A COMPARITIVE ANALYSIS OF MEDIATION ACTS IN SINGAPORE AND INDIA

Akash Gupta[*] *and Tejaswini Sahoo*[**]

Mediation, a mode of dispute resolution, enables parties to reach a settlement they often voluntarily abide by. However, parties occasionally fail to recognize and enforce the mediated settlement agreements. Consecutively, the dearth of an international cross-border framework to enforce the mediated settlement agreement has been levelled as the primary criticism. In the course of this paper, the author seeks to present a comparative analysis of the Mediation framework in Singapore and India. Firstly, the authors dissect the acclaimed Singapore Mediation Convention in light of cross-border disputes. Secondly, the paper analyses the key provisions of Singapore's Mediation Act of 2017. Further, it strives to present a bird's eye analysis of key provisions of India's newly implemented Mediation Act of 2023. Lastly, the authors present a comparative analysis of the Singapore Mediation Convention and the New York Convention in order to analyze the similarities, inconsistencies and the scope of seamless enforcement.

Keywords: Mediation, Singapore, India, Cross-Border, Comparison

TABLE OF CONTENTS

[*] Akash Gupta is an Assistant Professor and Assistant Director of the Centre for Alternative Dispute Resolution at Jindal Global Law School, where he specializes in teaching arbitration courses. Additionally, he is a Visiting Faculty at the National Law School of India University, Bengaluru. He has attended summer and winter schools at the Paris Arbitration Academy and the Hague Academy of International Law, respectively, both on full scholarship and full sponsorship.

[**] Tejaswini Sahoo is a 4th year law student at the West Bengal National University of Juridical Sciences Kolkata. She is currently serving as an Editor-in-Chief in the NUJS Journal of Dispute Resolution for the academic year, (2024-25). She can be reached out at tejaswini221059@nujs.edu.

I. INTRODUCTION

The adoption of alternative dispute resolution procedures has grown due to growing court dockets, skyrocketing litigation expenses, and discontent with the conventional adversarial process. Many techniques have emerged to address this issue, such as hybrid dispute resolution proceedings, mini-trials, arbitration, mediation, and summary jury trials. Mediation, one of the fairest dispute resolution mechanisms, has emerged with the advent of surmounting commercial concerns.[1] A range of distinctive characteristics of mediation, such as its informality, flexibility, and totally voluntary and non-binding character, make it more desirable than litigation and frequently even other alternative forms of conflict resolution.[2] It is the least interventionist process in which a third party gets involved only to facilitate keeping the interests of the disputing party in mind. Moreover, the decision-making authority lies with the parties.[3]

On a global scale, litigation is not the most efficient way to resolve as the domestic courts lack the expertise or tend to side with the interests of their own citizens over a foreign national.[4] It leads to placing the other side in an advantageous position over a foreign national who has fewer means to defend or prove their contentions; and additionally, this process is tedious and costly for the parties in most cases.[5] With evolving times, the need arises to fill the vacuum of enforcing the settlements.

Singapore introduced the Mediation Act in 2017, which laid down the legislative framework for commercial mediation with respect to enforceability, confidentiality and stay proceedings.[6] Consequently, the Singapore Convention on Mediation ("SCM"), which governs the international enforcement of Mediated Settlement Agreements ("MSAs"), has been accomplished by the UNCITRAL II Working Group and was adopted in 2019.[7] This occurrence presents a chance to talk about other approaches to international enforcement of agreements made with the help of a third party or "facilitator."[8] This model specifically lays down the path of international enforcement of settlement in cross-border jurisdictions.[9] Afterwards, India introduced the

[1] Linda C. Reif, 'The Use of Conciliation or Mediation for the Resolution of International Commercial Disputes,' (2007) CAN. BUS. L.J. 20, 45.
[2] Kenneth R. Feinberg, 'Mediation - A Preferred Method of Dispute Resolution', (1989).16 Pepp. L. Rev. Iss. 5
[3] *Id*.
[4] Alexa Bowen, 'The Power of Mediation to Resolve International Commercial Disputes and Repair Business Relationship' (2005).60 Dispute Resolution Journal 2
[5] *Id*.
[6] Dorcas Quek Anderson, 'A Coming Age for Mediation in Singapore', (2017).29 SAcLJ 275.
[7] UNGA Res, 73/198 (20 December 2018), A/RES/73/198.
[8] *Id*.
[9] *Id*.

