

Concept of Conciliation

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ABSTRACT: *Conciliation is "a process in which a neutral person meets the parties to a dispute that may be resolved; a relatively unstructured method of dispute resolution in which a third party facilitates communication between the parties in an attempt to help them resolve their differences." This consists of an effort by a third party appointed by the litigants to reconcile them either before or after they resort to action (either before a judge or arbitration). In general, the effort to conciliate is based on explaining the opposing sides of the conflict to each side, in order to get each side closer and to find a compromise. Section 61 of the 1996 Act provides for the conciliation, contractually or not, of conflicts arising out of a civil arrangement and of all associated prosecutions. There should be no objection, since its enactment, to the inability of the parties to enter into a conciliation arrangement with respect to the resolution of future conflicts.*

KEYWORDS: *Conciliation; Dispute Resolution; Mechanism.*

INTRODUCTION

A slight distinction in mediation and conciliation is there. When in mediation, after hearing all sides, the third side, impartial intermediary, referred to as mediator, assumes a more active function by offering separate solution formulas; in conciliation, the role of the third neutral intermediary is to put the parties together in a frame of mind to forget their animosities and be prepared for an appropriate compromise on terms halfway between the positions taken[1].

Conciliation is a confidential, collaborative mechanism whereby an impartial third party supports the parties to the conflict in finding a satisfactory understanding. It is a process by which the parties systematically isolate the issues involved in the conflict, establish solutions, discuss alternatives and find a consensual solution, together with the aid of a neutral third party, that will meet all their needs. The conciliator will generally separately examine the disagreement in this process and draft his report suggesting the form of dispute resolution[1].

Dispute settlement is, rather literally, the means of settling a dispute between sides. Conflict mediation is most sometimes referred to as "conflict resolution." There are a variety of methods that can be used to settle disagreements, allegations, and conflicts. Alternative conflict resolution, or ADR, refers to options out of court and the conventional, adversarial environment to settle and resolve disputes[2].

Alternative conflict settlements are also so successful that they are advocated as a first move by the American Bar Association, over automatically going to a judge to order a settlement. In addition, certain courts actually mandate alternate conflict settlements, such as mediation and arbitration, to be sought before they commence lawsuits. It will save time and resources to settle conflicts in the courts, and the proceedings are also less rigid and more fluid than those at the circuit court[3].

Another benefit is the collaboration and ingenuity of the parties involved; each side can come to better appreciate the role of the other because of the reciprocal nature of ADR, and remedies that the court may not legitimately enforce may be enforced[3].

There are many types of alternative strategies for settling conflicts, and each mechanism has its benefits. Some are required by the judge, and not all require an attorney's presence. Many individuals, however, do want to have their solicitor defend them in ADR proceedings. Some alternate mechanisms of dispute settlement are binding, which means that the parties cannot ignore the verdict on the grounds of whether they agree with the decision or not. Other types of ADR are non-binding, meaning it is possible to reject the decision[4].

A non-binding process in which a neutral third party, the conciliator, supports the parties to the dispute in reaching an agreed settlement of the dispute which is mutually agreeable. A less formal method of arbitration is conciliation[5].

The parties are free to accept or deny the conciliator's advice. However, if the peace agreement drawn up by the conciliator is agreed by all sides, it is definitive and binding on all parties[5].

DISCUSSION

Conciliation is a method of arbitration, although the essence of it is less formal. That is the method of facilitating an amicable settlement between the parties by which a conciliator who works with the parties individually is used by the parties to the conflict to resolve their dispute. Meeting of the conciliator individually to mitigate the conflict between the parties, enhance cooperation, interpret the issue to bring about a negotiated solution. There is no need for prior negotiation and it is not necessary to compel a party who does not wish to conciliate. In that way, it is separate from arbitration[6].

In compliance with this part, the group proposing conciliation shall give a written invitation to the other party to conciliate, briefly describing the topic of the conflict. Conciliation hearings shall begin upon written approval by the other side of an offer to conciliate. There will be no conciliation hearings if the other party refuses the invitation. Obviously, the aforementioned clause specifies that the conciliation arrangement should be an extemporary negotiation entered into after but not before the conflict. And when the arbitral hearings are on, the parties are still required to participate in the conciliation phase (section 30)[6].

Conciliation is commonly used for work issues rather than contractual disputes. Conciliation is an obligatory procedure before an individual decides to submit a petition before the Job Tribunal. After analyzing the situation and the multiple points, the conciliator will discuss the issues and attempt to help the parties find an understanding, also giving their own view. Their perspective may help shape a resolution or draw a solution to the conflict. Please see our Conciliation Guide for more information[7].

