Significance of UNCITRAL Deliberation

Why in news?

\n\n

India is about to participate in the deliberations at the United Nations Commission on International Trade Law (UNCITRAL).

\n\n

What is the UNCITRAL deliberations about?

\n\n

\n
- Commercial disputes are resolved not only through courts and arbitration but also through mediation.
\n
- The deliberations will consider how these settlement agreements in disputes in international commercial transactions will be implemented by courts in different countries.
\n

\n\n

\n
- UNCITRAL has formulated principles on which countries should recognise and enforce mediation agreements arising from cross-border disputes.
\n
- Once formalised, countries will have a consistent framework for enforcing mediation agreements made in other countries.
\n

\n\n

How UNCITRAL draft convention works?

\n\n

\n
- The convention will link laws adopted by countries to recognise domestic mediation and extend them beyond their boundaries.
\n

- It defines mediation as a “process whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person (the mediator).
\n
- Courts of a country before which a mediated settlement agreement is brought must ensure implementation of the terms of settlement.
\n
- The courts will allow a party to a settlement agreement to rely on this agreement as a defence in cases filed on the basis of disputes already settled by the agreement.
\n
- When the settlement agreement comes up before the court for implementation or enforcement, the court will review it on the basis of certain conditions.
\n
- Once the agreement has been reviewed, the court must enforce the agreement on the terms agreed, Courts can decline enforcement only on these conditions.
\n
- The importance of the draft convention is in the identification of these conditions after careful deliberation.
\n
- Mediated settlement agreements typically don’t need court assistance for enforcement since the terms of settlement have been chosen and determined by the parties.
\n

\n\n

What are the existing concerns to India in dispute resolution?

\n\n

\n
- India has lost substantial earnings as a result of international disputes being taken for resolution outside the country.
\n
- International transactions involve the application of different laws, by virtue of the persons from different countries being involved, or their undertaking a business in a third country.
\n
- Due to this there are various policy gap on outcomes from the mediation process involving cross-border disputes.
\n

\n\n

How this draft convention will resolve India’s issues?

\n\n

\n
- Strengthening the dispute resolution policies will encourage dispute resolution in India.
\n
- By this definitive legal framework businesses will be encouraged to consider mediation in managing and resolving disputes that arise in their commercial transactions.
\n
- This convention comes the certainty that settlement agreements through mediation will be acknowledged as a resolution of the dispute, and will be respected and enforced.
\n
- The convention is opportune to India and will facilitate legal reform to ease dispute resolution.
\n

\n\n

\n\n

Source: The Hindu

\n\n

\n\n

\n

