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A COMPARATIVE STUDY ON THE DIFFERENCE BETWEEN MEDIATION CONCILIATION IN INDIA: LAW AND PRACTICES

Shanmuga Priyanga.A[1], Sri Savithri Subbiah[2]
[1]*4th Year B.com LL.B. (Hons), Chettinad School of Law, Kelambakkam, Tamil Nadu, India.*
[2]*4th Year B.com LL.B. (Hons), Chettinad School of Law, Kelambakkam, Tamil Nadu, India.*

ABSTRACT
In India nowadays ADR (Alternative Dispute Resolution) plays a major role and it's becoming more important as it make the process easier and the heavy loads on the courts and burdens are reduced also considered as a time consuming and provides a people faster and more affordable ways to solve the conflicts. Among many ADR methods, mediation and conciliation are often seen as the same, but they are slightly different in law, process and practice. In this paper going to compare both methods and to show the unique features of it. Basically, mediation in India mainly works under the sec 89 of CPC,1908 combined (along) with the rules created by courts and the Mediation and Conciliation project Committee. Therefore, a separate law was made for it but still it lacks in passing the Mediation Bill, 2021. On the other side, conciliation is clearly mentioned under the part III of Arbitration and Conciliation Act, 1996, which makes any settlement reached through conciliation legally binding, similar to arbitral award. The study explores the main differences in how the processes starts and role of the 3rd party neutral, how adoptable the process is, and to check whether the agreement is binding. Mediation is more flexible and it focuses on helping parties to communicate and maintain the relationships. While conciliation is more formal with the conciliator producing the ideas, possible solutions and producing a binding settlement. In practice, mediation is mostly used in matters related to family, matrimonial, and court- referred disputes, whereas conciliation is preferred mostly used in business and industrial conflicts. Finally, both the methods are important to resolve different matters and clearer laws with more awareness makes them effective in solving disputes in India.

KEYWORDS: *Alternative Dispute Resolution, Faster, Flexible, Family issues, Industrial conflicts, Conciliator, Binding settlement*

OBJECTIVES
- To understand the legal framework of mediation and conciliation in India
- To examine key difference in their procedures and role of 3rd parties
- To examine how both are applied in real legal practices (courts, tribunals)
- To evaluate the effectiveness of each method in resolving disputes
- To suggest improvements in awareness and implementation

CHAPTALISATION

CHAPTER 1
Introduction
Disputes are an unavoidable part of human interaction, and every legal system seeks an effective way to resolve them. In India, the judiciary system is overburdened with millions of pending cases, there has been a growing system of ADR (Alternative Dispute Resolution mechanisms. With these mediation and conciliation occupy a major place as both methods concentrate on the dialogue, negotiation, and settlement outside the court system. Even though mediation and conciliation are similar to each other, they are non-identical. Mediation usually means a neutral third party who facilitate the communication between disputing parties without offering any solutions, while conciliator often allows the conciliator to actively propose terms and settlement. The important difference exits much debate in legal and academic

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circles, sometimes Indian laws and judicial practices blur the line between two.

A comparative study of mediation and conciliation in India is essential two reasons. Firstly, it assists in elucidate their legal standing under laws like Arbitration and Conciliation Act,1996 and the Mediation bill, 2021. Secondly it enunciates how these mechanisms are being utilized in real life, whether it is in commercial disputes, family issues, or community level conflicts. By analyzing both the legislations and the ground realities. Study attempts to find out if India requires sharper distinction or if the existing overlap is benefiting its justice system effectively.

Objectives

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RESEARCH QUESTIONS

1. What are legal meaning and statutory bases for mediation and conciliation?
2. What are the powers and role differing for mediator and conciliator?
3. In what kind of dispute are these methods used most commonly?
4. How effective are these methods in achieving dispute resolution in practice?
5. What challenges prevail in practical implementation of both processes?

