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Navigating Dispute Resolution: A Comparative Analysis of India's Mediation Act 2023 in the Global Context

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Mediation, as an alternative dispute resolution mechanism, is pivotal in contemporary legal systems worldwide. The Mediation Bill 2023 in India represents a significant legislative milestone in formalizing and regulating mediation practices within the country. This research paper endeavours to provide a comprehensive comparative analysis of the Mediation Bill 2023 in India by juxtaposing it against international models of mediation legislation. The objective is to discern the strengths and weaknesses of India's proposed mediation framework by drawing upon the experiences and best practices of countries such as the United States, the United Kingdom, Germany, Singapore, and others. This research contributes to the ongoing discourse on mediation legislation by placing India's Mediation Act of 2023 within a broader international context. By examining areas of convergence and divergence between Indian legislation and global models, the research sheds light on potential improvements and innovations. Drawing upon various jurisdictions' experiences and best practices, the paper aims to provide valuable insights for refining and strengthening India's mediation regulatory landscape. This comparative analysis serves as a resource for policymakers, legal practitioners, and scholars interested in advancing the field of alternative dispute resolution and fostering a harmonized and effective global mediation framework.

Keywords: *mediation bill 2023, adr, Singapore convention, online mediation.*

INTRODUCTION

Mediation, as a method of alternative dispute resolution (ADR), has evolved into a widely accepted and preferred means for parties to navigate and resolve conflicts without resorting to the formalities of a courtroom. In the intricate legal landscape of India, the introduction of the Mediation Bill 2023 represents a transformative leap toward formalizing and regulating mediation practices within the country. The roots of the Mediation Bill 2023 can be traced back to its predecessor, the Mediation Bill 2021, which was initially introduced in the Rajya Sabha on December 20, 2021. This legislative proposal sought to address the growing need for a structured and comprehensive framework for mediation, recognizing the limitations of the traditional litigation process. Recognizing the importance of refining and strengthening the bill, it underwent a rigorous evaluation by the Standing Committee on Personnel, Law & Justice, Public Grievances, which presented its recommendations on December 21.

The Mediation Bill 2023 witnessed further refinement and enhancement, with some of the recommendations proposed by the Standing Committee finding acceptance by the Union Cabinet. The subsequent legislative journey culminated in the Rajya Sabha and Lok Sabha enacting the bill on August 02 and August 07, 2023, respectively. The formalization of the bill into law took place with the notification of the Mediation Act 2023¹ by the Ministry of Law and Justice on September 15, 2023.

This legislative milestone embodies a multifaceted approach to dispute resolution, encapsulated in the Mediation Act of 2023. Its primary objectives extend beyond merely recognizing mediation as an ADR method. The Act encourages community mediation, fostering localized resolutions for conflicts that threaten peace and harmony within communities. Establishing a regulatory body for the registration of mediators ensures a level of professionalism and competency within the mediation field. Furthermore, the Act promotes institutional mediation, recognizing the role of established institutions in providing robust and structured dispute resolution mechanisms. It also underscores the importance of upholding mediated settlement

¹ Mediation Act 2023

agreements, ensuring the sanctity and legitimacy of resolutions achieved through mediation. Embracing the digital age, the Act recognizes online mediation as a viable and affordable option, acknowledging the evolving technological landscape and its potential to enhance accessibility to justice.

The need for the Mediation Act 2023 arises from the challenges of an overburdened judicial system characterized by lengthy court proceedings and a backlog of cases. This legislation is a response to the imperative to explore alternative avenues for conflict resolution, acknowledging the limitations of the traditional adversarial legal process.

As India positions itself on the global stage, the Mediation Act 2023 promises to expedite dispute resolution and establish the country as a leader in effective and innovative dispute resolution mechanisms. Through the lenses of this legislative development, this research endeavours to delve into the nuances of the Mediation Act, comparing and contrasting it with international models and shedding light on the potential impact of this transformative legal framework on the future of dispute resolution in India.

THE MEDIATION BILL: KEY PROVISIONS

The Mediation Act of 2023 in India encompasses several vital provisions that shape the mediation framework within the country.

