

AS INTRODUCED IN THE RAJYA SABHA

Bill No. XLIII of 2021

THE MEDIATION BILL, 2021

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Bill No. XLIII of 2021

THE MEDIATION BILL, 2021

A

BILL

to promote and facilitate mediation, especially institutional mediation, for resolution of disputes, commercial or otherwise, enforce mediated settlement agreements, provide for a body for registration of mediators, to encourage community mediation and to make online mediation as acceptable and cost effective process and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Seventy-second Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

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1. (1) This Act may be called the Mediation Act, 2021.

Short title,
extent and
commencement.

(2) It shall extend to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification, appoint and different dates may be appointed for different provisions of this Act and any

reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

CHAPTER II

APPLICATION

Application. **2. (1)** Subject to sub-section (2), this Act shall apply where mediation is conducted in India, and— 5

(i) all or both parties habitually reside in or are incorporated in or have their place of business in India; or

(ii) the mediation agreement provides that any dispute shall be resolved in accordance with the provisions of this Act; or 10

(iii) there is an international mediation.

(2) The provisions of sub-section (1) shall not apply wherein one of the parties to the dispute is the Central Government or a State Government, or agencies, public bodies, corporations and local bodies, including entities controlled or owned by such Government, except where the matter pertains to a commercial dispute: 15

Provided that nothing shall prevent the Central Government or a State Government from notifying, such kind of dispute, as it deems appropriate for such Government, for resolution through mediation under this Act, wherein such Government, or agencies, public bodies, corporations and local bodies including entities controlled or owned by them, is a party.

Definitions. **3.** In this Act, unless the context otherwise requires,— 20

(a) "commercial dispute" means a dispute defined in clause (c) of sub-section (1) of section 2 of the Commercial Courts Act, 2015; 4 of 2016.

(b) "Council" means the Mediation Council of India established under section 33;

(c) "court" means the principal civil court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the disputes forming the subject matter of mediation, if the same had been the subject matter of a suit or proceeding; 25

*Explanation.—*In a commercial dispute of a Specified Value as defined in the clause (i) of sub-section (1) of section 2 of the Commercial Courts Act, 2015, the court of competent jurisdiction shall be the Commercial Courts referred to in Chapter II of the said Act; 30 4 of 2016.

(d) "court annexed mediation" means mediation including pre-litigation mediation conducted at the mediation centres established by any court or tribunal;

(e) "institutional mediation" means mediation conducted under the aegis of a mediation service provider; 35

(f) "international mediation" means mediation undertaken under this Act and relates to a commercial dispute arising out of a legal relationship, contractual or otherwise, under any law for the time being in force in India, and where at least one of the parties, is— 40

(i) an individual who is a national of, or habitually resides in, any country other than India; or

(ii) a body corporate including a Limited Liability Partnership of any nature, with its place of business outside India; or

(iii) an association or body of individuals whose place of business is outside India; or 45

(iv) the Government of a foreign country;

(g) "mediation" means mediation referred to in section 4;

(h) "mediator" means a person who is appointed to be a mediator to undertake mediation, and includes a person registered as mediator with the Council.

5 *Explanation.*—Where more than one mediator is appointed for a mediation, reference to a mediator under this Act shall be a reference to all the mediators;

(i) "mediation agreement" means a mediation agreement referred to in sub-section (I) of section 5;

10 (j) "mediation communication" means communication made, whether in electronic form or otherwise, through—

(i) anything said or done;

(ii) any document; or

(iii) any information provided,

15 for the purposes of, or in relation to, or in the course of mediation, and includes a mediation agreement or a mediated settlement agreement;

(k) "mediation institute" means a body or organisation that provides training, continuous education and certification of mediators and carries out such other functions under this Act;

20 (l) "mediation service provider" means a body or organisation that provides for the conduct of mediation under this Act and rules and regulations made thereunder, and are recognised by the Council;

39 of 1987. *Explanation I.*—For the purposes of this clause, mediation service provider includes an Authority constituted under the Legal Services Authorities Act, 1987, or mediation centre annexed to a court, tribunal or such other forum as may be specified.

25 *Explanation II.*—An Authority constituted under the Legal Services Authorities Act, 1987, or mediation centre annexed to a court or tribunal or such other forum shall be deemed to be a mediation service provider recognised by the Council;

39 of 1987. (m) "mediated settlement agreement" means settlement agreement referred to in sub-section (I) of section 22;

30 (n) "notification" means notification published in the Official Gazette and the expression "notified" with its cognate meanings and grammatical variations shall be construed accordingly;

(o) "online mediation" means online mediation referred to in section 32;

35 (p) "participants" means persons other than the parties who participate in the mediation and includes advisers, advocates, consultants and any technical experts and observers;

(q) "party" means a party to a mediation agreement or mediation proceeding whose agreement or consent is necessary to resolve the dispute and includes their successors;

40 (r) "pre-litigation mediation" means a process of undertaking mediation, as provided under section 6, for settlement of disputes prior to the filing of a suit or proceeding of civil or commercial nature in respect thereof, before a court or notified tribunal under sub-section (2) of section 6;

45 (s) "prescribed" means prescribed by rules made by the Central Government under this Act;

(t) "Schedule" means the Schedule annexed to this Act;

(u) "secure electronic signature" with reference to online mediation means, electronic signatures referred to in section 15 of the Information Technology Act, 2000; and

21 of 2000.

(v) "specified" means specified by regulations made by the Council under this Act.

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CHAPTER III MEDIATION

Mediation.

4. Mediation shall be a process, whether referred to by the expression mediation, pre-litigation mediation, online mediation, community mediation, conciliation or an expression of similar import, whereby party or parties, request a third person referred to as mediator or mediation service provider to assist them in their attempt to reach an amicable settlement of a dispute.

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Mediation agreement.

5. (1) A mediation agreement shall be in writing, by or between parties and anyone claiming through them, to submit to mediation all or certain disputes which have arisen or which may arise between the parties.

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(2) A mediation agreement may be in the form of a mediation clause in a contract or in the form of a separate agreement.

(3) A mediation agreement is in writing, if it is contained in or recorded as—

(a) any document signed by the parties;

20

(b) an exchange of communications or letters including through electronic form as provided under the Information Technology Act, 2000;

21 of 2000.

(c) any pleadings in a suit or any other proceedings in which existence of mediation agreement is alleged by one party and not denied by the other.

(4) A reference in any agreement containing a mediation clause shall constitute a mediation agreement if the agreement is in writing and the reference is such as to make the mediation clause as part of the agreement.

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(5) The parties may agree to submit to mediation any dispute arising between them under an agreement, whether entered prior to arising of the dispute or subsequent thereto.

(6) A mediation agreement in case of international mediation shall refer to an agreement for resolution in matters of commercial disputes referred to in clause (a) of section 3.

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Pre-litigation mediation.

6. (1) Subject to other provisions of this Act, whether any mediation agreement exists or not, any party before filing any suit or proceedings of civil or commercial nature in any court, shall take steps to settle the disputes by pre-litigation mediation in accordance with the provisions of this Act:

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Provided that pre-litigation mediation in matters of commercial disputes of Specified Value shall be undertaken in accordance with the provisions of section 12A of the Commercial Courts Act, 2015, and the rules made thereunder.

4 of 2016.

(2) The provisions, of sub-section (1) shall be applicable to the tribunals notified by the Central Government or a State Government, as the case may be.

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(3) For the purposes, of sub-sections (1) and (2), unless otherwise agreed upon by the parties, a mediator,—

(i) registered with the Council;

(ii) empanelled by a court annexed mediation centre;

(iii) empanelled by an Authority constituted under the Legal Services Authorities Act, 1987; and

45

39 of 1987.

(iv) empanelled by a mediation service provider recognised under this Act, shall conduct pre-litigation mediation.

39 of 1987. 5 (4) For conducting pre-litigation mediation under clauses (ii) and (iii) of sub-section (3), a party may request any person designated for this purpose by the High Courts, or an Authority constituted under the Legal Services Authorities Act, 1987, as the case may be.

39 of 1987. (5) The courts and an Authority constituted under the Legal Services Authorities Act, 1987, shall maintain a panel of mediators for the purposes of pre-litigation mediation.

59 of 1988. 10 (6) Notwithstanding anything contained in sub-sections (1) and (2) and the Motor Vehicles Act, 1988, when an application for compensation arising out of an accident is made before the Claims Tribunal, if the settlement as provided for in section 149 of that Act is not arrived at between the parties, the Claims Tribunal shall refer the parties for mediation to a mediator or mediation service provider under this Act.

15 (7) Where the parties arrive at a settlement agreement under sub-section (6), it shall be placed before the Claims Tribunal for its consideration.

(8) If the parties do not reach to settlement agreement under sub-section (6), a failure report prepared by the mediator shall be forwarded to the Claims Tribunal, which has referred the matter for mediation, for adjudication.

20 7. (1) A mediation under this Act shall not be conducted for resolution of any dispute or matter contained in the indicative list under the First Schedule:

Provided that nothing contained herein shall prevent any court, if deemed appropriate, from referring any dispute to mediation relating to compoundable offences or matrimonial offences connected with or arising out of civil proceedings between the parties:

25 Provided further that the outcome of such mediation shall not be deemed to be a judgement or decree of court referred to in sub-section (2) of section 28, and shall be further considered by the court in accordance with the law for the time being in force.

(2) If the Central Government is satisfied that it is necessary or expedient so to do, it may, by notification, amend the First Schedule.

30 8. (1) If exceptional circumstances exist, a party may, before the commencement of, or during the continuation of, mediation proceedings under this Act, file suit or appropriate proceedings before a court or tribunal having competent jurisdiction for seeking urgent interim relief.

35 (2) The court or tribunal shall after granting or rejecting urgent interim relief, as the case may be, refer the parties to undertake mediation to resolve the dispute, if deemed appropriate.

9. (1) Notwithstanding the failure to reach any settlement under sub-section (1) of section 6, the court or tribunal may, at any stage of proceeding, refer the parties to undertake mediation, if a request to this effect is made by them.

40 (2) If the court or tribunal refers the parties to undertake mediation, it may pass suitable interim order to protect the interest of any party if deemed appropriate.

(3) The parties shall not be under obligation to come to a settlement in the mediation pursuant to a reference under sub-section (1).

Disputes or
matters not
fit for
mediation.

Interim relief
by court or
tribunal.

Power of court
or tribunal to
refer parties to
mediation.

45 10. (1) Unless otherwise agreed upon by the parties, a person of any nationality may be appointed as a mediator:

Appointment
of mediators.

Provided that mediator of any foreign nationality shall possess such qualification, experience and accreditation as may be specified.

(2) The parties shall be free to agree upon the name of mediator and the procedure for their appointment.

(3) If the parties do not reach any agreement on a matter referred to in sub-section (2), then the party seeking initiation of mediation shall make an application to a mediation service provider for the appointment of a mediator. 5

(4) Upon receiving an application under sub-section (3), the mediation service provider shall, within a period of seven days, appoint,—

(i) the mediator as agreed by the parties; or 10

(ii) in case the parties are unable to reach agreement as to the appointment of mediator or mediator agreed by them refuses to act as mediator, a mediator from the panel maintained by it, with his consent.

(5) The person appointed under clause (i) of sub-section (4) shall communicate his willingness or otherwise within a period of seven days from the date of receipt of communication of such appointment. 15

Preference of parties.

11. The mediation service provider shall, while appointing any person from the panel of mediators maintained by it, consider his suitability and the preference of the parties for resolving the dispute.

Conflict of interest and disclosure.

12. (1) The person appointed as a mediator shall, prior to the conduct of mediation, disclose in writing to the parties regarding any circumstance or potential circumstance, personal, professional, financial, or otherwise, that may constitute any conflict of interest or that is likely to give rise to justifiable doubts as to his independence or impartiality as a mediator. 20

(2) During the mediation, the mediator shall, without delay, disclose to the parties in writing any conflict of interest, referred to in sub-section (1), that has newly arisen or has come to his knowledge. 25

(3) Upon disclosure under sub-section (1) or sub-section (2), the parties shall have the option to waive any objection if all of them express in writing, which shall be construed as the consent of parties. 30

(4) Upon disclosure under sub-section (1) or sub-section (2), if either party desires to replace the mediator, then, in case of—

(i) institutional mediation, such party shall apply to the mediation service provider for termination of the mandate of mediator;

(ii) mediation other than institutional mediation, such party shall terminate the mandate of mediator. 35

Termination of mandate of mediator.

