

The Mediation Bill, 2021

October 8, 2022

In news– Parliamentary Standing Committee has submitted a report on the Mediation bill recently.

Recommendations-

The Committee has recommended substantial changes to the Mediation Bill, aimed at institutionalising mediation and establishing the Mediation Council of India.

Key features of the bill-

- The Bill **aims to promote, encourage, and facilitate mediation**, especially **institutional mediation**, to resolve disputes, commercial and otherwise.
- It **proposes mandatory mediation before litigation**. At the same time, **it safeguards the rights of litigants** to approach competent adjudicatory forums/courts for urgent relief.
- The mediation process will be confidential and immunity is provided against its disclosure in certain cases.
- **The outcome of the mediation process in the form of a Mediation Settlement Agreement (MSA) will be legally enforceable** and can be registered with the State/district/taluk legal authorities within 90 days to ensure authenticated records of the settlement.
- The Bill **establishes the Mediation Council of India** and also provides for community mediation.
- Its functions include registering mediators, and recognising mediation service providers and mediation institutes (which train and certify mediators).
- The Bill **requires persons to try to settle civil or commercial disputes through mediation** before approaching any court or tribunal.
- **A party may withdraw from mediation after two mediation**

sessions.

- The **mediation process must be completed within 180 days**, which may be extended by another 180 days by the parties.
- **The Bill lists disputes that are not fit for mediation** (such as those involving criminal prosecution, or affecting the rights of third parties). The central government may amend this list.

What are the concerns with the Bill?

- According to the Bill, pre-litigation mediation is mandatory for both parties before filing any suit or proceeding in a court, whether or not there is a mediation agreement between them.
- **Parties who fail to attend pre-litigation mediation without a reasonable reason may incur a cost.**
- However, as per **Article 21 of the Constitution, access to justice is a constitutional right which cannot be fettered or restricted. Mediation should just be voluntary and making it otherwise would amount to denial of justice.**
- Additionally, according to **Clause 26 of the Bill, court-annexed mediation**, including pre-litigation mediation, will be conducted in accordance with the directions or rules framed by the Supreme Court or High Courts.
- However, the **Committee objected to this. It stated that Clause 26 went against the spirit of the Constitution.**
- In countries that follow the Common Law system, it is a healthy tradition that in the absence of statutes, apex court judgments and decisions carry the same weight.
- The moment a law is passed however, it becomes the guiding force rather than the instructions or judgments given by the courts. **Therefore, Clause 26 is unconstitutional.**
- Furthermore, **the Bill considers international mediation**

to be domestic when it is conducted in India with the settlement being recognised as a judgment or decree of a court.

- The Singapore Convention does not apply to settlements that already have the status of judgments or decrees.
- As a result, conducting cross-border mediation in India will exclude the tremendous benefits of worldwide enforceability.