

(Draft) ADR AND MEDIATION & CONCILIATION RULES

Introduction

The High Courts under **Article 202** of the **Constitution** of the Islamic Republic of Pakistan 1973 are empowered to make their own rules. Under **Chapter X**, the **Section 122** of the **Code of Civil Procedure 1908** specifically empowers High Courts to make rules regulating their own procedure and the procedure of the civil courts. This power is to be exercised by the **Rule Committee** constituted by the Chief Justice (**Section 123**). The rules so made shall be subject to the previous approval of the Provincial Government (**Section 126**) and shall be applicable from the date of publication in official gazette within local limits of the High Court which made them and shall form part of First Schedule of the said Code (**Section 127**).

I have prepared draft model **rules for Alternative Disputes Resolution (ADR)** and also draft rules for mediation and conciliation under **Section 89 A** of the Code of Civil Procedure, 1908. They are in two parts the **first part** consisting of the **procedure** to be followed by the parties and the court in the matter of choosing the particular method of ADR. The **second part** consists of draft **rules of mediation and conciliation** under **Section 89-A** of the Code of Civil Procedure, 1908. These rules shall be added under **Order X** by inserting a new **Rule 1-B** in Code of Civil Procedure, 1908.

(Draft) Alternative Dispute Resolution and Mediation & Conciliation Rules, 2017

In exercise of the rule making power under Part X of the Code of Civil Procedure, 1908 (Act No. V of 1908) and Section 89-A of the said Code, the Lahore High Court, is hereby issuing the following Rules:

Part I

Alternative Dispute Resolution Rules

Rule 1: Title:

These Rules in Part I shall be called the 'Civil Procedure Alternative Dispute Resolution Rules 2017'.

Rule 2: Procedure for directing parties to opt for Alternative Modes of Settlement:

- (a) The Court shall, after recording admissions and denials at the first hearing of the suit under Rule 1 of Order X, and where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, formulate the terms of settlement and give them to the parties for their observations under sub-section (1) of Section 89, and the parties shall submit to the Court their responses within thirty days of the first hearing.
- (b) At the next hearing, which shall be not later than thirty days of the receipt of responses, the Court may reformulate the terms of a possible settlement and shall direct the parties to opt for one of the modes of settlement of disputes outside the Court as specified in clauses (a) to (d) of sub-section (1) of Section 89 read with Rule 1A of Order X, in the manner stated hereunder.
- (c) If all the contesting parties are in attendance in the Court in person or by their respective counsels, the Court may, by adjourning the hearing, mediate in order

to settle the dispute or disputes in the suit, or refer the dispute or disputes in the suit to the engaged counsels of the parties, or to the party or parties, where no pleader or counsels have been engaged, or to a mediator or conciliator from the panel as may be prepared by the District Judge under Rule 13, for undertaking efforts for settlement through mediation or conciliation.

- (d) When the reference under sub-rule (a) is made through counsels, the counsels shall, by their mutual agreement in consultation with their respective clients, appoint another pleader, not engaged by the parties in the suit, or a retired judge, or a mediator or conciliator from the panel as may be prepared by the District Judge under Rule 13, or any other person whom they may seem to be suitable, to act as a mediator or conciliator for settlement.

Provided that, if all the contesting parties in the suit through application or pleadings state to the Court that they are willing to try to settle the dispute or disputes in the suit through mediation, the Court shall so mediate, or make reference under this section.

Provided that, nothing in this sub-Section shall be deemed to prohibit appointment of more than one person to act as mediator or conciliator.

Provided further that, a person holding an office of profit in the service of the Federation of Pakistan or Province shall not be eligible for appointment as mediator or conciliator.

Provided that the Court, in the exercise of such power, shall not refer any dispute to arbitration or to judicial settlement by a person or institution without the written consent of all the parties to the suit.

Rule 3: Persons Authorised to take Decision for the Federation of Pakistan, Provincial Governments and others:

For the purpose of Rule 2, where one of the parties is the Federation of Pakistan or the Provincial Government or a District Government or a Local Government or a Local Authority or a Public Sector Undertaking or a Statutory Corporation or Body or Public Authority, such parties shall be directed by the High Court to nominate a person or group of persons who will be authorised to take a final decision as to the mode of Alternative Disputes Resolution it prefers to opt for and such decision shall be communicated to the High court within the period specified in these Rules by the said person or group of persons so authorised. Such nomination shall be communicated to the High Court within the period of three months from the date of commencement of these Rules and the High Court shall notify all the subordinate courts in this behalf as soon as such nomination is received from such Government or authorities.