13. A mediation service provider may terminate the mandate of a mediator upon—

(i) the receipt of application from a party under clause (i) of sub-section (4) of section 12; or

(ii) the receipt of information about the mediator being involved in a matter of conflict of interest from participants or any other person; or 40

(iii) his withdrawal from mediation for any reason:

Provided that termination under clause (ii) shall be effected if, after giving a hearing to the mediator, mediation service provider finds that there is justifiable doubt as to the independence or impartiality of the mediator and that the same has been brought to the notice of parties and that they desire to replace the mediator. 45

14. Upon termination of the mandate of mediator—Replacement
of mediator.

(i) in case of mediation other than institutional mediation under clause (ii) of sub-section (4) of section 12, the parties may, appoint another mediator within a period of seven days from such termination; and

5 (ii) under section 13, the mediation service provider shall appoint another mediator from the panel maintained by it within a period of seven days from such termination.

CHAPTER V**MEDIATION PROCEEDINGS**

15. Every mediation under this Act shall be undertaken within the territorial jurisdiction 10 of the court or tribunal of competent jurisdiction to decide the subject matter of dispute:

Provided that on the mutual consent of the parties, mediation may be conducted at any place outside the territorial jurisdiction of the court or tribunal, or by way of online mediation.

15 *Explanation.*—For the removal of doubts, it is clarified that where the parties agree to conduct the mediation at any place outside the territorial jurisdiction or online, for the purpose of enforcement, challenge and registration of the mediated settlement agreement, the same shall be deemed to have been undertaken within the territorial jurisdiction of the court or tribunal of competent jurisdiction.

16. The mediation proceedings with respect to a particular dispute shall be deemed to 20 have commenced—

(a) where there is an existing agreement between the parties to settle the dispute through mediation, the day on which a party issues notice to the other party or parties for mediation and settlement of their disputes; or

(b) in other cases—

25 (i) on the day the parties have agreed to appoint a mediator of their choice for mediation and settlement of disputes between them; or

(ii) on the day when one of the parties applies to a mediation service provider for settlement of disputes through mediation by appointment of a mediator.

17. (1) The mediator shall assist the parties in an independent, neutral and impartial manner in their attempt to reach an amicable settlement of their dispute.

Conduct of
mediation.

(2) The mediator shall at all times be guided by the principles of objectivity and fairness and protect the voluntariness, confidentiality, and self-determination of the parties, and the standards for professional and ethical conduct as may be specified.

35 (3) The mediation process may include the mediator taking such measures as may be considered appropriate, taking into account the circumstances of the case, including meeting with parties or participants, jointly or separately, as frequently as deemed fit by the mediator, both in order to convene the mediation, and during the mediation for the orderly and timely conduct of the process and to maintain its integrity.

5 of 1908. 40 (4) The mediator shall not be bound by the Code of Civil Procedure, 1908, or the Indian
1 of 1872. Evidence Act, 1872.

(5) The mediator with the consent of the parties shall determine the language or languages to be used in the mediation process.

18. (1) The mediator shall attempt to facilitate voluntary resolution of the dispute by 45 the parties and communicate the view of each party to the other to the extent agreed to by them, assist them in identifying issues, reducing misunderstandings, clarifying priorities,

Role of
mediator.

exploring areas of compromise and generating options in an attempt to resolve the dispute expeditiously, emphasising that it is the responsibility of the parties to take decision regarding their claims.

(2) The parties shall be informed expressly by the mediator that he only facilitates in arriving at a decision to resolve a dispute and that he may not impose any settlement nor give any assurance that the mediation may result in a settlement. 5

Role of mediator in other proceedings.

19. Unless otherwise agreed by the parties,—

(a) the mediator shall not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceeding in respect of a dispute that is the subject matter of the mediation proceedings; 10

(b) the mediator shall not be presented by the parties as a witness in any arbitral or judicial proceeding.

Withdrawal by parties from mediation.

20. (1) A party may withdraw from mediation at any time after the first two mediation sessions.

(2) Where any party fails to attend the first two mediation sessions without any reasonable cause which resulted in the failure of mediation, the court or tribunal, in subsequent litigation on the same subject matter between the parties, may take the said conduct of such party into consideration and impose such costs as deems fit. 15

Time-limit for completion of mediation.

21. (1) Notwithstanding anything contained in any other law for the time being in force, mediation under this Act shall be completed within a period of one hundred and eighty days from the date fixed for the first appearance before the mediator. 20

(2) The period for mediation mentioned under sub-section (1) may be extended for a further period as agreed by the parties, but not exceeding one hundred and eighty days.

Mediated settlement agreement.

22. (1) A mediated settlement agreement means and includes an agreement in writing between some or all of the parties resulting from mediation, settling some or all of the disputes between such parties, and authenticated by the mediator. 25

Provided that the terms of the mediated settlement agreement may extend beyond the disputes referred to mediation.

Explanation.—A mediated settlement agreement which is void under the Indian Contract Act, 1872, shall not be deemed to be lawful settlement agreement within the meaning of mediated settlement agreement. 30 9 of 1872.

(2) Where a mediated settlement agreement is reached between the parties in regard to all or some of the disputes, the same shall be reduced in writing and signed by the parties.

(3) Subject to the provisions of sections 26 and 27, the mediated settlement agreement so signed— 35

(i) in case of institutional mediation, shall be submitted to the mediator, who shall, after authenticating the same and forward it with a covering letter signed by him, to the mediation service provider and also provide a copy to the parties;

(ii) in all other cases, shall be submitted to the mediator who shall, after authenticating the settlement agreement, provide a copy to all the parties. 40

(4) Subject to provisions of sections 26 and 27, where no agreement is arrived at between the parties, within the time period as provided under section 21, or where, the mediator is of the view that no settlement is possible,—

(i) the mediator shall submit a failure report to this effect to the mediation service provider in writing in case of institutional mediation; 45

(ii) in all other cases, the mediator shall prepare a failure report to this effect and provide a signed copy to all the parties:

Provided that the report referred under this sub-section shall not disclose the cause of failure of the parties to reach a settlement, or any other matter or thing referring to their conduct, during mediation.

(5) The parties, may, at any time during the mediation process, make an agreement with respect to any of the disputes which is the subject matter of mediation.

(6) Any mediated settlement agreement under this section shall also include a settlement agreement resulting from online mediation and duly signed by the parties by way of secure electronic signature or otherwise and authenticated by the mediator in the like manner.

10 (7) For the purposes of record, mediated settlement agreement arrived at between the parties, other than those arrived in a court or tribunal referred mediation or award of Lok Adalat or final award of Permanent Lok Adalat under section 21 or section 22E 39 of 1987. of the Legal Services Authorities Act, 1987, shall be registered with an Authority constituted under the Legal Services Authorities Act, 1987, in such manner as may be specified and such Authority shall issue a unique registration number to such settlements:

Provided that the mediated settlement agreement under this section shall be registered with such Authority situated within the territorial jurisdiction of the court or tribunal of competent jurisdiction to decide the subject matter of dispute:

20 Provided further that such registration shall not be mandatory till the time regulations under this sub-section are made.

Explanation.—For the removal of doubts, it is clarified that nothing contained in this sub-section shall affect the rights of parties to enforce the mediated settlement agreement under section 28 or challenge the same as provided under section 29.

25 (8) For the purposes of registration of mediated settlement agreement, in matters other than commercial disputes, wherein mediation is not conducted by a mediation service provider, the presence of parties to the mediated settlement agreement or their authorised representative shall be mandatory before the Authority referred to in sub-section (7).

30 (9) The registration referred to in sub-section (7) shall be made by the parties, mediator or mediation service provider within a period of one hundred and eighty days from the date of receipt of authorlicated copy of mediated settlement agreement:

Provided that mediated settlement agreement may be allowed to be registered after the expiry of period of one hundred and eighty days on payment of such fee as may be specified in consultation with the Authority referred to in sub-section (7).

35 **23. (1)** Subject to the other provisions of this Act, the mediator, mediation service provider, the parties and participants in the mediation shall keep confidential the following matters relating to the mediation proceedings, namely:— Confidentiality.

(i) acknowledgements, opinions, suggestions, promises, proposals, apologies and admissions made during the mediation;

40 (ii) acceptance of, or willingness to, accept proposals made or exchanged in the mediation;

(iii) documents prepared solely for the conduct of mediation or in relation thereto.

(2) No audio or video recording of the mediation proceedings shall be made or maintained by the parties or the participants including the mediator and mediation service provider, whether conducted in person or online to ensure confidentiality of the conduct of mediation proceedings.

(3) No party to the mediation shall in any proceeding before a court or tribunal including arbitral tribunal, rely on or introduce as evidence any information or communication set forth in clauses (i) to (iii) of sub-section (1), including any information in electronic form, or verbal communication and the court or tribunal including arbitral tribunal shall not take cognizance of such information or evidence. 5

(4) The provisions of this section shall not prevent the mediator from compiling or disclosing general information concerning matters that have been subject of mediation, for research, reporting or training purposes, if the information does not expressly or indirectly identify a party or participants or the specific disputes in the mediation. 10

Explanation.—For the removal of doubts, it is hereby clarified that nothing contained in this section shall apply to the mediated settlement agreement where its disclosure is necessary for the purpose of registration, implementation, enforcement and challenge.

24. (1) No mediator or participant in the mediation, including experts and advisers engaged for the purpose of the mediation and persons involved in the administration of the mediation, shall at any time be permitted, or compelled to disclose to any court or tribunal, or in any adjudicatory proceedings, by whatever description, any communication in mediation, or to state the contents or conditions of any document or nature or conduct of parties during mediation including the content of negotiations or offers or counter offers with which they have become acquainted during the mediation: 15 20

Provided that nothing in this section and section 23 shall protect from disclosure, information sought or provided to prove or dispute a claim or complaint of professional misconduct of mediator or malpractice based on conduct occurring during the mediation. 25

(2) There shall be no privilege or confidentiality that will attach to—

(a) a threat or statement of a plan to commit an offence punishable under any law for the time being in force;

(b) information relating to domestic violence or child abuse; and

(c) statements made during a mediation showing a significant imminent threat to public health or safety. 30

25. The mediation proceedings under this Act shall be deemed to terminate—

(a) on the date of signing and authentication of the mediated settlement agreement; or

(b) on the date of the written declaration of the mediator, after consultation with the parties or otherwise, to the effect that further efforts at mediation are no longer justified; or 35

(c) on the expiry of seven days from the date of the second mediation session, where a party fails to appear before the mediator consecutively for the first two mediation sessions, and the mediator has not received any communication from such party; or 40

(d) on the date of the communication by a party or parties in writing, addressed to the mediator and the other parties to the effect that the party wishes to opt out of mediation:

Provided that the parties shall have to attend at least two mediation sessions before giving such communication; or 45

(e) on the expiry of time limit under section 21.

Termination
of mediation.

26. (1) For the purposes of court annexed mediation including pre-litigation mediation, the procedure of conducting mediation shall be such as may be determined under the practice directions or rules, by whatever name called, framed by the Supreme Court or the High Courts.

Court annexed
mediation.

5 (2) For the purposes of sub-section (1), the Supreme Court or the High Courts, as the case may be, may constitute mediation committee.

10 (3) The mediation committee shall, for the purposes of conducting mediation, in all courts, maintain a panel of mediators in accordance with the practice directions or rules, by whatever name called, framed by the Supreme Court or the High Courts, as the case may be, and such mediators may also conduct mediation other than those referred by a court.

