



A Bill for the mediation

 sanskritiias.com/current-affairs/a-bill-for-the-mediation



(MainsGS2:Statutory, regulatory and various quasi-judicial bodies & Government policies and interventions aimed at development in various sectors and issues arising out of their design and implementation.)

Context:

The Chief Justice of India (CJI), N.V. Ramana, while speaking at the India-Singapore Mediation Summit in July 2021 had said that mediation should be made mandatory as a first step in dispute resolution and that a law should be framed in this regard.

Alternate option:

- Over the last 15 years, the dispute resolution landscape in India has undergone significant change with the advent of mediation.
- The CJI in his speech called “Mediation for everyone: Realizing mediation’s potential in India”, emphasised the point that a movement needs to be launched to popularise mediation as it was a cheaper and faster dispute resolution mechanism.
- The CJI also said that courts should be the last resort for dispute resolution; therefore, one should explore the options of alternate dispute resolution.

Standalone legislation:

In India there is no standalone legislation yet; however, mediation finds legitimacy in some specific laws such as the Code of Civil Procedure, 1908, the Arbitration and Conciliation Act, 1996, the Companies Act, 2013, the Commercial Courts Act, 2015, and the Consumer Protection Act, 2019.

- The Mediation Bill, 2021, introduced in Parliament in December 2021, seeks to 'promote mediation (including online), and provide for enforcement of settlement agreements resulting from mediation'.
- In case of civil or commercial disputes, a person must try to settle the dispute by mediation before approaching a court or tribunal.
- Disputes not fit for mediation *inter alia* include those relating to prosecution for criminal offences, disputes involving allegation of serious and specific fraud, fabrication of documents, forgery, impersonation and coercion.

Improving the situation:

- There are certain provisions in the Bill which may help in improving the law and order situation in a locality and/or encourage compounding of criminal offences.
- First, Section 7 of the Bill says that courts will be competent to refer any dispute to mediation relating to compoundable offences or matrimonial offences connected with or arising out of civil proceedings between the parties.
- Second, Section 44 of the Bill provides for 'any dispute likely to affect peace, harmony and tranquillity amongst the residents or families of any area or locality', to be settled through community mediation. Any settlement so arrived at, however, shall not be enforceable as a judgment or decree of a civil court.
- Third, the provisions of the Act shall not have overriding effect, *inter alia*, on the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

Resolving disputes:

- The proposed law primarily intends to resolve civil and commercial disputes through mediation, it has ample scope to relieve some of the pressure on law enforcement agencies.
- The law to prevent the sexual harassment of women at the workplace has probably been kept out of its scope so that an internal or local complaint committee is able to take up conciliation and close the case locally without involving a third party and detailed procedure.
- The law on the maintenance and the welfare of parents and senior citizens has also been kept out of its scope as offences under it are cognisable offences.

Promote friendliness:

- Section 320 in the Code Of Criminal Procedure (CrPC) provides for the compounding of certain criminal offences which shall have the effect of acquittal of the accused.
- There are about 43 criminal offences, from body offences to property offences, which can be compounded by the victim, and about 13 offences which can be compounded with the permission of the court.

- Here, the policy of the law is to promote friendliness between the parties so that peace between them is restored.

Court's view:

- The Supreme Court of India has held that if there is composition of an offence during investigation, the parties can either approach the court or the police.
- The police, on verification of the truth, genuineness and voluntariness of the composition, may record the statement of the victim and recommend to the Magistrate to accept the negative final report.
- The Magistrate after giving notice to the complainant can make an appropriate decision in the matter accepting the composition.
- In other cases, appropriate orders may be passed by the court, and leave granted to compound the offence.

Relieve pressure on police:

- Many civil or commercial disputes are given the colour of a criminal offence and reported to the police so that they get resolved under the fear of arrest.
- Many criminal offences are a result of the fact that civil or commercial disputes could not be resolved amicably and in time.
- However, the police at times take minor cases lightly or reduce the seriousness of crime by converting a cognisable offence into a non-cognisable one and meanwhile some of these cases may become aggravated with time and assume serious consequences.
- Therefore, the proposed law of mediation, that has the mechanism of not only preventing the breakdown of law and order through community intervention but also the competence to smoothen the route to compounding of certain criminal offences, may ultimately relieve some of the pressure on the police also.