Where such person or persons or group of persons have not been nominated as aforesaid, such party as referred to in clause (1) shall, if it is a plaintiff, file along with the plaint or if it is a defendant file, along with or before the filing of the written statement, a memo into the Court, nominating a person or persons or group of persons who is or are authorized to take a final decision as to the mode of alternative dispute resolution, which the party prefers to adopt in the event of the Court directing the party to opt for one or other mode of Alternative Dispute Resolution.

Rule 4: Fee and Procedure:

While referring a dispute or disputes in the suit for mediation or conciliation under Rule 2, the Court shall not dictate or determine the fees of the counsels, mediator or the conciliator, and procedure to be followed by the mediator, or the conciliator and the parties, and it shall be for the counsels, their respective clients and the mediator, or the conciliator to mutually agree on and determine the fees and the provisions of the

Mediation and Conciliation Rules, 2017 in **Part II** shall be followed for the purpose of settlements through mediation or conciliation, and when the Court shall mediate, it shall determine the procedure to be followed, and shall not charge any fee for mediation.

Rule 5: Consent of the parties and time for conclusion of Mediation and Conciliation:

(a) Within fifteen days from the date of reference under Rule 2, the parties shall inform the Court in writing as to whether they have agreed to try to settle the dispute or disputes in the suit by mediation or conciliation and whom they have appointed as mediator or conciliator, failing which the reference under Rule 2 will stand cancelled and the suit shall be proceeded with for hearing by the Court, and should the parties inform the Court about their agreement to try to settle the dispute or disputes in the suit through mediation or conciliation and appointment of mediator or conciliator as aforesaid, the mediation or the conciliation shall be concluded within 30 (thirty days from the day on which the Court is so informed, unless the court of its own motion or upon a joint prayer of the parties, extends the time for a further period of not exceeding 15 (fifteen) days.

(b) The mediator or conciliator shall, without violating the confidentiality of the parties to the mediation proceeding, submit through the counsels, to the court a report of result of the mediation or conciliation proceedings, and if the result is of compromise of the dispute or disputes in the suit, the terms of such compromise shall be reduced into writing in the form of an agreement, bearing signatures or thumb impressions of the parties as executants, and signatures of the counsels and the mediator or conciliator as witnesses, and the court shall, thereupon, pass an order or a decree in accordance with relevant provisions of Order XXIII of the Code.

(c) When the Court itself mediates, it shall make a report and pass order in a manner similar to that as stated in sub-rule (b).

Rule 6: Court to give guidance to parties while giving direction to opt:

(a) Before directing the parties to exercise option under clause (b) of Rule 2, the Court shall give such guidance as it deems fit to the parties, by drawing their attention to the relevant factors which parties will have to take into account, before they exercise their option as to the particular mode of settlement, namely:

(i) that it will be to the advantage of the parties, so far as time and expense are concerned, to opt for one of these modes of settlement rather than seek a trial on the disputes arising in the suit;

(ii) that, where there is no relationship between the parties which requires to be preserved, it will be in the interests of the parties to seek reference of the matter to arbitration as envisaged in the **Arbitration Act 1940** (Act No. X of 1940) for settlement through mediation, conciliation and arbitration by '**Musaliat Anjuman**' under **Section 104 Punjab Local Government Ordinance, 2001** or the **Small Claims and Minors Offences Courts Ordinance, 2001**.

(iii) that, where there is a relationship between the parties which requires to be preserved, it will be in the interests of parties to seek reference of the matter to conciliation or mediation, as envisaged in **Section 89-A** of the **Code** or reconciliation by the judge Family Court under section **10** and **12** of the **Family Courts Act, 1964**.

Explanation: Disputes arising in commercial matters, disputes in respect of administration, partition distribution of property amongst legal heirs and matrimonial, maintenance and child custody matters shall, among others, be treated as cases where a relationship between the parties has to be preserved

(iv) that, where parties are interested in a final settlement and it will be in the interests of

the parties to seek reference of the matter which may lead to a settlement through mediation, conciliation and arbitration by ‘**Musaliyat Anjuman**’ under section 104 Punjab Local Government Ordinance, 2001 or the **Small Claims and Minors Offences Courts Ordinance** or **Section 89-A** and **Order X rule 1-A** of **Civil Procedure Code**.

(v) the difference between the different modes of settlement, namely, arbitration, conciliation and mediation as explained below:

‘**Arbitration**’ means the process by which an arbitrator appointed by parties or by the Court, as the case may be, adjudicates the disputes between the parties to the suit and passes an award by the application of the provisions of the Arbitration Act, 1940 (X of 1940), in so far as they refer to arbitration.

