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Mediation And Conciliation In Conflict Resolution

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Abstract: *Although mediation and conciliation are essentially the same, conciliation has not developed much in our nation; instead, courts favour mediation centres and Lok Adalat. These two names are clearly similar however, they are different in a few aspects.*

Mediation is an alternative conflict resolve in a way disagreement is resolved out of court. The process of mediation involves negotiation with assistance from both parties. Court-referred mediation and private mediation are the two forms of mediation. The parties controlled how the mediation procedure turned out.

Conciliation is an informal process that is a type of alternative conflict resolution strategy that involves resolving disputes without going to court. Conciliation is a chosen by both disputing parties to mediates their disagreement, and the conciliator attempts to do so. Section 64 of the Arbitration and Conciliation Act of 1996 specifies the appointment of a conciliator. No such thing as an odd or even number of conciliators exists. Conciliators must adhere to three principles: justice, objectivity, and fairness. They are always unbiased and independent. 62 Section of 1996 Arbitration and Conciliation Act outlines the conciliation process.

stressful method of resolving conflicts and frequently produces more amicable settlements.

Quicker Procedure Family mediation typically takes less time than going to court. Family mediation can take a few days to a few weeks, whereas the court process could take several months or even years.

Keywords: *Mediation, Conciliation, Quicker, Alternative, Resolution*

INTRODUCTION

Many people frequently wonder what conciliation and mediation represent, whether they are the same thing, and if not, whether they differ from one another.

Conciliation and Mediation.

It is evident that two acts passed by the Parliament approach conciliation and mediation differently, regardless of whether they differ in common usage.

30 Section of the Arbitration and Conciliation Act, 1996, which is found in Part I, states that an arbitral tribunal may attempt to resolve the issue through "mediation" or "conciliation." This legislation was passed in 1996. Section 30's subsection (1) gives the arbitral tribunal the authority to.

Use mediation, conciliation or other procedures", for the purpose of reaching settlement.

(b) The Civil Procedure Code (Amendment) Act 1999 which introduced sec. 89, too speaks of 'conciliation' and 'mediation' as different concepts. Order 10 Rules 1A, 1B, 1C of the Code also go along with sec. 89.

As a result, our Parliament has clearly distinguished between mediation and conciliation. Sections 61 to 81 of Part III of the 1996 Act, which addresses

There is no meaning for "conciliation" when it comes to this term. Additionally, section 89 of the Code of Civil Procedure, 1908 (as revised in 1999) does not define "conciliation" or "mediation."

CONCILIATION

We must turn to the duties of a "Conciliator," as envisioned by Part III of the 1996 Act, in order to comprehend what Parliament meant by "conciliation." Indeed, section 62 of the relevant act provides mention of "conciliation" by consent of the parties, but Section 89 allows the Court to send a dispute for conciliation even in the absence of consent from the parties, as long as the Court determines that the case is suitable for conciliation. This has no bearing on what "conciliation" means under section 89 since it states that as soon as a "conciliator" is mentioned, the1996Act

would be relevant. Therefore, section 89 of the Code of Civil Procedure must be understood to include the definition of "conciliation" as it appears in the 1996 Act. It should be mentioned that the 1996 Act is predicated on the UNCITRAL Rules for Conciliation.

The "conciliator" may now ask each party to provide him with a brief written statement outlining the "general nature of the dispute and the points at issue" in accordance with section 65ofthe1996Act,

declarations and records. The function of a conciliator is explained in Section 67.
He must provide parties with independent and unbiased assistance, according to subsection (1). According to subsection (2), he will be governed by the values of impartiality, equity, and justice, to the parties' rights and responsibilities, the customs of the relevant trade, and the facts of the dispute, including any prior business dealings between the parties.
Subsection (3) states that he shall take into account "the circumstances of the case, the wishes the parties may express, including a request for oral statements. Subsection (4) is important and permits the conciliator 'to make proposals for a settlement. It states as follows:
Section 67(4). The conciliator may, at any stage of the conciliation proceeding, make proposals for a settlement of the dispute. Such proposals need not be in writing and need not be accompanied by a statement of the reasons therefor.
Before I move on to section 73, I will briefly discuss the other clauses.
The conciliator may invite parties to meet with him, according to Section 69. Section 70 addresses the conciliator's sharing of material provided to him by one
party, to the opposing side.
Section 71 addresses the parties' participation with the conciliator, whereas Section 72 addresses the ideas that each party makes to the conciliator in order to reach a settlement. In conclusion
Section73,
Crucially, it says that if the conciliator believes there are components of a settlement, he can create terms for a potential agreement. He also has the right to "reformulate
The above provisions in the 1996 Act, make it clear that the 'Conciliator' under the said Act, apart from assisting the parties to reach a settlement, is also permitted to make "proposals for a settlement" and "formulate the terms of a possible settlement" or "reformulate the terms". This is indeed the UNCITRAL concept.

