

Standing Committee Report Summary

The Mediation Bill, 2021

- The Standing Committee on Personnel, Public Grievances, Law and Justice (Chair: Mr. Sushil Kumar Modi) submitted its report on the Mediation Bill, 2021 on July 13, 2022. The Bill was introduced in Lok Sabha in December 2021. It seeks to promote mediation (including online mediation) and provide for enforcement of settlement agreements resulting from mediation. Key observations and recommendations of the Committee include:
 - **Pre-litigation mediation:** The Bill mandates parties to attend at least two mediation sessions. A cost may be imposed on them if they fail to attend the sessions without reasonable cause. The Committee observed that by mandating pre-litigation mediation, parties will have to wait for several months before being allowed to approach a court or tribunal. This may result in delaying of cases. The Committee recommended reconsidering mandating pre-litigation, making it optional and introducing it in a phased manner. The Bill also provides that pre-litigation mediation will be applicable to matters pending before a tribunal. The Committee noted that there is lack of clarity as to how such matters can come under the purview of pre-litigation mediation.
 - **Timeline for mediation:** Mediation process must be completed within 180 days, which may be extended by another 180 days. The Committee recommended reducing it to 90 days with an extension of 60 days.
 - **Disputes not fit for mediation:** The First Schedule of the Bill specifies disputes not fit for mediation. The central government may amend this list. The Committee noted that this amounts to excessive delegation. It recommended that the number of disputes in the Schedule should be reduced to ensure that maximum number of disputes go through pre-litigation mediation. Disputes involving disabled people should not be excluded from the purview of mediation and courts should be empowered to refer suitable cases for mediation. The Schedule also includes disputes affecting the rights of third parties. The Committee noted that this will affect mediation in matrimonial cases where children are involved. It recommended allowing mediation in such cases.
 - **Definition of exceptional circumstances:** Under pre-litigation mediation, parties can seek interim relief from a court or tribunal in exceptional circumstances. The Committee noted that the term ‘exceptional circumstances’ has not been defined and it can lead to parties approaching the court under various situations. Parties used a similar provision under the Commercial Courts Act, 2015 to delay pre-litigation mediation by filing applications for interim relief. The Committee recommended: (i) adding qualifying criteria for exceptional circumstances to avoid wide interpretation, and (ii) providing a fixed time period for deciding interim relief applications and for commencing mediation proceedings after an interim order has been received.
- **Mediation Council of India:** The central government will establish the Mediation Council of India. Members of the Council include a chairperson and two full-time members with experience in mediation or alternate dispute resolution (ADR). The Committee noted that this may lead to appointment of members with experience in ADR mechanisms other than mediation. It recommended: (i) considering appointing only members with experience in mediation, and (ii) appointing the chairperson and members on recommendation of a committee constituted by the central government. Further, Mediation Councils should also be constituted in all states that will function under the control of the Mediation Council of India.
- The Bill provides for multiple regulating authorities for mediation service providers and institutes. The Committee recommended to make the Mediation Council of India the single authority to regulate all mediation service providers and institutes
- **Confidentiality in proceedings:** Parties in a mediation proceeding are required to keep information relating to the proceedings confidential. The Committee noted that there is no punishment/liability for breaching confidentiality. It recommended that the Bill should provide for a provision for cases of breach of confidentiality.
- **Registration of agreements:** The Bill provides for mandatory registration of mediated settlement agreement. The Committee recommended leaving registration to the discretion of the parties.
- **International mediation:** The Bill does not apply to international mediations conducted outside India. The Singapore Convention provides a framework for cross-border enforcement of settlement agreements resulting from international mediation. The Committee recommended revisiting the definition of international mediation so that the Bill can be brought in line with the Convention in the future.

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