Usually, ADR is cheaper and easier than entering arbitration and resorting before the courts. As long as contact between the parties to the conflict has not been irretrievably broken down, it should be viewed as a more successful way of reaching a result. Compared to the more public aspect of legal hearings, it is therefore useful in terms of preserving a degree of privacy.

Arbitration is an increasingly appealing choice for corporations as it allows the secrecy of any matter and protects the integrity of the persons or companies concerned[7].

If relations have totally broken down, therefore a more conventional path to litigation could be appropriate. ADR will also place the person at a disadvantage where there is an imbalance in influence (for example, where there involves a conflict between a sole trader and a big company), but this is a problem that should be taken into consideration[7].

ADR is a non-adversarial conflict resolution system, that is, working together cooperatively to find the right resolution for all. ADR will be instrumental in reducing the legal pressure on the courts, thus presenting the parties concerned with a well-rounded and rewarding experience[7]. Via imaginative, constructive negotiation, it offers the chance to "expand the pie" and satisfy the desires driving their demands[7].

Non-binding process in which the neutral third party, the conciliator, helps the parties to the dispute to reach an agreed settlement of the dispute which is mutually acceptable. A less formal method of arbitration is conciliation. The parties are free to accept or deny the conciliator's advice. However, if the peace agreement drawn up by the conciliator is agreed by all sides, it is definitive and binding on all parties[8].

There has been a change in the climate of the legal system in India in recent years. While the judiciary or litigation process remains effective, trustworthy and the most credible way of securing justice or settling disputes, there has been a re-emergence of some pre-existing conflict settlement processes in the past few decades that have further enhanced the glory of the Indian legal system. Hybrid resolution structures and other current ADR modes are thus certainly concluded to be fantastic advantages of the judicial system, which have helped to significantly alleviate the burden on the judiciary[8].

Conciliation is a conflict resolution process in which, with the aid of a conciliator, the parties to a dispute agree to a settlement. The conciliator meets with the sides in order to enter into an amicable arrangement, both jointly and individually. Here, the final decision can be made by reducing conflicts, strengthening relations, and implementing other approaches. It is a versatile procedure, such that the parties are free to determine the content and intent of the proceedings. Unless they sign it, it is risk-free and is not binding on the parties[9].

Conciliation is an informal conflict settlement mechanism whereby a conciliator that works with the parties individually to settle their disputes is used by the parties to a dispute. By minimizing conflicts, strengthening communications, interpreting challenges, offering technical support, discussing alternative options, and achieving a negotiated resolution, they do this. Of that, it varies from Arbitration[9].

Conciliation is a cooperative process where the parties concerned are free to consent and strive by conciliation to settle their disagreement. The mechanism is versatile, allowing the time, structure and substance of the conciliation hearings to be determined by the parties. Rarely are these hearings public. They are interest-based, since the conciliator would not only take into account the legal positions of the parties, but also their commercial, financial and / or personal interests when negotiating a settlement[10].

In the Indian context, the terms conciliation and mediation are synonymous. Conciliation is a voluntary mechanism by which a professional and competent impartial conciliator encourages mediation between the parties to the dispute and allows them to consider their differences and interests in order to achieve a mutually satisfactory resolution. Conciliation includes negotiations between the parties and the conciliator with a view to resolving the existing problems present in the conflict and developing opportunities for mediation that are satisfactory to all parties to seek permanent and fair settlements[10].

In order to find a solution that is consistent with all sides, the conciliator does not settle for the parties, but strives to assist them in creating alternatives. The method is risk free and not binding on the parties until the agreement is reached and signed by them. Once a settlement has been found before a conciliator between the parties to the conflict, the resolution has the value of an arbitration award and is legally binding in every court in the world[10].

CONCLUSION & IMPLICATION

Through the emergence of alternative conflict resolution, there is a new way for parties to address their disputes. The resolution of disputes in Lok Adalat has steadily gained traction among the public and this has really given rise to a new power for ADR, and this would certainly minimize the absence of legal courts. There is a pressing need, through ADR processes, for justice dispensation.

With greater speed, the ADR movement needs to be carried on. This would greatly minimize the burden on the judiciary, aside from offering immediate door-step justice, without requiring major costs. When they are effectively impacted, the aim of rendering social justice to the parties to the case would really be accomplished.

Alternative Dispute Resolution (ADR) mechanisms provide many procedures that allow parties, with the help of a qualified impartial intermediary of their choosing, to settle their disputes out of court in a private forum. Various arbitral agencies have ADR procedures.

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