Limitations on Mediation: The Act specifies which issues or disputes are appropriate for mediation. Crucially, it states that issues included in the First Schedule of the Act are not eligible for mediation. However, the Act provides a few exclusions, allowing judges to submit cases involving compoundable offences – including some marriage offences – to mediation.²

Mediator Selection: Parties may choose mediators of any nationality under the Act. Foreign mediators could be subject to additional training, experience, and accreditation requirements. The parties may agree upon selecting a mediator and the associated process. The Act describes

² Mediation Act, 2023, s 6.

how a mediation service provider will choose a mediator within a given time limit when the parties cannot agree.³

Challenging Mediated Settlement Agreements: It allows parties to challenge mediated settlement agreements on specific grounds, such as fraud, corruption, impersonation, or if the issue was not appropriate for mediation under Section 6, to preserve the fairness and legitimacy of such agreements. There is a deadline for contesting these agreements, and applications must be submitted within ninety days of obtaining a copy of the mediated settlement agreement. If necessary, an extra ninety days can be added to the deadline.⁴

Online Mediation: The provision supports online mediation in recognizing technology's role in contemporary conflict resolution. Using computer networks, encrypted chat rooms, electronic forms, or video and audio conferencing, the parties may consent to online mediation at any point. The Act strongly emphasizes the necessity of protecting the integrity and confidentiality of online mediation sessions.⁵⁶

Community Mediation: It establishes community mediation to recognize the need for localized dispute resolution. It enables families or locals to resolve conflicts that threaten harmony, peace, and calm. Parties may ask the appropriate authorities to send their conflict to community mediation. A panel of respected community members and mediation specialists facilitates the settlement process.⁷

LEGISLATIVE ANALYSIS

The proposed Mediation Act outlines a comprehensive framework to promote institutional mediation and advance alternative dispute resolution (ADR) practices. The overarching objective is to establish a robust mediation law that not only facilitates the resolution of disputes but also integrates online mediation as an accessible and productive substitute for traditional conflict resolution methods. Under the Act's provisions, the scope of applicability covers various

³ Mediation Act 2023, s 8

⁴ Mediation Act 2023, s 28

⁵ Mediation Act 2023

⁶ Mediation Act 2023, s 30

⁷ Mediation Act 2023, s 43

circumstances. Mediation conducted in India, the regular residence or incorporation of one or both parties in India, and international mediation fall within the purview of the Act. Additionally, involvement in the dispute by governmental bodies, agencies, public bodies, corporations, and local bodies brings the disagreement under the ambit of the Act. This broad applicability ensures a wide-reaching impact, encompassing domestic and international mediation scenarios.

Furthermore, the provisions underscore the importance of documenting mediation agreements or clauses in writing. This requirement necessitates the mutual consent of both parties, formalizing the mediation process through signed agreements and exchanged communications. The Act encourages parties to take proactive steps towards pre-litigation mediation, emphasizing resolving disputes through mediation before resorting to legal actions. This provision aligns with the broader goal of reducing the burden on courts and promoting more efficient and cost-effective dispute resolution.

Regarding mediator selection, the Act introduces a noteworthy provision allowing the appointment of a mediator who is not a citizen of any country. This flexibility reflects a commitment to diversity and inclusivity in the mediation process. It grants parties autonomy in the selection and appointment process of the mediator, promoting a collaborative approach to dispute resolution. Significantly, it restricts the mediator from assuming roles as an arbitrator or expert witness on behalf of any party, ensuring impartiality and preventing conflicts of interest.

The Mediation Act establishes a structured timeline for mediation, mandating that the mediation process must be completed within a 120-day window after the initial appearance before the mediator. This provision is aimed at ensuring the expeditious resolution of disputes through mediation. Recognizing the need for flexibility, a 60-day extension is allowed but is capped to prevent indefinite delays, striking a balance between efficiency and adaptability to the complexity of some instances.

Termination of mediation is addressed with clarity in the Act. The mediated settlement agreement is signed and authenticated when the mediator makes a written declaration, after consultation with the parties, stating that further efforts at mediation are no longer justified. Alternatively, the agreement may end if a party or parties communicate in writing to the mediator and the other parties, expressing their desire to opt out of mediation upon the expiration of the 120-day time limit. This provision ensures that the mediation process concludes decisively, providing closure and clarity to all involved parties. In essence, the proposed Mediation Act 2023 encapsulates a holistic approach to institutional mediation, emphasizing inclusivity, timely resolution, and the integration of online mediation. It sets forth a framework that aligns with global best practices in ADR, fostering a conducive environment for the effective and efficient resolution of disputes in India.

WHAT IS THE SIGNIFICANCE OF THE MEDIATION ACT 2023?

The Mediation Act of 2023 holds significant implications for the Indian legal landscape and the broader context of dispute resolution. One of its foremost contributions is the potential reduction of India's overwhelming backlog of court cases. The Act mandates parties to engage in pre-litigation mediation before approaching the courts, thereby encouraging the resolution of disputes outside the formal judicial system. With a staggering 70,000 cases pending in the Supreme Court and approximately 60 lakh cases awaiting resolution in the High Courts, the Indian judiciary is burdened with an excessive caseload. The Mediation Act's emphasis on pre-litigation mediation alleviates this burden by diverting cases from the courts, promoting efficiency, and expediting the dispute resolution process.

