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NAVIGATING INDIA'S MEDIATION ACT 2023: A COMPREHENSIVE REVIEW, GLOBAL IMPLICATIONS, AND FUTURE ADR LANDSCAPE

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Introduction

Mediation in India has a rich historical backdrop, with community conflict resolution through Panchayats. However, British rule led to a decline in mediation, causing an upsurge in disputes within the legal system. The Code of Civil Procedure, 1908, opened the door to alternative dispute resolution, including mediation. Despite the existence of mediation centers, private mediation lacked structure and legal recognition, prompting the proposal of the Mediation Bill 2021. The Act aims to bolster the effectiveness of mediation and establish a comprehensive legal framework.

Background and Evolution

The journey began on August 7, 2019, when India became an early signatory to the United Nations Convention on Enforcement of International Settlement Agreements. The subsequent drafting of the Mediation Act involved multiple stages, including the formation of committees, public consultations, and parliamentary scrutiny.

Legislative Process and Committee Recommendations

The drafting committee, constituted by the Supreme Court, initiated the process, leading to the presentation of draft bills in August and October 2021. The bills underwent public scrutiny before being introduced in the Rajya Sabha on December 20, 2021. A crucial step in this process was the examination and recommendations provided by the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law, and Justice.

1. Expert Committee and Finalization

Following the parliamentary committee's report in July 2022, an expert committee was appointed to refine the bill. The culmination of these efforts resulted in the introduction of the Mediation

Act 2023 in the Rajya Sabha on August 1, 2023.

2. Key Provisions of the Mediation Act:

The Mediation Act prioritizes the promotion and facilitation of mediation, emphasizing institutionalⁱ, onlineⁱⁱ, and community mediationⁱⁱⁱ. It tackles the enforcement of mediated settlement agreements and proposes the establishment of a regulatory body for mediator registration.

3. Expanding the Scope of Mediation

To align with international practices, section 3(h) of the Mediation Act broadens the definition of mediation to encompass pre-litigation mediation, online mediation, and community mediation, treating mediation and conciliation interchangeably.^{iv}

4. Applicability of the Mediation Act

As per section 2, the Mediation Act applies to mediations conducted in India, covering parties residing, doing business, or having an international commercial dispute in India.^v However, it excludes mediations conducted outside India, signaling a potential gap in enforcing settlement agreements arising from such mediations.

5. Matters Fit for Mediation

The Mediation Act delineates disputes not fit for mediation, including those involving minors, criminal offenses, tax matters, and specific regulatory proceedings. It also extends the scope to cover compoundable offenses, including matrimonial disputes. List of matters not fit for mediation has been enumerated in first schedule.^{vi}

6. Mediation Agreement

The agreement can take various forms, including a clause in an agreement or a separate document. Parties can opt for mediation even after a dispute arises, promoting flexibility in the resolution process.^{vii}

7. Pre-Litigation Mediation and Court's Power to Refer

Recognizing concerns, the Mediation act allows voluntary pre-litigation mediation. Courts or tribunals can refer parties to mediation at any stage^{viii}, irrespective of a pre-existing mediation agreement.^{ix}

8. Interim Orders for Protection

The Mediation Act empowers the court or tribunal to issue interim orders during mediations, ensuring the protection of parties' interests^x. However, it lacks specificity compared to Section 9 of the Arbitration & Conciliation Act, 1996.

9. Appointment of Mediators

Mediators can be of any nationality, chosen through mutual consent. Foreign mediators must meet prescribed qualifications and accreditation criteria.^{xi} The mediator must disclose conflicts of interest, with parties having the option to waive such conflicts in writing.^{xii}

10. Mediation Proceedings: An Overview

The Act allows mediation to take place within the court's jurisdiction or any mutually agreed place. Online mediation is also permissible with parties' written consent, providing flexibility beyond the confines of the Code of Civil Procedure or the Indian Evidence Act.^{xiii}

11. Time-Limit and Confidentiality

Setting a time limit of 120 days for mediation proceedings, extendable by mutual agreement up to 60 days, strikes a balance between party autonomy and procedural efficiency. Parties and participants must maintain confidentiality, with discussions barred from use as evidence in other proceedings.^{xiv}

12. Mediated Settlement Agreements: Form, Registration, Enforcement, and Challenge

The agreement must be in writing, signed by all parties, and authenticated by the mediator. Parties can register the agreement^{xv}, making it final and binding, enforceable as a decree or judgment. Grounds for challenging include fraud, corruption, impersonation, or if the subject matter was not subject to mediation^{xvi}.

