lack of rigorous selection processes, potential biases in appointments, and limited transparency in proceedings, which could impact the government's position. However, it is important to note that arbitrators are appointed through various methods, including government appointment, mutual consent and court intervention in cases of dispute. The appointment of retired judges as arbitrators also serves as a quality control measure. Nevertheless, the memo suggests expanding the pool of arbitrators to include seasoned arbitration professionals to address concerns about the quality and independence of arbitration.

Furthermore, the memo questions the effectiveness of arbitration in achieving its intended benefits, highlighting the high rate of contested arbitration decisions and the potential for incorrect factual findings and misapplication of the law due to the informal and binding nature of arbitration proceedings. These observations lead to concerns about the accountability of arbitral awards and the overall trust in arbitration as a reliable dispute resolution mechanism.

The memo's perspective underscores the need to acknowledge and respect the limitations of arbitration while also addressing the challenges to ensure its effectiveness. It proposes the establishment of independent committees to scrutinize adverse arbitral awards and determine the need for challenges, particularly in high-profile cases involving substantial financial stakes or significant legal questions.

IMPLICATIONS OF THE MEDIATION ACT 2023 FOR PUBLIC SECTOR UNDERTAKINGS AND LEGAL FRAMEWORK

The Memo clarifies that a court decision remains an alternative if a contract lacks an arbitration clause. Another alternative to arbitration is mediation, a voluntary, non-binding technique where an impartial mediator facilitates a settlement of disputed events. The mediator does not

impose a solution but promotes an environment leading to a solution. However, both parties must agree on the settlement; otherwise, the case proceeds to trial.

The Mandate for Public Sector Undertakings (PSUs): The MA,2023[12] mandates Public Sector Undertakings (PSUs) to opt for mediation for dispute resolution, requiring revisions to existing contracts to include mediation agreements and educate stakeholders about the new requirements. To be compliant, current and future contracts should include a Mediation agreement and specify Mediation jurisdiction clauses. Navigating these complexities prudently ensures the effective use of mediation while maintaining clarity and control. Careful drafting, understanding enforceability, and compliance with legal requirements are critical to mitigating risks and ensuring fairness for all parties involved.

Provisions and Enforcement: The MA 2023 outlines provisions relating to a 'Mediation Agreement', which may be a written settlement or contractual clause.[13] Like arbitration agreements, mediation agreements are independent of their underlying contracts. If a mediation settlement is invoked in intent and not denied by the opposing party, it is deemed to exist between the events and binds them to mediation. The key document that resolves disputes through mediation is the Mediated Settlement Agreement (MSA)[14].

Once signed and authenticated through an intermediary, it has the enforceability of a consent decree under the Code of Civil Procedure, 1908 ('CPC')[15], making it legally binding and enforceable as a judicial decree. This bypasses conventional judicial review and increases its importance. MSA can most effectively be challenged in a courtroom with substantial financial or local jurisdiction over the subject matter of the mediation. Section 28(2) of the MA 2023[16] specifies limited grounds for challenging an MSA, such as fraud, corruption, impersonation, or where the mediation concerned disputes excluded under Section 6 of the Act.[17] Challenges must

[12] Mediation Act, 2023, s 2
[13] Mediation Act, 2023, s 4
[14] Mediation Act, 2023, s 19
[15] Code of Civil Procedure 1908
[16] Mediation Act 2023, s 28(2)
[17] Mediation Act 2023, s 6

be filed within 90 of receiving a copy of the MSA, with a possible extension of another 90 days for 'sufficient cause.'[18]

Administrative Efforts and Delays: Revising prevailing contracts to consist of mediation agreements and jurisdiction clauses requires extensive administrative efforts that can be time-consuming and expensive for public sector enterprises and various entities. Mandating mediation as a preliminary step in dispute resolution should cause delay, particularly if events are averse to mediation or if mediation approaches are not well established, thereby increasing the general timeline for dispute resolution compared to direct arbitration or litigation. This leads to prolonged litigation and inefficient mediation attempts, contributing to judicial backlogs.

