CONFLICT OF BIAS IN CONFLICT RESOLUTION: NEUTRALITY AND THE MEDIATION ACT, 2023

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Abstract

Neutrality is not a decorative principle in mediation; it is the condition for survival. Bias—whether cognitive, cultural, financial, or unconscious silently seeps into the process and erodes legitimacy. India's Mediation Act, 2023 attempts to anchor neutrality through disclosure obligations and narrow challenge grounds, yet the deeper structural and psychological distortions remain largely untouched. Comparative frame works the UNCITRAL Model Law (2018), the Singapore Convention (2019), and the EU Mediation Directive (2008/52/EC) demonstrate stronger safeguards. Indian jurisprudence, from Afcons Infrastructure to Salem Advocate Bar Ass'n, similarly underscores impartiality as foundational. This study argues that neutrality must be secured not only by statute but by practice: rigorous accreditation, enforceable ethical standards, expanded grounds of challenge, and greater diversity among mediators. Mediation in India can fulfill its promise of efficiency and justice only if impartiality is treated not as aspiration, but as an uncompromising core.

Keywords: *Mediation, Neutrality, Bias in Mediation, Mediation Act 2023, Alternative Dispute Resolution, Cognitive Bias, Cultural Bias*

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I. Introduction

MEDIATION TODAY stands as one of the strongest anchors of alternative dispute resolution (ADR), both within national jurisdictions and across borders. Its appeal is often explained in familiar term slower costs, speed, confidentiality, and procedural informality. Yet efficiency alone does not set it apart. What makes mediation distinctive is its promise that

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disputing parties will craft outcomes acceptable to all.[1]That promise, however, is precarious. The legitimacy of mediation collapses once neutrality is lost. A process designed to nurture fairness and dialogue cannot endure if its integrity is corroded.[2]

Even small traces of bias prove corrosive. Prejudices whether rooted in cultural assumptions, unconscious heuristics, financial incentives, or institutional structures chip away at party autonomy and distort outcomes.[3] Trust falters, perceptions of fairness fade, and the rationale for choosing mediation begins to unravel. Around the world, courts and legislatures have acknowledged this danger. While endorsing mediation as a mechanism to ease judicial burdens, they simultaneously stress that impartiality remains the bedrock of the entire enterprise. The Supreme Court of India has echoed this position in *Afcons Infrastructure Ltd*. v. *Cherian Varkey Constr. Co. (P) Ltd*. (2010), underscoring that mediation is not a peripheral option but an integral component of the justice system. [4] This judicial encouragement began earlier in *Salem Advocate Bar Ass'n (II)* v. *Union of India (2005)*, where the Court specifically directed the framing of rules to institutionalize mediation within civil procedure.[5]

International frameworks reaffirm the point. The UNCITRAL Model Law on International Commercial Mediation (2018) and the Singapore Convention on Mediation (2019) elevate impartiality into a guiding principle.[6] India's Mediation Act, 2023 follows suit by codifying duties of neutrality, requiring disclosure of conflicts, and permitting challenges against mediators who appear partial.[7] Yet codification is not cure. The subtler adversary unconscious bias and structural inequality cannot be legislated away.

This paper argues that impartiality in mediation is both an ethical commitment and a practical necessity. Without it, fairness, enforceability, and legitimacy are all endangered. Accordingly, the analysis will explore three questions: first, what are the sources of bias; second, how do they affect dispute resolution; and third, what institutional and legal guardrails exist to minimize these risks. Situated within global and Indian contexts, the

[1] Laurence Boulle, *Mediation: Principles, Process, Practice* 45-47 (3d ed., LexisNexis, 2014).
[2] Daniel Kahneman, *Thinking*, Fast and Slow 20-25 (Farrar, Straus & Giroux, 2011).
[3] Mahzarin R. Banaji & Anthony G. Greenwald, *Blindspot: Hidden Biases of Good People* 55-62 (Delacorte Press, 2013).
[4] *Afcons Infrastructure Ltd.* v. *Cherian Varkey Constr. Co. (P) Ltd., (2010) 8 SCC 24.*
[5] *Salem Advocate Bar Ass'n (II)* v. *Union of India, (2005) 6 SCC 344.*
[6] UNCITRAL, *Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation*, U.N. Doc. A/73/17 (2018).
[7] United Nations, *Singapore Convention on Mediation*, Aug. 7, 2019, 58 I.L.M. 1; The Mediation Act, 2023 (Act 21 of 2023), s. 12.

argument reinforces a simple truth: impartiality is the soul of mediation. Strip it away, and mediation risks becoming a mirror image of adversarial litigation.