(4) Where the parties to a mediation referred by the court or tribunal arrive at settlement agreement in respect of some or all of the disputes, a copy of settlement agreement shall be placed before the said court or tribunal for consideration and in cases, other than court referred mediation provided, to the parties.

15 (5) If the parties do not reach settlement agreement referred to in sub-section (4), a failure report shall be forwarded by the mediator—

- (i) to the court or tribunal, as the case may be, which has referred the matter for mediation;
- (ii) to the parties in all other cases.

20 **27.** The provisions of this Act shall not apply to the proceedings conducted by
39 of 1987. Lok Adalat and Permanent Lok Adalat under the Legal Services Authorities Act, 1987.

Proceedings of
Lok Adalat
and
Permanent
Lok Adalat
not to be
affected.
Enforcement
of mediated
settlement
agreement.

CHAPTER VI

ENFORCEMENT OF MEDIATED SETTLEMENT AGREEMENT

25 **28.** (1) A mediated settlement agreement resulting from a mediation signed by the parties and authenticated by the mediator shall be final and binding on the parties and persons claiming under them respectively and enforceable as per the provisions of sub-section (2).

5 of 1908. (2) Subject to the provisions of section 29, the mediated settlement agreement shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908, in the same manner as if it were a judgment or decree passed by a court, and may, accordingly, be relied on by any of the parties or persons claiming through them, by way of defence, set off or otherwise in any legal proceeding.

35 **29.** (1) Notwithstanding anything contained in any other law for the time being in force, in any case in which the mediated settlement agreement is arrived at between the parties other than in court referred mediation or by Lok Adalat or Permanent Lok Adalat under the Legal
39 of 1987. Services Authorities Act, 1987, and is sought to be challenged by either of the parties, such party may file an application before the court or tribunal of competent jurisdiction.

(2) A mediated settlement agreement may be challenged only on all or any of the following grounds, namely:—

40 (i) fraud;

(ii) corruption;

(iii) impersonation;

(iv) where the mediation was conducted in disputes or matters not fit for mediation under section 7.

45 (3) An application for challenging the mediated settlement agreement shall not be made after ninety days have elapsed from the date on which the party making that application has received the copy of mediated settlement agreement under sub-section (3) of section 22:

Provided that if the court or tribunal, as the case may be, is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of ninety days, it may entertain the application within a further period of ninety days.

Costs.	30. Unless otherwise agreed by the parties, all costs of mediation, including the fees of the mediator and the charges of the mediation service provider shall be borne equally by the parties.	5
Limitation.	31. Notwithstanding anything contained in the Limitation Act, 1963 or in any other law for the time being in force, in computing the period of limitation fixed for any proceedings in respect of which a mediation has been undertaken under this Act, the period from the date of commencement of mediation under section 16, and up to—	36 of 1963.
	(i) submission of report under sub-section (4) of section 22; or	10
	(ii) termination of mediation under section 25; or	
	(iii) the settlement agreement arrived at in terms of sub-section (4) of section 26, in case of mediation other than court referred mediation; or	
	(iv) forwarding of failure report in terms of clause (ii) of sub-section (5) of section 26,	15
Online mediation.	shall be excluded.	
CHAPTER VII		
ONLINE MEDIATION		
32. (1) Online mediation including pre-litigation mediation may be conducted at any stage of mediation under this Act, with the written consent of the parties including by the use of electronic form or computer networks but not limited to an encrypted electronic mail service, secure chat rooms or conferencing by video or audio mode or both.	20	
(2) The process of online mediation shall be in such manner as may be specified.		
(3) The conduct of online mediation shall be in the circumstances, which ensure that the essential elements of integrity of proceedings and confidentiality are maintained at all times and the mediator may take such appropriate steps in this regard as he deems fit.	25	
(4) Subject to the other provisions of this Act, the mediation communications in the case of online mediation shall, ensure confidentiality of mediation.		
CHAPTER VIII		
MEDIATION COUNCIL OF INDIA		
33. (1) The Central Government shall, by notification, establish for the purposes of this Act, a Council to be known as the Mediation Council of India to perform the duties and discharge the functions under this Act.	30	
(2) The Council shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to enter into contract, and shall, by the said name, sue or be sued.	35	
(3) The head office of the Council shall be at Delhi or at such other place as may be notified by the Central Government.		
(4) The Council may, in consultation with the Central Government, establish offices at other places in India and abroad.	40	
Composition of Council.	34. (1) The Council shall consist of the following members, namely:—	
	(a) a person of ability, integrity and standing having adequate knowledge and professional experience or shown capacity in dealing with problems relating to law, alternate dispute resolution, public affairs or administration to be appointed by the Central Government—Chairperson;	45

- (b) a person having knowledge and experience in law related to mediation or alternate dispute resolution mechanisms, to be appointed by the Central Government—Full-Time Member;
- (c) an eminent person having experience in research or teaching in the field of mediation and alternate dispute resolution laws, to be appointed by the Central Government—Full-Time Member;
- (d) Secretary to the Government of India in the Department of Legal Affairs, Ministry of Law and Justice or his representative not below the rank of Joint Secretary—Member, *ex officio*;
- (e) Secretary to the Government of India in the Department of Expenditure, Ministry of Finance or his representative not below the rank of Joint Secretary—Member, *ex officio*;
- (f) Chief Executive Officer—Member-Secretary, *ex officio*; and
- (g) one representative of a recognised body of commerce and industry, chosen by the Central Government—Part-Time Member.
- (2) The Chairperson, Full-Time Member and Part-Time Member of the Council, other than *ex officio* members, shall hold office as such, for a term of four years from the date on which they enter upon their office and shall be eligible for re-appointment:
- Provided that no Chairperson, Full-Time Member or Part-Time Member, other than *ex officio* member, shall hold office as such after he has attained the age of seventy years in the case of Chairperson and sixty-seven years in the case of Full-Time or Part-Time Member.
- (3) The salaries, allowances and other terms and conditions of the Chairperson and Full-Time members referred to in clauses (b) and (c) of sub-section (1) shall be such as may be prescribed.**
- (4) The Part-Time Member shall be entitled to such travelling and other allowances as may be prescribed.
- 35. No act or proceeding of the Council shall be invalid merely by reason of—**
- (a) any vacancy or any defect, in the constitution of the Council;
- (b) any defect in the appointment of a person acting as a Chairperson or Full-Time Member or Part-Time Member of the Council; or
- (c) any irregularity in the procedure of the Council not affecting the merits of the case.
- 36. The Chairperson or the Full-Time Member or Part-Time Member may, by notice in writing, under his hand addressed to the Central Government, resign his office:**
- Provided that the Chairperson or the Full-Time Member or Part-Time Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is earlier.
- 37. (1) The Central Government may, remove the Chairperson or Full-Time Member or Part-Time Member from his office, if he—**
- (a) is an undischarged insolvent; or
- (b) has engaged at any time, during his term of office, in any paid employment without the permission of the Central Government; or
- (c) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
- (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Chairperson or such Member; or

Vacancies,
etc., not to
invalidate
proceedings of
Council.

Resignation.

Removal.

(e) has so abused his position as to render his continuance in office prejudicial to the public interest; or

(f) has become physically or mentally incapable of acting as a Chairperson or Full-Time Member or Part-Time Member:

Provided that where a Chairperson or Full-Time Member or Part-Time Member is proposed to be removed on any ground, he shall be informed of charges against him and given an opportunity of being heard in respect of those charges. 5

Appointment
of experts and
constitution
of
Committees.

38. The Council may, appoint such experts and constitute such committees of experts as it may consider necessary to discharge its functions on such terms and conditions as may be specified. 10

Secretariat and
Chief
Executive
Officer of
Council.

39. (1) **There shall be a Chief Executive Officer of the Council, who shall be responsible for the day to day administration and implementation of the decisions of the Council.**

(2) The qualification, appointment and other terms and conditions of service of the Chief Executive Officer shall be such as may be specified.

(3) The Chief Executive Officer shall discharge such functions and perform such duties as may be specified. 15

(4) There shall be a Secretariat to the Council consisting of such number of officers and employees as may be specified.

(5) The qualification, appointment and other terms and conditions of the service of the employees and other officers of the Council shall be such as may be specified. 20

(6) The Central Government shall provide such number of officers and employees as may be necessary for the functioning of the Council till regulations are made under this section.

Duties and
Functions of
the Council.

40. The Council shall—

(a) endeavour to promote domestic and international mediation in India through appropriate guidelines; 25

(b) endeavour to develop India to be a robust centre for domestic and international mediation;

(c) lay down the guidelines for the continuous education, certification and assessment of mediators by the recognised mediation institutes;

(d) provide for manner of registration of mediators and renew, withdraw, suspend or cancel registration on the basis of conditions as may be specified; 30

(e) lay down standards for professional and ethical conduct of mediators under sub-section (2) of section 17;

(f) hold trainings, workshops and courses in the area of mediation in collaboration with mediation service providers, law firms and universities and other stakeholders, both Indian and international, and any other mediation institutes; 35

(g) enter into memoranda of understanding or agreements with domestic and international bodies or organisations or institutions;

(h) recognise mediation institutes and mediation service providers and renew, withdraw, suspend or cancel such recognition; 40

(i) specify the criteria for recognition of mediation institutes and mediation service providers;

(j) call for any information or record of mediation institutes and mediation service providers;

- (k) lay down standards for professional and ethical conduct of the mediation institutes and mediation service providers;
- (l) publish such information, data, research studies and such other information as may be required;
- 5 (m) maintain an electronic depository of the mediated settlement agreements made in India and for such other records related thereto in such manner as may be specified; and
- (n) perform any other function as may be assigned to it by the Central Government.

CHAPTER IX

10 MEDIATION SERVICE PROVIDERS AND MEDIATION INSTITUTES

- 41.** The mediation service provider recognised by the Council shall be graded by it in the manner as may be specified. Mediation service providers.
- 42.** The mediation service providers shall perform the following functions, namely:— Functions of mediation service providers.
- (a) accredit mediators and maintain panel of mediators;
 - 15 (b) provide the services of mediator for conduct of mediation;
 - (c) provide all facilities, secretarial assistance and infrastructure for the efficient conduct of mediation;
 - (d) promote professional and ethical conduct amongst mediators;
 - (e) facilitate registration of settlement agreements in accordance with the provisions of section 22; and
 - (f) such other functions as may be specified.

- 43.** The Council shall recognise mediation institutes to perform such duties and exercise such functions as may be specified. Mediation institutes.

CHAPTER X

25 COMMUNITY MEDIATION

- 44.** (1) Any dispute likely to affect peace, harmony and tranquility amongst the residents or families of any area or locality may be settled through community mediation with prior mutual consent of the parties to the dispute. Community mediation.
- 39 of 1987. 30 (2) For the purposes of sub-section (1), any of the parties shall make an application before the concerned Authority constituted under the Legal Services Authorities Act, 1987 or District Magistrate or Sub-Divisional Magistrate in areas where no such Authority has been constituted, for referring the dispute to mediation.
- 39 of 1987. 35 (3) In order to facilitate settlement of a dispute for which an application has been received under sub-section (2), the concerned Authority constituted under the Legal Services Authorities Act, 1987 or the District Magistrate or Sub-Divisional Magistrate, as the case may be, shall constitute panel of three mediators.
- (4) For the purpose of this section, the Authority or District Magistrate or the Sub-Divisional Magistrate, as the case may be, shall notify a permanent panel of mediators, which may be revised from time to time.
- 40 (5) The following persons may be included in the panel referred to in sub-section (4)—
- (a) persons of standing and integrity who are respectable in the community;
 - (b) any local person whose contribution to the society has been recognised;
 - (c) representative of area or resident welfare associations; and

(d) any other person deemed appropriate.

(6) While making panel referred to in sub-section (4) the representation of women or any other class or category of persons may be considered.

Procedure for community mediation. 45. (1) Any community mediation shall be conducted by the panel of three mediators referred to in sub-section (3) of section 44 who shall devise suitable procedure for the purpose of resolving the dispute. 5

(2) The mediators shall endeavour to resolve disputes through community mediation and provide assistance to parties for resolving disputes amicably.

