What does the Draft Mediation Bill Propose?

Why in news?

Government of India has released a Draft Mediation Bill 2021 for promotion and strengthening of Alternative Dispute Resolution (ADR) mechanisms in India.

What is mediation?

- Mediation is a process where an impartial third party is appointed to facilitate structured negotiation between disputing parties and help them reach a mutually agreeable settlement.
- It is known as an Alternative Dispute Resolution (ADR) mechanism, in other words, an alternative for litigation in courts.
- India is a signatory to the **Singapore Convention on Mediation** which assures disputants that their mediation settlements will be enforced without much difficulty across the world.

What are the key features of the draft Mediation Bill?

- The Draft bill aims to enforce domestic and international mediation settlement agreements, provide for a body for the registration of mediators, encourage community mediation and make online mediation an acceptable and cost-effective process.
- The draft Bill proposes for pre-litigation mediation and at the same time safeguards the interest of the litigants to approach the competent adjudicatory forums/courts in case an urgent relief is sought.
- The successful outcome of mediation in the form of Mediation Settlement Agreement (MSA) has been made enforceable by law. Since the Mediation Settlement Agreement is out of the consensual agreement between the parties, the challenge to the same has been permitted on limited grounds.
- The mediation process protects the confidentiality of the mediation undertaken and provides for immunity in certain cases against its disclosure.
- The registration of Mediation Settlement Agreement has also been provided for with State/District/Taluk Legal Authorities within 90 days to ensure maintenance of authenticated records of the settlement so arrived.

- It provides for establishment of the Mediation Council of India.
- It also provides for community mediation.

What is the significance of the bill?

- The Bill recognises that mediation needs to be treated as a profession over the part-time honorarium basis it has in the court-annexed mediation schemes.
- The Bill acknowledges the importance of institutes to train mediators, and service providers to provide structured mediation under their rules.
- If any urgent interim order is needed, there is a possibility to bypass mediation at the first stage and return to it after resolving the interim relief issue.
- The Bill does away with the confusion arising from the terms “mediation” and “conciliation” by opting for the former in accordance with international practice, and defining it widely to include the latter.
- It recognises online dispute resolution which came in limelight during the COVID-19.
- It provides for enforcement of commercial settlements reached in international mediation viz between parties from different countries as per the Singapore Convention on Mediation.

What are the concerns in the draft bill?

- **Status of domestic mediation**- The Bill unwisely treats international mediation when conducted in India as a domestic mediation and the settlement under the latter is given the status of a judgment or decree of a court.
- It will be disastrous when one party is foreign because the Singapore Convention does not apply to settlements which already have the status of a judgment or decree.
- Conducting cross-border mediation in India will leave out the tremendous benefits of worldwide enforceability.
- **The Council**- It has three members including a retired senior judge, a person with experience of ADR law and an academic who has taught ADR but it doesn’t have a single mediator.
- Since they are full-time members, it is clear that none of them will be active practitioners.
- This is the field of dispute resolution which is the judiciary’s domain, but has left the Chief Justice of India from the picture for making appointments.

- **Disputes not to be mediated-** There is a long list of disputes such as fraud which should not be mediated.
- In cases involving minors or persons of unsound mind, the law provides for the court to pass orders to protect them.
- In the case of telecom, there is no provision for manufacturers and service providers and consumers to talk and resolve issues.
- What is missing is the element of focused and engaged discussion after comments are sent.

References

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