Jurisdictional Clauses and Multi-Jurisdictional Contracts: The specification of jurisdictional clauses for mediation can introduce complexities, particularly in multi-jurisdictional contracts. Jurisdictional clauses for mediation in multi-jurisdictional contracts introduce complexities due to varying legal systems, enforceability issues, cultural differences, and logistical challenges. These complexities necessitate careful consideration to ensure effective and enforceable mediation outcomes. While mediation is usually less expensive than arbitration or litigation, the effort to change contracts, train stakeholders, and engage in mediation without securing a resolution should increase fees in the short term. This additional layer of requirements could complicate rather than simplify the way a dispute is decided. Mediation agreements may also lead to an agreement on all or some of the issues, including those beyond the scope of specific disputes, beginning with said mediation. However, the implications of an MSA are huge, as it can settle disputes beyond those first recorded through mediation, possibly masking multiple contracts or fate disputes. This vast scope requires careful elaboration to avoid unintended results.

Government Schemes and Guidelines: MA 2023 empowers the government or its entities to formulate specific schemes or guidelines for resolving disputes through mediation or conciliation.[19] Any mediation or conciliation will be governed using these established policies if such structures are in an area. The Mediation Act allows the government to adjust dispute

[18] Mediation Act 2023, s 28(3)
[19] Mediation Act 2023, s 48

resolution procedures to ensure consistency and efficiency. However, the introduction of particular government schemes or tips to streamline dispute selections may additionally come across resistance from stakeholders who recognize them as too restrictive or now not in their remarkable interests. This resistance can erode acceptance as true within the mediation system and decrease its effectiveness.

Exemptions and Interim Relief Section 56 of Act[20] states that it does not apply to 'ongoing conciliation.' However, it is unclear whether this exception covers cases where the parties have agreed to conciliation but have not yet begun or where conciliation has been referred to but not started. Unlike arbitration or court proceedings, mediation generally does not include interim orders or relief to preserve the subject of the dispute. Parties should be aware of this limitation when deciding to mediate. The MA 2023 entitles a party to move the court, before the commencement or during mediation, for interim relief only in "exceptional circumstances", a term not defined[21].

CHALLENGES IN IMPLEMENTING INTERNATIONAL MEDIATION STANDARDS WITHIN INDIAN LEGAL FRAMEWORK

The new mediation guidelines pose challenges by requiring adaptations to diverse legal standards and ensuring consistent enforcement across different jurisdictions, which can complicate the mediation process and outcomes. The limit of 10cr in the arbitration clause is a hinge that directly attacks the sanctity of the arbitrators in India. While there are recent advancements in regards to the setting up of the arbitration bar of India such clauses are derogatory and in conflict with the interest of the people involved. In line with the said guidelines, there is a clear conflict that needs to be addressed either by the government itself or it is on the Arbitration Bar to question and challenge the same to save their inheritance from getting suppressed by the hard crunches of government machinery. Further, there are conflicts with the international legislation on arbitration as well which shall be dealt with further.

[20] Mediation Act 2023, s 56
[21] Mediation Act 2023, s 8

INTERNATIONAL MEDIATION STANDARDS AND INDIAN LEGAL FRAMEWORK

Broadly, 2 international instruments set out frameworks for legislation on mediation:

1. The United Nations Convention on International Settlement Agreements resulting from Mediation, 2019 (Singapore Convention)[22], aims to facilitate the enforcement of international Mediation Settlement Agreements (MSAs) across borders, much like the New York Convention does for arbitral awards. It seeks to provide a uniform and efficient framework for recognizing and enforcing MSAs arising from international commercial disputes.
2. United Nations Commission on International Trade Law Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, 2018 (Model Law)[23], which offers a comprehensive legislative framework for international commercial mediation and the enforcement of MSAs. It aims to harmonize mediation laws across jurisdictions, ensuring consistency in mediation procedures and recognition of settlements.