II. Understanding Bias in Mediation

Defining Bias in Mediation

At its core, bias means a leaning of mind an inclination strong enough to cloud objectivity. In mediation, this tilt often surfaces in ways that quietly erode neutrality. Courts have procedural armor: codified safeguards, appellate checks, institutional oversight. Mediation lacks that shield. It leans almost entirely on the mediator's integrity and personal conduct. Which is why even whispers of bias barely perceptible can redirect the process and distort the outcome.[8]

Scholars note that neutrality in mediation is less a fixed reality than an aspiration.[9] That aspiration, however, collapses when bias slips in unnoticed. Party autonomy shrinks, legitimacy falters, and settlements risk becoming hollow.

The Mediation Act, 2023 attempts a safeguard by recognizing neutrality as a guiding principle and obligating mediators to disclose conflicts of interest.[10] Disclosure, though, only scratches the surface: it flags the obvious, the declared. Subtler forces psychological shortcuts, social conditioning, institutional hierarchies rarely get exposed. Any serious conversation about impartiality must therefore begin with these deeper forms of bias. Only then can we measure how far statutory safeguards stretch, and where their limits lie.

Cognitive Bias

Cognitive biases are recurring distortions in judgment patterns that pull thought away from pure rationality. Psychologists Daniel Kahneman and Amos Tversky demonstrated decades ago that mental shortcuts, or heuristics, shape decision-making far more than we admit.[11] Their insights apply to mediators no less than to ordinary decision-makers.

Confirmation Bias. Mediators may unconsciously give greater weight to facts that align with their first impressions of a party's narrative.[12]

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[8] Julie Macfarlane*, The New Lawyer: How Settlement is Transforming the Practice of Law* 112-14 (UBC Press, 2008).
[9] Carrie Menkel-Meadow, *Mediation: Theory, Policy and Practice* 33-35 (Ashgate, 2001).
[10] The Mediation Act, 2023 (Act 21 of 2023), s. 12
[11] Daniel Kahneman & Amos Tversky, "Prospect Theory: An Analysis of Decision under Risk" 47 *Econometrica* 263 (1979).
[12] Daniel Kahneman, *Thinking, Fast and Slow* 80-83 (Farrar, Straus & Giroux, 2011).

Anchoring Effect. The initial figure named in a monetary negotiation, however unrealistic, can skew a mediator's sense of value.[13]

Halo Effect. A person's professional status, gender, or confident body language may inflate their credibility.

Chris Guthrie's empirical work shows a sobering truth: even seasoned neutrals trained to be objective fall prey to these traps.[14]

Section 12 of the Mediation Act does require disclosure of circumstances that could raise doubts about neutrality.[15] But disclosure governs the visible, the conscious. Unconscious mental shortcuts remain untouched. The result is a persistent gap between statutory neutrality and psychological reality: a mediator may technically comply with the law yet still be nudged by hidden biases.

Cultural and Gender Bias

Mediation never takes place in a vacuum; it unfolds within social hierarchies and cultural frames. In patriarchal contexts, mediators may, knowingly or not, slip into gendered assumptions viewing women as less rational or less suited to financial decision-making.[16] Cross-border disputes add further complications: direct communication from one culture may be read as hostile, while indirect, deferential speech from another may be dismissed as evasive. Misread cues distort the process.

