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Recognition of Commercial Mediation as an Effective Alternative Dispute Resolution Process in Sri Lanka

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Sri Lanka's general progressive legislative moves on ADR.

- Alternative Dispute Resolution (ADR) was not an alien means of dispute resolution in Sri Lanka even before colonization, as the society used informal conflict resolution, which utilized characteristics of different ADR mechanisms. Known commonly as "Gam Sabha" -village councils, a forum similar to Indian "Panchayat" However, these traditional resolution methods were highly influenced by its religion and respect for religious leaders, and the sole objective was to resolve disputes amicably.
- Colonization significantly influenced Sri Lanka's legal system. It incorporated Western governance concepts and formalized many informal structures. The Dutch introduced the common law of the land, and the British introduced the English law for commercial dispute resolution.

➤ Post-colonial legal reforms on ADR up to recent times-

- Formalization of informal practices on the concept of the amicable settlement of disputes catering for mandatory community-level resolution of minor disputes by impartial conciliators through the Conciliation Boards Act 1958. This was subsequently repealed and replaced by the Mediation Boards Act No.72 of 1988.
- Introduction of the Arbitration Act No. 11 of 1995
- Enactment of Commercial Mediation Centre of Sri Lanka Act, No. 44 of 2000.
- Enactment of Mediation (Special Categories of Disputes) Act, No. 21 of 2003.
- Recent Government Policy decision,
 - For the introduction of New Arbitration Act, to repeal and replace the Arbitration Act No. 11 of 1995;
 - For the introduction of Recognition and Enforcement of International Settlement Agreement resulting from Mediation Act, to implement the state obligation under the United Nations Convention on International Settlement Agreements Resulting from Mediation.
 - For the introduction of Mediation (Civil and Commercial Disputes) Act.

Overview of the existing legal framework on mediation as an ADR

- Mediation Boards Act No.72 of 1988.
- Commercial Mediation Centre of Sri Lanka Act, No. 44 of 2000.
- Mediation (Special Categories of Disputes) Act, No. 21 of 2003.

Mediation vs. Arbitration in the Commercial Sector of Sri Lanka

Mediation vs. Arbitration in the commercial sector in Sri Lanka

The notions that Arbitration was a more formal and expeditious dispute resolution process than mediation on more serious issues such as commercial disputes, unlike communal disputes.

The noticeable drift towards utilizing 'mediation' for resolution of commercial disputes in Sri Lanka

A best practice dispute management tool. A credible mechanism consist of interest based approach which does not at any stage permit the assumption of positions by parties, focuses on the understanding of commonalities and mutuality between disputing parties.

Proposed Commercial Mediation Reforms of Sri Lanka in the Pipeline

1. Introduction of Recognition and Enforcement of International Settlement Agreement resulting from Mediation Bill

To create domestic legislating to honour the obligation under the United Nations Convention on International Settlement Agreements Resulting from Mediation.

Status as at 16 September 2023:

To be presented to the Cabinet of Ministers for final approval to publish the Bill in Gazette and present the gazette Bill in the Parliament for the enactment.

2. Introduction of Mediation (Civil and Commercial Disputes) Bill.

The main objective of this Bill is to introduce a statutory framework for voluntary mediation for civil and commercial mediation by the parties.

Status as at 16 September 2023:

The Bill is being finalized by the Legal Draftsman in line with the policy approval.

Thank you.

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