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Bangladesh needs a Mediation Act

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Historically, mediation has been a well-established system for dispute resolution in our subcontinent. Over time, different laws, including the Code of Civil Procedure 1908 (CPC)– the guiding law for civil court proceedings formally adopted the mediation process for dispute resolution. While India enacted the Mediation Act 2023 which provides a framework to mainstream and institutionalise the mediation process for dispute resolution, Bangladesh lacks comprehensive legislation to provide a comprehensive framework for dispute resolution via mediation.

Bangladesh's judiciary is overburdened with a huge backlog of cases due largely to the lack of infrastructure and shortage of judges. The litigation process is often costly; therefore, litigants endure serious hardships. Mediation is an amicable settlement process through which people can, within a short period, resolve their disputes in a less costly and adversarial way outside the courtroom.

India has recently witnessed a significant growth in people's preference for ADR, especially mediation. Keeping in mind the need for a legal framework for mediation, the Mediation Act, 2023 was enacted, and now it serves as a standalone legislation for mediation. The Act aims to promote and facilitate mediation, especially institutional mediation, enforce mediated settlement agreements, create a body for mediator registration, support community mediation, and make online mediation an accessible and affordable option. It aims to regulate, certify, and promote professional mediation, encourage pre-litigation mediation, make mediation agreements enforceable similar to court orders, and provide a time frame for the mediation process for a timely dispute resolution. Additionally, in its schedules, the law amends many existing laws to make the mediation process streamlined and unified.

Enactment of a legislation similar to the Mediation Act of India has the potential to tackle Bangladesh's existing challenges with backlog. A mediation Act will institutionalise the mediation process, allowing people to opt for mediation without filing a suit, and that would significantly reduce the number of cases and burden on the courts.

The Act should be a standalone legislation that works as the guiding legislation regarding mediation, and every other legislation that allows mediation should be amended to remove inconsistencies and ambiguities. The courts must require a mandatory pre-litigation mediation so that disputants attempt mediation before filing suits. Mediation settlement agreements should be treated similarly to a court decree to ensure enforceability and fairness. A mediation council should be in place to oversee the accreditation, training, and other mediation-related issues. The Act should also encourage the accreditation of mediators and mediation centers. It should also provide a fixed timeframe for the process to avoid delays in mediation and ensure timely access to justice. Finally, it should also acknowledge online dispute resolution (ODR).

In conclusion, the Indian Mediation Act, 2023 is a comprehensive law that offers a well-organised, efficient, accessible, and reliable system that adheres to international standards. Enacting a similar mediation law in Bangladesh can promote a people-friendly dispute resolution system– which can ultimately strengthen the overall dispute resolution regime in Bangladesh.

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