Mediation Act 2023 ("Mediation Act") on the parallel world.[10] It includes the process of pre-litigation mediation, community mediation, virtual mediation, conciliation or an expression carrying similar import with the essence of a neutral third party by not imposing a settlement upon the parties.[11]

With the occurrence of two imperative developments, it is pertinent to measure the obligations, execution, and lacunas in the said field. The historic Singapore Convention on Mediation was signed by 46 States, including the two biggest economies in the world, China and the United States, as well as three of the four primary countries of Asia, namely China, India, and South Korea.[12] However, it is germane to the context that India has not ratified yet. Additionally, the Mediation Act does not extend recognition to the MSAs taking place outside India.[13] Needless to say, India is only a signatory to the SCM and has failed to internalize the essence of "international direct enforcement" of MSAs. [14]According to the data gathered from the National Judicial Data Grid, out of 10975484 civil cases pending, 73.89% of them are pending more than one year.[15] The abysmal judicial backlog is restricting access to the justice by delaying adjudication. Therefore, the paper aims to provide a comparative analysis between the two primary jurisdictions, India and Singapore, to analyze the efficiency and lacunae of this mechanism in jurisdictions.

Therefore, the present article aims to dissect the domestic laws in harmony with the widely acclaimed Singapore Convention on Mediation. The same has been primarily chaptered into six co-related parts. Part I formally introduces the substance of the present article by mentioning the relevant conventions and legislations for the context. Further, the authors provide the basis for drawing comparisons between the two jurisdictions with the roadmap for each segment of the paper. Part II analyses the historical background of the formation of the SCM and its legal framework. Moreover, it also identifies the lacunas and fallacies in the SCM. Part III dissects the domestic law of the Singapore Mediation Act, 2017. Part IV analyses the key provisions of the new Mediation Act of India. Part V sheds light on a comparative analysis between the Singapore Mediation Convention and the New York Convention on a generic basis, from which it has drawn inspiration. Further, Part VI concludes and provides an overview of India's ratification of the Singapore Convention in light of the cross-border enforceability of MSA.

[10] The Mediation Act, 2023, §1, (India).
[11] Raj Panchmatia, Haabil Vahanvaty, and Roselin Alex, 'Game Changer in Effective Alternative Dispute Resolution-The Mediation Act', (SCC Online Blog September 28, 2023). https://www.scconline.com/blog/post/2023/09/28/game-changer-in-effective-alternative-dispute-resolution-the-mediation-act-2023/ accessed December 29 2023.
[12] Prerita Bhardwaja, 'Critical Appraisal of the Singapore Convention on Mediation' (2023) Jus Corpus L. Journal 968.
[13] Soumya Gulati, Shweta Sahu & Sahil Kanunga, 'Decoding Mediation Act,' https://www.nishithdesai.com/NewsDetails/10748 Last Visited on Dec 29, 2023.
[14] *Id.*
[15] National Judicial Data Grid, available at https://njdg.ecourts.gov.in/njdgnew/index.php (Last Visited on January 3, 2024).

II. LEGAL FRAMEWORK OF SINGAPORE CONVENTION

A. BACKGROUND

The final drafts of the Singapore Convention and the Working Group II amendments to the Model Law on International Commercial Mediation were approved by the United Nations Commission on International Trade Law ("UNCITRAL") on June 26, 2018, essentially without any alterations whatsoever.[16] Similar to how the New York Convention makes it easier for international arbitration awards to be recognized and enforced, these instruments seek to increase the enforcement of international commercial settlement agreements made through mediation.[17] The US proposed to create a multilateral convention to mandate the enforceability of international commercial settlement agreements reached through mediation in a similar fashion to how the New York Convention facilitates the recognition and enforcement of international arbitration awards.[18] As a result, the said convention stemmed from negotiations starting in 2014.

Additionally, this idea was derived from a survey conducted in 2014 among professionals in the fields of international business and law.[19]It disclosed that 74% of participants held the view that the number of international commercial mediations in their home jurisdictions would rise if a multi-lateral treaty were in place that allowed settlement agreements resulting from the mediation to be enforced internationally, indicating the need to fill the vacuum.[20]

The essential objective of the convention is to promote mediation as an dispute resolution mechanism in light of cross-border business transactions.[21] In a complex commercial dispute, enforcement is an incentive to use it as a preferred mode of dispute resolution. In order to do this, the Convention elevates settlement agreements to the level of an exclusive legally binding instrument recognised by international law.[22] In addition to being less time-consuming and cost-effective, mediation also has a higher chance of preserving relationships in the future as it lays down the structure for acquiescence and effective implementation of the MSAs.