MEDIATION
If the role of the 'conciliator' in India is pro-active and interventionist as stated above, the role of the 'mediator' must necessarily be restricted to that of a 'facilitator, In their celebrated book ADR Principles and Practice' by Henry J. Brown and Arthur L. Mariot (1997, 2nd Ed. Sweet & Maxwell, Lord the authors say that 'mediation' is a facilitative process in which disputing parties engage the assistance of an impartial third party, the mediator, who helps them to try to arrive at an agreed resolution of their dispute. The mediator has no authority to make any decisions that are binding on them, but uses certain procedures, techniques and skills to help them to negotiate an agreed resolution of their dispute without adjudication. Mediation is negotiation carried out with the assistance of a third party. The mediator, in contrast to the arbitrator or judge, has no power to impose an outcome on disputing parties.
Despite the lack of teeth in the mediation process, the involvement of a mediator alters the dynamics of negotiations. Depending on what seems to be impeding agreement, the mediator may attempt to encourage exchange of information, provide new information, help the parties to understand each other views, let them know that their concerns are understood; promote a productive level of emotional expression; deal with differences in perceptions and interest between negotiations and constituents (including lawyer and client); help negotiators realistically, assess alternatives to settlement, learn (often in separate sessions with each party) about those interest the parties are reluctant to disclose to each other and invent solutions that meet the fundamental interests of all parties.
In a transformative approach to mediation, mediating persons consciously try to avoid shaping issues, proposals or terms of settlement, or even pushing for the achievement of settlement at all. Instead, they encourage parties to define problems and find solutions for themselves and they endorse and support the parties' own efforts to do so.
The meaning of these words as understood in India appears to be similar to the way they are understood in UK. In the recent Discussion Paper by the lord Chancellor's Department on Alternative Dispute Resolution.
where while defining 'Mediation' and 'Conciliation, it is stated that 'Mediation' is a way of settling disputes by a third party who helps both sides to come to an agreement, which each considers acceptable. Mediation can be 'evaluative' or facilitative Conciliation', it is said, is a procedure like mediation but the third party, the conciliator, takes a more interventionist role in bringing the two parties together and in suggesting possible solutions to help achieve a settlement. But it is also stated that the term 'conciliation' is gradually falling into disuse and a process which is pro-active is also being regarded as a form of

mediation. (This has already happened in USA).
The above discussion shows that the 'mediator' is a facilitator and does not have a pro-active role. But, as shown below, these words are differently understood in US.

The difference between conciliation and mediation
Under our law and the UNCITRAL model, the role of the mediator is not pro-active and is somewhat less than the role of a 'conciliator'. We have seen that under Part III of the Arbitration and Conciliation Act, the Conciliator powers are larger than those of a mediator as he can suggest proposals for settlement. Hence the above meaning of the role of mediator.
In India is quite clear and can be accepted, in relation to sec. 89 of the Code of Civil Procedure also. The difference lies in the fact that the 'conciliator' can make proposals for settlement, 'formulate or 'reformulate' the terms of a possible settlement while a 'mediator' would not do so but would merely facilitate a settlement between the parties.
Brown quotes the 1997 Handbook of the City Disputes Panel, UK which offers a range of dispute resolution processes, facilitative, evaluative and adjudicative. It is there stated that conciliation is a process in which the Conciliator plays a proactive role to bring about a settlement" and mediator is "a more passive process". This is the position in India, UK and under the UNCITRAL model. However, in the USA, the person having the pro-active role is called a 'mediator' rather than a 'conciliator'. Brown says that the term 'Conciliation' which was more widely used in the 1970s has, in the 1970s, in many other fields given way to the term 'mediation'. These terms are elsewhere often used interchangeably.
Where both terms survived, some organizations use 'conciliation' to refer to a more proactive and evaluative form of process. However, reverse usage is sometimes employed; and even in UK, 'Advisory, Conciliation and Arbitration Service' (UK) applies a different meaning. In fact, the meanings are reversed. In relation to 'employment', the term 'conciliation' is used to refer to a mediatory process that is wholly facilitative and nonevaluative. The definition of 'conciliation' formulated by the ILO (1983) is as follows: The practice by which the services of a neutral third party are used in a dispute as a means of helping the disputing parties to reduce the extent of their differences and to arrive at an amicable settlement or agreed solution. It is a process of orderly or rational discussion under the guidance of the conciliator." However, according to the ACAS, 'mediation' in this context involves a process in which the neutral "mediator takes a more pro-active role than a conciliator for the resolution of the dispute, which the parties are free to accept or reject. (The ACAS role in Arbitration, Conciliation and Mediation, 1989). It will be seen that here, the definitions, even in UK, run contrary to the meanings of these words in UK, India and the UNCITRAL model.