Carrie Menkel-Meadow has shown that neutrality falters when mediators import their own cultural frameworks into proceedings.[17] The challenge is sharper in India, where disputants frequently belong to starkly different socio-economic and caste groups. Yet the Mediation Act, 2023 remains silent on systemic inequalities. Gender bias, caste bias both linger beyond its reach. Without corrective mechanisms, predispositions creep quietly into settlements, tilting outcomes in ways the statute never intended.[18]

Financial and Institutional Bias

Bias does not always come from the mind of the mediator; it can be embedded in mediation's structure. If compensation flows from one party, or if institutional ties create vested interests,

[13] *Id.* at 119-22.
[14] Chris Guthrie, "Cognitive Biases in Mediation" 54 *SMU Law Review*733 (2003).
[15] The Mediation Act, 2023 (Act 21 of 2023), s. 12.
[16] Carrie Menkel-Meadow, "Pursuing Settlement in an Adversary Culture: A Tale of Innovation Co-opted or 'The Law of ADR'" 19 Florida State University Law Review 1, 23-25 (1991).
[17] Carrie Menkel-Meadow, "Mediation and Its Applications for Good and for Ill" 14 *Ohio State Journal on Dispute Resolution* 291, 296-97 (2016).
[18] Nita Mishra, "Gender Bias in Family Mediation in India" 61 *Journal of Indian Law Institute* 203, 210 (2019).

neutrality wobbles. Consider the "repeat-player" phenomenon: law firms or corporations who repeatedly brief the same mediator. Even without overt pressure, the pull to preserve such relationships can shape outcomes.[19]

Institutional centers, though offering organization, may themselves embody bias depending on their governance or funding models. The Mediation Act attempts oversight. Section 12 requires disclosure of financial or other interests that may compromise impartiality.[20] Yet this provision primarily captures straightforward pecuniary conflicts. Subtler dynamics slip through for instance, court-annexed centers often staffed by former judges, where adjudicatory habits seep into what is supposed to be a facilitative process. Here neutrality is not compromised by intent but by design.

The Psychology of Unconscious Bias

The most insidious form of bias operates invisibly. Social psychologists Mahzarin Banaji and Anthony Greenwald show that individuals harbor implicit associations that contradict their declared values.[21] A mediator might assume, without realizing it, that younger parties are more flexible or that older ones are less adaptable to compromise. These assumptions are never voiced, yet they operate below awareness and precisely because they are hidden, they are hardest to correct.

International frameworks now emphasize bias-awareness training as part of mediator development.[22] India's Mediation Act, however, leaves continuing education to institutional discretion. Without a mandate, impartiality risks being reduced to a formal requirement on paper rather than a cultivated skill in practice.

Bias in mediation is multi faceted cognitive, cultural, financial, unconscious. Each undermines neutrality. The Mediation Act, 2023 responds with disclosure duties and challenge provisions, but these reach only the surface. They do not pierce deeper roots: the psychological reflexes and structural forces that quietly shape conduct. This gap between law on paper and practice in reality makes bias more than a theoretical worry it becomes a practical barrier to the Act's effectiveness. The next part traces how these biases translate into distortions in conflict resolution.

III. Impact of Bias on Conflict Resolution

[19]Richard C. Reuben, "Institutional Bias in Mediation" 44*Washburn Law Journal* 377, 384-85 (2004).
[20] The Mediation Act, 2023 (Act 21 of 2023), s. 12.
[21]Mahzarin R. Banaji & Anthony G. Greenwald, *Blindspot: Hidden Biases of Good People* 102-07 (Delacorte Press, 2013).
[22] International Mediation Institute, *Code of Professional Conduct* (2016).

Distorted Outcomes and Party Autonomy

Mediation is grounded in the principle of party autonomy the freedom of parties to design their own solutions. Bias corrodes that foundation. When a mediator unconsciously privileges the socially dominant party through gender, financial standing, or institutional power the weaker side may accept terms neither equitable nor voluntary. Such agreements often look sound on paper but collapse during enforcement, damaging both the settlement and mediation's reputation.[23]

Power Imbalances and Reinforcement of Inequality

Critics warn that mediation does not always level pre-existing asymmetries; it may reproduce them. In Indian family disputes, women are sometimes urged to "save the marriage," even in cases involving cruelty or deprivation. The cultural bias is subtle but decisive: justice gets compromised, and vulnerable voices muted.[24] Similar risks appear in workplace conflicts. Mediators may unconsciously soften harassment claims or downplay grievances under the influence of gendered assumptions. The supposed neutrality masks reinforcement of inequality.[25]

