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"Pivotal Aspects of India's Recent Mediation Legislation in 2023"

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Introduction

The passage delineates the transformative strides taken by the Indian parliament in institutionalizing and validating mediation as a formal method for dispute resolution. Introduced as the Mediation Bill 2021, this legislative initiative, which emerged in the Rajya Sabha on December 20, 2021, seeks to bolster and streamline mediation processes, with a pronounced focus on institutional mediation. Its ambit encompasses the resolution of an array of disputes, spanning both commercial and non-commercial domains, while also emphasizing the enforceability of mediated settlement agreements. Moreover, the bill lays the groundwork for the establishment of a regulatory body for mediator registration, advocates for the promotion of community-based mediation, and recognizes online mediation as an efficient and cost-effective channel. The fruition of this endeavor materialized when the Rajya Sabha passed the bill on August 1, 2023, followed by the Lok Sabha's endorsement on August 7, 2023. The President of India granted her assent on September 14, 2023, marking the enactment of the Mediation Act, 2023.

The Mediation Act, 2023, encompasses a spectrum of provisions designed to ensure its effectiveness and applicability in a diverse range of disputes. It extends to disputes involving parties residing, incorporating, or conducting business within India's jurisdiction, including those governed by international mediation agreements. Notably, the Act does not extend to non-commercial disputes with governmental entities, ensuring that commercial disputes with the Government can undergo mediation processes.

A cornerstone of the Act is its mandate for pre-litigation mediation. This requirement necessitates that parties engage in mediation before initiating civil or commercial suits before a court or notified tribunal. The Act also provides criteria for determining which disputes are unsuitable for mediation.

Key among the provisions is the latitude it affords parties in selecting a mediator and devising the process for their appointment. While qualifications for mediators are not expressly stipulated, foreign mediators are required to meet specified criteria. In instances where parties fail to reach an agreement on mediator selection and appointment, recourse can be sought through a mediation service provider.

The Act further delineates that, unless mutually agreed otherwise, mediation proceedings should occur within the territorial jurisdiction of the competent court or tribunal. Importantly, mediators are not bound by the procedural constraints of the Code of Civil Procedure, 1908, or the Indian Evidence Act, 1872. Notably, the provision from the original Bill allowing parties to withdraw from mediation after the first two sessions has been omitted in the Act. The Act mandates a stricter timeframe of 120 days for concluding mediation, extendable by an additional 60 days, as compared to the Bill's provision of 180 days, with a potential further extension of 180 days.

A pivotal facet of the Act lies in its treatment of mediated settlement agreements, which are endowed with the same legal standing as judgments or decrees issued by a court. While the Code of Civil Procedure, 1908 does not govern mediation proceedings, its provisions apply to the enforcement of Mediated Settlement Agreements as relevant. The Act outlines limited grounds on which a Mediated Settlement Agreement may be challenged, including fraud, corruption, impersonation, and disputes unsuitable for mediation. Moreover, the confidentiality of the agreement remains protected, with disclosure allowances made for registration, enforcement, or challenge purposes.

In a nod to the digital age, the Act embraces online pre-litigation mediation, removing geographical barriers and enhancing convenience for the involved parties, contingent on ensuring the mediation's confidentiality.

An innovative addition is the introduction of community mediation, permitting disputes affecting local peace and harmony to be resolved through mediation, provided parties mutually consent. This provision empowers local communities to address issues that may disrupt their peace and harmony, thereby fostering a culture of collective problem-solving and social cohesion.

The Mediation Act, 2023, embodies a progressive leap in alternative dispute resolution in India, standing alongside arbitration and conciliation. Its effectiveness will ultimately be determined by its implementation, yet it is perceived as a forward-thinking legislation with the potential to yield mutually beneficial outcomes and catalyze business growth.