‘**Conciliation**’ means the process by which a conciliator who is appointed by parties or by the Court, as the case may be, conciliates the disputes between the parties to the suit by the application of the provisions of the Punjab Local Government Ordinance, 2001 or the Small Claims and Minors Offences Courts Ordinance, 2001 or Section 89-A and Order X rule 1-A of Code, in so far as they relate to conciliation.

‘**Mediation**’ means the process by which a mediator appointed by parties or by the Court, as the case may be, mediates the dispute between the parties to the suit by the application of the provisions of the Mediation and Conciliation Rules in Part II, and in particular, by facilitating discussion between parties directly or by communicating with each other through the mediator, by assisting parties in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise, generating options in an attempt to solve the dispute and emphasizing that it is the parties’ own responsibility for making decisions which affect them.

Explanation: ‘Mediation’ and ‘Conciliation’ under section 89-A of Code shall mean flexible, informal, non-binding, confidential, non-adversarial and consensual dispute resolution process in which the mediator/conciliator shall facilitate compromise of disputes in the suit between the parties without directing or dictating the terms of such compromise.

Rule 7: Procedure for Reference by the Court to the different modes of Settlement:

(a) Where all parties to the suit decide to exercise their option and agree for settlement by arbitration, they shall apply to the Court, within fifteen days of the direction of the Court under clause (b) of Rule 2 and the Court shall, within fifteen days of the said application, refer the matter to arbitration and then the provisions of the Arbitration Act 1940 shall apply as if the proceedings were referred for settlement by way of arbitration under the provisions of that Act;

(b) Where all the parties to the suit decide to exercise their option and to agree for settlement by ‘Musaliyat Anjuman’ under section 104 Punjab Local Government Ordinance, 2001, they shall apply to the Court, within fifteen days of the direction under clause (b) of Rule 2 and the Court shall, within fifteen days of the application, transfer the matter to the ‘Musaliyat Anjuman’ having jurisdiction in the matter and then all the other provisions of that Ordinance shall apply;

(c) Where all the parties are unable to opt or agree to refer the dispute to arbitration, or ‘Musaliyat Anjuman’, within fifteen days of the direction of the Court under clause (b) of Rule 2, they shall consider if they could agree for reference to conciliation or mediation, within the same period.

(d) Where all the parties opt and agree for conciliation, they shall apply to the Court, within fifteen days of the direction under Rule 2 and the Court shall, within fifteen days

of the application refer the matter to conciliation (ii) Where all the parties opt and agree for mediation, they shall apply to the Court, within fifteen days of the direction under Rule 2 and the Court shall, within fifteen days of the application, refer the matter to mediation and then the Mediation and Conciliation Rules, 2005 in Part II shall apply.

(e) Where all the parties are not able to opt and agree for conciliation or mediation, one or more parties may apply to the court within fifteen days of the direction under clause (b) of Rule 2, seeking settlement through conciliation or mediation, as the case may be, and in that event, the Court shall, within a further period of fifteen days issue notice to the other parties to respond to the application, and

(i) in case all the parties agree, the Court shall refer the matter to conciliation or mediation, as the case may be, as stated in clause (e);

(ii) in case all the parties do not agree and where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties and that there is a relationship between the parties which has to be preserved, the Court shall refer the matter to conciliation or mediation, as the case may be.

Rule 8: When none of the parties apply for reference for settlement of disputes through Alternate Dispute Resolution Mechanisms:

(a) Where none of the parties apply for reference either to arbitration, or ‘Musalihat Anjuman’, or for conciliation or mediation, within fifteen days of the direction under clause (b) of Rule 2, the Court shall, within a further period of fifteen days, issue notices to the parties or their representatives fixing the matter for hearing on the question of making a reference either to conciliation or mediation.

(b) After hearing the parties or their representatives on the day so fixed, the Court shall, whether parties agree or not, and if there exist elements of the settlement which may be acceptable to the parties, refer the matter to:

(i) Conciliation, if the Court considers that the matter is fit for conciliation

(ii) Mediation, if the Court considers that the matter is fit for mediation and then the provisions of the **Mediation and Conciliation Rules, 2017 in Part II** shall apply.

(c) No next friend or guardian for the suit shall, without the leave of the Court, expressly recorded in the proceedings of the Court, opt for any one of the modes of alternative dispute resolution nor shall enter into any settlement on behalf of a minor or person under disability with reference to the suit in which he acts as mere friend or guardian.