Case Studies in Bias-Influenced Mediation

Family Mediation in India

Empirical studies at the Delhi High Court Mediation and Conciliation Centre (2015–2019) reveal troubling patterns. Women reported being nudged toward reconciliation even in cases involving domestic violence. Settlements were reached quickly, but many collapsed during enforcement.[26] Academic commentary echoes this. In 2019, Nita Mishra documented how mediators subtly steered women toward compromises or skewed alimony arrangements reflecting patriarchal norms.[27]

[23] Julie Macfarlane, *The New Lawyer: How Settlement is Transforming the Practice of Law* 145 (UBC Press, 2008).
[24] *Supra* note 18, at 61.
[25] Carrie Menkel-Meadow, "Mediation and Its Applications for Good and for Ill" 14 Ohio St. J. on Disp. Resol. 291, 296-97 (2016).
[26] Mediation & Conciliation Project Committee, Supreme Court of India, *Mediation in India: A Toolkit* 34-38 (2019).
[27] *Supra* note 18, at 215.

Illustration in one Delhi case adjacent to s. 498A proceedings, a wife initially seeking separation agreed to "try reconciliation" after repeated appeals to "family honor." No explicit coercion was used yet the framing narrowed her choices.[28]

Workplace Mediation in the United States

Employment mediation shows parallel distortions. Delgado and colleagues found that minority employees consistently obtained less favorable outcomes.[29] Cultural communication styles were misinterpreted: a Black woman pausing before answering was labeled "non-responsive," while a white male manager pausing was called "thoughtful." These unconscious stereotypes subtly shifted the negotiation balance.[30]Over time, the disparities accumulated into systemic inequality.

Cross-Border Commercial Mediation

Hofstede's cultural dimensions research shows stark differences in communication across societies.[31] In practice, Asian parties 'reliance on indirect speech has been misread by Western mediators as stonewalling. A Japanese supplier's measured silence in a Singapore mediation was logged as "non-cooperation," leading to collapse; the buyer later admitted it had interpreted silence through a U.S. deal-room lens.[32]

Together, these cases demonstrate the same point: mediation falters when bias goes unchecked. Settlements created under unequal conditions are rarely durable. They unravel in enforcement and disillusion parties, weakening mediation as an institution.

Erosion of Trust in ADR Mechanisms

Trust is the foundation on which mediation stands, and bias is the crack that breaks it. The moment a party perceives partiality, legitimacy unravels. Litigation allows appeals; arbitration permits review under Section 34 of the Arbitration and Conciliation Act, 1996. Mediation offers no such safety net.

For scope and evolution of § 34 review including"fundamental policy," "justice/morality," and "patent illegality"the Supreme Court's jurisprudence is instructive:

[28]*Id*. at 217.
[29] Richard Delgado et al., "Fairness and Formality: Minimizing the Risk of Prejudice in Alternative Dispute Resolution" 1985 *Wisconsin Law Review*1359, 1371.
[30] Deborah M. Kolb, *When Talk Works: Profiles of Mediators* 112-15 (Jossey-Bass, 1994).
[31] Geert Hofstede, *Culture's Consequences: Comparing Values, Behaviors, Institutions and Organizations Across Nations* 75-77 (2d ed., Sage, 2001).
[32] Nadja Alexander, *International and Comparative Mediation: Legal Perspectives* 203-04 (Kluwer Law, 2009).

Oil & Natural Gas Corp. Ltd. v. *Saw Pipes Ltd.,* (2003) 5 SCC 705;[33]
Associate Builders v. *Delhi Development Authority,* (2015) 3 SCC 49;[34]
Ssangyong Eng'g & Constr. Co. Ltd. v. *National Highways Authority of India,* (2019) 15 SCC 131.[35]

By contrast, the Mediation Act, 2023 provides that a Mediated Settlement Agreement (MSA), once authenticated, is final and binding equal in force to a civil court decree.[36]

Challenge provisions are strikingly narrow: fraud, corruption, impersonation, or non-mediable subject matter.[37] Absent are bias, inequality of process, or coercion. Even when settlements are tainted by predisposition or pressure, legal recourse is minimal. Disciplinary sanctions against mediators exist, but they target the professional, not the injustice in a specific case.[38]