(3) In every case where a settlement agreement is arrived at through mediation under this Act, the same may be reduced into writing with the signature of the parties and authenticated by the mediator, a copy of which he provided to the parties and in cases where no settlement agreement is arrived at, a failure report may be submitted by the mediator to the Authority or the District Magistrate or the Sub-Divisional Magistrate, as the case may be, and to the parties. 10

(4) Any settlement agreement arrived at under this Chapter shall be for the purpose of maintaining the peace, harmony and tranquility amongst the residents or families of any area or locality but shall not be enforceable as a judgment or decree of a civil court. 15

(5) The provisions of sub-sections (7) and (8) of section 22 shall, *mutatis mutandis* apply, in relation to the registration of mediated settlement agreement under this section.

CHAPTER XI

MISCELLANEOUS

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Mediation Fund. 46. (1) There shall be a fund to be called "Mediation Fund" (hereinafter referred to as the "Fund") for the purposes of promotion, facilitation and encouragement of mediation under this Act, which shall be administered by the Council.

(2) There shall be credited to the Fund the following, namely:—

(a) all monies provided by the Central Government; 25

(b) all fees and other charges received from mediation service provider, mediation institutes or bodies or persons;

(c) all monies received by the Council in the form of donations, grants, contributions and income from other sources;

(d) grants made by the Central Government or the State Government for the 30 purposes of the Fund;

(e) amounts deposited by persons as contributions to the Fund;

(f) amounts received in the Fund from any other source; and

(g) interest on the above or other income received out of the investment made from the Fund. 35

(3) The Fund shall be applied towards meeting the salaries and other allowances of Chairperson, Full-Time Member, Part-Time Member, Chief Executive Officer, Officers and employees and the expenses of the Council including expenses incurred in the exercise of its powers and discharge of its duties under this Act.

Accounts and audit. 47. (1) The Council shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, including the balance sheet, in such form and manner as may be prescribed in consultation with the Comptroller and Auditor-General of India. 40

(2) The accounts of the Council shall be audited by the Comptroller and Auditor-General of India and any expenditure incurred by him in connection with such audit shall be payable by the Council to the Comptroller and Auditor-General of India. 45

- (3) The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of the Council shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the audit of the Government accounts, and, in particular, shall have
- 5 the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect the offices of the Council.

- (4) The accounts of the Council as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and the Central Government
- 10 shall cause the same to be laid before each House of Parliament.

- 48. (1)** Without prejudice to the foregoing provisions of this Act, the Council shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time:

- 15 Provided that the views of the Council shall be taken into consideration before any direction is given under this sub-section.

- (2) The decision of the Central Government whether a question is one of policy or not shall be final.

- 49.** Nothing contained in this Act shall prevent the Central Government or State
- 20 Government, as the case may be, from framing any scheme or guidelines, to be notified, for resolution of any dispute through mediation or conciliation in cases where the Central Government or State Government or any of its entity or agencies is one of the parties and in such cases mediation or conciliation may be conducted in accordance with such scheme or guidelines.

- 25 **50.** Notwithstanding anything contained in this Act, no dispute including a commercial dispute, wherein the Central Government or State Government or any of its agencies, public bodies, corporations and local bodies including entities controlled or owned by them is a party, the settlement agreement arrived at shall be signed only after obtaining the prior written consent of the competent authority of such Government or any of its entity or
- 30 agencies, public bodies, corporations and local bodies, as the case may be.

- 35 **51.** No suit, prosecution or other legal proceeding shall lie against the Central Government or a State Government or any officer of such Government, or the Chairperson, Full-Time Member or Part-Time Member or Officer or employee of the Council or a mediator, mediation institutes, mediation service providers, which is done or is intended to be done in good faith under this Act or the rules or regulations made thereunder.

- 52. (1)** The Central Government may, by notification, make rules for carrying out the provisions of this Act.

- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may make provision for—

- 40 (a) the salaries and allowances and the terms and conditions of the Chairperson and Full-time Members under sub-section (3) of section 34;

- (b) the travelling and other allowances payable to the Part-Time Member under sub-section (4) of section 34;

- 45 (c) the form and manner of annual statement of accounts, including the balance sheet under sub-section (1) of section 47; and

- (d) any other matter which is to be, or may be prescribed.

Power of
Central
Government
to issue
directions.

Power of
Governments
to frame
schemes or
guidelines.

Mediated
settlement
agreement
where
Government
or its, agency,
etc., is a party.

Protection of
action taken
in good faith.

Power to
make rules.

Power to
make
regulations.

53. (1) The Council may, with the previous approval of the Central Government, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may make provision for—

(a) such other forum under *Explanation I* to clause (l) of section 3;

(b) qualification, experience and accreditation for mediators of foreign nationality under the proviso to sub-section (1) of section 10;

(c) standards for professional and ethical conduct of mediators under sub-section (2) of section 17;

(d) manner of registration of mediated settlement agreement under sub-section (7) of section 22;

(e) fees for registration of mediated settlement agreement under the proviso to sub-section (9) of section 22;

(f) manner of process of conducting online mediation under sub-section (2) of section 32;

(g) the terms and conditions of experts and committees of experts under section 38;

(h) qualifications, appointment and other terms and conditions of service of the Chief Executive Officer under sub-section (2) of section 39;

(i) functions and duties to be performed by the Chief Executive Officer under sub-section (3) of section 39;

(j) the number of officers and employees of the Secretariat of the Council under sub-section (4) of section 39;

(k) the qualification, appointment and other terms and conditions of the employees and other officers of the Council under sub-section (5) of section 39;

(l) conditions for registration of mediators and renewal, withdrawal, suspension or cancellations of such registrations under clause (d) of section 40;

(m) criteria for recognition of mediation institutes and mediation service providers under clause (i) of section 40;

(n) manner of maintenance of electronic depository of mediated settlement agreement under clause (m) of section 40;

(o) manner for grading of mediation service provider under section 41;

(p) such other functions of mediation service provider under clause (f) of section 42;

(q) duties and functions to be performed by mediation institutes under section 43; and

(r) any other matter in respect of which provision is necessary for the performance of functions of the Council under this Act.

Laying.

54. Every notification under sub-section (2) of section 7, sub-section (2) of section 56, rule and regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid,

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both Houses agree in making any modification in the notification, rule or regulation or both Houses agree that the notification, rule or regulation should not be made, the notification, rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification, rule or regulation.

55. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to it to be necessary for removing the difficulty:

10 Provided that no such order shall be made under this section after the expiry of a period of three years from the date of commencement of this Act.

 (2) Every order made under sub-section (1) shall be laid, as soon as may be after it is made, before each House of Parliament.

56. (1) Subject to the enactments mentioned in the Second Schedule, the provisions 15 of this Act shall have overriding effect for conduct of mediation or conciliation notwithstanding anything inconsistent therewith contained in any other law for the time being in force, and any instrument having force of law.

 (2) If the Central Government is satisfied that it is necessary or expedient so to do, it may, by notification, amend the Second Schedule and thereupon it shall be deemed to have 20 been amended accordingly.

57. This Act shall not apply to, or in relation to, any mediation or conciliation commenced before the coming into force of this Act.

58. The Indian Contract Act, 1872, shall be amended in the manner specified in the Third Schedule.

25 **59.** The Code of Civil Procedure, 1908, shall be amended in the manner specified in the Fourth Schedule.

60. The Legal Service Authorities Act, 1987, shall be amended in the manner specified in the Fifth Schedule.

30 **61.** The Arbitration and Conciliation Act, 1996, shall be amended in the manner specified in the Sixth Schedule.

62. The Micro, Small and Medium Enterprises Development Act, 2006, shall be amended in the manner specified in the Seventh Schedule.

63. The Companies Act, 2013, shall be amended in the manner specified in the Eighth Schedule.

35 **64.** The Commercial Courts Act, 2015, shall be amended in the manner specified in the Ninth Schedule.

65. The Consumer Protection Act, 2019, shall be amended in the manner specified in the Tenth Schedule.

Power to remove difficulties.

Provisions of Act to have overriding effect on mediation or conciliation contained in other laws.

Act not to apply to pending proceedings.

Amendment of Act 9 of 1872.

Amendment of Act 5 of 1908.

Amendment of Act 39 of 1987.

Amendment of Act 26 of 1996.

Amendment of Act 27 of 2006.

Amendment of Act 18 of 2013.

Amendment of Act 4 of 2016.

Amendment of Act 35 of 2019.

THE FIRST SCHEDULE

(See section 7)

DISPUTES OR MATTERS NOT FIT FOR MEDIATION

1. Disputes which by virtue of any law for the time being in force may not be submitted for mediation.
2. Disputes involving allegations of serious and specific fraud, fabrication of documents, forgery, impersonation, coercion.
3. Disputes relating to claims against minors, deities; persons with intellectual disabilities, under paragraph 2 of the Schedule and person with disability having high support needs [as defined in clause (t) of section 2] of the Rights of Persons with Disabilities Act, 2016 (49 of 2016); persons with mental illness as defined in clause (s) of sub-section (I) of section 2 of the Mental Healthcare Act, 2017 (10 of 2017); persons of unsound mind, in relation to whom proceedings are to be conducted under Order XXXII of the Code of Civil Procedure, 1908 (5 of 1908); and suits for declaration of title against Government; declaration having effect of right *in rem*.
4. Disputes involving prosecution for criminal offences.
5. Settlement of matters which are prohibited being in conflict with public policy or is opposed to basic notions of morality or justice or under any law for the time being in force.
6. Complaints or proceedings, initiated before any statutory authority or body in relation to registration, discipline, misconduct of any practitioner, or other registered professional, such as legal practitioner, medical practitioner, dentist, architect, chartered accountant, or in relation to any other profession of whatever description, which is regulated under any law for the time being in force.
7. Disputes which have the effect on rights of a third party who are not a party to the mediation proceedings.
8. Any proceeding in relation to any subject-matter, falling within any enactment, over which the Tribunal constituted under the National Green Tribunals Act, 2010 (19 of 2010) has jurisdiction.
9. Any dispute relating to levy, collection, penalties or offences, in relation to any direct or indirect tax or refunds, enacted by any State legislature or Parliament.
10. Any investigation, inquiry or proceeding, under the Competition Act, 2002 (12 of 2003), including proceedings before the Director General, under that Act; proceedings before the Telecom Regulatory Authority of India, under the Telecom Regulatory Authority of India Act, 1997 (24 of 1997) or Telecom Disputes Settlement and Appellate Tribunal established under section 14 of that Act.
11. Proceedings before appropriate Commissions, and the Appellate Tribunal for Electricity, under the Electricity Act, 2003 (36 of 2003).
12. Proceedings before the Petroleum and Natural Gas Regulatory Board, and appeals therefrom before the Appellate Tribunal under the Petroleum and Natural Gas Regulatory Board Act, 2006 (19 of 2006).
13. Proceedings before the Securities and Exchange Board of India, and the Securities Appellate Tribunal, under the Securities and Exchange Board of India Act, 1992 (15 of 1992).
14. Land acquisition and determination of compensation under land acquisition laws, or any provision of law providing for land acquisition.
15. Any other subject-matter of dispute which may be notified by the Central Government.

SECOND SCHEDULE

(See section 56)

1. The Industrial Disputes Act, 1947 (14 of 1947).
2. The Brahmaputra Board Act, 1980 (46 of 1980).
3. The Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981 (50 of 1981).
4. The Family Courts Act, 1984 (66 of 1984).
5. The Legal Services Authorities Act, 1987 (39 of 1987).
6. The Maintenance and Welfare of Parents and Senior Citizen Act, 2007 (56 of 2007).
7. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (14 of 2013).
8. The Finance Act, 2016 (28 of 2016).
9. The Industrial Relations Code, 2020 (35 of 2020).

THE THIRD SCHEDULE

(See section 58)

In section 28 of the Indian Contract Act, 1872 (9 of 1872), for *Exception 1* and *Exception 2*, the following shall be substituted, namely:—

"Exception 1.—Saving of contract to refer to arbitration or mediation dispute that may arise.—This section shall not render illegal a contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to resolution through arbitration or mediation.