CHALLENGES IN THE RECOGNITION AND ENFORCEMENT OF INTERNATIONAL MSAS

The SCM provides guidelines for implementing settlement agreements arising from international commercial disputes. It ensures that if two parties from different countries settle through mediation, the agreement can be enforced across borders, similar to international arbitral awards. Although India is a signatory to the Singapore Convention on 7th August 2019, the MA 2023 does not provide for the recognition and enforcement of international MSAs. This means that while India agrees with the principles of the convention these are not legally binding within the country.

[22] United Nations Convention on International Settlement Agreements Resulting from Mediation 2018
[23] Model Law on International Commercial Conciliation with Guide to Enactment and Use 2002

Since India has not ratified this convention[24], the MA 2023 does not include these rules. This differs from the Arbitration and Conciliation Act 1996, which incorporates the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, allowing international arbitral awards to be identified and enforced in India. This deficiency will ultimately prevent a certain procedure within the Act, and the absence of peer review and enforcement mechanisms could lead to frivolous lawsuits, wasting resources and time under this approach.

IMPLICATIONS FOR CROSS-BORDER DISPUTES AND ADR DEVELOPMENT

MA 2023 applies to mediations in India if all parties are residents or incorporated in India if at least one foreign birthday party is involved in a commercial dispute, if the mediation agreement falls under this Act, or if the Central or the state government is a party to an industrial dispute. It no longer applies to mediations conducted outside India or the enforcement of MSAs from such litigation[25].

There are 2 primary issues here:

1. MSAs resulting from mediation proceedings conducted outside India are not enforceable under the Act. This limitation creates uncertainty for parties seeking cross-border dispute resolution, as they may face challenges in enforcing foreign-mediated settlements within India.
2. While the Act allows for the mediation of non-commercial disputes within India, it restricts its applicability to Indian mediation proceedings involving foreign parties solely to commercial disputes. This limitation excludes foreign parties from utilizing the Act's framework for non-commercial disputes, potentially discouraging their engagement in broader mediation processes within India.

India desires to establish itself as a global center for Alternative Dispute Resolution (ADR). However, the modern regulation is structured such as to dissuade mediation proceedings

[24] Department-Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justic, *One Hundred Seventeenth Report on The Mediation Bill, 2021* (2022)
[25] Mediation Act 2023, s 2(i) – (iii)

outside India concerning businesses, assets, or contracts linked to the country. With the increase in complicated cross-border transactions and the growing attractiveness of mediation, India needs to develop a mechanism for enforcing international Mediated Settlement Agreements (MSAs). A plausible strategy could emulate the approach used for foreign arbitral awards under the New York Convention, where enforcement is presumed unless specific, limited grounds for challenge are proven. India should amend its mediation laws to allow the enforcement of MSAs from international mediations similarly to foreign arbitral awards under the New York Convention, ensuring enforcement unless limited grounds for challenge are proven. This would bolster India's status as a global ADR hub and can add as a way out of the challenge posed.

GUIDELINES FOR ARBITRATION AS ADR WITH SUBSEQUENT AMENDMENTS

In recent years, arbitration has been increasingly used as an alternative dispute resolution method to reduce litigation and achieve quick settlement of contractual disputes. However, recent developments and practical experiences have necessitated a reassessment of arbitration, especially in contracts involving the Government or its entities. While arbitration is expected to be faster and less formal than litigation, it often leads to delays, high costs, and questionable decisions, with many arbitration awards being challenged in courts, thus failing to reduce litigation effectively.

To address these concerns, new guidelines for domestic public procurement contracts were issued on June 3, 2024.[26] These guidelines stipulate that arbitration should not be routinely included in large procurement contracts or tenders, except for minor disputes valued at ₹10 crore or less. Instead, government entities are encouraged to adopt mediation under the Mediation Act, 2023, or pursue amicable settlements. The guidelines further recommend that government departments and agencies establish a High-Level Committee (HLC) to resolve disputes. This committee may comprise a retired judge, a retired senior government officer, and/or a technical expert. However, the composition of the HLC is merely advisory and not mandatory.