This statutory finality transforms neutrality from an ethical aspiration into the sole operational safeguard. If impartiality falters at the start, no remedy exists later. In India, where mediation is still building legitimacy, even the suspicion of bias is corrosive. Parties who feel trust has been broken often retreat to litigation, undermining ADR itself.[39]

En forcement Challenges

The enforceability of mediated settlements is one of the Act's most celebrated innovations. Under the Mediation Act, 2023, an MSA carries the same force as a civil court decree.[40] This ensures certainty and avoids litigation delays. Yet binding enforceability is problematic if neutrality is compromised.

Arbitral awards may be set aside under Section 34 for violations of natural justice.[41]MSAs, by contrast, may be challenged only for fraud, corruption, impersonation, or subject-matter non-mediability.[42] Absent are mediator bias, procedural inequality, or undue influence. Thus, even settlements tainted by questionable circumstances can nonetheless gain enforceability.

The risks are tangible. Parties pressured into settlement may later resist compliance, generating litigation mediation was meant to avoid. Worse, repeated experiences of biased

[33]*Oil & Natural Gas Corp. Ltd*. v. *Saw Pipes Ltd., (2003) 5 SCC 705.*
[34]*Associate Builders* v. *Delhi Development Authority*, (2015) 3 SCC 49.
[35]*Ssangyong Eng'g & Constr. Co. Ltd*. v. *National Highways Authority of India*, (2019) 15 SCC 131.
[36] The Mediation Act, 2023 (Act 21 of 2023), s. 27.
[37]*Id*. ss. 27–28.
[38]*Id*. s. 41.
[39]*Supra* note 19, at 394–98.
[40] The Mediation Act, 2023 (Act 21 of 2023), s. 27.
[41] Arbitration and Conciliation Act, 1996 (Act 26 of 1996), s. 34.
[42] The Mediation Act, 2023 (Act 21 of 2023), s. 28.

enforcement corrode faith in ADR. Commentators emphasize that enforceability is not a procedural add-on it is inseparably tied to the fairness of the process that produced the outcome.[43]

Hence, the Act's strength finality becomes its weakness. The more robust the enforceability, the deeper the injustice if neutrality is compromised.[44]

Bias in mediation is not incidental; it is structural, striking at legitimacy itself. Cognitive shortcuts, cultural predispositions, institutional in centivesall tilt the scales. The Mediation Act, 2023 intensifies concern by equating MSAs with decrees while limiting challenge grounds. With no appellate review, neutrality stands as the lone safeguard against injustice.

The uncomfortable truth: by hard-coding finality, the Act magnifies the cost of bias. By foreclosing redress, it multiplies its harm. Even the perception of partiality undermines both individual settlements and systemic trust. Addressing this requires more than statutes it demands ethical frameworks, institutional vigilance, and cultural change.

IV. Ethical and Legal Frameworks for Neutrality

International Standards

International law has consistently treated neutrality as the anchor of mediation. The UNCITRAL Model Law on International Commercial Mediation (2018) requires mediators to disclose "any circumstances likely to give rise to justifiable doubts" about impartiality.[45] The Singapore Convention on Mediation (2019), though focused on enforcement, echoes the same concern: enforcement may be refused if the mediator's conduct raised doubts about fairness.[46] Together, these instruments show that impartiality is not a moral aspiration but a legal precondition for enforceable settlements.

Comparative National Approaches

Domestic systems have further entrenched neutrality as a legal duty:

United States. The Uniform Mediation Act, 2003 obliges mediators to disclose conflicts and shields those acting in good faith from undue litigation, balancing accountability and protection.[47]

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[43] *Supra* note 32, at 210.
[44] Laurence Boulle, *Mediation : Skills and Techniques* 56-58 (3d ed., LexisNexis, 2014).
[45] UNCITRAL, *Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation*, U.N. Doc. A/73/17 (2018).
[46] United Nations, *Singapore Convention on Mediation*, Aug. 7, 2019, 58 I.L.M. 1.
[47] Uniform Mediation Act § 9 (2003) (U.S.).

