

THE MEDIATION BILL, 2021

Relevant for: Developmental Issues | Topic: Regulatory & Quasi-Judicial bodies



- The Mediation Bill, 2021 was introduced in Rajya Sabha on December 20, 2021.

Mediation is a form of alternative dispute resolution (ADR), where parties attempt to settle their dispute (outside courts) with the assistance of an independent third person (mediator).

The Bill seeks to promote mediation (including online mediation), and provide for enforcement of settlement agreements resulting from mediation. Key features of the Bill include:

- **Applicability:** The Bill will apply to mediation proceedings conducted in India where: (i) all parties reside in, are incorporated in, or have their place of business in India, (ii) the mediation agreement states that mediation will be as per this Bill, or (iii) there is an international mediation (i.e., mediation related to a commercial dispute where at least one party is a foreign government, a foreign national/resident, or an entity with its place of business outside India). In these cases, if the central or state government is a party, the Bill will only apply to: (a) commercial disputes, and (b) other disputes as notified by such government.
- **Pre-litigation mediation:** In case of civil or commercial disputes, a person must try to settle the dispute by mediation before approaching any court or certain tribunals as notified. Even if the parties fail to reach a settlement through pre-litigation mediation, the court or tribunal may at any stage of the proceedings refer the parties to mediation if they request for the same.
- **Disputes not fit for mediation:** Disputes not fit for mediation include those: (i) relating to claims against minors or persons of unsound mind, (ii) involving prosecution for criminal offences, (iii) affecting the rights of third parties, and (iv) relating to levy or collection of taxes. The central government may amend this list of disputes.
- **Mediation process:** Mediation proceedings will be confidential. A party may withdraw from mediation after the first two mediation sessions. The mediation process must be completed within 180 days (even if the parties fail to arrive at an agreement), which may be extended by another 180 days by the parties. In case of court annexed mediation (i.e., mediation conducted at a mediation centre established by any court or tribunal), the process must be conducted in accordance with directions or rules framed by the Supreme Court or High Courts.
- **Mediators:** Mediators only assist the parties to settle their dispute, and cannot impose a settlement on them. Mediators may be appointed by: (i) the parties by agreement, or (ii) a mediation service provider (an institution administering mediation). Mediators must disclose any conflict of interest that may raise doubts on

their independence. Parties may then choose to replace the mediator.

- **Mediation Council of India:** The central government will establish the Mediation Council of India. The Council will consist of a chairperson, two full-time members (with experience in mediation or ADR), three ex-officio members (including Secretaries in the Ministries of Law and Justice and Finance), and one part-time member (from an industry body). Functions of the Council include: (i) registration of mediators, and (ii) recognising mediation service providers and mediation institutes (providing training, education and certification of mediators).
- **Mediated settlement agreement:** Agreements resulting from mediation must be in writing, signed by the parties and authenticated by the mediator. Such agreements will be final, binding, and enforceable in the same manner as court judgments (except agreements arrived at after community mediation). Mediated settlement agreements (besides those arrived at in court referred mediation or by Lok Adalat or Permanent Lok Adalat) may be challenged only on grounds of: (i) fraud, (ii) corruption, (iii) impersonation, or (iv) relating to disputes not fit for mediation.
- **Community mediation:** Community mediation may be attempted to resolve disputes likely to affect the peace and harmony amongst residents of a locality. It will be conducted by a panel of three mediators (may include persons of standing in the community, and representatives of RWAs).
- **Interface with other laws:** The Bill will override other laws on mediation (except certain laws such as the Legal Services Authorities Act, 1987, and the Industrial Relations Code, 2020). The Bill also makes consequential amendments in certain laws (such as the Indian Contract Act, 1872, and the Arbitration and Conciliation Act, 1996).

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