Furthermore, the Mediation Act positions India as a potential global hub for mediation services. By establishing a structured legal framework for mediation and encouraging its adoption, the Act aims to make India a dispute-friendly jurisdiction. This strategic positioning has the potential to attract foreign investments, much like Singapore's robust mediation ecosystem, which has successfully drawn substantial international investments. The Act's recognition of mediation as a valuable and efficient means of resolving disputes enhances India's reputation

on the global stage, fostering confidence in its legal system and promoting cross-border collaborations.

The Act's provision for community mediation is a crucial step toward promoting peace, law, and security within the country. By offering a mechanism for localized dispute resolution, the Act acknowledges the importance of resolving conflicts that could otherwise jeopardize local communities' peace, harmony and tranquillity. The community mediation provision seeks to build consensus and understanding among community members, contributing to social cohesion and preventing the escalation of disputes into more significant issues that may impact the country's overall security.

In addition to its practical implications, the Mediation Act underscores the cost-effectiveness of mediation as a dispute resolution method. Citing an article in the Harvard Business Review, the Act highlights the substantial cost savings associated with mediation compared to litigation. With an estimated cost of \$700,000 for mediation through outside counsel and a staggering \$2.5 million for court proceedings over three to five years, the Act encourages parties to consider the financial advantages of opting for mediation. This emphasis on cost-effectiveness aligns with the broader objective of streamlining the dispute resolution process and making it more accessible and affordable for individuals and businesses.

Lastly, the Mediation Act demonstrates India's commitment to international standards by fulfilling its obligations under the Singapore Convention on Mediation. The Act's ratification of the Convention signifies India's dedication to internationally promoting and upholding mediated settlement agreements. This alignment with global mediation standards enhances India's standing in the international legal community and facilitates smoother cross-border dispute resolution by recognising and enforcing mediated settlements. In summary, the Mediation Act of 2023 is a comprehensive legal framework that addresses domestic challenges and positions India as a progressive force in the global landscape of alternative dispute resolution.

INTERNATIONAL COMPARATIVE ANALYSIS

European Union - Germany: The European Union (EU) has purposefully promoted mediation and other ADR techniques during the past two decades to improve citizens' access to justice. It has intensified this effort, particularly over the past ten years. Mediation has been positioned at the forefront of EU policy on improving access to justice and adequate dispute settlement among the range of ADR methods that are now accessible. The shift toward Mediation reflects the growing tendency in the EU and the dominant position that Mediation now holds within the broad ADR spectrum. To help EU Member States create legislation governing Mediation in civil and business disputes, the European Union issued directives (the 'Mediation Directive') in 2008⁸. The Directive establishes a uniform set of guidelines to control mediation practice throughout the EU, enhancing the legality and respectability of Mediation as a method for resolving disputes.

Germany's Mediation Act⁹ went into effect on July 26, 2012. This was the first piece of official legislation in Germany governing mediation services. The European Mediation Directive is likewise incorporated into German law by the Act.

The key aspects covered by the MediationsG, include the *Definition of Mediation and Mediator*¹⁰ where the act defines mediation as 'a confidential and structured procedure in which the parties, with the help of one or more mediators, voluntarily and on their responsibility seek an amicable settlement of their conflict.' Furthermore, the *Procedure of Mediation, Rights, and Duties of the Mediator*¹¹ outlines the procedural aspects of mediation and the roles, rights, and duties of the mediator involved in the process. For *Neutrality and Impartiality of the Mediator*¹², Mediators must maintain neutrality and impartiality during mediation to ensure a fair and unbiased resolution. In the case of *Confidentiality Obligations for the Mediator*¹³

⁸ Mediation Directive 2008/52/EC

⁹ Mediation Act (Mediationsgesetz, MediationsG) 2012

¹⁰ Mediation Act (Mediationsgesetz, MediationsG) 2012, s 1

¹¹ Mediation Act (Mediationsgesetz, MediationsG) 2012, s 2

¹² Mediation Act (Mediationsgesetz, MediationsG) 2012, s 3

¹³ Mediation Act (Mediationsgesetz, MediationsG) 2012, s 4

provided in the act emphasizes the importance of confidentiality in mediation and outlines the mediator's obligations to maintain the privacy of the mediation proceedings. *Primary and Continued Education for Mediators, Requirements for Certified Mediators*¹⁴ establishes standards for the education and certification of mediators, ensuring a competent and qualified pool of professionals. *Research and Financial Support of Mediation*¹⁵ addresses research initiatives and financial support mechanisms to enhance and promote the field of mediation. *Evaluation of the Development of Mediation in Germany*¹⁶ focuses on the ongoing assessment of the development and effectiveness of mediation in Germany.

