

PRE-TRIAL CONDUCT

In pre-trial hearing parties to the dispute and their lawyers hold a pre-schedule meeting before the trial begins in the presence of judge, or a magistrate or a judicial officer who possesses fewer judicial powers than a judge.

In India, the system of pre-trial hearing is not clearly celebrated as a distinctive feature of the judicial process, although both the Civil Procedure Code and Criminal Procedure Code contain certain provisions that can be utilized for this purpose.

The Law Commission has rejected the proposal for pre-trial conferences in the Fourteenth Report. It observed that conditions in our country are not yet ripe for the introduction of such an innovation. Although, government is seeking to speed up disposal of cases by introducing the system of 'pre-trial hearings' on the lines of the UK and the US.

DISCLOSURES

- Disclosure refers to that juncture of the litigation process when each party is required to disclose the documents that are relevant to the issues in dispute to the other party. Under Civil Procedure Code, a party by the way of discovery is enabled to obtain material facts or information in the form of documents from the other party.
- An application for discovery of documents may be made to the court and the court may direct the other party to the suit to disclose the documents requested by the other side in case such document is in the possession of the opposite party. However, such a discovery shall not be ordered if the court is of the opinion that it is not necessary either for disposing of the suit or for saving costs.
- The process of the discovery of documents is made after the examination of parties in three stages:
 - a. the disclosure in writing by one party to the other of all the documents which he has in his possession;
 - b. the inspection of the documents disclosed, other than those for which privilege from or other objection to production is properly claimed or raised: and
 - c. the production of the documents disclosed either for inspection by the opposite party or to the court.
- The court has the power to make an order, at any time during the pendency of any civil proceedings, where it deems appropriate, production of any document in the possession or power of any party to such proceedings.

- While it must be noted that an arbitral tribunal constituted under Arbitration & Conciliation Act, 1996, is not bound by the Code of Civil Procedure, 1908 and the Indian Evidence Act, 1872, however, in practice, the rules of document disclosure followed in arbitration proceedings remain largely similar to those applied in civil proceedings. However, it is significant that under the Arbitration Act, parties are free to decide the procedure to be followed by the arbitral tribunal and the tribunal may conduct the proceedings in a manner it deems fit on a case to case basis.
- Whereas, when conciliation proceedings are conducted under the Arbitration & Conciliation Act, 1996, the conciliator and the parties are required to keep and maintain secrecy concerning all matters relating to the conciliation proceedings or including any settlement agreement apart from where its disclosure is necessary for purpose of implementation and enforcement of any order.

OTHER APPLICABLE RULES

In practice, the Courts in India in their respective jurisdictions, in the form of notifications, circulars, handbooks, etc. issue rules governing litigation procedures applicable to advocates and courts all over India.



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