



FACULTY OF JURIDICAL SCIENCES

COURSE: B.A.LL.B.

Semester: VIII

SUBJECT: Alternative Dispute

Resolution

SUBJECT CODE: BAL803

NAME OF FACULTY: Mohammad Aqib

Lecture-23



LECTURE 23: Conciliation and Appointment of Conciliators

CONCILIATION

Meaning: Part III of the Arbitration and Conciliation Act, 1996 deals with conciliation. Conciliation means the settling of disputes without litigation." Conciliation is a process by which discussion between parties is kept going through the participation of a conciliator. The main difference between arbitration and conciliation is that in arbitration proceedings the award is the decision of the Arbitral Tribunal while in the case of conciliation the decision is that of the parties arrived at with the assistance of the conciliator.

Application and Scope

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.
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.

Section 61 points out that the process of conciliation extends, in the first place, to disputes whether contractual or not. But the disputes must arise out of legal relationship. It means that the dispute must be such as to give one party the right to sue and other party the liability to be sued. The process of conciliation extends, in the second place, to all proceedings relating to it. But Part III of the Act does not apply to such disputes as cannot be submitted to conciliation by virtue of any law for the time being in force.

Number and qualifications of conciliators (Section 63): Section 63 fixes the number of conciliators. There shall be one conciliator. But the parties may by their agreement provide for two or three conciliators. Where the number of conciliators is more than one, they should as a general rule act jointly.

Appointment of conciliators (Section 64): Sub-section (1) of Section 64 provides three rules for the appointment of conciliators:

- a) If there is one conciliator in a conciliation proceedings, the parties may agree on the name of a sole conciliator.
- b) If there are two conciliators in a conciliation proceedings, each party may appoint one conciliator.
- c) If there are three conciliators in a conciliation proceedings, 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.

Sub-section (2) of Section 64 provides for the assistance of a suitable institution or person in the appointment of conciliators. Either a party may request such institution or person to recommend the names of suitable individuals to act as conciliator, or the parties may agree that the appointment of one or more conciliators be made directly by such institution or person.

The proviso to Section 64 requires that in recommending or appointing individuals to act as conciliators, the institution or person shall have regard to such considerations as are likely to secure the appointment of an independent and impartial conciliator with respect to a sole or third conciliator the advisability of appointing a conciliator of a nationality other than the nationalities of the parties should be taken into account.