When Is Mediation Required
Through mediation, the conflicting parties have the chance to sit together and try to negotiate their respective terms. The parties avoid their problems becoming heated arguments and heading to court by choosing mediation. Therefore, mediation is fundamentally necessary to maintain the secrecy of delicate cases and facilitate long-term relationships between parties.
An attempt at mediation first can sometimes prevent parties from taking their disagreement to court or arbitration and impact the parties' goodwill when large quantities of money are at stake. Therefore, mediation becomes necessary even when the parties' reputation and goodwill are at risk.
For instance, under Section 12A of the Commercial Courts Act, 2015, parties to disputes involving more than Rs. 3 lakhs must first attempt a mediation process; only if that mediation is unsuccessful may the parties proceed with the case in court. This is an example of the Indian legislative framework. In order to provide the parties an opportunity to resolve their differences, judges and arbitrators frequently refer cases to mediation in litigation and arbitration, respectively. This is carried out to assist the parties in preserving enduring relationships, averting legal action, and safeguarding the privacy of such business conflicts.

When Is Conciliation Required
Conciliation is necessary when there are a significant number of people on one side of a demand or dispute and a small but influential group on the other. The goal of conciliation is to provide the party with less negotiating power a voice and to address their demands or claims. Although conciliation is also a flexible and informal process, it is necessary in situations where a settlement is necessary to maintain contractual connections because the conciliator works to ensure that a settlement is reached.
For instance, Indian legislation mandates the use of conciliation as a means of resolving mass demands

from trade union workers against the company. Trade union workers can use this process to bring their concerns before the Labour Court (if the company is under the state government) or the Regional Labour Commissioner (RLC) of the state in which the company is located. Section 4 of the Industrial Disputes Act of 1947 establishes this remedy.

Who Should opt For Mediation

The fact that party's bargain with one another and work towards a settlement is a crucial component of mediation. In order to resolve disagreements and enable the parties to fulfil their future commitments to one another, it is a method that has been agreed upon by both parties and is in the best interests of their long-term partnership.

Therefore, mediation is an option for parties who want to keep long-term relationships or who have a lot at stake, such as in business disputes. This way, if there are disagreements or disputes between business relations, they can be amicably resolved and the parties can carry on as before. Additionally, mediation is a technique that may be applied to conflicts such as those involving families, marriages, and employers and employees because the secrecy of the processes is so carefully preserved.

In some situations, the court may also use its authority to order disputes to mediation; this authority may be used in a mandatory or directory manner. As previously observed, mediation has become a mandatory prerequisite for parties bringing commercial actions worth more than Rs. 3 lakhs due to its widespread acceptance and great efficacy. The latter is an example of the mandatory use of court power, whereas the former was an example of the directory use of court power.

Who Should opt For Conciliation

Conciliation can be used to describe disagreements that appear to have a chance of being resolved, whether through litigation or arbitration. The idea of maintaining long-term relationships is prioritised here as well. Employers choosing to use conciliation to resolve conflicts between themselves and their staff is a good example of who ought to use conciliation. Another example is an ongoing legal matter, regardless of its type, in which the courts believe a settlement can be reached and that it is better to refer it to a conciliation commission in order to expedite the process and reduce the workload for the courts.

Conduct Of Proceeding

MEDIATION

Since mediation is a relatively new law in India, the Mediation Act, 2023, has established guidelines and protocols for conducting a mediation proceeding, raising public awareness and establishing consistency in the process.

There are essentially two types of mediation: the first is one that the parties willingly consent to in their contracts, agreements, or business dealings, and the second is one that the courts start by sending a dispute to mediation, either before or during the litigation process.