(d) Where an application is made to the Court for leave to enter into a settlement initiated into in the alternative dispute resolution proceedings on behalf of a minor or other person under disability and such minor or other person under disability is represented by Counsel or pleader, the counsel or pleader shall file a certificate along with the said application to the effect that the settlement is, in his opinion, for the benefit of the minor or other person under disability. The decree of the Court based on the settlement to which the minor or other person under disability is a party, shall refer to the sanction of the Court thereto and shall set out the terms of the settlement.”

Rule 9: Appearance before the Court upon failure of attempts to settle disputes by Conciliation or Mediation:

Where a suit has been referred for settlement under one of the modes referred to in Section 89-A read with Rule 1-A of Order X and clauses (b) of Rule 2 and has not been settled or where it is felt that it would not be proper in the interests of justice to proceed further with the matter, the suit shall be referred back to the Court with a direction to the parties to appear before the Court on a specific date.

Rule 10: When the Conciliation or Mediation fails:

(a) The court shall, subject to the provision of these rules, proceed with hearing of the suit from the stage at which the suit stood before the decision to mediate or conciliation or reference for mediation or conciliation, in accordance with provisions of the Code in a manner as if there had been no decision to mediate or conciliation or reference for mediation or conciliation as aforesaid.

(b) The proceedings of mediation and conciliation under this section shall be confidential and any communication made, evidence adduced, admission, statement or comment made and conversation held between the parties, their counsels, representatives and the mediator or conciliator, shall be deemed privileged and shall not be referred to and admissible in evidence in any subsequent hearing of the same suit or any other proceeding.

(c) When a mediation initiative led by the court itself fails to resolve the dispute or disputes in the suit, the same court shall not hear the suit, if the court continues to be presided by the same judge who led the mediation initiative, and in that instance, the suit shall be heard by another court of competent jurisdiction.

(d) Upon the reference of the matter back to the court, the court shall proceed with the suit in accordance with law.

Rule 11: Preparation of panel of Mediators and Conciliators:

For the purpose of this section 89-A of Code, the District Judge shall, in consultation with the President of the District Bar Association, prepare a panel of mediators and conciliators (to be updated from time to time) consisting of counsels, retired judges, professional and other persons known to be trained in the art of dispute resolution, and such other person or persons, except persons holding office of profit in the service of the Federation of Pakistan or Provincial Government, as may be deemed appropriate for the purpose, and shall inform all the Civil Courts under his administrative jurisdiction about the panel.

Provided that, a mediator or conciliator, shall not act as a mediator or conciliator between the parties, if he had ever been engaged by either of the parties as a pleader in any suit in any Court.

Rule 12: Refund of Court Fee:

Notwithstanding anything contained in the **Court Fees Act, 1870 (Act No. VII of 1870)**, where a dispute or disputes in a suit are settled on compromise under section 89-A of Code, the Court shall issue a certificate directing refund of the court fees paid by the parties in respect of the plaint or written statement, and the parties shall be entitled to such refund within 60 (sixty) days of the issuance of the certificate).

Rule 13: Finality of Orders and Decrees:

No appeal or revision shall be against any order or decree passed by the Court in pursuance of settlement between the parties under section 89-A of Code.

Rule 14: Nothing in section 89-A of Code shall be deemed to otherwise limit the option of the parties regarding withdrawal, adjustment and compromise of the suit under Order XXIII of the Code.

Rule 15: Training in alternative methods of resolution of disputes, and preparation of Manual:

(a) The High Court shall take steps to have training courses conducted at the Provincial judicial Academy or places where the High Court and the District Courts are located, by requesting bodies recognised by the High Court or the Universities imparting legal education or retired faculty members or other persons who, according to the High Court

are well-versed in the techniques of alternative methods of disputes and resolution, to conduct training courses for lawyers and judicial officers.

(b) The High Court shall nominate a committee of judges, faculty members including retired persons belonging to the above categories, senior members of the Bar, members of the Bar specially qualified in the techniques of alternative disputes resolution for the purpose referred to in clause (a) and for the purpose of preparing a detailed manual of procedure for alternative dispute resolution to be used by the Courts in the Province as well as by the arbitrators, members of the 'Musalihah Anjuman', conciliators and mediators.

(ii) The said manual shall describe the various methods of alternative dispute resolution, the manner in which any one of the said methods is to be opted for, the suitability of any particular method for any particular type of dispute and shall specifically deal with the role of conciliators and mediators in disputes which are commercial or domestic in nature or which relate to matrimonial, maintenance and child custody matters.