Elementary characteristics of the convention:[23]

A) The ambit of the convention

[16] Eunice Chua, 'The Singapore Convention on Mediation- A Brighter Future for Asian Dispute Resolution,' (2019).Asian J. of Int. L. 2.
[17] Brette L Steel, 'Enforcing International Commercial Mediation Agreements as Arbitral Awards under the New York Convention,' (2007).54 UCLA L. REV. 1385.
[18] CHUA, *Supra Note 16,* at 2.
[19] S. Strong, 'Use and Perception of International Commercial Mediation and Conciliation: A Preliminary Report on Issues Relating to The Proposed UNCITRAL Convention on International Commercial Mediation and Conciliation,' (2014) University of Missouri School of Law Legal Studies Research Paper No. 2014-28, 45.
[20]*Id*.
[21] STEEL, *Supra Note 17*, at 4.
[22] BHARADWAJ, *supra note*, 07 at 969.
[23] Nadja Alexander & ors, 'An Introduction to the Singapore Convention on Mediation – Perspectives from Singapore,' (2018).22 Nederlands-Vlaams tijdschrift voor Mediation en conflictmanagement 4.

B) How do enforcement and recognition form in the convention? And how the terminologies have been utilised in it?

C) Does the court hold the discretion in refusing enforcement of an MSAs?

D) Do the parties have the liberty to make reservations to the convention?

B. ANALYSIS OF KEY PROVISIONS

1. The Scope Of Application

The Convention's coverage extends to (1) MSAs reached through mediation regarding business disputes[24]; (2) MSAs in writing, meaning they are recorded in any format, including electronic correspondence[25]; and (3) Circumstances in which[26](i) At least two of the parties to the settlement agreement have their places of business in different States; (ii) the parties' places of business are located in different States than the State in which the majority of the obligations under the agreement are fulfilled; or (iii) The state is the one with which the settlement agreement's subject matter is most closely related.

On the other hand, it does not extend to a) transactions related if one of the parties as a consumer for personal, family or household; b) transactions in relation to family, inheritance or employment law; c) enforceable as an arbitral award; and d) approved by the court or judgement enforceable in the court.[27]

The term "commercial" must mean contentions arising out of any business matters, irrespective of whether it can be treated as contractual or not. In the Supreme Court of Alberta, in the case *R V. Wah Kee*, the ambit of the commercial dispute must be enlarged to include "any enterprise can be called an enterprise if with profit motive".[28] While interpreting the international character of the dispute, the Hong Kong Court in *Fung Sang Trading Ltd V. Kai Sunn Sea Products and Food Company Ltd* held that the primary work of shipping products was occurring from outside Hong Kong, i.e. China.[29]

2. Recognition in Cloak

An MSA "shall be enforced by each State Party in accordance with its rules of procedure, and under the conditions laid down in this Convention," according to Article 3(1).[30] When the parties are unable to provide one or more justifications for rejection and the Convention's standards for scope, form, and evidence are satisfied, the appropriate authority will ordinarily enforce them. According to Article 3(2), a state must permit a party to "invoke the settlement agreement in order

[24] United Nations Convention on International Settlement Agreements Resulting from Mediation, Art 1 (a), 2019.
[25] United Nations Convention on International Settlement Agreements Resulting from Mediation, Art 1 (b), 2019.
[26] United Nations Convention on International Settlement Agreements Resulting from Mediation, Art 1 (c), 2019.
[27] United Nations Convention on International Settlement Agreements Resulting from Mediation, Art 2, 2019.
[28] R v Wah Kee [1920] 3 WWR 656.
[29] Fung Sang Trading Limited v Kai Sun Sea Products & Food Company Ltd [1992] HKLR 40.
[30] United Nations Convention on International Settlement Agreements Resulting from Mediation, Art 3(1) 2019.

to prove that the matter has already been resolved, in accordance with its rules of procedure and under the conditions laid down in the Singapore Convention."[31] In essence, it provides leeway to the states to apply their own procedures and rules for the sake of enforcement and has not prescribed any specific method.[32]

The term "direct enforcement" under the Singapore Convention means that the said enforcement is not entitled to a review process in the country of MSA, where it originated first, but would directly be enforced in the country of enforcement.[33] It essentially emphasizes the international character of an MSA. Additionally, the Singapore Mediation Convention's methodology effectively removes the location of the potential MSA from the enforcement procedure.[34] This is accomplished by permitting enforcement in the enforcing party's preferred nation. In addition to the extra value that comes with allowing parties to expect the ability to construct solutions unconstrained by a particular legal system, this can also be useful in the increasingly common electronic mediation proceedings.[35]

