



# **FACULTY OF JURIDICAL SCIENCES**

**COURSE: B.A.LL.B.**

**Semester: VIII**

**SUBJECT: Alternative Dispute**

**Resolution**

**SUBJECT CODE: BAL803**

**NAME OF FACULTY: Mohammad Aqib**

# Lecture-30



## LECTURE 30: Confidentiality of Proceedings and Settlement agreements

Mediation proceedings are strictly private and confidential in India. Section 75 of the ACA provides that, notwithstanding anything contained in any other law in force in India, the conciliator and the parties shall keep all matters relating to the mediation proceedings confidential, and that confidentiality extends to the settlement agreement except where its disclosure is necessary for implementation and enforcement.

Best practices dictate that in a private commercial mediation, parties to the dispute and the mediator sign a confidentiality agreement prior to the commencement of mediation proceedings.

Section 80(b) of the ACA specifically provides that the conciliator shall not be presented by the parties as a witness in any arbitral or judicial proceedings.

Section 81 of the ACA makes the following inadmissible as evidence in arbitral or judicial proceeding:

- views expressed or suggestions made by the other party in respect of a possible settlement of the dispute;
- admissions made by the other party in the course of the conciliation proceedings;
- proposals made by the conciliator; and
- the fact that the other party had indicated to accept a proposal for settlement made by the conciliator.

In court-referred mediations, confidentiality is protected by the rules drawn up by courts under the CPC to regulate cases referred by judges to mediation (Rule 20 of the Model Civil Procedure (Mediation) Rules 2003). These rules are similar to the rules set out in the ACA. In their reports to the court, the mediators must only state whether the case has been settled or not; no further details are to be given.

Confidential information given by one side to the mediator in the mediation process cannot be revealed to the other party.

In the case of a breach of confidentiality, the injured party can sue for breach of contract, negligence or wilful misconduct. It can seek damages or a permanent injunction against disclosure. It may also be entitled to seek interlocutory injunctions to prevent disclosure. The court will take a serious view of a breach of confidentiality.

### **Formalities of Settlement Agreement:-**

Section 73 of the ACA provides for the drawing up and signing of a written settlement agreement. The settlement agreement must also be witnessed. When the parties sign the settlement agreement, it shall be final and binding on the parties claiming under them respectively. The mediator is required to authenticate the settlement agreement and furnish a copy of the same to each of the parties.

In the case of a settlement arrived at in a court-annexed mediation or judicial settlement, the same should be reduced to writing and presented to the court, which will pass an order or decree on the terms thereof.

### **Challenging settlements:-**

As per the ACA and the Commercial Courts Act, the mediation settlement has the same status as an arbitral award and hence can be challenged on the same grounds as an arbitral award.

The vitiating factors are in the nature of fraud, coercion, corruption, incapacity of a party or the settlement being contrary to public policy or a fundamental policy of Indian law.

In India, a mediator cannot be called to give evidence in relation to the mediation or the alleged settlement in any judicial or arbitral proceeding. This provision exists to protect the confidentiality of the mediation process.

### **Enforceability of settlements:-**

Section 74 of the ACA provides that a settlement agreement has the same effect as an arbitral award on agreed terms. The position in the Commercial Courts Act is also the same as a settlement in a pre-institution mediation proceeding under the Act and is given the same status as that of an arbitral award under the ACA. Such an arbitral award is enforceable as a decree of court as per section 36 of the ACA.

In cases of settlements in court-annexed mediations, the settlement is enforced through the courts as the court passes an order or decree in terms of the written settlement.