Exception 2.—Saving of contract to refer questions that have already arisen.—Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration or mediation any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration or mediation.".

THE FOURTH SCHEDULE

(See section 59)

In the Code of Civil Procedure, 1908 (5 of 1908),—

(i) under Part V, under the heading SPECIAL PROCEEDINGS, the sub-heading "ARBITRATION" shall be omitted;

(ii) for section 89, the following section shall be substituted, namely:—

"89. Settlement of disputes outside the Court.—Where it appears to the Court that the dispute between the parties may be settled and there exists elements of settlement which may be acceptable to the parties, the Court may—

(a) refer the dispute to arbitration, and thereafter, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration were referred for settlement under the provisions of that Act; or

(b) refer the parties to mediation, to the court annexed mediation centre or to any other mediator as per the option of the parties, in accordance with the provisions of the Mediation Act, 2021; or

(c) refer the dispute to Lok Adalat, in accordance with the provisions of sub-section (1) of section 20 of Legal Services Authorities Act, 1987 (39 of 1987) and thereafter, all other provisions of that Act shall apply in respect of the dispute;

(d) effect compromise between the parties and shall follow such procedure as deemed fit for judicial settlement.".

THE FIFTH SCHEDULE

(See section 60)

In the Legal Services Authorities Act, 1987 (39 of 1987), in section 4, for clause (f), the following clause shall be substituted, namely:—

"(f) encourage the settlement of disputes, including online by way of negotiations, arbitration, mediation and conciliation;".

THE SIXTH SCHEDULE

(See section 61)

In the Arbitration and Conciliation Act, 1996 (26 of 1996),—

(a) in section 43D,—

(i) in sub-section (1), the words "mediation, conciliation" shall be omitted;

(ii) in sub-section (2), in clauses (e), (f) and (i), the words "and conciliation" wherever they occur shall be omitted;

(b) for sections 61 to 81, the following sections shall be substituted, namely:—

"61. Reference of conciliation in enactments.—(1) Any provision, in any other enactment for the time being in force, providing for resolution of disputes through conciliation in accordance with the provisions of this Act, shall be construed as reference to mediation as provided under the Mediation Act, 2021.

(2) Conciliation as provided under this Act and the Code of Civil Procedure, 1908 (5 of 1908), shall be construed as mediation referred to in section 4 of the Mediation Act, 2021.

62. Saving.—Notwithstanding anything contained in section 61, any conciliation proceeding initiated in pursuance of sections 61 to 81 of this Act as in force before the commencement of the Mediation Act, 2021, shall be continued as such, as if the Mediation Act, 2021, had not been enacted.".

THE SEVENTH SCHEDULE

(See section 62)

In the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006), for section 18, the following section shall be substituted, namely:—

"18. Reference to Micro and Small Enterprises Facilitation Council.—(1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.

(2) On receipt of a reference under sub-section (1), the Council shall either conduct mediation itself or refer the matter to any mediation service provider as provided under the Mediation Act, 2021.

(3) The conduct of mediation under this section shall be as per the provisions of the Mediation Act, 2021.

(4) Where the mediation initiated under sub-section (3) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any institution or centre providing alternative dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996), shall, then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of section 7 of that Act.

(5) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternative dispute resolution services shall have jurisdiction to act as an Arbitrator or mediator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.".

THE EIGHTH SCHEDULE

(See section 63)

In the Companies Act, 2013 (18 of 2013), for section 442, the following section shall be substituted, namely:—

"442. Reference to mediation.—(1) Any of the parties to a proceedings before the Central Government, Tribunal or the Appellate Tribunal may, at any time apply to the Central Government, Tribunal or the Appellate Tribunal, as the case may be, in such form along with such fees, if any, as may be prescribed, for referring the matter pertaining to such proceedings for mediation and the Central Government, Tribunal or the Appellate Tribunal, as the case may be, shall refer the matter to mediation to be conducted under the provisions of the Mediation Act, 2021.

(2) Nothing in this section shall prevent the Central Government, Tribunal or the Appellate Tribunal before which any proceeding is pending from referring any matter pertaining to such proceeding *suo motu* to mediation to be conducted under the provisions of Mediation Act, 2021 as the Central Government, Tribunal or the Appellate Tribunal, deems fit.

(3) The mediator or mediation service provider shall file the mediated settlement agreement arrived at between the parties with the Central Government or the Tribunal or the Appellate Tribunal under the Act.

(4) The Central Government or the Tribunal or the Appellate Tribunal shall pass an order or judgment making the said Mediated settlement agreement as part thereof.

(5) The fee of the mediator shall be such as may be prescribed.".

THE NINTH SCHEDULE

(See section 64)

In the Commercial Courts Act, 2015 (4 of 2016),—

(a) for Chapter IIIA, the following Chapter shall be substituted, namely:—

"CHAPTER IIIA

PRE-LITIGATION MEDIATION AND SETTLEMENT

12A. Pre-litigation Mediation and Settlement.—(1) A suit, which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of pre-litigation mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.

(2) For the purposes of pre-litigation mediation, the Central Government may, by notification, authorise—

(i) the Authority, constituted under the Legal Services Authorities Act, 1987 (39 of 1987); or

(ii) a mediation service provider as defined under clause (l) of section 3 of the Mediation Act, 2021.

(3) Notwithstanding anything contained in the Legal Services Authorities Act, 1987 (39 of 1987), the Authority or mediation service provider authorised by the Central Government under sub-section (2) shall complete the process of mediation within a period of six months from the date of application made by the plaintiff under sub-section (1):

Provided that the period of mediation may be extended for a further period of six months with the consent of the parties:

Provided further that, the period during which the parties spent for pre-litigation mediation shall not be computed for the purposes of limitation under the Limitation Act, 1963 (36 of 1963).

(4) If the parties to the commercial dispute arrive at a settlement, the same shall be reduced into writing and shall be signed by the parties and the mediator.

(5) The mediated settlement agreement arrived at under this section shall be dealt with in accordance with the provisions of sections 28 and 29 of the Mediation Act, 2021.";

(b) in section 21A, in sub-section (2), for clause (a), the following clause shall be substituted, namely:—

"(a) the manner and procedure of pre-litigation mediation under sub-section (1) of section 12A;".

THE TENTH SCHEDULE

(See section 65)

In the Consumer Protection Act, 2019 (35 of 2019),—

(a) in section 2, clauses (25) and (26) shall be omitted;

(b) for section 37, the following sections shall be substituted, namely:—

"37. Reference to mediation.—The District Commission or State Commission or the National Commission, as the case may be, shall either on an application by the parties at any stage of proceedings refer the disputes for settlement by mediation under the Mediation Act, 2021.

37A. Settlement through mediation.—(1) Pursuant to mediation, if an agreement is reached between the parties with respect to all of the issues involved in the consumer dispute or with respect to only some of the issues, the terms of such agreement shall be reduced to writing accordingly, and signed by the parties to such dispute or their authorised representatives.

(2) The mediator shall prepare a settlement report of the settlement and forward the signed agreement along with such report to the concerned Commission.

(3) Where no agreement is reached between the parties within the specified time or the mediator is of the opinion that settlement is not possible, he shall prepare his report accordingly and submit the same to the concerned Commission.

37B. Recording settlement and passing of order.—(1) The District Commission or the State Commission or the National Commission, as the case may be, shall, within seven days of the receipt of the settlement report, pass suitable order recording such settlement of consumer dispute and dispose of the matter accordingly.

(2) Where the consumer dispute is settled only in part, the District Commission or the State Commission or the National Commission, as the case may be, shall record settlement of the issues which have been so settled and continue to hear other issues involved in such consumer dispute.

(3) Where the consumer dispute could not be settled by mediation, the District Commission or the State Commission or the National Commission, as the case may be, shall continue to hear all the issues involved in such consumer dispute.";

(c) in section 38, in sub-section (1), the words "or in respect of case referred for mediation on failure of settlement by mediation," shall be omitted;

(d) in section 41, the third proviso shall be omitted;

(e) Chapter V shall be omitted;

(f) in section 101, in sub-section (2),—

(i) clause (r) shall be omitted;

(ii) clause (zf) shall be omitted;

(g) in section 102, in sub-section (2), clause (p) shall be omitted;

(h) in section 103, in sub-section (2), clauses (c) to (h) shall be omitted.

STATEMENT OF OBJECTS AND REASONS

An effective dispute resolution process has a significant impact on the economy and doing business in the country, thereby promoting ease of living for citizens, access to justice and rule of law. The rapidly changing society and progress in various areas not limited to economic, industrial or financial sectors, demand commensurate expeditious settlement of dispute between the parties, which at present is time consuming. Thus, there is a need to further promote Alternative Dispute Resolution (ADR), *inter alia*, by institutional mediation. The ADR mechanism of mediation though finds mention in various existing laws, but as on date, there is no comprehensive law governing the various aspects of mediation.

2. Mediation results in amicable resolution of disputes in civil, commercial, family and matrimonial matters and fosters collaborative approach, reduces the burden on the courts, and preserves relationships amongst disputants. Therefore, bringing a comprehensive mediation law and providing for online mediation may serve the interests of all the stakeholders as effective alternative mechanism for resolving disputes.

3. The Bill covering the various aspects of mediation seeks to promote mediation as a preferred mode of ADR, *inter alia*, providing for—

(i) subsuming conciliation under Part III of the Arbitration and Conciliation Act, 1996, in mediation as per international practice of using the terms “conciliation” and “mediation” interchangeably;

(ii) compulsory pre-litigation mediation in matters of civil or commercial dispute, before parties approach a court or a tribunal as provided;

(iii) conduct of online mediation;

(iv) an indicative list of matters which are not fit for mediation under the First Schedule;

(v) mediation that will take place within the territorial jurisdiction of the court or tribunal of competent jurisdiction, unless parties agree otherwise or undertake mediation in online mode;

(vi) a period of one hundred and eighty days, for completing the mediation process which is further extendable to a maximum period of one hundred and eighty days with the mutual consent of the parties;

(vii) the mediated settlement agreement resulting from mediation which will be final and binding and will be enforceable in accordance with the provisions of Code of Civil Procedure, 1908, in the same manner as if it were a judgment or decree of a Court;

(viii) establishment of Mediation Council of India, objects of which would be, *inter alia*, to promote mediation and to develop India as a robust centre for domestic and international mediation, make regulations for registration of mediators, grade mediation service providers, specify criteria for recognition of mediation institutes and mediation service providers, to hold training workshops and courses in the area of mediation, etc.; and

(ix) conduct of community mediation with consent of parties for disputes which are likely to affect peace, harmony and tranquility amongst the residents or families of any area or locality.

4. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 14th December, 2021.

KIREN RIJIU.

Notes on clauses

Clause 1 of the Bill provides for short title, extent and commencement of the Act.

Clause 2 of the Bill provides for applicability of the Act.

Clause 3 of the Bill provides definition of various expressions used in the Bill.

Clause 4 of the Bill provides that mediation shall be a process whereby party or parties, request a third person referred to as mediator or mediation service provider to assist in the attempt to reach an amicable settlement of dispute.

Clause 5 of the Bill provides that mediation agreement shall be in writing, by or between parties and anyone claiming through them, to submit to mediation all or certain disputes which have arisen or which may arise between the parties. It further provides that mediation agreement may be in the form of a mediation clause in a contract or in the form of a separate agreement.

Clause 6 of the Bill provides that whether any mediation agreement exists or not, any party before filing any suit or proceedings of civil or commercial nature in any Court shall, take steps to settle the disputes by pre-litigation mediation in accordance with the provisions of the new law. It further provides that pre-litigation mediation in matters of commercial disputes of Specified Value, shall be undertaken in accordance with the provisions of section 12A of the Commercial Courts Act, 2015, and the rules made thereunder.

Clause 7 of the Bill provides an indicative list of disputes or matters which cannot be referred to mediation except some compoundable offences or matrimonial offences connected with or arising out of civil proceedings which can be referred to mediation by Court, if deemed appropriate. Settlement arrived in these cases not to have effect of judgement or decree of Court.