When it comes to the notion of "relief" under Article 4 of the convention, which provides the conditions for application to the competent authority, as it relates to the legal impact that the MSA will obtain in the nation of enforcement, the Singapore Mediation Convention utilizes the term "relief."[36] Although both words were covered in previous drafts, the terms "enforcement" and "recognition" are omitted. As it was used in the UNCITRAL Model Law on Cross-Border Insolvency (1997), the term "relief" is not new in a UNCITRAL context.[37]

The critical point is that the convention does not use the term "recognition" as opposed to the New York Convention, which can bear distinct meanings in distinct jurisdictions. However, it describes the practical effect of "recognition", which allows MSAs to be used as a defense under Article 4 of the Singapore Convention. The primary reason for the working group to use the term "relief" was to use it both as a sword and shield in respective enforcement and recognition (by extending the legal effect).[38] Furthermore, the fundamental concept is to leave the recognition process to domestic regulations, which would be challenging to harmonies otherwise, rather than disclosing specifics.[39]

3. Other Relevant Provisions

How well-mediated settlement agreements are implemented and to what degree they are enforced will determine the effectiveness of the Convention. Article 5 of the Singapore Convention lays down the grounds where the competent authority may refuse to enforce the MSA, such as due

[31] United Nations Convention on International Settlement Agreements Resulting from Mediation, Art 3(2), 2019.
[32] BHARADWAJ, *Supra Note 07*, at 970.
[33] H. Meidanis, 'International Enforcement of Mediated Settlement Agreements: Two and a Half Models— Why and How to Enforce Internationally Mediated Settlement Agreements', (2019). 85 Stavros Brekoulakis(ed) Arbitration: The International Journal of Arbitration, Mediation and Dispute Management, 44
[34] *Id* at 2.
[35] *Id*. at 3.
[36] United Nations Convention on International Settlement Agreements Resulting from Mediation, Art 4, 2019.
[37] MEIDANIS, *Supra Note 23* at 4.
[38] ALEXANDER, *Supra Note 13* at 43.
[39] CHUA, *Supra Note 08* at 5.

to incapacity being technically ineffective or granting relief that could be contrary to the terms of the agreement.[40] The grounds delineated in Article 5 are similar to those in the New York Convention. Nonetheless, the language is not exact enough, and a party may effectively argue against the enforcement of an MSA on the grounds that the mediator materially violated the relevant requirements.[41] The interpretation of a "serious" or "material" breach should be according to the mediator's individual examination of issues and underlying issues discussed in the private sessions in the absence of definitions and guidelines.[42]

Furthermore, Article 8, one of the critical provisions, permits conveying reservations by the signatory governments that only the extent to which parties to the MSA have made a choice to enforce it will be covered by the Convention.[43]

III. MEDIATION IN SINGAPORE: AN ACT OF 2017

The Act of 2017 aims to make Singapore a renowned hub for international commercial mediation..[44] The following segment analyses the key provisions of Singapore's Mediation Act, 2017. Further, it provides a bird's eye view of the act, whether it has refined the common law position or brought any more significant amount of uncertainty.

A. ELEMENTARY PROVISIONS OF THE ACT

1. General Framework

Section 2 of the Act defines the scope of mediation communication, which can include any oral statements or action, documentation, or information for mediation.[45] It also extends to include previously entered agreements or MSAs under section 4 of the Act.[46]

2. Confidentiality Framework

Section 9 delineates the restrictions on the disclosure, and section 9(2) specifically lays down the conditions in which the norm of confidentiality may be breached.[47] According to section 9(2)(a), the disputing parties can make the disclosure against the mediator's willingness because the term "consent of the parties" does not include the mediator as a party under section 2 of the Act.[48] Interestingly, section 9(2)(b) lays down the ground of public interest. The case of *Farm Assist* clarifies the term inclusive of safety, avoiding harm and injury, investigation of potential

[40] United Nations Convention on International Settlement Agreements Resulting from Mediation, Art 5, 2019.
[41] Christopher To, 'Will the Introduction of the Singapore Mediation Convention Put an End to International Arbitration?', (2019).21 Asian Dispute Review 4, 164.
[42] *Id*. at 168.
[43] United Nations Convention on International Settlement Agreements Resulting from Mediation, Art 8, 2019.
[44] Singapore Parliamentary Debates, Official Report vol 94 (Indranee Rajah SC, Senior Minister of State for Law) (2017).
[45] Mediation Act, 2017, §2, (Singapore).
[46] Mediation Act, 2017, §4, (Singapore).
[47] Mediation Act, 2017, §9(2), (Singapore).
[48] Mediation Act, 2017, §9(2)(a) read with §2, (Singapore).