LITERATURE REVIEW

Alternative Dispute Resolution (ADR) in India has remained a key to alleviating judicial burden and enabling congenial settlements. Its importance has been emphasized by academics and courts alike toward providing speedy and cost-effective justice.

Evolution of ADR

As Menon (2002) aptly stated, ADR reflects the trend towards consensus and participatory justice in keeping with India's social realities. The 222nd Law Commission Report (2009) also brought out the role of ADR in decongesting courts and improving access to justice. Similarly, Basu (2015) noted that ADR facilitates restorative justice concepts, balancing efficiency with equity.

Mediation in India

Mediation, being a voluntary and facilitative procedure, received legal recognition by virtue of Section 89 of the Code of Civil Procedure, 1908 (amended in 2002). Singh (2018) clarified that the Supreme Court Mediation and Conciliation Project Committee (MCPC) has institutionalized court-annexed mediation centers all over India. Gandhi (2020) argued that flexibility and confidentiality of mediation make it most appropriate for family and matrimonial cases. However, Rao (2021) felt that the absence of codified law reduces uniformity—a deficiency the upcoming Mediation Bill, 2021 aims to fill.

Conciliation in India

Conciliation, however, is governed by Part III of the Arbitration and Conciliation Act, 1996, as per the UNCITRAL Model Law (2002). Desai (2017) noted that conciliation is a more formal procedure, allowing the conciliator to make proposals for settlements. Such settlements under Section 74 of the Act are enforceable in law, being on par with arbitral awards. Patel (2019) noted that conciliation is preferred in commercial as well as industrial disputes due to its enforceability and procedural definiteness**.**

Comparative Analysis

Although Mehta (2016) and Awasthi (2019) indicated that mediation and conciliation promote cooperation, they differ on neutrality and result. Mediation emphasizes party autonomy and non-binding resolutions, while conciliation involves a proactive conciliator and legally binding results. Srivastava (2020) added that Indian courts usually blur the distinction between the two, leading to heterogeneous practices across jurisdictions.

Institutional and Practical Developments

Empirical evidence by NALSA (2020) and the MCPC (2021) showed considerable pendency decreases in court via court-referred mediation. Rao (2022) noted institutional shortcomings—scant trained neutrals, uneven awareness, and poor infrastructure—that restrict extensive use of both processes.

Research Gap

The majority of the literature available is focused on conciliation or mediation alone. Extremely few studies have tried a comparative analysis per se of their legal structure, practice, and deliverability in India. The dearth offers vindication for the present study's aim to investigate their contrast and measure their effectiveness in practice.

Summary

Briefly, mediation and conciliation complement each other and do not conflict. Mediation promotes communication and relationship-building, while conciliation ensures formal, enforceable agreements. Sharpening legal clarity, professional training, and public awareness will augment their joint function in India's justice system.

Methodology

This research is doctrinal in nature, relying on the secondary sources of information. The study involves an in-depth analysis of exiting literature, including books, journals, articles, case laws,

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statutes, government report and various online resources. A comparative understanding of mediation, conciliation and ADR techniques has been drawn from both Indian and international perspectives. This also includes a critical review of judicial decision and legislative reforms in India to understand how ADR has evolved over time. The study is not only to present existing knowledge but also to highlights gaps and recommend improvements.

CHAPTER 2

2.1 Definition

Meditation is a structured and flexible process in which an impartial third party assist disputing individual or groups in reaching settlement the mediator does not impose any restrictions or decisions on them but rather guide the parties in identifying the concerns, exploring options, and both except for a mutually agreeable solution. Its not as same like litigation which often produce winers and losers, mediation often encourages collaboration and consensus building. It encourages open communication and problem-solving, the outcomes that are not only legally acceptable but also practically sustainable for the parties involved. Finally, mediation is less about determining who is right or wrong and more it find a way to satisfies both sides.

