Mediation Act, 2023

Why in news?

In the recent monsoon session of Parliament, both Houses passed The Mediation Bill, 2023, to promote mediation as a means of dispute resolution.

Alternate Dispute Resolution (ADR)

• It denotes a wide range of dispute resolution processes and techniques that parties can use to settle disputes with the help of a third party.
• **Coverage-** ADR offers to resolve *all type of matters* including civil, commercial, industrial and family etc., where people are not being able to start the negotiation and reach the settlement.
• It utilises a neutral third party to help the parties to communicate, discuss the differences and resolve the dispute.
• **Methods of ADR**- Arbitration, Mediation, Conciliation.

Arbitration	The resolution parties refer their dispute to one or more persons called *arbitrators* whose decision (award) is *bound on the parties*.
Mediation	A *third neutral party* aims to assist two or more disputants in reaching agreement.
Conciliation	It is the process of facilitating an amicable resolution between the parties, whereby the parties to the dispute use *conciliator* to settle their dispute.

• **Legal provisions**
• Arbitration and Conciliation Act 1996
• Mediation Act 2023

What are the salient features of the Act?

- **Aim-** To foster a link between the mediation and the arbitration of commercial disputes, thus reducing the burden on Indian Courts.
- **Pre-litigation mediation**- Parties must attempt to settle civil or commercial disputes by mediation before approaching any court or certain tribunals.
- Even if they fail to reach a settlement through pre-litigation mediation, the court or tribunal may at any stage refer the parties to mediation if they request for the same.
- **Prohibition-** It contains a list of disputes which are not fit for mediation. These include disputes
    - Related to claims against minors or persons of unsound mind,
    - Involving criminal prosecution, and
    - Affecting the rights of third parties.
- The central government may amend this list.
- **Applicability**- It will apply to mediations conducted in India
    - Involving only domestic parties,
    - Involving at least one foreign party and relating to a commercial dispute (i.e.,

international mediation)

    - If the central or state government is a party, the Act will apply to commercial disputes, and other disputes as notified.
- **Mediation process-** Mediation proceedings will be confidential, and must be completed within 180 days (may be extended by 180 days by the parties). A party may withdraw from mediation after two sessions.
- **Court annexed mediation-** It must be conducted as per the rules framed by the Supreme Court or High Courts.
- **Mediators-** Mediators may be appointed by
    - The parties by agreement, or
    - Mediation service provider (an institution administering mediation).
- **Mediation Council of India-** It will be established by the Central government. Its functions are to
    - Register, recognize and regulate mediation institutions and mediators in India
    - Promote international and domestic mediation in India
    - Facilitate and conduct continuous training, education and certifications in mediation
    - Maintain a depository of mediation settlement agreements made in India
- **Nature of the mediation**- Agreements resulting from mediation (other than community mediation) will be *final, binding,* and enforceable in the same manner as court judgments.
- It may be challenged on grounds of
    - Fraud,
    - Corruption,
    - Impersonation, or
    - Relating to disputes not fit for mediation.
- **Community mediation**- It will be conducted by a panel of 3 mediators to resolve disputes likely to affect the peace and harmony amongst residents of a locality.

What are the benefits of the Act?

- **Sort disputes**- It creates a regulatory framework for mediations in India to resolve civil and commercial issues by a neutral party before they become a dispute that requires judicial resolution.
- **Credibility**- Its binding effect and its amenability gives more credibility to the mediation process.
- **Ease of doing business-** The pre-litigation resolution framework can be presented to foreign investors as a factor for ease of doing business in India, as it mitigates the risk, expense and delays in judicial adjudication.
- **Cost-effective-** The dispute resolution process is cost effective.
- **Reduce pendency**- It helps to reduce the burden on courts by enabling out-of-court settlements, and reduce the filing of frivolous claims before Indian Courts.
- **Confidentiality**- It mitigates the risk of deterioration of the parties' relationship due to a publicly fought dispute.
- **Efficiency-** In exceptional circumstances the party may seek urgent interim reliefs from a court before the commencement or during the continuation of a mediation.

NITI Aayog (2021) has observed that this model of compulsory mediation up to a few sessions has been successful in countries such as Italy, Brazil, and Turkey.

What are the shortcomings of the Act?

- **Mandatory mediation**- The concerns are raised about the feasibility of a mediation conducted under the sword of an obligation as opposed to a sincere desire to arrive at an amicable resolution.
- **Limited coverage**- The Act does not provide for enforcement of mediated settlement agreements from international mediations conducted outside India.
- **Judicial intervention-** The enforcement and challenge of a mediated settlement agreement lies before the court or tribunal of competent jurisdiction thus threatening the expedited timelines of resolution of any disputes in India.
- **Singapore Convention on Mediation-** India was amongst the first to sign the *United Nations Convention on International Settlement Agreements resulting from Mediation*, but it chose not to incorporate the convention.
- The Convention contemplates enforcement of mediated settlement agreements in the courts of the home country of the counter party, which is not included in the Act.

How does it differ from Arbitration and Conciliation Act?

About	Arbitration and Conciliation Act 2021	Mediation Act 2023
Institutional mechanism	Arbitration Council of India (Yet to be implemented)	Mediation Council of India
Service providers	Arbitral Institutions which provide mediation services that are on par with global best practices.	Mediation service providers to provide not only the service of mediator but also facilities, secretarial assistance and infrastructure.
Verdict	Arbitral award	Mediated settlement agreement
Similarities		
• **Timelines**- Both Act provides stringent timelines for the conduct of proceedings. • **Privacy-** Both mandates confidentiality and ensures public trust. • **Procedure -** Indian courts to refer the parties to mediation or arbitration, provide a default mechanism for the appointment of a mediator or arbitrator, and prescribe the procedure for the termination of their mandate.		

References

1. The Hindu- A clear message to industry on dispute resolution
2. PRS- Mediation Bill 2021



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