Furthermore, the European Code of Conduct for Mediators serves as a relevant voluntary set of principles in mediation. The overall legal framework in Germany aims to promote mediation as an effective and preferred method for resolving disputes, contributing to the broader landscape of alternative dispute resolution. The German Mediation Act does not meet the standards of the European Directive. However, the Directive solely addresses cross-border economic and civil conflicts. The German Mediation Act covers all types of mediation in Germany, regardless of the nature of the dispute or the parties' respective residences. In Germany, mediation is not yet employed to its full potential as a substitute for other negotiation techniques. The research states that there is no pressing urgency to pass legislation.

Japan: A framework for facilitating the execution of settlement agreements arising from mediation in cross-border business disputes is provided by the Singapore Convention. Since the Singapore Convention became available for signature in 2019, fifty-six States have ratified it. With a few exceptions for refusing enforcement, the Convention mandates that all Member States uphold mediated settlement agreements. Japan has not yet ratified the Singapore Convention. The Mediation Act prepares Japanese domestic law for Japan's potential future accession to the Convention by outlining a framework for executing international settlement accords.

¹⁴ Mediation Act (Mediationsgesetz, MediationsG) 2012, ss 5-6

¹⁵ Mediation Act (Mediationsgesetz, MediationsG) 2012, s 7

¹⁶ Mediation Act (Mediationsgesetz, MediationsG) 2012, s 8

KEY TAKEAWAYS

- The first major revision of Japan's Arbitration Act¹⁷ in twenty years, as well as an act implementing the Singapore Mediation Convention¹⁸, was approved by the Diet¹⁹ on April 21, 2023.
- In addition to facilitating the temporary preservation of parties' rights during the resolution of their arbitral disputes, the legislation seeks to provide easy access to Japanese courts when their help is needed to enforce arbitration decisions and settlement agreements emerging from mediation.
- These events carry on the government of Japan's recent endeavours to fortify Japan's framework for alternative conflict settlement and to enhance Japan's appeal as a centre for dispute resolution.

United States of America: On December 20, 2018, the UN General Assembly adopted the Convention on International Settlement Agreements Resulting from Mediation. The Convention is required to establish a consistent and efficient framework for the international enforcement of mediation-achieved settlement agreements. In addition, mediators can find various associations for professionals around the United States. The United Nations Department of Political Affairs, the American Institute of Peace, the Federal Mediation and Conciliation Service, the National Mediation Board, the Chartered Institute of Arbitrators, the Civil Mediation Council, and the Judicial Arbitration and Mediation Services are a few of them.

For instance, according to Southern District of Indiana Alternative Dispute Resolution Rule 1.3, each Mediator shall have immunity in the performance of his or her duties under this Rule, to the extent permitted by applicable law, in the same manner, and to the same extent as would a duly appointed Judge. Furthermore, mediators can exercise their rights under different state mediation laws and court orders. The privilege has different limitations depending on the

¹⁷ Japanese Arbitration Act 2003

¹⁸ United Nations Convention on International Settlement Agreements resulting from Mediation 2018

¹⁹ National Diet of Japan, Japanese Legislative body

jurisdiction. Thus, we can say that the US has a successful mediation system that satisfies the demands of its people.

SUGGESTIONS AND CONCLUSION

SUGGESTIONS

- Before litigation, It is necessary to make mediation voluntary and elective. The parties must be free to select the procedure they wish to use to settle their differences and pursue justice.
- Another suggestion is that a different selection committee should appoint council members to maintain impartiality and openness. The vague clause in the Bill only stipulates that these members must possess the necessary knowledge and ability. The members must meet specific requirements to be chosen.
- The Bill merely establishes a council for central mediation. Since India is a varied nation, state councils are a need. In addition to helping to accomplish the goal of the Bill, this will place all state councils under the central council's oversight, promoting accountability and openness.
- It is recommended that the disposal process be expedited by reducing the mediation time limit from 180 days to 90 days, along with a corresponding reduction in the extension period to 60 days.

CONCLUSION

Even though mediation is still entirely voluntary and optional, its increasing popularity as a form of alternative dispute resolution is demonstrated by the fact that the procedure and approach have been recognized and formalized into a statute. COVID-19 and the pressure on the world economy have made it necessary to provide justice more quickly and affordably, especially in non-adjudicatory cases.

The passage of the Mediation Bill through the legislative process, along with the Standing Committee's recommendations, shows a diligent attempt to compromise judicial intervention

and voluntary participation while safeguarding the privacy and privileged communications of parties seeking an amicable resolution to their differences. The establishment of MCI establishes a comprehensive mediation framework, the rules for mediated settlement agreements, and the role of mediation service providers. Similar guiding principles and clarity about the appointment of a mediator are absent from the Mediation Act, in contrast to the Fifth Schedule of the A&C Act, which provides for the appointment of an arbitrator. Hopefully, this gap will be filled by the regulations outlined in Clause 52 of the Mediation Act. The Mediation Act is a positive step toward changing the dispute resolution environment by providing parties with an efficient and successful means of resolving disputes amicably without adjudication.