2.2 Features

The unique feature of mediation it **distinct** from other dispute resolution processes. Firstly, it is a voluntary process where parties are free to participate and withdrawn at time can be at coinvent time. This ensures that the settlement reached based on the genuine agreement rather than compulsion. Secondly, mediation upholds the principle of confidentiality it allows parties to present their points without any fear their statement is later used in courts. Thirdly the neutral decision of the mediator acts a facilitator rather than a judge, maintaining fairness throughout the process. Fourth, mediation is famous for the informality and flexibility because it does not adhere to any strict procedural rules or requirements regarding evidences. Last, mediation has the unique privilege of protecting the relationship, which is primarily significant in family, community, or business-related conflicts where ongoing interaction between parties was unavoidable.

2.3 Legal Framework

The legal framework monitoring in India has gradually developed through statutory provisions and judicial encouragement. Sec 89 of CPC, 1908, introduced by 2002 amendment, is one of the **most significant** milestones, as it empowers courts to refer cases for settlement through alternative dispute resolution methods, including mediation. The Arbitration and Conciliation Act, 1996 was also did a groundwork by codifying structured settlement processes, even though it focuses more on arbitration and conciliation. The Legal Authority Act, 1987 plays a major role in implementing Lok Adalat, which use mediation like methods to resolve dispute **amicable.** Also, the Companies Act, 2013 further recognised mediation by introducing panels to resolve corporate disputes, while the Commercial Courts Act, 2015(amended in 2018) made that pre institution mediation is compulsory for specific commercial cases, the pending Mediation Bill, 2021 aims to provide a

2.4 Court-Referred Mediation

Court-referred mediation occurs when a judge refers a pending case to mediation under Section 89 of the CPC. Such mediations are conducted through court-annexed mediation centers, which have been established in many states. The mediators are usually trained professionals, including lawyers or retired judges, who are empaneled with the courts. Court-referred mediation has several advantages: it is either free or very affordable, making it accessible to a wide range of litigants; it also introduces parties to the benefits of mediation, often for the first time. However, there are limitations. Since cases are referred by courts, some parties may perceive mediation as a compulsory stage rather than a voluntary process. In certain cases, the lack of specialized mediators and the overburdened nature of court-annexed centers can also affect efficiency. Nonetheless, court-referred mediation has played a crucial role in mainstreaming the practice across India.

2.5 Private Mediation

Private mediation, however, is initiated voluntarily by parties to a dispute without the intervention of the courts. Here, the parties have the liberty to select their mediator, who may be an expert in law, sector expert, or professional. Private mediation is very highly demanded where commercial conflicts are involved and confidentiality, speedy hearing, and accommodation are highly desired. The procedure permits the adaptation of the proceedings to suit the parties' requirements, such as fixing the agenda, venue, and communication mode. While private mediation is more expensive compared to court-annexed mediation, it produces more efficient and fulfilling results due to its adapted form. Businesses, particularly, prefer private mediation because it is discreet and business relations are not strained though one need not endure the bad publicity of court battles.

2.6 Private Mediation and Court-Referred Mediation

Private mediation and court-referred mediation both contribute to boosting the practice of mediation in India, but in different ways. Court-referred mediation is also an important contributor to wider accessibility and awareness through exposure of litigants to ADR via the judiciary. It is cheap and allows even the poor to reach a settlement. It may, however, at times be less nimble and more adversarial in focus than a voluntary process. Private mediation offers more control, professionalism, and confidentiality. It is especially relevant where there are complex commercial matters and high-value disputes when parties must be advised by professionals and provided with tailor-made solutions. Although costly, private mediation yields outcomes which are comparatively long-term and effective. The two systems thus supplement each other, court-referred mediation offering accessibility and private mediation offering quality and innovativeness.