European Union. The EU Mediation Directive (2008/52/EC) mandates impartiality and requires Member States to set training standards that address bias.[48]

United Kingdom. The Civil Mediation Council's Code of Conduct makes neutrality an enforceable expectation, holding accredited mediators to binding norms.[49]

These examples reveal a global trend: impartiality is codified not as courtesy but as statutory duty.

Indian Legal Framework: The Mediation Act, 2023

India's Mediation Act, 2023 marks a significant shift toward institutionalizing neutrality. Key features include:

Disclosure of Conflicts. Section 12 compels mediators to reveal any circumstance likely to affect impartiality.[50]

Grounds for Challenge. Parties may replace a mediator where neutrality is in doubt, borrowing principles from judicial disqualification.[51]

Institutional Oversight. Court-annexed and institutional mediation centers may set codes of conduct and training norms, embedding neutrality into practice.[52]

Yet the Act's very strength conferring finality on MSAs is also its weakness. Unlike arbitration, where Section 34 permits review for violation of natural justice, mediation provides no equivalent review. Neutrality is codified but fragile.[53]

Ethical Codes and Professional Standards

Statutes alone cannot secure neutrality; professional codes add a second line of defense. In India, the Mediation Training Manual of India, prepared by the MCPC, directs mediators to avoid both actual and apparent bias.[54] Internationally, the International Mediation Institute (IMI) Code imposes similar duties: accredited mediators must disclose conflicts and undertake continuing education in impartiality.[55]

[48] 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, 2008 O.J. (L 136) 3.
[49] Civil Mediation Council*, Code of Conduct for Civil/Commercial Mediators* (U.K., 2019).
[50] The Mediation Act, 2023 (Act 21 of 2023), s. 12.
[51] *Id.* s. 13.
[52] *Id.* s. 41.
[53] Arbitration and Conciliation Act, 1996 (Act 26 of 1996), s. 34.
[54] Mediation & Conciliation Project Committee, Supreme Court of India*, Mediation Training Manual of India* 12-15 (2015).
[55] International Mediation Institute, *Code of Professional Conduct* (2016).

These frameworks matter because mediation rests less on rigid procedures and more on the character of the mediator. Where legal remedies are limited, ethical self-regulation becomes the first safeguard.

Across global and Indian frameworks, a pattern emerges: neutrality is non-negotiable if mediation is to remain credible. The Mediation Act codifies neutrality, yet its restricted challenge provisions leave settlements vulnerable. Ethical codes and institutional safeguards attempt to fill the gap, but unevenly. Comparative practice suggests statutory recognition must be matched by robust training, accreditation, and enforceable ethical standards. Only then does neutrality shift from paper promise to lived reality.

V. Safeguards against Bias

Accreditation and Training of Mediators

Bias cannot be eliminated, but it can be contained. Structured training is the first step. The MCPC's Mediation Training Manual emphasizes that mediators must learn to recognize unconscious leanings and develop counter-strategies.[56] International accreditation models IMI and CIArbrequire ongoing education in impartiality and conflict management.[57] India must embed similar requirements to move neutrality from aspiration to practice.

Disclosure of Conflicts of Interest

Disclosure is the load-bearing beam of neutrality. Section 12 of the Mediation Act obliges mediators to disclose circumstances raising doubts about impartiality.[58] This mirrors arbitration law, where Section 12 of the Arbitration and Conciliation Act, 1996 makes even the appearance of bias grounds for disqualification.[59] But disclosure without consequences risks tokenism; unless failure carries sanctions, neutrality remains symbolic.

Co-Mediation and Procedural Innovations

Shared responsibility dilutes bias. Co-mediation where two mediators jointly guide the process reduces reliance on one individual's judgment. Procedural innovations also help:

[56] Mediation & Conciliation Project Committee, Supreme Court of India, Mediation Training Manual of India 42–43 (2015).
[57] International Mediation Institute, *Code of Professional Conduct* (2016).
[58] The Mediation Act, 2023 (Act 21 of 2023), s. 12.
[59] Arbitration and Conciliation Act, 1996 (Act 26 of 1996), s. 12.

allowing parties to participate in mediator selection or subjecting appointments to institutional oversight.[60] Though still rare in India, such practices could deepen trust.