crimes, etc.[49] The said act has been drafted with the motive of implicitly recognizing the nuanced overlap between confidentiality and admissibility. Accordingly, section 9(3) has laid down three specific scenarios that also deal with admissibility.[50] The first one talks about utilizing communication for enforcement, which is also an exception to *Ng Chee Weng and Unilever's* "without prejudice" rule.[51] The second is about disciplinary proceedings for misconduct by a mediator or solicitor.[52] Thirdly, it is for the purpose of discovery.[53]

3. Enforceability of MSA

Section 12 stands as the most novice provision within the act. The expedited enforcement mechanism has been incorporated in order to boost the efficiency of cross border users. .[54] The common law position has been encapsulated in *Brown V. Rice*, where proceedings have to be commenced to assert that it was validly formed based on contractual obligations, eliminating mistakes and duress.[55] The conventional method is quite onerous as it leads to additional expenses, and where the dispute is about the very existence of the contractual terms. The uncertainty hovering over the enforcement lessens the value of the process.[56]

Therefore, it is not astonishing that the act of 2017 incorporates the mechanism of treating a private MSA as a court order for the purpose of enforcement. Section 12(5) of the act states that the expedited mechanisms are only applicable to mediation conducted by the Singapore mediation Centre or accredited by SIMI.[57] Section 12(4) of the act emphasizes the court's discretion when it comes to enforcing every agreement that the parties consent to. The vitiating factors limit the principle of expedited mechanism.[58]

4. Other Key Provisions

Section 8 of the Act entails the court's power to order a stay of proceedings pending completion of a mediation.[59] Section 4 lays down that the mediation agreement may take the form of a contract or bill of lading.[60] Subsequently, it must allow the referral of the whole or part of the dispute where interim orders are necessary to preserve the parties' rights pending the completion of the mediation.[61] It simply mandates the reference of a dispute to mediation without asking to furnish further details about the mediation procedure.

[49] Farm Assist Ltd V. Secretary of State for the Environment, Food and Rural Affairs (No 2)(2009) EWHC 1102(TCC).
[50] Mediation Act, 2017, §9(3), (Singapore).
[51] Ng Chee Weng V. Lim Jit Ming Bryan (2012) 1 SLR 457 at (94)-(97): Unilever Plc V. The Protector & Gamble Co(2000) 1 WLR 2436.
[52] Mediation Act, 2017, §9(3)(b),(Singapore).
[53] Mediation Act, 2017, §9(3)(c), (Singapore).
[54] Mediation Act, 2017, §12, (Singapore).
[55] Brown V. Rice [2007] EWHC 625 (Ch).
[56] Dorcas Quek Anderson, 'A Coming of Age For Mediation in Singapore' (2017) 29 SAcLJ 275.
[57] Mediation Act, 2017, §12(5), (Singapore).
[58] Mediation Act, 2017, §12(4), (Singapore).
[59] Mediation Act, 2017, §8, (Singapore).
[60] Mediation Act, 2017, §4, (Singapore).
[61] Mediation Act, 2017, §8 read with §4, (Singapore).

Until this act, Singapore had no uniform legal framework to regulate mediation. The most reliance was placed on the common law, which was pervasive in several fundamental aspects. However, enacting the Act presented an opportune moment to bring consistency in legal principles and better user guidance.[62] It achieved a greater goal by enforcing MSA in an expedited mechanism. However, where the very existence of a settlement is disputed or their exist vitiating factors such as legality, the expedited mechanism fails to fit.[63] Moreover, the narrow application of the category of mediation only hails a partial achievement. Nonetheless, it emanates a sound recognition of the long-standing need for uniformity.