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CHAPTER 3

3.1 Definition and Key Elements

Conciliation is another dispute resolution (ADR) procedure used to resolve conflicts amicably without resorting to formal court proceedings. Conciliation entails the services of a third party who is impartial and is referred to as a conciliator who guides parties in conflict through communication with the aim of coming to agreed terms acceptable to both parties. Conciliation is to be distinguished from arbitration because it is not a binding decision, but rather an agreement by consent. Essential features of conciliation are the confidential nature, the adaptability, the lack of formality, and the voluntariness of attendance. The parties have control over the result; thus, the process is voluntary. The conciliator is a facilitator who aids communication, clarification, and suggesting solutions but takes no decision. This aspect of self-determination renders the practice of conciliation unique compared to adversarial processes and makes it more relevant to commercial, contractual, and personal conflicts.

3.2 Indian Legal Foundation for Conciliation (Arbitration and Conciliation Act, 1996)

Indian law relating to conciliation is largely provided in Part III of the Arbitration and Conciliation Act, 1996. The Act has taken stock provisions from the UNCITRAL Model Law on International Commercial Conciliation so that it maintains harmony with international practice. Sections 61-81 of the Act provide for the scope, procedure, and effects of conciliation proceedings. It explicitly says that parties may refer disputes arising out of contractual or legal relationships to conciliation. The Act authorizes conciliators to make settlement proposals without prejudice. Besides this, a conciliation agreement is equal in status and can be enforced as an arbitral award under Section 74. The Act thus makes conciliation a legally accepted ADR process, reducing the gap between arbitration and litigation by promoting joint dispute resolution.

3.3 Procedure and Jurisdiction of the Conciliator

The process of conciliation begins with an invitation by a party and acceptance by the other. Upon initiation, the conciliator actively gets involved in facilitating communication, identification of issues, and encouragement of constructive negotiation. The conciliator may hold joint meetings or separate meetings with parties to identify and discuss the possibilities of settlements. They are empowered under the Arbitration and Conciliation Act, 1996, to make settlement proposals, but such proposals shall not be binding except with mutual consent. Observe that the conciliator shall remain impartial, independent, and fair throughout the proceedings. They have a function limited to persuasion and facilitation and not adjudication. After the settlement has been achieved, the conciliator drafts a settlement that, as per Section 74, is binding in effect to the extent of an arbitral award. This union of elasticity and legal enforcement results from the conciliator's pivotal position in India's ADR regime.

CHAPTER 4

4.1 Procedural Differences

Arbitration and conciliation, despite both being alternate mechanisms for resolution of disputes, have very different procedural framework. Arbitration is a formal process, even having similarity with court hearings, wherein parties present pleadings and evidence before an arbitrator who gives a binding award. It follows stern rule of procedure, schedule, and evidence requirements. Conciliation, being an informal and flexible process. It is not based on rigid procedural codes, allowing parties to adopt a more collaborative approach. The role of the conciliator is to facilitate discussion and make suggestions, while that of the arbitrator is to make decisions about disputes with authority. Conciliation is based on voluntary participation, while arbitration is based on compliance once parties have agreed to arbitrate under a contract or provision. In addition, arbitration tends to be adversarial, focusing on rights and liabilities under the law, unlike conciliation, which focuses more on harmony maintenance and consensus attainment. Such procedural variations highlight the suitability of arbitration in complex commercial disputes that require final resolutions, as opposed to conciliation in disputes where harmony and consensus maintenance is desired.

4.2 Legal Enforceability

One of the most notable distinctions between arbitration and conciliation lies in enforceability. In arbitration, the arbitrator's award at the end is as binding as a court order and is immediately enforceable under the Arbitration and Conciliation Act, 1996. The binding nature gives arbitration a stronger platform for parties seeking legal finality and certainty. Conciliation does, in fact, conclude in a settlement agreement between the parties facilitated by the conciliator. Although voluntary, such a settlement agreement upon signing is binding and carries the same legal status as an arbitral award under Section 74 of the Act. The success of conciliation, nevertheless, does not hinge on anything else other than the parties agreeing to accept and abide by the settlement. This disparity is intended to highlight the enforceability of arbitration, as certified by the courts, as compared to conciliation relying more on voluntariness. Thus, those seeking enforceability and finality would prefer arbitration but those seeking cooperation and voluntariness would prefer conciliation.

