



FACULTY OF JURIDICAL SCIENCES

COURSE: B.A.LL.B.

Semester: VIII

SUBJECT: Alternative Dispute

Resolution

SUBJECT CODE: BAL803

NAME OF FACULTY: Mohammad Aqib

Lecture-28



LECTURE 28: Mediator

Accreditation of Mediators:

There is a professional association of mediators in India called Mediators India.

It is not necessary to be accredited to practise as a mediator in India. However, accreditation is necessary for empanelment with court and tribunal mediation panels. With growing awareness of mediation, there will be a preference for certified accredited mediators.

In India, court-annexed mediation centres conduct two training courses: a basic training course that is 40 hours in duration and an advanced training course that is 20 hours in duration. Accreditation of mediators takes place after completion of the basic training course, 20 hours of mediation (including co-mediation) and completion of the advanced training course.

There is no requirement that mediators must undertake continuous professional education or development courses. In the court mediation system, the mediation centres do arrange for refresher courses and mediators are encouraged to attend the same.

Liability of Mediator:-

The ACA and the CPC spell out the duties of mediators that pertain to disclosure, avoiding improper conduct, maintaining confidentiality, not imposing settlements, etc. The PIMS Rules also impose certain ethical duties on mediators.

However, no potential liability is spelt out in the statutes for mediators. In fact, Rule 22 of the Mediation Rules and Rule 23 of the Companies (Mediation) Rules provide that mediators shall not be liable for anything bona fide done by them or omitted to be done by them during the mediation process and are immune from civil or criminal action. In the court mediation system, mediators can be removed from the panel for misconduct or poor performance.

Professional liability insurance is neither available nor required.

Mediation agreements:-

In the court mediation process, there is no obligation to have an agreement between the parties and the mediator, since the rules under the CPC govern the mediation.

In other mediations, while there is no legal mandate, it is customary to have such written agreement. This will include provisions regarding confidentiality and the process to be followed.

Appointment of Mediator:-

In the court system, the Civil Procedure (Mediation) Rules regulate the accreditation, empanelment of mediators and appointments in individual cases. Such appointments are usually based on the roster; in exceptional cases mediators may be specified by name by the referring judge himself or herself or acting on the suggestion of parties.

In the field of private mediation, the practice of including mediation clauses in contracts is gaining popularity. Such clauses may specify the name of a mediator to settle disputes or the name of an institution whose assistance may be sought in appointing a mediator.

Conflicts of interest:-

Mediators are obliged to inform the parties about conflicts of interest. This must be done before the proceedings commence, or, if a conflict arises thereafter, as soon as the mediator is aware of it. Both the ACA and the Mediation Rules require such disclosure. As per the Mediation Rules, anything that would give rise to a justifiable doubt as to the mediator's independence or impartiality must be disclosed. This would include, but would not be limited to, the mediator having financial interests in a corporate party, etc.

If the mediator fails to disclose a conflict of interest, he or she would be liable to face civil action. In the case of court-referred mediations, a report regarding such conduct of the mediator may also be submitted the court and the court may consider taking any action that it deems fit.

Fees:-

In the court-run mediation scheme, the mediation service is usually free for the parties. The court, however, pays an honorarium to the mediators.

In the field of private mediation, there is no statutory or legal regulation of the fees of the mediators. The fee is negotiable, is usually on a time spent basis and varies from 25,000 rupees to 300,000 rupees per day. The parties usually share the mediator's fees equally.

In the context of pre-institution mediation under the Commercial Courts Act, a fee structure is in the process of being devised. If the parties choose the mediator by themselves, they can negotiate a fee with the mediator. If the state agency's services are used for appointment of a mediator, a fee will be fixed for the same.