Institutional Review and Oversight

Institutions act as gatekeepers. Global models show the way: the Singapore Mediation Centre and JAMS (U.S.) operate complaint mechanisms addressing bias.[61] India's Mediation Act nods in this direction: Section 41 empowers service providers to frame codes, accredit mediators, and exercise discipline.[62] The gap lies in implementation. Without clear grievance pathways and transparent enforcement, oversight risks hollowing out.[63]

Embedding Bias-Awareness in Practice

Safeguards must live in culture, not just codes. Best practices abroad include reflective exercises, diversity training, and peer review. These keep mediators alert to unconscious prejudice.[64] For India, where mediation is still consolidating, embedding bias-awareness early can prevent systemic distortions.

Statutes cannot carry neutrality alone. It must be reinforced at three levels: statutory, institutional, and cultural. The Mediation Act lays a foundation with disclosure and oversight, but unless accreditation standards tighten, co-mediation expands, and bias-awareness is cultivated, neutrality risks remaining aspirational. Comparative experience reinforces the point: safeguarding impartiality is a continuing process, not a one-off legislative act.

VI. Recommendations

Strengthening Accreditation and Training

India's mediation system is still in its infancy, and accreditation remains fragmented. A national framework should be established mandating modules on bias-awareness, continuing legal education (CLE), and periodic peer evaluations.[65] International standards, particularly those of the IMI, can serve as templates but must be localized. Accreditation should not be

[60] Laurence Boulle, *Mediation: Principles, Process, Practice* 143 (3d ed., LexisNexis, 2014).
[61] JAMS, *Mediator Ethics Guidelines* (2016).
[62] The Mediation Act, 2023 (Act 21 of 2023), s. 41.
[63] Mediation & Conciliation Project Committee, Supreme Court of India, *Mediation in India: A Toolkit* 38-40 (2019).
[64] *Supra note* 18, at 303-04.
[65] Mediation & Conciliation Project Committee, Supreme Court of India, *Mediation Training Manual of India* 56-58 (2015).

optional it should be the gateway to practice. Only then can the risks of untrained mediators perpetuating unconscious bias be reduced.[66]

Enforceable Ethical Codes with Sanctions

Section 41 of the Mediation Act empowers institutions to prescribe codes of conduct, but without penalties the provision is toothless. Ethical norms must be backed by sanctions ranging from warnings to debarment.[67] Aligning mediator accountability with the standards applied to judges and arbitrators would elevate neutrality from aspiration to enforceable duty.[68]

Expanding Grounds for Challenge of Mediated Settlements

Currently, Sections 27–28 of the Act allow challenges on extremely narrow grounds. This must expand to cover mediator bias, procedural unfairness, and undue influence mirroring Section 34 of the Arbitration and Conciliation Act, 1996, which permits review for violations of natural justice.[69] Without expansion, settlements distorted by bias risk acquiring binding force under the cloak of finality. For comparison, note the calibrated § 34 standards applied by the Supreme Court:

- Saw Pipes (fundamental policy),[70]
- Associate Builders (justice/morality),[71]
- Ssangyong (patent illegality).[72]

Co-mediation should be encouraged, particularly in complex or high-stakes disputes. Two mediators balance perspectives and safeguard neutrality. Parties should also have meaningful participation in mediator selection to avoid perceptions of favoritism.[73]

Promoting Diversity in the Mediator Pool

Homogeneity breeds blind spots. India should actively promote gender, caste, regional, and professional diversity within its mediator pool. Research shows diverse panels better detect

[66] International Mediation Institute, *Competency Standards for Accredited Mediators* (2016).
[67] The Mediation Act, 2023 (Act 21 of 2023), s. 41.
[68] P.C. Rao, "Neutrality and Accountability of Mediators in India" 12 *NUJS Law Review* 145, 163 (2019).
[69] The Mediation Act, 2023 (Act 21 of 2023), ss. 27–28.
[70] *Oil & Natural Gas Corp. Ltd.* v. *Saw Pipes Ltd.,* (2003) 5 SCC 705
[71] *Associate Builders* v. *Delhi Development Authority*, (2015) 3 SCC 49.
[72] *Ssangyong Eng'g & Constr. Co. Ltd*. v. *National Highways Authority of India*, (2019) 15 SCC 131.
[73] Laurence Boulle, *Mediation : Skills and Techniques* 201-03 (3d ed., LexisNexis, 2014).