(c) The High Court and the District Courts shall periodically conduct seminars and workshops on the subject of alternative dispute resolution procedures throughout the Province with a view to bring awareness of such procedures and to impart training to lawyers and judicial officers.

(d) Persons who gain experience in the matter of alternative dispute resolution procedures, and in particular in regard to conciliation and mediation, shall be given preference for purposes of appointment in the matter of resolution of disputes by the said procedures.

Rule 8: Applicability to other proceedings:

The provisions of these Rules may be applied to proceedings before the Courts, including Family Courts constituted under the **Family Courts Act (XXXV of 1964)**, while dealing with matrimonial, maintenance and child custody disputes.

PART II

(DRAFT) MEDIATION & CONCILIATION RULES

Rule 1: Title:

These Rules in Part II shall be called the Mediation and Conciliation Rules, 2017.

Rule 2: Appointment of Mediator or Conciliator:

(a) Parties to a suit may all agree on the name of the sole mediator or conciliator for mediating or conciliation between them.

(b) Where, there are two sets of parties and are unable to agree on a sole mediator or conciliator, each set of parties shall nominate a mediator or conciliator.

(c) Where parties agree on a sole mediator or conciliator under clause (a) or where parties nominate more than one mediator or conciliator under clause (b), the mediator or conciliator need not necessarily be from the panel of mediators or conciliators referred to in Rule 3 nor bear the qualifications referred to in Rule 4 but should not be a person who suffers from the disqualifications referred to in Rule 5.

(d) Where there are more than two sets of parties having diverse interests, each set shall nominate a person on its behalf and the said nominees shall select the sole mediator or conciliator and failing unanimity in that behalf, the Court shall appoint a sole mediator or conciliator.

Rule 3: Panel of Mediators or Conciliators:

(a) The High Court shall, for the purpose of appointing mediators or conciliators between parties in suits filed on its original side, prepare a panel of mediators or conciliators and publish the same on its Notice Board, within thirty days of the coming into force of these Rules, with copy to the Bar Association attached to the original side of the High Court or any of its Benches.

(b) (i) The Courts of the District and Sessions Judge in each District or the Courts of the Senior Civil Judge or Small claims shall, for the purposes of appointing mediators to mediate between parties in suits filed on their original side, prepare a panel of mediators and conciliators, within a period of sixty days of the commencement of these Rules, after obtaining the approval of the High Court to the names included in the panel, and shall publish the same on their respective Notice Boards.

(ii) Copies of the said panels referred to in clause (i) shall be forwarded to all the Courts subordinate to the Courts referred to in sub-clause (i) and to the Bar Associations attached to each of the Courts:

(c) The consent of the persons whose names are included in the panel shall be obtained before empanelling them.

The panel of names shall contain detailed Annexure giving details of the qualifications of the mediators and their professional or technical experience in different fields.

Rule 4: Qualifications of persons to be empanelled under Rule 3:

The following persons shall be treated as qualified and eligible for being enlisted in the panel of mediators or conciliators under Rule 3, namely:

(a) (i) Retired Judges of the Supreme Court of Pakistan;

(ii) Retired Judges of the High Courts;

- (iii) Retired District and Sessions Judges or retired Civil Judges.
- (b) Legal practitioners with at least fifteen years standing at the Bar at the level of the Supreme Court or the High Court; or the Subordinate Courts.
- (c) Accredited Mediators, Experts or other professionals with at least fifteen years standing; or retired senior bureaucrats or retired senior executives;
- (d) Institutions which are themselves experts in mediation or conciliator and have been recognised as such by the High Court.

Rule 5: Disqualifications of persons:

The following persons shall be deemed to be disqualified for being empanelled as mediators or conciliator:

- (i) any person who has been adjudged as insolvent or persons (a) against whom criminal charges involving moral turpitude are framed by a criminal court and are pending, or (b) persons who have been convicted by a criminal court for any offence involving moral turpitude;
- (ii) any person against whom disciplinary proceedings have been initiated by the appropriate disciplinary authority which are pending or have resulted in a punishment.
- (iii) any person who is interested or connected with the subject-matter of dispute or is related to any one of the parties or to those who represent them, unless such objection is waived by all the parties in writing.
- (iv) any legal practitioner who has or is appearing for any of the parties in the suit or in any other suit or proceedings.
- (v) such other categories of persons as may be notified by the High Court.

