

# Dispute Resolution in Telecom and Broadcasting Sectors

on

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# **Business Session –II**

**Dispute Resolution in the Broadcasting Sector**

## **Negotiation and Mediation**

**Presented by**

**Ms. Asha Menon**

**Additional District Judge &**

**Member Secretary, Delhi Legal Services Authority**

# Definition

- Negotiation encompasses any exchange of information made by two or more persons in search of an agreement to do or not to do something.
- Negotiation could be defined as a process whereby two or more parties seek an agreement to establish what each shall give or take or perform and receive in a transaction between them.
- Negotiation is an interactive communication process that may take place whenever we want something from someone else or another person wants something from us.





# **If Negotiation is a way of life :**

Is it only intuitive

**or**

Is it a skill that can be acquired

# Types of Negotiation

Negotiations are commonly between the following five pairs :

1. Individuals Vs. Individuals.
2. Private entity Vs. Private entity (such as Corporates and NGOs)
3. Individuals Vs. Private entities
4. Govt. Vs. Govt.
5. Govt. Vs. Private entities (individuals)



## Negotiations could be in the following subjects:

1. Personal
2. Business or Trade: with or without transaction.
3. Protection of Rights
4. Political
5. Sovereignty and Security

It can be bilateral or multilateral.

# Process of Negotiation

Negotiation is a universal dance with three/four stages or steps.

1. Planning or preparation.
2. Action or information exchange.
3. Action or explicit bargaining.
4. Assessment – evaluating whether negotiation is complete and commitment to the result.



# Strategies of Negotiation

1. Problem Solving.
2. Adversarial



# Styles of Negotiation

1. Cooperative
2. Competitive

# Skills required

1. Attitude.
2. Communication Skills.
3. Planning.
4. Adopting the right bargaining technique.
5. Using correct negotiating tactics.
6. Avoiding impasses.



# Barriers to Negotiations

- Despite best efforts sometimes negotiations reach an impasse resulting in substantial and avoidable costs to the parties.
- Parties realize that the resolution of disputes can serve them better but still they do not reach a settlement.
- Despite the existence of commercial interests the negotiations fail, leaving parties dissatisfied.



# Types of Barriers

## 1. Strategic Barriers

- ❖ When one party takes calculated steps to maximize one sided gains.
- ❖ It arises from the tension between self interests and joint gains- how will the parties divide a fixed pie.
- ❖ Many times intentional use of secrecy and deception to gain advantage may have the opposite effect.

## 2. Principal and Agent Barriers

An agent negotiating for the principal may induce behavior that fails to serve interests of the principal.

It could be due to conflict of interests between the agent's goals and objectives and those of his principal.

### 3. Cognitive Barriers

Some times parties create a barrier to decision making or dispute resolution because of their risk assessment. The parties tend to be averse to risk regarding gain and would rather have a certain gain than an uncertain larger gain.

People are risk seeking with regard to loss. They would avoid a certain loss and take a risk of greater loss if there is some chance of avoiding that greater loss.

Some parties would rather postpone a certain loss for an uncertain result in the future .

A good negotiator will assist the parties and opponents in addressing these fears.



## 4. Psychological Barriers

1. Many times unwarranted assumptions about the motives and intentions of the other party can create a barrier.
2. Due to this reason decision about accepting an offer is made with uncertainty and risk.



## **EFFECTIVE NEGOTIATOR**

- 1. Experienced**
- 2. Realistic**
- 3. Ethical**
- 4. Rational**
- 5. Perceptive**
- 6. Analytical**
- 7. Skillful**
- 8. Prepared on law and facts**
- 9. Creative**

## **INEFFECTIVE NEGOTIATOR**

- 1. Inexperienced**
- 2. Lacking in analytical skills**
- 3. Unrealistic**
- 4. Non convincing**
- 5. Non cooperative**
- 6. Out of control**
- 7. Discourteous and unfair**
- 8. Non perceptive**
- 9. Irrational**



# MEDIATION



# Definition

**A.** Mediation is a process in which an impartial third party- a mediator- facilitates the resolution of a dispute by promoting amicable agreement by the parties to the dispute.

## **A mediator**

facilitates communication,  
promotes understanding,  
assists parties to identify interests and needs,  
uses creative problem solving techniques  
enables parties to reach their own agreement.



## **B. Mediation is:**

- A structured negotiation process
- Neutral mediator
- Facilitate communication and negotiation
- Assist the parties in resolving their dispute.
- Flexible process.



*Thank you*