In the former case, mediation may be carried out ad hoc or the parties may agree to refer the disputes to an organisation that would facilitate the mediation process. When the court sends a dispute to mediation in the latter case, it often does so through the court's mediation service centre or a mediation service provider that has an agreement with the court. Regardless, Chapter V of the Mediation Act, 2023, outlines the process to be followed when conducting the mediation proceedings. The process can be divided into three categories: mediated settlement agreement, mediation behaviour, and mediation beginning.

- **Mediation commencement**: The mediation process begins when the party receiving notice of mediation from the party initiating mediation does so. The day the mediator is appointed marks the start of the court-initiated medication proceedings.
- **Mediation conduct:** The 2023 Act makes no mention of a particular way or process for mediation. This implies that the parties are free to choose the process they wish to use and can inform the mediator of their choice.
- **Mediated Settlement Agreement:** In accordance with the 2023 Act, mediation must be finished within 120 days of the start date; if not, an extension must be requested. The mediated settlement agreement, which will resemble an agreement between the parties with terms derived from the mediation between the parties, will be the result of a mediation. Both the parties' and the mediator's signatures must appear on this written agreement.

CONCILIATION

First and foremost, unless they expressly select one, the parties to a conciliation action are not obligated by any laws. The conciliation norms of a certain institution may also be followed by the parties. In any case, although the parties are free to use the conciliation process they have agreed upon, it must be in accordance with the conciliation law of that nation in order for the conciliation's results to be upheld as legitimate and lawful in Indian courts.

The Arbitration and Conciliation Act, 1996's "Part III-Conciliation" contains the pertinent section pertaining to conciliation processes in India. Conciliation, hearings, evidence, and settlement agreement are the general divisions of the entire process.

OUTCOMES:

Mediation

An agreement outlining the agreed or renegotiated conditions and resolving the disputes is typically the outcome of a successful mediation. A mediated settlement agreement, however, is the outcome of a successful mediation under the Indian Mediation Act, 2023. On the other hand, if a mediation fails, the mediator will issue a failure report.

A mediated settlement agreement has the same enforceability as a civil court decree or judgement, according to Section 27(2) of the aforementioned Act. This suggests that any violation of a mediated settlement agreement by any of the parties involved will be regarded as a violation of a decree or decision.

Conciliation

After a successful conciliation, a written settlement agreement is produced. The conciliator drafts the settlement agreement whenever he believes a settlement has become possible during the process. The Arbitration and Conciliation Act of 1996 states that the conciliator may submit the settlement agreement to the parties for their comments after he has made it.

If any recommendation is made by the parties that calls for the conciliator to reword the terms of the settlement agreement, the conciliator does so in accordance with the parties' suggestions. The conciliator's authentication, which is final and enforceable against the parties, is included in this settlement agreement.

A settlement agreement has the same legal power as an arbitral ruling under the 1996 Arbitration and Conciliation Act. This implies that the parties may contest any future violations of the settlement agreement in the same way that they would contest an arbitral ruling.

Point of difference	Mediation	Conciliation
Definition	It is a process wherein the disputing parties appoint a third neutral party, called the mediator, to help them negotiate and settle the dispute amicably.	It is a process wherein the disputing parties appoint a third neutral party, called the conciliator, to help them negotiate and provide a settlement solution.
Role of third neutral party	The mediator merely brings the disputing parties together, thereafter, it is on the parties to talk and negotiate by themselves.	The conciliator has to bring the parties together as well as make an active effort to settle the disputes between the parties.
Nature of procedure	It is a less formal mode of dispute resolution.	It is more formal than mediation but less formal than arbitration
Governing legislations	It is governed under the Mediation Act, 2023.	It is governed under the Arbitration and Conciliation Act, 1996.
Objective	The objective is to enable the parties to talk about their differences and come to a middle ground.	The objective is to attempt to settle the disputes amicably, through the suggestions of a neutral third party, i.e., the conciliator.

CONCLUSION

Conciliation is a private dispute resolution method in which the parties designate an impartial third party known as the "conciliator," who not only mediates the conflict but also actively engages in the process and helps the parties find a compromise. To put it another way, conciliation is a process wherein parties work out a solution to settle disagreements. The parties may designate more than one conciliator in this case. onciliation is one step more than mediation. In conciliation, the conciliator is duty-bound to act in a just and impartial manner and give both parties a fair hearing. If, at any point in time, the conciliator thinks there is a possibility of settlement of disputes, the conciliator can make the proposal for settlement to the parties. Based on the parties suggestions, the conciliator prepares a settlement agreement which becomes binding on the parties and enforceable in a court of law as a 'settlement agreement'. This entire process is called conciliation**.**

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