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NOTE ON THE MEDIATION BILL

A. Introduction

The Ministry of Law and Justice (“**Ministry**”) introduced the Mediation Bill, 2021 (“**Bill**”)¹ on December 20, 2021, in the Rajya Sabha. It seeks to establish a uniform code on mediation. When passed, India will be one of the few countries to have an independent legislation for commercial mediation.

India is signatory to the United Nations Convention on International Settlement Agreements Resulting from Mediation (“**Convention**”), which was adopted by the United Nations Commission on International Trade Law. It facilitates enforcement of international settlement agreements resulting from mediation.

The Bill proposes to implement a framework established by the Convention via domestic legislation, and its key features are discussed below. The Bill is now referred to the Parliament Standing Committee on Personnel, Public Grievances, Law and Justice (“**Standing Committee**”) for examination.²

B. Key Features

The Bill proposes to:

1. Mandate parties to pursue pre-litigation mediation in civil or commercial disputes, irrespective of whether or not a mediation agreement is in place.³
2. Provide a schedule detailing the disputes or matters that are unfit for mediation.⁴ Some of these disputes include:
 - a. Disputes which may not be submitted for mediation due to applicable law;
 - b. Disputes involving allegations of serious and specific fraud, fabrication of documents, forgery, impersonation or coercion;
 - c. Disputes involving prosecution for criminal offences;
 - d. Disputes having effect on a third party’s rights.
3. Facilitate parties to file suit or appropriate relief with a court of competent jurisdiction for urgent and immediate interim relief.⁵
4. Give effect to the appointment of mediators of any nationality.⁶
5. Enable institutional mediation, where a party may apply to a ‘mediation service provider’ (“**Service Provider**”), as a substitute to seeking redress through courts.⁷ Service Providers must facilitate registration of Settlement Agreements (defined below); accredit and maintain a panel of mediators, *etc.*⁸
6. Provide for conducting mediation at any place, which may be outside the jurisdiction of court/tribunal,

¹ [Text](#) of the Bill.

² As [reported](#) by the Rajya Sabha.

³ Clause 6 of the Bill.

⁴ Clause 7 of the Bill.

⁵ Clause 8 of the Bill.

⁶ Clause 10 of the Bill.

⁷ Clause 12(4) of the Bill.

⁸ Clause 42 of the Bill.

where both parties agree to mediation.⁹

7. Identify mediation as legitimate means of dispute settlement.¹⁰
8. Incorporate timelines for completion of mediation within 180 days from the first mediation hearing.
9. Introduce mediation settlement agreements (“**Settlement Agreement**”) as final and binding instruments on the parties.¹¹ It is enforceable under Code of Civil Procedure, 1908 (**CPC**).¹² The Bill provides recourse to challenge Settlement Agreements on the grounds of fraud, corruption, impersonation, *etc.* by the parties or the mediator.¹³
10. Recognise online mediation, that may be conducted at any stage of the dispute, provided it adheres to the same standards and procedures of in-person mediation.
11. Seek to establish Mediation Council of India, aiming to promote domestic and international mediations by enforcing the standards set out in the Bill. The Bill also details the composition, duties and rules of appointment of council members.¹⁴
12. Incorporate facility for ‘community mediation’ to settle issues arising amongst families or residents of a particular locality or area, through mutual consent of the parties to the dispute.
13. Override other laws on mediation, excepting *e.g.*, Legal Services Authorities Act, 1987, and the Industrial Relations Code, 2020. The Bill also aims to effect amendments to the Indian Contract Act, 1872, and the Arbitration and Conciliation Act, 1996, *etc.*¹⁵
14. The Bill when enacted will not apply to any mediation or conciliation that commenced before its enactment.¹⁶

C. Comment

This is a step in the right direction. The government proposes a distinct and long-awaited legislation for speedy resolution of civil and commercial disputes. However, some lacunae need to be addressed as below:

- Although the Bill prescribes key processes relating to mediation, it falls short of outlining the parameters of domestic mediation.
- Despite making pre-litigation mediation mandatory, the steps and requisite compliances by the parties are not yet prescribed.
- Prerequisites that permit interim relief are not adequately specified. This can invite disputes, which may negate the Bill’s purpose to provide speedy resolution.

That said, the Bill seeks to cement mediation as a legitimate alternative dispute resolution (**ADR**) mechanism. If the inadequacies are addressed, the Bill, having institutionalised and streamlined the mediation process, has the capacity to bring this to the forefront of ADR. This could reduce the burden on the courts. Since the Bill is now referred to the Standing Committee, further changes can be expected.

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⁹ Clause 15 of the Bill.

¹⁰ Clause 2(1)(iii) of the Bill.

¹¹ Clause 28(1) of the Bill.

¹² Clause 28(2) of the Bill.

¹³ Clause 29(1) of the Bill.

¹⁴ Chapter VII (Clauses 33 – 40) of the Bill.

¹⁵ Clauses 58-65 of the Bill.

¹⁶ Clause 57 of the Bill.