IV. MEDIATION IN INDIA: AN ACT OF 2023

A. BACKGROUND

On December 21, 2021, the Standing Committee on Personnel, Public Grievances, Law & Justice ("Standing Committee") was tasked with reviewing the Mediation Bill 2021, introduced in the Rajya Sabha on December 20, 2021.[64]The Standing Committee recommended changes to the provisions in its 117th Report on the Mediation Bill, released on July 13, 2022.[65] The Rajya Sabha and Lok Sabha passed the Mediation Bill 2023 (also known as the "Mediation Bill") on August 02 and July 07, 2023, respectively, after the Union Cabinet approved some of these proposals.[66] On September 15, 2023, the Mediation Bill, now referred to as the "Mediation Act 2023" or "Mediation Act," obtained presidential assent.[67] Its objectives are to cater for the enforcement of settlement agreements reached through mediation and to foster mediation, especially virtual mediation.[68] The advantages of mediation have been stressed time and again. In the case of *Vikram Bakshi V. Sonia Khosla*, according to a Supreme Court decision, mediation has several benefits, including the ability to "provide an equitable solution that cannot be reached by judicial adjudication" and the importance of early resolution of disputes.[69]

B. ELEMENTARY PROVISIONS

Section 2 of the Act 2023 carves out the applicability as i) parties residing or incorporated in India, ii) an agreement containing a mediation clause, iii) international mediation, iv) Where the government acts as a party to a commercial dispute or v) to any dispute if notified government as

[62] DEBATES, *Supra Note 33*.
[63] ANDERSON, *Supra Note 45*, at 288.
[64] Mr. Sushil Kumar Modi, Standing Committee Report (The Mediation Bill, 2021), PRS at <https://prsindia.org/files/bills_acts/bills_parliament/2021/SCR_Mediation%20Bill,%202021.pdf> accessed on Dec 29, 2023.
[65] *Id*.
[66] Press Information Bureau, <available at https://pib.gov.in/PressReleseDetail.aspx?PRID=1947857> accessed on January 2, 2024.
[67] *Id*.
[68] GULATI, SAHU & KANUNGA *Supra Note* 13.
[69] Vikram Bakshi v Ms Sonia Khosla 2014 (2) ILR (Ker) 658.

a party.[70] While the Mediation Act covers international mediations conducted in India, international mediations conducted outside India are not covered. On the other hand, the Singapore Convention offers a framework for the cross-border enforcement of settlement agreements resulting from international mediation.[71]

The 2021 version of the bill recommended that the Bill requires parties to attend a minimum of two mediation sessions.[72] If they miss the sessions without a valid excuse, they could be charged for it.[73] The Committee noted that parties will have to wait several months before being permitted to approach a court or tribunal due to the mandate for pre-litigation mediation.[74] Cases may be delayed as a result of this. The Committee suggested giving prelitigation a second look, making it optional, and implementing it gradually. Presently, as per the bill pre litigation mediation will be applicable to cases that are pending before a tribunal. The Committee observed that it is unclear how pre-litigation mediation can be used in these kinds of situations.[75]

Similarly, in Italy, the said legislative Decree 69/2013(Mandatory mediation model), which was issued in September 2013, brought back the requirement of mediation before bringing legal action.[76] One might also note the distinction between the Italian and Indian models in terms of the kind of cases that each country requires to go through mandatory pre-litigation mediation. The Italian decree only allows specified categories of cases—mostly those involving alienable rights—to be sent to mediation.[77] However, the Bill would require pre-litigation mediation for all civil and commercial lawsuits, eliminating some exceptions, including those involving claims made by minors or people who are not of sound mind, as well as those that infringe upon the rights of third parties.[78]

However, in Indian jurisdiction, mandating pre-litigation mediation could delay further in the case and prove it to be expensive for the parties. It might dissuade parties from opting for mediation as a mechanism.[79] Therefore, the standing committee recommended it should be an opt-out mechanism without laying down the proposal devoid of clarity.[80] Subsequent to changes in the bill, according to Section 5(1) of the Mediation Act, before bringing any civil or business matter before any court, the parties may, voluntarily and with permission, refer the disagreement for

[70] The Mediation Act, 2023, §2, (India).
[71] ACT, *Supra Note 53*.
[72] The Mediation Bill, 2021, No.2 9 /LN/Ref./December/2022, Available at https://loksabhadocs.nic.in/Refinput/New_Reference_Notes/English/19122022_103126_102120526.pdf accessed on January 2, 2024).
[73] *Id* at 2.
[74] *Id* at 3.
[75] MODI, *Supra Note 52*.
[76] Legislative Decree 69/2013, <available at https://www.gazzettaufficiale.it/eli/id/2013/06/21/13G00116/sg> (accessed on January 3, 2024).
[77] Aaryan Dhasmana, 'Mandating Mediation: India's Learning from the Italian Experience,' <https://www.rsrr.in/post/mandating-mediation-india-s-learnings-from-the-italian-experience> accessed on January 3, 2024.
[78] MODI, *Supra note* 65.
[79] *Id*.
[80] *Id*.

settlement through mediation.[81] This is true regardless of any mediation agreements. Furthermore, regardless of the existence of a mediation agreement, any court or tribunal has the authority to order the parties to mediate at any point during a procedure.