Clause 8 of the Bill provides that if exceptional circumstances exist, a party may, before the commencement of or during the continuation of mediation proceedings under this Part, file appropriate proceedings before a court or tribunal of competent jurisdiction for seeking urgent interim measures.

Clause 9 of the Bill provides that court or tribunal may, at any stage of pending proceeding, refer the parties to undertake mediation if a request to this effect is made by them.

Clause 10 of the Bill provides for the appointment of mediator.

Clause 11 of the Bill provides that mediation service provider while appointing mediator shall consider his suitability and the preference of the parties for resolving the dispute.

Clause 12 of the Bill provides that when a person is appointed as a mediator, he shall disclose in writing to the parties about any circumstances or potential circumstances, personal, professional or financial, that may constitute conflict of interest or that is likely to give rise to justifiable doubts as to such mediator's independence or impartiality in the conduct of the mediation process.

Clause 13 of the Bill provides for the termination of mandate of mediator.

Clause 14 of the Bill provides for the replacement of mediator.

Clause 15 of the Bill provides that mediation under this Act shall take place within the territorial jurisdiction of the court or tribunal of competent jurisdiction unless parties agree to conduct mediation outside the said territorial jurisdiction or by way of online mediation.

Clause 16 of the Bill provides that mediation proceedings with respect to a particular dispute shall be deemed to have commenced on the date on which a party issues notice to

the other party in case of prior mediation agreement and in other cases on the day the parties have agreed to appoint a mediator of their choice or on the day when a party applies to a mediation service provider for mediation.

Clause 17 of the Bill provides that the mediator shall assist the parties in an independent, neutral and impartial manner in their attempt to reach an amicable settlement of their dispute. It further provides that mediator shall not be bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872.

Clause 18 of the Bill provides that mediator shall attempt to facilitate voluntary resolution of the dispute by the parties, and communicate the view of each party to the other to the extent agreed to by them, assist them in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise and generating options in an attempt to resolve the dispute.

Clause 19 of the Bill provides that mediator shall not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceeding in respect of a dispute that is the subject of the mediation proceedings and he shall not be presented by the parties as a witness in any arbitral or judicial proceeding.

Clause 20 of the Bill provides that parties may withdraw from mediation at any time after the first two mediation sessions. The court or tribunal can however, impose cost in subsequent litigation if a party fails to attend the first two mediation sessions without any reasonable cause thereby resulting in the failure of mediation.

Clause 21 of the Bill provides that mediation under this Act shall be completed within a period of one hundred and eighty days from the date fixed for the first appearance before the mediator and the period can be extended by further period of one hundred and eighty days with the mutual consent of the parties.

Clause 22 of the Bill provides that mediated settlement agreement means and includes an agreement in writing between some or all of the parties resulting from mediation including online mediation, settling some or all of the disputes between such parties, and authenticated by the mediator. It further provides that mediated settlement agreement arrived at between the parties other than those arrived in Court annexed mediation centres or under sections 21 and 22E of the Legal Services Authorities Act, 1987 shall be registered with the Authority constituted under the Legal Services Authorities Act, 1987 within a period of one hundred and eighty days. However, registration is not mandatory till the time regulations specifying the manner of registration are made by the Council.

Clause 23 of the Bill provides that the mediator, mediation service provider, the parties and participants in the mediation shall keep information and communication relating to the mediation proceedings confidential and no party to the mediation shall in any proceedings before a court or tribunal including arbitral tribunal, rely on or introduce as evidence any such information or communication. However, confidentiality shall not apply to the mediated settlement agreement where its disclosure is necessary for the purpose of registration, implementation, enforcement and challenge.

Clause 24 of the Bill provides immunity to the participants including experts and advisers engaged for the purpose of the mediation and persons involved in the administration of the mediation from disclosing by whatever description, any communication in mediation, or to state the contents or conditions of any document or nature or conduct of parties during mediation including the content of negotiations or offers or counter offers with which they have become acquainted during the mediation.

Clause 25 of the Bill provides for termination of mediation proceedings in certain circumstances.

Clause 26 of the Bill provides that court annexed mediation including pre-litigation mediation in court annexed mediation centre shall be conducted in accordance with the

practice directions or rules by whatever name called by the Supreme Court or the High Courts. Also, Supreme Court or the High Court to constitute mediation committee for the empanelment of mediators who shall conduct mediation in all courts.

Clause 27 of the Bill provides that the provisions of the proposed Act shall not apply to the proceedings conducted by Lok Adalat and Permanent Lok Adalat under the Legal Services Authorities Act, 1987.

Clause 28 of the Bill provides that mediated settlement agreement resulting from mediation is final and binding and is enforceable in accordance with the provisions of Code of Civil Procedure, 1908, in the same manner as if it were a judgement or decree passed by a court.

Clause 29 of the Bill provides that mediated settlement agreement can be challenged on the grounds of fraud, corruption, impersonation or where mediation is conducted in a dispute or matter not fit for mediation and that such challenge can be made within a period of ninety days from the date of receipt of copy of mediated settlement agreement by the parties.

Clause 30 of the Bill provides that all costs of mediation, including the fees of the mediator and the charges of the mediation service provider shall be borne equally by the parties unless otherwise agreed by the parties.

Clause 31 of the Bill provides that the period during which the parties were engaged in the mediation shall be excluded for computing the period of limitation specified for any proceedings.

Clause 32 of the Bill provides that the online mediation including pre-litigation mediation may be conducted at any stage of mediation with the written consent of the parties and that such online mediation shall be conducted in the manner specified by the Council.

Clause 33 of the Bill provides for the establishment of Mediation Council of India as a body corporate having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both moveable and immoveable, and to enter into contract, and shall, by the said name, sue or be sued.

Clause 34 of the Bill provides for the composition of Council and appointment and qualifications, term of office, salary and allowances, etc., of Chairperson, Full-Time Member and Part-Time Member.

Clause 35 of the Bill provides that any vacancy, defect in the appointment or any irregularity in procedure shall not invalidate the proceedings of the Council.

Clause 36 of the Bill provides for the procedure for resignation of Chairperson or the Full-Time Member and Part-Time Member by notice in writing, addressed to the Central Government.

Clause 37 of the Bill specifies the circumstances in which the Central Government may, remove Chairperson or a Full-Time Member or a Part-Time Member of the Council.

Clause 38 of the Bill provides for the appoint of experts and constitution of committees of experts as Council may consider necessary for the effective discharge of its functions.

Clause 39 of the Bill provides for the Chief Executive Officer of the Council as well as the Secretariat of the council, which shall comprise of such number of officers and employees as may be specified by the Council.

Clause 40 of the Bill provides the duties and functions of the Council.

Clause 41 of the Bill provides for the recognition and grading of mediation service provider by the Council.

Clause 42 of the Bill provides the functions to be performed by the mediation service provider.

Clause 43 of the Bill provides for the recognition of mediation institutes by the Council and the functions and duties to be performed by such mediation institutes as may be specified by the Council.

Clause 44 of the Bill provides for community mediation, with prior mutual consent of parties, for resolution of disputes which are likely to affect peace, harmony and tranquility amongst the residents or families of any area or locality and empowers the concerned Authority or District Magistrate or Sub-Divisional Magistrate to constitute a panel of three mediators for conducting the community mediation.

Clause 45 of the Bill provides that a panel of three community mediators shall conduct community mediation in accordance with the procedure to be devise by them for resolving the dispute.

Clause 46 of the Bill provides that there shall be a fund to be called "Mediation Fund" for the purposes of promotion, facilitation and encouragement of mediation and empowers the Council to administer the Fund.

Clause 47 of the Bill provides that Council shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, including the balance sheet, in such form and manner as may be made by rule in consultation with the Comptroller and Auditor-General of India. It further provides that the accounts of the Council shall be audited by the Comptroller and Auditor-General of India.

Clause 48 of the Bill empowers the Central Government to issue directions to the Council on questions of policy which shall be binding on the Council.

Clause 49 of the Bill provides that Central Government or State Government can frame any scheme or guidelines for resolution of any dispute through mediation or conciliation in cases where the Central Government or State Government or any of its entity or agencies is one of the party.

Clause 50 of the Bill provides that the settlement agreement arrived at in a dispute including a commercial dispute, wherein the Central Government or State Government or any of its agencies, public bodies, corporations and local bodies including entities is a party shall be signed only after obtaining the prior written consent of the competent authority.

Clause 51 of the Bill provides that no suit, prosecution or other legal proceedings shall lie against the Central Government or a State Government or any officer of such Government, or the Chairperson, Full-Time Member or Part-Time Member or Officer or employee of the Council or a mediator, mediation institutes, mediation service providers, which is done or is intended to be done in good faith.

Clause 52 of the Bill empowers the Central Government to make rules to carry out the provisions of this Act.

Clause 53 of the Bill empowers the Council to make regulations, by notification, with the previous approval of the Central Government. It further provides that the regulations shall be consistent with the provisions of the Act and the rules made thereunder.

Clause 54 of the Bill provides for laying of every notification issued under sub-clause (2) of clause 7 and sub-clause (2) of clause 56 and every rule made by the Central Government and every regulation made by the Council, as soon as may be, after it is made, before each House of Parliament.

Clause 55 of the Bill seeks to provide that, if any difficulty arises in giving effect to the provisions of the Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of the Act, as may appear to it to be necessary for removing the difficulty.

Clause 56 of the Bill seeks to provide that the provisions of Act to have overriding effect on mediation or conciliation contained in other laws except those mentioned in the Second Schedule. It further provides that the Central Government may amend the Schedule by notification in the Official Gazette.

Clause 57 of the Bill seeks to provide that the Act shall not apply to, or in relation to, any mediation or conciliation commenced before the coming into force of this Act.

Clause 58 of the Bill amends the Indian Contract Act, 1872 in the manner specified in the Third Schedule.

Clause 59 of the Bill amends the Code of Civil Procedure, 1908 in the manner specified in the Fourth Schedule.

Clause 60 of the Bill amends the Legal Service Authorities Act, 1987 in the manner specified in the Fifth Schedule.

Clause 61 of the Bill amends the Arbitration and Conciliation Act, 1996 in the manner specified in the Sixth Schedule.

Clause 62 of the Bill amends the Micro, Small and Medium Enterprises Development Act, 2006 in the manner specified in the Seventh Schedule.

Clause 63 of the Bill amends the Companies Act, 2013 in the manner specified in the Eighth Schedule.

Clause 64 of the Bill amends the Commercial Courts Act, 2015 in the manner specified in the Ninth Schedule.

Clause 65 amends the Consumer Protection Act, 2019 in the manner specified in the Tenth Schedule.

FINANCIAL MEMORANDUM

Sub-clause (1) of clause 33 of the Bill provides for establishment of Mediation Council of India.

2. Sub-clause (1) of clause 34 of the Bill provides for the composition of the Mediation Council of India.

3. Sub-clauses (3) and (4) of clause 34 provides for the terms and conditions, salary and allowances payable to the Chairperson, Full-Time Member and Part-Time Member.

4. Clause 38 of the Bill provides for appointment of such experts and constitution of such committees of experts by the Mediation Council as it may consider necessary to discharge its functions.

5. Sub-clause (1) of clause 39 provides for appointment of a Chief Executive Officer, who shall be responsible for the day to day administration of the Council.

6. Sub-clause (2) of clause 39 provides for the qualification, appointment and other terms and conditions of Chief Executive Officer.

7. Sub-clause (4) of clause 39 provides for Secretariat to the Council consisting of such number of officers and employees. Further, sub-section (5) provides for qualification, appointment and other terms and conditions of the service of the employees and other officers of the Council.

8. Clause 46 of the Bill provides for maintenances of a Fund called "Mediation Fund" for crediting all monies provided by the Central Government; all fees and other charges received from mediation service provider, mediation institutes or bodies or persons; all monies received by the Council in the form of donations, grants, contributions and income from other sources; grants made by the Central Government or the State Government for the purposes of the Fund; amounts deposited by persons as contributions to the Fund; amounts received in the Fund from any other source; interest on the above or other income received out of the investment made from the Fund.