13. Institutional Mediation under the Mediation Act^{xvii}

Mediation Service Providers^{xviii}, including organizations and court annexed mediation centers, can conduct mediation. The Mediation Council of India will regulate and accredit mediators, maintaining an electronic depository of mediated settlement agreements.^{xix}

14. Amendments to Existing Statutes

Sections 58-65 of the Mediation Act propose amendments to various statutes, ensuring

alignment with the new framework and reflecting a commitment to a comprehensive alternative dispute resolution (ADR) ecosystem.

15. International Mediation: Omissions and Concerns

Despite India's commitment to the Singapore Convention, the Mediation Act does not include provisions for the enforcement of international settlement agreements. This omission raises concerns about India's position in the global dispute resolution landscape and its impact on investor confidence and foreign relations.^{xx} The Parliamentary Standing Committee expressed its opinion that the exclusion of provisions for international mediation compromised the Act's purpose. While acknowledging the government's concerns about potential conflicts with domestic laws, the Committee recommended revisiting the definition of "International Mediation" to incorporate Singapore Convention provisions without ambiguity.

Despite the Committee's recommendation, the Act omitted the enforcement of international MSAs. Section 2(iii) specifies that the Act applies even to international mediations conducted in India, but the absence of specific provisions for enforcement raises concerns. This gap could dissuade parties from engaging in international mediations involving Indian entities, as the resulting MSAs would lack enforceability in India.

The consequences extend beyond individual disputes. The failure to include provisions for enforcing international MSAs undermines India's commitment to the Singapore Convention, signaling a potential withdrawal from the treaty indirectly. This could impact India's standing in the international dispute resolution landscape and hinder the development of harmonized legal frameworks supporting settlement agreements resulting from mediation.^{xxi}

16. Domestic Mediation: Provisions and Oversight

While the Act aligns with international mediation practices for domestic disputes, certain oversights require attention. The voluntary approach to pre-litigation mediation lacks specificity regarding disputes covered under a mediation agreement.^{xxii} The absence of a provision analogous to Section 8 of the Arbitration & Conciliation Act, 1996, leaves a gap in referring parties to mediation based on existing agreements.

17. Refining Periods of Limitation

While Section 29 of the Act, excluding the period of limitation during mediation, is

commendable, oversight in situations where a mediated settlement is set aside by the court under Section 28 needs attention.

18. The Road Ahead: Toward Comprehensive ADR Legislation

The Mediation Act represents progress in institutionalizing mediation, but there is room for improvement. A unified ADR framework covering arbitration and mediation for both domestic and international disputes is crucial. This could streamline accreditation processes, avoiding conflicting policies and court orders.

Conclusion: Striking a Balance

While the Mediation Act 2023 marks progress in institutionalizing mediation in India, balancing domestic and international considerations is essential. Addressing oversights, refining pre-litigation provisions, and envisioning a unified ADR framework will enhance the Act's effectiveness. This comprehensive approach holds the potential to position India as a leading hub for both domestic and international dispute resolution, fortifying its global reputation in alternative dispute resolution.

ⁱ 3(f) "institutional mediation" means mediation conducted under the aegis of a mediation service provider;

ⁱⁱ Section 30, Mediation Act, 2023

ⁱⁱⁱ Section 43, Mediation Act, 2023

^{iv} Section 3, Mediation Act, 2023

^v Section 2, Mediation Act, 2023

^{vi} Section 6, Mediation Act, 2023

^{vii} Section 4, Mediation Act, 2023

^{viii} Section 7, Mediation Act, 2023

^{ix} Section 5, Mediation Act, 2023

^x Section 7, Mediation Act, 2023

^{xi} Section 8, Mediation Act, 2023

^{xii} Section 10, Mediation Act, 2023

^{xiii} Section 13, Mediation Act, 2023

^{xiv} Section 18, Mediation Act, 2023

^{xv} Section 20, Mediation Act, 2023

^{xvi} Section 19, Mediation Act, 2023

^{xvii} 3(f) "institutional mediation" means mediation conducted under the aegis of a mediation service provider;

^{xviii} Section 40 & 41, Mediation Act, 2023

^{xix} Section 38, Mediation Act, 2023

^{xx} Section 3(g), Mediation Act, 2023

^{xxi} <https://www.livelaw.in/articles/dawn-of-mediation-relief-for-justice-234501#:~:text=In%20the%20Indian%20scenario%2C%20mediation,and%20impartial%20manner%20in%20thei>

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^{xxii} Section 5, Mediation Act, 2023