Section 3(e) defines the term where, in order to successfully integrate mediation with the Indian judicial system, this provision permits the court to refer cases which are deemed appropriate for mediation as a mode of alternative dispute resolution.[82] It also includes the pre-litigation mediation at the mediation centers with the direction of any court or tribunal.

Section 19 of the 2023 Act explains the agreement in writing between parties resulting from mediation (which also includes online mediation) authorized by the mediator. Additionally, the terms of the settlement may extend beyond the dispute as referred to mediation.[83] Chapter VI of the act lays down the provision for the enforcement of MSA. If it is signed by the parties and authorized by the mediator, it can be held as binding and enforceable as a decree or judgment under section 27 of the act.[84] The same can be challenged on the grounds of fraud, corruption or impersonation under section 28 of the Act.[85]

Section 40 of the act authorizes mediation conducted by a mediation service provider, which includes a) any court-annexed mediation center, b) an authority constituted under the Legal Services Act or c) any other body notified or recognized by MCI.[86] Arguably, the act has established the Mediation Council of India("MCI") to regulate domestic and international mediation for the first time.[87] Moreover, it will ensure the aspect of quality and professionalism in India.

The new act has taken progressive steps to promote mediation, such as establishing MCI or making uniform provisions. Barring a few exceptions such as criminal offence, dispute under the telecom authority or matters under the Competition Act, the Act covers civil and matrimonial disputes being compounded under section 6 of the Act.[88] However, it does not provide an adequate mechanism for international mediation, which can lead to ambiguity in application.[89]

Similarly, it only provides a framework to enforce the MSA in India but not for the cross-border mediations concluded outside India. In order to challenge the conventional method, section 13 of the Mediation 2023 Act provides for conducting mediation outside any jurisdiction or online and attaches the same value to the enforcement, registration, or challenge of the MSA. However, there is also a lack of awareness, training programs, and cultural hesitancy to change the conventional method.[90]

[81] The Mediation Act, 2023, §5(1), (India).
[82] The Mediation Act, 2023, §3, (India).
[83] The Mediation Act, 2023, §19, (India).
[84] The Mediation Act, 2023, §27, (India).
[85] The Mediation Act, 2023, §28, No. 32, (India).
[86] The Mediation Act, 2023, §40, No. 32, (India).
[87] The Mediation Act, 2023, §31, No. 32, (India).
[88] The Mediation Act, 2023, §6, (India).
[89] PANCHMITA, *Supra Note 6*, at 3.
[90] *Id*. at 4.

V. COMPARATIVE ANALYSIS

A. THE SINGAPORE CONVENTION ON MEDIATION VIS-À-VIS THE NEW YORK CONVENTION ON ARBITRATION

What are the takeaways from the New York Convention for implementing and interpreting the Singapore Convention on Mediation when it comes to its widespread acceptance and use? The said conventions provide mechanism for cross-border relief of for commercial settlement agreements arising out of mediation and arbitrations. The Singapore Convention has drawn inspirations from the New York Convention in light of enforceability of cross-border disputes. The following section emphasizes to seek a comparative analysis in light of various defenses and cross-border disputes.

A significant step toward encouraging mediation as an efficient method of resolving disputes in international relations is the Singapore Convention. The great majority of commercial settlement agreements are covered by the Convention because it defines a broad scope for embracing any commercial subject matter followed by a small exemption.[91] The parties can benefit more conveniently and affordably from the adoption of the Singapore Convention due to its broad scope and lack of a necessity for a mediation seat, in contrast to the New York Convention. Due to the enforcement mechanism that the Convention will provide for international mediation agreements, there will be fewer formalities and greater confidentiality in international mediation, which will make it a more advantageous method of resolving disputes.[92]

Both the Singapore Convention on Mediation and the New York Convention's corresponding provision revolve around defenses against the recognition and enforcement of foreign arbitral awards.[93] Due to the permissive language "may be refused" in the Convention, one question that has emerged in the context of the New York Convention that pertains to all defenses is the extent to which a national court may recognize. Moreover, the enforcement of a foreign award even though a ground for refusal has been established under the Convention would allow them to object. Article 5(1) of the Singapore Convention on Mediation employs the exact phrase, "may refuse to grant relief."[94] However, the Singapore Convention does not use the term “recognition” as opposed to it uses “relief” with all the practical effects of recognition.[95]