[26] Department of Expenditure (n 3)

When an HLC is formed, the concerned government department or agency has two options for dispute resolution: they can either negotiate directly with the other party and present a tentative solution to the HLC for review, or engage a mediator to facilitate an agreement, which is then submitted to the HLC. Alternatively, the HLC itself can act as the mediator. Rather than streamlining the process, these guidelines appear to add additional layers of bureaucracy, potentially complicating dispute resolution instead of simplifying it.

CONCERNS OVER INDIA'S POLICY SHIFT FROM ARBITRATION TO MEDIATION

The recent shift in India's dispute resolution policy away from arbitration towards mediation raises significant concerns across several fronts.[27] Critics argue that the policy introduces discrimination between the public and private sectors, potentially deterring foreign investors and jeopardizing the public-private partnership model.[28] The conspicuous silence of major trade bodies such as the Federation of Indian Chambers of Commerce & Industry (FICCI), Confederation of Indian Industry (CII), and Associated Chambers of Commerce and Industry of India (ASSOCHAM) suggests underlying concerns regarding the potential impact of the policy.

India's global business reputation has come under scrutiny following recent Supreme Court (SC) rulings, particularly its reversal of a prior judgment in the commercial dispute between Delhi Metro Rail Corporation (DMRC) and Delhi Airport Metro Express (DAMEPL)[29] through a Curative Petition—an appeal mechanism that is virtually unheard of in commercial matters worldwide. Coupled with the government's push for mediation over arbitration, these developments risk further damaging India's credibility within the international business community.[30] Prime Minister Narendra Modi's vision of establishing India as a hub for

[27] Dipen Sabharwal KC and Aditya Singh, 'India's legal reform in dispute resolution encourages foreign investment' *(White & Case LLP,* 21 November 2023*)* <https://www.whitecase.com/insight-our-thinking/investing-india-legal-reform-dispute> accessed 11 January 2025
[28] Vidhi Centre for Legal Policy, *ODR: The Future of Dispute Resolution in India* (2020*)*
[29] *DMRC v Delhi Airport Metro Express Ltd.* (2024) SCC OnLine SC 522
[30] Manas Pimpalkhare, 'Arbitration pros resist govt.'s advisory favouring mediation over Arbitration' *Live Mint* (20 June 2024*)* <https://www.livemint.com/news/india/arbitration-pros-resist-govt-s-advisory-favouring-mediation-plan-to-take-up-the-matter-with-the-government-11718863309811.html> accessed 11 January 2025

commercial arbitration now appears increasingly uncertain, as potential cases may shift towards more arbitration-friendly jurisdictions like Singapore and the UK.[31]

Moreover, the policy shift could strain India's already burdened judicial system. Mediation outcomes, being non-binding, often lead to court proceedings, unlike arbitration's enforceable awards, contributing to judicial backlog and inefficiency. Critics argue that abandoning arbitration, despite its widespread acceptance and enforceability, undermines the reliability and attractiveness of India as a destination for resolving commercial disputes.

The core reason for this dramatic policy shift is the government's perception that arbitrators often lack integrity, collude with private parties, and produce awards difficult to overturn due to the limited legal grounds for challenging arbitral awards on merits.[32] However, the government's alleged inability to find and trust individuals of integrity cannot justify abandoning a widely accepted dispute resolution method in favour of a potentially dysfunctional method.

In terms of transparency and accountability, a settlement cannot be equated with an award issued following a judicial process, which can be challenged on grounds such as bias, fraud, or corruption. Moreover, creating the infrastructure for mediation will be costly and could hinder efforts to bridge the infrastructural gap, thereby impeding the realization of the 'five trillion-dollar economy' aspiration.