Rule 6: Preference:

The Court shall, while nominating any person from the panel of mediators or conciliator referred to in Rule 3, consider his suitability for resolving the particular class of dispute involved in the suit and shall give preference to those who have proven record of successful mediation or who have special qualification or experience in mediation or conciliation.

Rule 7: Duty of Mediator or Conciliator to disclose certain facts:

- (a) When a person is approached in connection with his possible appointment as a mediator or conciliator, he shall disclose in writing to the parties, any circumstances likely to give rise to a justifiable doubt as to his independence or impartiality.
- (b) Every mediator or conciliator shall, from the time of his appointment and throughout the continuance of the mediation or conciliation proceedings, without delay, disclose to the parties in writing, about the existence of any of the circumstances referred to in clause (a).

Rule 8: Removal or deletion from panel:

Upon information furnished by the mediator or conciliator under Rule 6 or upon any other information received from the parties or other persons, if the Court, in which the suit is filed, is satisfied, after conducting such inquiry as it deems fit, and after giving a hearing to the mediator or conciliator, that the said information has raised a justifiable doubt as to the mediator's or conciliator's independence or impartiality, it shall cancel the appointment by a reasoned order and replace him by another mediator or conciliator

Rule 9: Cancellation of appointment:

- (a) A person whose name is placed in the panel referred to in Rule 3 may be removed or his name be deleted from the said panel, by the Court which empanelled him, if:
 - (i) he resigns or withdraws his name from the panel for any reason;
 - (ii) he is declared insolvent by any Court or is declared of unsound mind;

- (iii) he exhibits or displays conduct, during the continuance of the mediation or conciliation proceedings, which is unbecoming of a mediator or conciliator;
- (iv) the Court which empanelled, upon receipt of information, if it is satisfied, after conducting such inquiry as it deems fit, is of the view, that it is not possible or desirable to continue the name of that person in the panel,

Provided that, before removing or deleting his name, under clause (iii) and (iv), the Court shall hear the mediator or conciliator whose name is proposed to be removed or deleted from the panel and shall pass a reasoned order.

Rule 10: Procedure of Mediation or Conciliator:

(a) The parties may agree on the procedure to be followed by the mediator or conciliator in the conduct of the mediation or conciliation proceedings.

(b) Where the parties do not agree on any particular procedure to be followed by the mediator or conciliator, the mediator or conciliator shall follow the procedure hereinafter mentioned, namely:

(i) he shall fix, in consultation with the parties, a time schedule, the dates and the time of each mediation or conciliation session, where all parties have to be present;

(ii) he shall hold the mediation or conciliation at any convenient location agreeable to him and the parties, as he may determine;

(iii) he may conduct joint or separate meetings with the parties;

(iv) each party shall, ten days before a session, provide to the mediator or conciliator a brief memorandum setting forth the issues, which according to it, need to be resolved, and its position in respect to those issues and all information reasonably required for the mediator or conciliator to understand the issue; such memoranda shall also be mutually exchanged between the parties;

(v) each party shall furnish to the mediator or conciliator such other information as may be required by him in connection with the issues to be resolved.

(c) Where there is more than one mediator or conciliator, the mediator or conciliator nominated by each party shall first confer with the party that nominated him and shall thereafter interact with the other mediators or conciliator, with a view to resolving the disputes

Rule 11: Mediator or Conciliator not bound by the Qanun-e-Shahadat Order 1984 or Code of Civil Procedure, 1908:

The mediator or conciliator shall not be bound by the Qanun-e-Shahadat Order 1984 or Code of Civil Procedure, 1908, but shall be guided by principles of fairness and justice, having regard to the rights and obligations of the parties, usages of trade, if any, and the circumstances of the dispute.

Rule 12: Non-attendance of Parties at Sessions or Meetings on due dates:

(a) the parties shall be present personally or through their counsel or power of attorney holders at the meetings or sessions notified by the mediator or conciliator.

(b) if a party fails to attend a session or a meeting notified by the mediator or conciliator, other parties or the mediator or conciliator can apply to the Court in which the suit is filed, to issue appropriate directions to that party to attend before the mediator or conciliator and if the Court finds that a party is absenting himself before the mediator or conciliator without sufficient reason, the Court may take action against the said party by imposition of costs or by taking action for contempt.

(c) the parties not resident in Pakistan may be represented by their counsel or power of attorney holders at the sessions or meetings.

Rule 13: Administrative Assistance:

In order to facilitate the conduct of mediation or conciliation proceedings, the parties, or the mediator or conciliator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.