When it comes to specific defenses, the ones that fall under Articles V (2) of the New York Convention and 5(2) of the Singapore Convention on Mediation are the most similar.[96] The Working Group considered interpreting the defenses in a manner similar to the New York Convention, with regard to the claims that enforcement would be against public policy and that

[91] Ahdieh Alipour Herisi & Wendy Trachte-Huber, ‘Aftermath of the Singapore Convention: A Comparative Analysis between the Singapore Convention and the New York Convention,’ (2019) 12 AM. J. MEDIATION 154.
[92] *Id*. at 172.
[93] CHUA, *Supra Note 08* at 7.
[94] United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Award, Art 5, 1958.
[95] CHUA, *Supra Note 08* at 7.
[96] United Nations Convention on International Settlement Agreements Resulting from Mediation, Art 4, 2019 read with United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Award, Art 5, 1958.

the dispute's subject matter could not be resolved through mediation or arbitration.[97] But in the context of international arbitration, public policy defence is notoriously troublesome, especially in Asian nations like Malaysia and India.[98]

Therefore, even though it is understood that the party opposing relief bears the final burden of proof under Article 5(2) and that the standard of proof is stringent and should only be applied in exceptional and very limited circumstances, there are real-world concerns and possible hazards that parties should be aware of.[99] Given the Working Group's reading of the Article and its instructions, one can still hope that the Singapore Convention's public policy exemption will be applied more safely than the New York Convention.

Lastly, over sixty years after its inception, the New York Convention still fulfils its intended purpose in spite of its many flaws, criticisms, and requests for reform. The New York Convention has done a great job of lubricating the wheels of the international commercial arbitration machinery, especially in the last few decades, by offering a straightforward and uniform framework for the enforcement of foreign arbitral rulings.[100]

This article expresses optimism that the Singapore Convention on Mediation, whether applied alone or in conjunction with arbitration or litigation, can likewise fulfil its objective of advancing the use of mediation for international business conflicts. After all, it has the advantage of learning from the application and interpretation of the New York Convention. It is intended that Asian jurisdictions, the majority of which are now signatories to the New York Convention, will also ratify the Singapore Convention on Mediation. However, it is hoped that future work will address the gap left by the Singapore Convention on Mediation's silence about the execution of agreements to mediate.

VI. CONCLUSION

The authors took the opportunity to analyze various aspects of the mediation between Singapore and India. The Singapore Convention possesses the capability to tackle the issues related to enforceability and enable favorable perceptions of mediation to result in an increase in the practical application of mediation. In order to broaden the scope of this prominent alternative dispute resolution forum, signatory States are invited to review their institutional a nd regulatory structures for (international) commercial mediation, identical to how they are with the New York Convention on arbitration in relation to institutional international arbitration. However, as pointed out in the comparative analysis, the specific abusive use of defenses in Article V of the New York Convention must set an example for the parties to the Singapore Convention and in Asian countries like India, where the said defense is troublesome.

[97] Chrispas Nyombi & Konstantinos Siliafis, 'Rationalizing the Defences to Enforcement under the New York Convention 1958', (2017) 17 ASPER REV. INT'l BUS. & TRADE L. 111.
[98] ONGC v. SAW Pipes Ltd, 2003, 5 SCC 705, 709.
[99] CHUA, *Supra Note 08* at 8.
[100] *Id*. at 9.

In summary, the Singapore Convention represents a major advancement in the use of mediation to resolve conflicts involving parties outside the country with respect to the recognition of cross-border MSA. However, it gives wide discretion to domestic laws of the member states and makes a reservation to the convention. It also does not adequately explain the mechanism to comply with MSAs. Nonetheless, it positively impacts the utilization of the actual mediation.

In the Indian context, the enforceability of MSA is a comfort to the parties and including wide inclusivity, such as including the government as a party, also indicates a change in approach, moving towards an efficient mediation jurisdiction. However, cross-border enforceability still needs to be reconsidered. Moreover, international mediation remains slow and insignificant in India despite significant efforts to boost usage through various legislative measures. As previously mentioned, the non-binding nature of the procedure and its unenforceability are the reasons behind this. The Convention must be ratified by India as soon as possible; otherwise, there is a chance that foreign and investor relations will be hampered or terminated. In the end, the success of the Act would depend on the flexibility, adaptability, and friendly procedure in addition to the effective use of mediation by the practitioners.