9. Sub-clause (3) of clause 46 provides that the Fund shall be applied towards meeting the salaries and other allowances of Chairperson, Full-Time Member, Part-Time Member, Chief Executive Officer, Officers and employees and the expenses of the Council including expenses incurred in the exercise of its powers and discharge of its duties under this Act.

10. It is estimated that the proposed law when passed would entail an expenditure of approximately twenty-one crores one lakh fifteen thousand thirty-six rupees in the first year, twenty crores ninety-nine lakhs nine thousand forty in the second year, twenty-three crores sixteen lakhs seven thousand one hundred ninety-four in the third year of establishment of Council as initial establishment expenses, including salaries and allowances and other remuneration of Chairperson, Full-Time Member, Part-Time Member and its officers and other employees.

11. The Bill if enacted and brought into operation would not involve any other expenditure of a recurring or non-recurring nature from the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (2) of clause 7 of the Bill provides for amendment of the First Schedule by notification by the Central Government.

2. Clause 33 of the Bill provides for the establishment of Mediation Council of India.

3. Clause 52 of the Bill empowers the Central Government to make rules with respect to the matters which relate to the terms and conditions and the salaries and allowances payable to the Chairperson and Full-Time Members; the travelling and other allowances payable to the Part-Time Members; the form and manner of annual statement of accounts, including the balance sheet and any other matter which is to be, or may be prescribed.

4. Clause 53 of the Bill provides for the Mediation Council of India, with the previous approval of the Central Government, to make regulations consistent with the Act and the rules made thereunder to carry out the provisions of this Act which, *inter alia* relate to qualification, experience and accreditation for mediators of foreign nationality; manner of registration of mediated settlement agreement; fees for registration of mediated settlement agreement; manner of process of conducting online mediation; the terms and conditions of experts and committees of experts; qualifications, appointment and other terms and conditions of service of the Chief Executive Officer; functions and duties to be performed by the Chief Executive Officer; the number of officers and employees of the Secretariat of the Council; the qualification, appointment and other terms and conditions of the employees and other officers of the Council; conditions for registration of mediators and renewal, withdrawal, suspension or cancellations of such registrations; standards for professional and ethical conduct of mediators; criteria for recognition of mediation institutes and mediation service providers; manner of maintenance of electronic depository of mediated settlement agreement; manner for grading of mediation service provider; functions of mediation service provider; duties and functions to be performed by mediation institutes; any other matter in respect of which provision is necessary for the performance of functions of the Council under this Act.

5. Sub-clause (2) of clause 56 provides for the amendment of the Second Schedule by notification to be issued by the Central Government.

6. The matters in respect of which notification, rules and regulations may be made under the aforesaid provisions are matters of procedure and administrative details and it is not practical to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

ANNEXURE

EXTRACT FROM THE INDIAN CONTRACT ACT, 1872

(9 OF 1872)

* * * * *

Agreements
in restraint of
legal
proceedings.

28. Every agreement,—

(a) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights; or

(b) which extinguishes the rights of any party thereto, or discharges any party thereto, from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights, is void to the extent.

Exception 1.—Saving of contract to refer to arbitration dispute that may arise.—This section shall not render illegal a contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

Exception 2.—Saving of contract to refer questions that have already arisen.—Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration.

* * * * *

EXTRACT FROM THE CODE OF CIVIL PROCEDURE, 1908

(5 OF 1908)

* * * * *

PART V

SPECIAL PROCEEDINGS

ARBITRATION

Settlement of
disputes outside
the Court.

89. (1) Where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of a possible settlement and refer the same for:—

- (a) arbitration;
- (b) conciliation;
- (c) judicial settlement including settlement through Lok Adalat; or
- (d) mediation.

(2) Were a dispute has been referred—

(a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act;

(b) to Lok Adalat, the Court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (1) of section 20 of the Legal Services Authorities

26 of 1996.

39 of 1987.

Act, 1987 and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;

39 of 1987.

(c) for judicial settlement, the Court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authorities Act, 1987 shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;

(d) for mediation, the Court shall effect a compromise between the parties and shall follow such procedure as may be prescribed

* * * * *

EXTRACT FROM THE LEGAL SERVICES AUTHORITIES ACT, 1987

(39 OF 1987)

* * * * *

4. The Central Authority shall perform all or any of the following functions, namely:—

* * * * *

Functions of
the Central
Authority.

(f) encourage the settlement of disputes by way of negotiations, arbitration and conciliation;

* * * * *

EXTRACTS FROM THE ARBITRATION AND CONCILIATION ACT, 1996

(26 OF 1996)

* * * * *

43D. (1) It shall be the duty of the Council to take all such measures as may be necessary to promote and encourage arbitration, mediation, conciliation or other alternative dispute resolution mechanism and for that purpose to frame policy and guidelines for the establishment, operation and maintenance of uniform professional standards in respect of all matters relating to arbitration.

Duties and
functions of
Council.

(2) For the purposes of performing the duties and discharging the functions under this Act, the Council may—

* * * * *

(e) frame, review and update norms to ensure satisfactory level of arbitration and conciliation;

(f) act as a forum for exchange of views and techniques to be adopted for creating a platform to make India a robust centre for domestic and international arbitration and conciliation;

* * * * *

(i) conduct examination and training on various subjects relating to arbitration and conciliation and award certificates thereof;

* * * * *

PART III CONCILIATION

61. (1) Save as otherwise provided by any law for the time being in force and unless the parties have otherwise agreed, this Part shall apply to conciliation of disputes arising out of legal relationship, whether contractual or not and to all proceedings relating thereto.

Application
and scope.

(2) This Part shall not apply where by virtue of any law for the time being in force certain disputes may not be submitted to conciliation.

Commencement of conciliation proceedings.

62. (1) The party initiating conciliation shall send to the other party a written invitation to conciliate under this Part, briefly identifying the subject of the dispute.

(2) Conciliation proceedings, shall commence when the other party accepts in writing the invitation to conciliate.

(3) If the other party rejects the invitation, there will be no conciliation proceedings.

(4) If the party initiating conciliation does not receive a reply within thirty days from the date on which he sends the invitation, or within such other period of time as specified in the invitation, he may elect to treat this as a rejection of the invitation to conciliate and if he so elects, he shall inform in writing the other party accordingly.

Number of conciliators.

63. (1) There shall be one conciliator unless the parties agree that there shall be two or three conciliators.

(2) Where there is more than one conciliator, they ought, as a general rule, to act jointly.

Appointment of conciliators.

64. (1) Subject to sub-section (2)—

(a) in conciliation proceedings, with one conciliator, the parties may agree on the name of a sole conciliator;

(b) in conciliation proceedings with two conciliators, each party may appoint one conciliator;

(c) in conciliation proceedings with three conciliators, each party may appoint one conciliator and the parties may agree on the name of the third conciliator who shall act as the presiding conciliator.

(2) Parties may enlist the assistance of a suitable institution or person in connection with the appointment of conciliators, and in particular,—

(a) a party may request such an institution or person to recommend the names of suitable individuals to act as conciliator; or

(b) the parties may agree that the appointment of one or more conciliators be made directly by such an institution or person:

Provided that in recommending or appointing individuals to act as conciliator, the institution or person shall have regard to such considerations as are likely to secure the appointment of an independent and impartial conciliator and, with respect to a sole or third conciliator, shall take into account the advisability of appointing a conciliator of a nationality other than the nationalities of the parties.

Submission of statements to conciliator.

65. (1) The conciliator, upon his appointment, may request each party to submit to him a brief written statement describing the general nature of the dispute and the points at issue. Each party shall send a copy of such statement to the other party.

(2) The conciliator may request each party to submit to him a further written statement of his position and the facts and grounds in support thereof, supplemented by any documents and other evidence that such party deems appropriate. The party shall send a copy of such statement, documents and other evidence to the other party.

(3) At any stage of the conciliation proceedings, the conciliator may request a party to submit to him such additional information as he deems appropriate.

Explanation.—In this section and all the following sections of this Part, the term "conciliator" applies to a sole conciliator, two or three conciliators, as the case may be.

5 of 1908.
1 of 1872.

66. The conciliator is not bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872 .

Conciliator
not bound by
certain
enactments.

67. (1) The conciliator shall assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.

Role of
conciliator.

(2) The conciliator shall be guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties.

(3) The conciliator may conduct the conciliation proceedings in such a manner as he considers appropriate, taking into account the circumstances of the case, the wishes the parties may express, including any request by a party that the conciliator hear oral statements, and the need for a speedy settlement of the dispute.

(4) The conciliator may, at any stage of the conciliation proceedings, make proposals for a settlement of the dispute. Such proposals need not be in writing and need not be accompanied by a statement of the reasons therefor.

68. In order to facilitate the conduct of the conciliation proceedings, the parties, or the conciliator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.

Administrative
assistance.

69. (1) The conciliator may invite the parties to meet him or may communicate with them orally or in writing. He may meet or communicate with the parties together or with each of them separately.

Communication
between
conciliator
and parties.

(2) Unless the parties have agreed upon the place where meetings with the conciliator are to be held, such place shall be determined by the conciliator, after consultation with the parties, having regard to the circumstances of the conciliation proceedings.

70. When the conciliator receives factual information concerning the dispute from a party, he shall disclose the substance of that information to the other party in order that the other party may have the opportunity to present any explanation which he considers appropriate:

Disclosure of
information.

Provided that when a party gives any information to the conciliator subject to a specific condition that it be kept confidential, the conciliator shall not disclose that information to the other party.

71. The parties shall in good faith co-operate with the conciliator and, in particular, shall endeavour to comply with requests by the conciliator to submit written materials, provide evidence and attend meetings.

Co-operation
of parties with
conciliator.

72. Each party may, on his own initiative or at the invitation of the conciliator, submit to the conciliator suggestions for the settlement of the dispute.

Suggestions by
parties for
settlement of
dispute.

73. (1) When it appears to the conciliator that there exist elements of a settlement which may be acceptable to the parties, he shall formulate the terms of a possible settlement and submit them to the parties for their observations. After receiving the observations of the parties, the conciliator may reformulate the terms of a possible settlement in the light of such observations.

Settlement
agreement.

(2) If the parties reach agreement on a settlement of the dispute, they may draw up and sign a written settlement agreement. If requested by the parties, the conciliator may draw up, or assist the parties in drawing up, the settlement agreement.

(3) When the parties sign the settlement agreement, it shall be final and binding on the parties and persons claiming under them respectively.

(4) The conciliator shall authenticate the settlement agreement and furnish a copy thereof to each of the parties.

Status and effect of settlement agreement.

74. The settlement agreement shall have the same status and effect as if it is an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal under section 30.

Confidentiality.

75. Notwithstanding anything contained in any other law for the time being in force, the conciliator and the parties shall keep confidential all matters relating to the conciliation proceedings. Confidentiality shall extend also to the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement.

Termination of conciliation proceedings.

76. The conciliation proceedings shall be terminated—

(a) by the signing of the settlement agreement by the parties, on the date of the agreement; or

(b) by a written declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration; or

(c) by a written declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated, on the date of the declaration; or

(d) by a written declaration of a party to the other party and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of the declaration.

Resort to arbitral or judicial proceedings.

77. The parties shall not initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject-matter of the conciliation proceedings except that a party may initiate arbitral or judicial proceedings where, in his opinion, such proceedings are necessary for preserving his rights.

Costs.

78. (1) Upon termination of the conciliation proceedings, the conciliator shall fix the costs of the conciliation and give written notice thereof to the parties.

(2) For the purpose of sub-section (1), "costs" means reasonable costs relating to—

(a) the fee and expenses of the conciliator and witnesses requested by the conciliator with the consent of the parties;

(b) any expert advice requested by the conciliator with the consent of the parties;

(c) any assistance provided pursuant to clause (b) of sub-section (2) of section 64 and section 68.