Rule 14: Offer of Settlement by Parties:

(a) Any party to the suit may, 'without prejudice', offer a settlement to the other party at any stage of the proceedings, with notice to the mediator or conciliator.

(b) Any party to the suit may make a, 'with prejudice' offer, to the other party at any stage of the proceedings, with notice to the mediator or conciliator.

Rule 15: Role of Mediator or Conciliator:

The mediator or conciliator shall attempt to facilitate voluntary resolution of the dispute by the parties, and communicate the view of each party to the other, assist them in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise and generating options in an attempt to solve the dispute, emphasising that it is the responsibility of the parties to take decision which effect them; he shall not impose any terms of settlement on the parties.

Rule 16: Parties alone responsible for taking Decision:

The parties must understand that the mediator or conciliator only facilitates in arriving at a decision to resolve disputes and that he will not and cannot impose any settlement nor does the mediator or conciliator give any warranty that the mediation or conciliation will result in a settlement. The mediator or conciliator shall not impose any decision on the parties.

Rule 17: Representation of Parties:

Parties may be present before the mediator or conciliator personally or through their counsel or lawful power of attorney holders.

Rule 18: Time Limit for completion of Mediation or Conciliation:

On the expiry of sixty days from the date fixed for the first appearance of the parties before the mediator or conciliator, the mediation or conciliation shall stand terminated, unless the Court, which referred the matter, either suo-moto, or upon request by any of the parties, and upon hearing all the parties, is of the view that extension of time is necessary or may be useful; but such extension shall not be beyond a further period of thirty days.

Rule 19: Parties to act in Good Faith:

While no one can be compelled to commit to settle his case in advance of mediation or conciliation, all parties shall commit to participate in the proceedings in good faith with the intention to settle the disputes, if possible.

Rule 20: Confidentiality, Disclosure and Inadmissibility of Information:

(1) When a mediator or conciliator receives factual information concerning the dispute from any party, he shall disclose the substance of that information to the other party, so that the other party may have an opportunity to present such explanation as it may consider appropriate,

Provided that, when a party gives information to the mediator or conciliator subject to a specific condition that it be kept confidential, the mediator or conciliator shall not disclose that information to the other party.

(2) Receipt or perusal, or preparation of records, reports or other documents by the mediator or conciliator, while serving in that capacity shall be confidential and the mediator or conciliator shall not be compelled to divulge information regarding those documents nor as to what transpired during the mediation or conciliation.

(3) Parties shall maintain confidentiality in respect of events that transpired during mediation or conciliation and shall not rely on or introduce the said information in any other proceedings as to:

(a) views expressed by a party in the course of the mediation or conciliator proceedings;
(b) documents obtained during the mediation or conciliation which were expressly required to be treated as confidential or other notes, drafts or information given by parties or mediators or conciliators;

(c) proposals made or views expressed by the mediator or conciliator;

(d) admission made by a party in the course of mediation or conciliator proceedings;

(e) the fact that a party had or had not indicated willingness to accept a proposal;

(4) There shall be no stenographic or audio or video recording of the mediation or conciliation proceedings.

Rule 21: Privacy:

Mediation or conciliation sessions and meetings are private; only the concerned parties or their counsel or power of attorney holders can attend. Other persons may attend only with the permission of the parties and with the consent of the mediator or conciliator.

Rule 22: Immunity:

No mediator or conciliator shall be held liable for anything bona fide done or omitted to be done by him during the mediation or conciliation proceedings for civil or criminal action nor shall he be summoned by any party to the suit to appear in a Court of law to testify in regard to information received by him or action taken by him or in respect of drafts or records prepared by him or shown to him during the mediation or conciliation proceedings.

Rule 23: Communication between Mediator or Conciliator and the Court:

(a) In order to preserve the confidence of parties in the Court and the neutrality of the mediator or conciliator, there should be no communication between the mediator or conciliator and the Court, except as stated in clauses (b) and (c) of this Rule.

(b) If any communication between the mediator or conciliator and the Court is necessary, it shall be in writing and copies of the same shall be given to the parties or their counsel or power of attorney.

(c) Communication between the mediator or conciliator and the Court shall be limited to communication by the mediator or conciliator:

(i) with the Court about the failure of party to attend;

(ii) with the Court with the consent of the parties;

(iii) regarding his assessment that the case is not suited for settlement through mediation or conciliation;

(iv) that the parties have settled the dispute or disputes.