Chief Justice Dr. DY Chandrachud has affirmed that arbitration has become the preferred mechanism for resolving commercial disputes, encouraging India to fully adopt this approach.[33] Solicitor General Tushar Mehta has also underscored the protective measures embedded within the Arbitration Act, while Foreign Minister Dr. S. Jaishankar emphasized the government's dedication to high-quality arbitration and international cooperation, in line with the Prime Minister's vision of positioning India as a global arbitration hub. However, restricting

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[31] *Ibid*

[32] Sumeet Kachwaha, 'An Arbitrary Decision' *The Financial Express* (03 June 2024) <https://www.financialexpress.com/opinion/nbspan-arbitrary-decision/3524393/> accessed 11 January 2025

[33] Utkarsh Anand, 'Arbitration Now Preferred Method for Commercial Justice: CJI Chandrachud' *Hindustan Times* (07 June 2024) <https://www.hindustantimes.com/india-news/arbitration-now-preferred-method-for-commercial-justice-cji-chandrachud-101717744876872.html> accessed 11 January 2025

arbitration to disputes valued below Rs. 10 crores could discourage foreign investors, who often favour arbitration due to its perceived neutrality and efficiency compared to Indian courts. The emphasis on institutional arbitration within India and the involvement of government-appointed High-Level Committees may raise concerns of bias among non-domestic parties, potentially undermining investor confidence.

While mediation has its merits, its promotion at the expense of arbitration poses significant risks. The diminishing use of arbitration clauses and concerns over transparency, accountability, and judicial burden threaten India's aspirations for economic growth and infrastructure development. Therefore, the government's pivot towards mediation necessitates carefully considering its broader implications for India's legal and business environment.

CONCLUSION

Unfortunately, arbitration's speedy means of settling conflicts has led to an increasing number of decisions against the government that have outpaced the established system. In place of the suggested empowering measures, a more protectionist regime is being implemented.

This is not a novel discovery; early signs were apparent in the standard contract's deliberate drafting of non-negotiable dispute resolution clauses. For instance, one of the top upstream oil companies in India removes claims that are not announced from the arbitral tribunal's jurisdiction while another significant oil company excludes disputes that total more than USD 12 million. The gist of the argument is clear: if these disagreements were resolved by legal proceedings, the associated expenses and time invested would discourage private organisations from initiating legal action. The government can use legal clauses that waive pre-reference and *pendente lite* interest to force suppliers and contractors into standard contracts, allowing them to delay payments without facing consequences. This correspondence could have a big effect on the infrastructure industry if it isn't withdrawn since many contractors are at risk of going bankrupt because of interrupted cash flows brought on by unresolved disputes.

On the other hand, this memorandum may contradict the Prime Minister's objective of improving India's Ease of Doing Business rankings. It appears to hinder and potentially reverse

the advancements made in fostering an arbitration-friendly environment, despite the recent emphasis by the Chief Justice of India and the Law Minister on the significance of promoting arbitration. The government's reputation as the country's most active litigant has been bemoaned by several judges, and the 126th and 100th Law Commission Reports of India have brought attention to the government's propensity to take cases to the Supreme Court. Given the non-binding nature of mediation and the persistent risk of vigilance investigations, this communication is more likely to strain the already overburdened court system rather than result in effectively mediated settlements. Even though the government promised to release a National Litigation Policy nine days following this correspondence, it is thought that the memo has to be formally withdrawn. It would also be beneficial for the National Litigation Policy to be reevaluated.

The policy has its pros and cons there is a need to consider whether the rules were necessarily required to be in place or not. The policy introduction at a time when arbitration is the preferred source of dispute resolution by big corporate houses as well as the government machinery, a mere loss in some high-profile arbitration cases for the side of the government should not act in a manner to make a well-established policy which has good hold and prevalence in India to face major operation problems. But the agreed facts of saving the government inheritance in monetary terms are also of prime importance, it would be unjust for the government to make such a sudden change. Even if the government plans to bring some changes as already stated in the guidelines, it should be done promptly and not in a hurry. Also, the calling amount as mentioned should not be a mere 10 crores and should be raised to a reasonable manner to be on the even side for all the interested individuals in the process.