(d) any other expenses incurred in connection with the conciliation proceedings and the settlement agreement.

(3) The costs shall be borne equally by the parties unless the settlement agreement provides for a different apportionment. All other expenses incurred by a party shall be borne by that party.

Deposits.

79. (1) The conciliator may direct each party to deposit an equal amount as an advance for the costs referred to in sub-section(2) of section 78 which he expects will be incurred.

(2) During the course of the conciliation proceedings, the conciliator may direct supplementary deposits in an equal amount from each party.

(3) If the required deposits under sub-sections (1) and (2) are not paid in full by both parties within thirty days, the conciliator may suspend the proceedings or may make a written declaration of termination of the proceedings to the parties, effective on the date of that declaration.

(4) Upon termination of the conciliation proceedings, the conciliator shall render an accounting to the parties of the deposits received and shall return any unexpended balance to the parties.

80. Unless otherwise agreed by the parties,—

(a) the conciliator shall not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceeding in respect of a dispute that is the subject of the conciliation proceedings;

(b) the conciliator shall not be presented by the parties as a witness in any arbitral or judicial proceedings.

Role of conciliator in other proceedings.

81. The parties shall not rely on or introduce as evidence in arbitral or judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of the conciliation proceedings,—

(a) views expressed or suggestions made by the other party in respect of a possible settlement of the dispute;

(b) admissions made by the other party in the course of the conciliation proceedings;

(c) proposals made by the conciliator;

(d) the fact that the other party had indicated his willingness to accept a proposal for settlement made by the conciliator.

Admissibility of evidence in other proceedings.

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EXTRACT FROM THE MICRO, SMALL AND MEDIUM ENTERPRISES DEVELOPMENT ACT, 2006

(27 OF 2006)

* * * *

Reference to Micro and Small Enterprises Facilitation Council.

18. (1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.

(2) On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.

26 of 1996.

26 of 1996.

(3) Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of section 7 of that Act.

(4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.

(5) Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference.

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EXTRACT FROM THE COMPANIES ACT, 2013

(18 OF 2013)

* * * *

Mediation and Conciliation Panel.

442. (1) The Central Government shall maintain a panel of experts to be called as the Mediation and Conciliation Panel consisting of such number of experts having such qualifications as may be prescribed for mediation between the parties during the pendency of any proceedings before the Central Government or the Tribunal or the Appellate Tribunal under this Act.

(2) Any of the parties to the proceedings may, at any time during the proceedings before the Central Government or the Tribunal or the Appellate Tribunal, apply to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, in such form along with such fees as may be prescribed, for referring the matter pertaining to such proceedings to the Mediation and Conciliation Panel and the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, shall appoint one or more experts from the panel referred to in sub-section (1).

(3) The Central Government or the Tribunal or the Appellate Tribunal before which any proceeding is pending may, *suo motu*, refer any matter pertaining to such proceeding to such number of experts from the Mediation and Conciliation Panel as the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, deems fit.

(4) The fee and other terms and conditions of experts of the Mediation and Conciliation Panel shall be such as may be prescribed.

(5) The Mediation and Conciliation Panel shall follow such procedure as may be prescribed and dispose of the matter referred to it within a period of three months from the date of such reference and forward its recommendations to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.

(6) Any party agreed by the recommendation of the Mediation and Conciliation Panel may file objections to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.

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EXTRACT FROM THE COMMERCIAL COURTS ACT, 2015

(4 OF 2016)

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CHAPTER IIIA

PRE-INSTITUTION MEDIATION AND SETTLEMENT

Pre-Institution Mediation and Settlement.

12A. (1) A suit, which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of preinstitution mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.

(2) The Central Government may, by notification, authorise the Authorities constituted under the Legal Services Authorities Act, 1987, for the purposes of pre-institution mediation.

39 of 1987.

(3) Notwithstanding anything contained in the Legal Services Authorities Act, 1987, the Authority authorised by the Central Government under sub-section (2) shall complete the process of mediation within a period of three months from the date of application made by the plaintiff under sub-section (1):

39 of 1987.

Provided that the period of mediation may be extended for a further period of two months with the consent of the parties:

Provided further that, the period during which the parties remained occupied with the pre-institution mediation, such period shall not be computed for the purpose of limitation under the Limitation Act, 1963 .
36 of 1963.

(4) If the parties to the commercial dispute arrive at a settlement, the same shall be reduced into writing and shall be signed by the parties to the dispute and the mediator.

(5) The settlement arrived at under this section shall have the same status and effect as if it is an arbitral award on agreed terms under sub-section (4) of section 30 of the Arbitration and Conciliation Act, 1996 .
26 of 1996.

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EXTRACTS FROM THE CONSUMER PROTECTION ACT, 2019

(35 OF 2019)

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2. In this Act, unless the context otherwise requires,—

Definitions.

* * * * *

(25) "mediation" means the process by which a mediator mediates the consumer disputes;

(26) "mediator" means a mediator referred to in section 75;

* * * * *

37. (1) At the first hearing of the complaint after its admission, or at any later stage, if it appears to the District Commission that there exists elements of a settlement which may be acceptable to the parties, except in such cases as may be prescribed, it may direct the parties to give in writing, within five days, consent to have their dispute settled by mediation in accordance with the provisions of Chapter V.

Reference to
mediation.

(2) Where the parties agree for settlement by mediation and give their consent in writing, the District Commission shall, within five days of receipt of such consent, refer the matter for mediation, and in such case, the provisions of Chapter V, relating to mediation, shall apply.

* * * * *

38. (1) The District Commission shall, on admission of a complaint, or in respect of cases referred for mediation on failure of settlement by mediation, proceed with such complaint.

Procedure on
admission of
complaint.

* * * * *

41. Any person aggrieved by an order made by the District Commission may prefer an appeal against such order to the State Commission on the grounds of facts or law within a period of forty-five days from the date of the order, in such form and manner, as may be prescribed:

Appeal against
order of
District
Commission.

Provided that the State Commission may entertain an appeal after the expiry of the said period of forty-five days, if it is satisfied that there was sufficient cause for not filing it within that period:

Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the District Commission, shall be entertained by the State Commission unless the appellant has deposited fifty per cent. of that amount in the manner as may be prescribed:

Provided also that no appeal shall lie from any order passed under sub-section (1) of section 81 by the District Commission pursuant to a settlement by mediation under section 80.

CHAPTER V

MEDIATION

Establishment of consumer mediation cell.

74. (1) The State Government shall establish, by notification, a consumer mediation cell to be attached to each of the District Commissions and the State Commissions of that State.

(2) The Central Government shall establish, by notification, a consumer mediation cell to be attached to the National Commission and each of the regional Benches.

(3) A consumer mediation cell shall consist of such persons as may be prescribed.

(4) Every consumer mediation cell shall maintain—

(a) a list of empanelled mediators;

(b) a list of cases handled by the cell;

(c) record of proceeding; and

(d) any other information as may be specified by regulations.

(5) Every consumer mediation cell shall submit a quarterly report to the District Commission, State Commission or the National Commission to which it is attached, in the manner specified by regulations.

Empanelment of mediators.

75. (1) For the purpose of mediation, the National Commission or the State Commission or the District Commission, as the case may be, shall prepare a panel of the mediators to be maintained by the consumer mediation cell attached to it, on the recommendation of a selection committee consisting of the President and a member of that Commission.

(2) The qualifications and experience required for empanelment as mediator, the procedure for empanelment, the manner of training empanelled mediators, the fee payable to empanelled mediator, the terms and conditions for empanelment, the code of conduct for empanelled mediators, the grounds on which, and the manner in which, empanelled mediators shall be removed or empanelment shall be cancelled and other matters relating thereto, shall be such as may be specified by regulations.

(3) The panel of mediators prepared under sub-section (1) shall be valid for a period of five years, and the empanelled mediators shall be eligible to be considered for re-empanelment for another term, subject to such conditions as may be specified by regulations.

Nomination of mediators from panel.

76. The District Commission, the State Commission or the National Commission shall, while nominating any person from the panel of mediators referred to in section 75, consider his suitability for resolving the consumer dispute involved.

Duty of mediator to disclose certain facts.

77. It shall be the duty of the mediator to disclose—

(a) any personal, professional or financial interest in the outcome of the consumer dispute;

(b) the circumstances which may give rise to a justifiable doubt as to his independence or impartiality; and

(c) such other facts as may be specified by regulations.

Replacement of mediator in certain cases.

78. Where the District Commission or the State Commission or the National Commission, as the case may be, is satisfied, on the information furnished by the mediator or on the information received from any other person including parties to the complaint and after hearing the mediator, it shall replace such mediator by another mediator.

Procedure for mediation.

79. (1) The mediation shall be held in the consumer mediation cell attached to the District Commission, the State Commission or the National Commission, as the case may be.

(2) Where a consumer dispute is referred for mediation by the District Commission or the State Commission or the National Commission, as the case may be, the mediator nominated by such Commission shall have regard to the rights and obligations of the parties, the usages of trade, if any, the circumstances giving rise to the consumer dispute and such other relevant factors, as he may deem necessary and shall be guided by the principles of natural justice while carrying out mediation.

(3) The mediator so nominated shall conduct mediation within such time and in such manner as may be specified by regulations.

80. (1) Pursuant to mediation, if an agreement is reached between the parties with respect to all of the issues involved in the consumer dispute or with respect to only some of the issues, the terms of such agreement shall be reduced to writing accordingly, and signed by the parties to such dispute or their authorised representatives.

Settlement through mediation.

(2) The mediator shall prepare a settlement report of the settlement and forward the signed agreement along with such report to the concerned Commission.

(3) Where no agreement is reached between the parties within the specified time or the mediator is of the opinion that settlement is not possible, he shall prepare his report accordingly and submit the same to the concerned Commission.

81. (1) The District Commission or the State Commission or the National Commission, as the case may be, shall, within seven days of the receipt of the settlement report, pass suitable order recording such settlement of consumer dispute and dispose of the matter accordingly.

Recording settlement and passing of order.

(2) Where the consumer dispute is settled only in part, the District Commission or the State Commission or the National Commission, as the case may be, shall record settlement of the issues which have been so settled and continue to hear other issues involved in such consumer dispute.

(3) Where the consumer dispute could not be settled by mediation, the District Commission or the State Commission or the National Commission, as the case may be, shall continue to hear all the issues involved in such consumer dispute.

* * * * *

101. (1) *

* Power of Central Government to make rules.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for,—

* * * * *

(r) the cases which may not be referred for settlement by mediation under sub-section (1) of section 37;

* * * * *

(z) the persons in the consumer mediation cell under sub-section (3) of section 74;

* * * * *

102. (1) *

* Power of State Government to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

* * * * *

(p) the persons in the consumer mediation cell under sub-section (3) of section 74;

* * * * *

103. (1)

* * * * *

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may make provisions for—

* * * * *

(c) the maintenance of any other information by the consumer mediation cell under sub-section (4) of section 74;

(d) the manner of submission of quarterly report by consumer mediation cell to the District Commission, the State Commission or the National Commission under sub-section (5) of section 74;

(e) the qualifications and experience required for empanelment as mediator, the procedure for empanelment, the manner of training empanelled mediators, the fee payable to empanelled mediator, the terms and conditions for empanelment, the code of conduct for empanelled mediators, the grounds on which, and the manner in which, empanelled mediators shall be removed or empanelment shall be cancelled and the other matters relating thereto under sub-section (2) of section 75;

(f) the conditions for re-empanelment of mediators for another term under sub-section (3) of section 75;

(g) the other facts to be disclosed by mediators under clause (c) of section 77;

(h) the time within which, and the manner in which, mediation may be conducted under sub-section (3) of section 79;

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RAJYA SABHA

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to promote and facilitate mediation, especially institutional mediation, for resolution of disputes, commercial or otherwise, enforce mediated settlement agreements, provide for a body for registration of mediators, to encourage community mediation and to make online mediation as acceptable and cost effective process and for matters connected therewith or incidental thereto.

(*Shri Kiren Rijiju, Minister of Law and Justice*)