and offset systemic bias.[74] Scholarships for underrepresented groups in mediator training would foster inclusivity and legitimacy.[75]

Embedding Reflective Practice and Peer Review

Professional culture is as important as statutory safeguards. Reflective practices peer reviews, confidential party feedback, and institutional audits keep mediators alert to unconscious prejudice.[76] Over time, these habits can embed neutrality into the profession, ensuring sustained credibility.[77]

Reform must move beyond codification to practice. Accreditation, enforceable ethics, broader challenge grounds, co-mediation, diversity, and reflective culture together form a holistic framework for impartiality. The Mediation Act provides a foundation, but unless strengthened, neutrality risks remaining aspirational. By integrating global best practices with India's socio-legal realities, mediation can fulfill its dual promise not only of efficiency but also of justice.[78]

VIII. Conclusion

Neutrality is the lifeblood of mediation. Strip it away, and the process reduces to little more than disguised bargaining replicating the adversarial defects it was meant to transcend. This paper has shown that bias, whether cognitive, cultural, financial, or institutional, threatens party autonomy, corrodes fairness, and undermines the durability of mediated outcomes. In India, the problem is sharpened by the Mediation Act, 2023: while it confers MSAs with the binding force of civil decrees, it offers only narrow avenues of challenge. Unlike arbitration or litigation, mediation leaves parties with virtually no statutory recourse when processes are compromised by bias. Finality here is structural, which makes impartiality not a virtue but a necessity.

A comparative lens reinforces this point. International instruments the UNCITRAL Model Law (2018), the Singapore Convention (2019), and the EU Mediation Directive (2008/52/EC)reflect a growing consensus that neutrality must be codified, supervised, and

[74] Nadja Alexander, *Mediation and Diversity: Global Perspectives* 87-89 (Kluwer, 2015).
[75] Id. at 93.
[76] Deborah M. Kolb, *When Talk Works: Profiles of Mediators* 128-30 (Jossey-Bass, 1994).
[77] Carrie Menkel-Meadow, "The Future of Mediation: A Holistic Perspective" *25 Journal of Dispute Resolution* 1, 22 (2020).
[78] Richard C. Reuben, "Institutional Bias and Mediation Legitimacy" 36 *Harvard Negotiation Law Review* 189, 210 (2021).

enforced.[79] India's Act marks a significant beginning by embedding disclosure requirements and institutional oversight, yet it stops short of addressing bias-tainted settlements. Unless these gaps are closed, distortions will persist at the micro level and, at the macro level, public confidence in mediation will slowly erode.

The recommendations advanced in this paper strengthened accreditation, enforceable ethical codes, broader grounds for challenge, co-mediation, diversity, and reflective practice are not mere procedural refinements. They form the essential scaffolding for mediation to live up to its dual promise of efficiency and justice. In a system where litigation too often delays access to remedies, mediation can indeed transform dispute resolution. But that potential will only be realized if neutrality remains its uncompromising core. See also Carrie Menkel-Meadow's scholarship on settlement culture and Richard Reuben's analysis of institutional bias, both of which reinforce the centrality of neutrality in sustaining ADR credibility.[80]

[79] 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, 2008 O.J. (L 136) 3; UNCITRAL, *Model Law on International Commercial*, *Mediation and International Settlement Agreements Resulting from Mediation, U.N. Doc. A/73/17 (2018); United Nations, Singapore Convention on Mediation*, Aug. 7, 2019, 58 I.L.M. 1.

[80] Carrie Menkel-Meadow, "The Trouble with the Adversary System in a Postmodern, Multicultural World" 38 *William & Mary Law Review* 5, 21-23 (1996); Richard C. Reuben, "Institutional Bias and Mediation Legitimacy" 36 *Harvard Negotiation Law Review* 189, 210 (2021).