Rule 24: Settlement Agreement:

(1) Where an agreement is reached between the parties in regard to all the issues in the suit or some of the issues, the same shall be reduced to writing in the form of an agreement, bearing signatures or thumb impressions of the parties as executants, and signatures of the counsels and the mediator or conciliator as witnesses,

(2) The agreement of the parties so signed and attested shall be submitted to the mediator or conciliator who shall, with a covering letter signed by him, forward the same to the Court in which the suit is pending.

(3) Where no agreement is arrived at between the parties, before the time limit stated in Rule 22 or where, the mediator or conciliator is of the view that no settlement is possible, he shall report the same to the said Court in writing.

Rule 25: Court to fix a date for recording Settlement and passing of Decree:

(1) Within seven days of the receipt of any settlement, the Court shall issue notice to the parties fixing a day for recording the settlement, such date not being beyond a further period of fourteen days from the date of receipt of settlement, and the Court shall record the settlement.

(2) The Court shall then pass a decree in accordance with the settlement so recorded and in accordance with relevant provisions of Order XXIII of the Code. if the settlement disposes of all the issues in the suit.

(3) If the settlement disposes of only certain issues arising in the suit, the Court shall record the settlement on the date fixed for recording the settlement and shall include the terms of the said settlement in the judgment, while deciding the other issues.

Rule 26: Fee of Mediator or Conciliator and Costs:

(1) At the time of referring the disputes to mediation or conciliation, the Court shall, after consulting the mediator or conciliator and the parties, fix the fee of the mediator or conciliator.

(2) As far as possible, a consolidated sum may be fixed rather than for each session or meeting.

(3) Where there are two mediators or conciliators as in clause (b) of Rule 2, the Court shall fix the fee payable to the mediators or conciliators which shall be shared equally by the two sets of parties.

(4) The expense of the mediation or conciliation including the fee of the mediator or conciliator, costs of administrative assistance, and other ancillary expenses concerned, shall be born equally by the various contesting parties or as may be otherwise directed by the Court.

(5) Each party shall bear the costs for production of witnesses on his side including experts, or for production of documents.

(6) The mediator or conciliator may, before the commencement of mediation or conciliation, direct the parties to deposit equal sums, tentatively, to the extent of 40% of the probable costs of the mediation or conciliation, as referred to in clause (3), including his fee. The remaining 60% shall be deposited with the mediator or conciliator, after the conclusion of mediation or conciliator. The amount deposited towards costs shall be expended by the mediator or conciliator by obtaining receipts and a statement of account shall be filed, by the mediator or conciliator in the Court.

(7) If any party or parties do not pay the amount referred to sub-rule (5), the Court shall, on the application of the mediator or conciliator, or any party, issue appropriate directions to the concerned parties.

(8) The expense of mediation or conciliator including fee, if not paid by the parties, the Court shall, on the application of the mediator or conciliator or parties, direct the concerned parties to pay, and if they do not pay, the Court shall recover the said amounts as if there was a decree for the said amount.

Rule 27: Ethics to be followed by Mediator or Conciliator:

The mediator or conciliator shall:

(1) follow and observe these Rules strictly and with due diligence;

(2) not carry on any activity or conduct which could reasonably be considered as conduct unbecoming of a mediator or conciliator;

(3) uphold the integrity and fairness of the mediation or conciliation process;

(4) ensure that the parties involved in the mediation and fairly informed and have an adequate understanding of the procedural aspects of the process;

- (5) satisfy himself/herself that he/she is qualified to undertake and complete the assignment in a professional manner;
- (6) disclose any interest or relationship likely to affect impartiality or which might seek an appearance of partiality or bias;
- (7) avoid, while communicating with the parties, any impropriety or appearance of impropriety;
- (8) be faithful to the relationship of trust and confidentiality imposed in the office of mediator or conciliator;
- (9) conduct all proceedings related to the resolutions of a dispute, in accordance with the applicable law;
- (10) recognise that mediation or conciliation is based on principles of self-determination by the parties and that mediation or conciliation process relies upon the ability of parties to reach a voluntary, undisclosed agreement;
- (11) maintain the reasonable expectations of the parties as to confidentiality;
- (12) refrain from promises or guarantees of results.

Rule 28: Transitory Provisions:

Until a panel of mediators or conciliators is prepared by the High Court and the District Court as stated in Rule 2, the Courts, referred to in Rule 2, may nominate a mediator or conciliator of their choice if the mediator or conciliator belongs to the various classes of persons referred to in Rule 2 and is duly qualified and is not disqualified, taking into account the suitability of the mediator or conciliator for resolving the particular dispute.

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