4.3 Third-Party Neutral's Role

The third-party neutral's role in arbitration and conciliation highlights fundamental differences in philosophy. The arbitrator is a quasi-judge who has to balance evidence, apply law, and render a binding decision. His part is authoritative with very little space for flexibility once hearings are ongoing. The arbitrator's independence is to resolve legal rights objectively and not actively work with parties towards reaching agreement. Conversely, a facilitative role is that of a conciliator. Conciliators don't impose upon people but initiate discussion, help to reveal foundations of settlement, and suggest probable solutions. Conciliators work towards establishing trust, maintaining relationships, and framing the solution to fit each party's interests.

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Such an active and empathetic process enables conciliators to craft solutions that are not necessarily legal rights but better express mutual interests. Thus, whereas arbitrators are solution-imposers, conciliators are facilitators of conversation. The two differ based on whether or not parties desire an authoritative solution to conflict or an interest-based, collaborative solution.

4.4 Use in Practice

In practice, the use of arbitration and conciliation differs based on the character of disputes, sectoral practice, and cultural factors. Arbitration is more popular with international and high-value commercial disputes since it is enforceable, rule-bound in procedure, and recognized under international treaties such as the New York Convention. Businesses prefer putting in arbitration clauses into contracts to seek certain resolution of disputes. Conciliation, on the other hand, is more utilized in intra-national conflicts, family disputes, labor disputes, and commercial disputes where it is important to maintain long-term relationships. Indian courts also promote conciliation in pre-litigation and pending cases in a bid to minimize judicial backlog, an indication of its increasing role in managing conflicts. Whereas arbitration dominates formal and international disputes, conciliation is applied as a low-cost and time-efficient measure in disputes when cooperation is more important than confrontation. Collectively, these two mechanisms support each other: arbitration provides legal certainty, and conciliation secures social harmony and stable settlements. The actual application of each is influenced not just by legal necessities but also by priorities and dynamics of the disputing parties

CHAPTER 5

5.1 Public Awareness

One of the primary difficulties confronted by conciliation in India is the absence of public knowledge regarding its advantages and process. Even though conciliation is made out by the Arbitration and Conciliation Act, 1996, conciliation is overshadowed by arbitration and litigation both in public and professional understanding. A large number of people and enterprises continue to think about dispute resolution in terms of court procedures and have a perception that ADR mechanisms are secondary or informal. Such limited awareness of conciliation usually discourages parties from considering conciliation at the very beginning of a dispute. There are also not enough proper education programs and outreach activities to bring attention to how conciliation can save time and money and also maintain relationships. Lawyers themselves also tend to favor adversarial strategies because professional incentives accompany litigation. To resolve this problem, there is a need for awareness campaigns, inclusion of ADR studies within legal curricula, and promotion by professional associations. Raising visibility and credibility of conciliation can make it a mainstream approach to dispute resolution instead of the unused option.

5.2 Institutional Gaps

A second key challenge is that institutional gaps in the conciliation support infrastructure are wide. In contrast with arbitration, which has specialized institutions and well-defined rules of procedure, conciliation does not have robust institutional arrangements in India. While there are mediation and conciliation centers in existence, these are dispersed and generally concentrated in urban areas or court-attached systems. The absence of professional training for conciliators also weakens the credibility and quality of process. In addition, there is no single mechanism to facilitate accountability, transparency, and outcome monitoring. Conciliation remains underutilized as many are apprehensive about the possibility of unprofessional or ineffectual application in practice. Eliminating these institutional deficiencies involves building effective conciliation centers, adequate accreditation criteria for conciliators, and more effective positioning of conciliation services within commercial and legal environments. This will also increase credibility and make conciliation a more appealing and credible means of dispute resolution throughout India.

5.3 Need for Uniformity

Another difficulty is the lack of consistency in conciliation practice among jurisdictions and Indian institutions. Although the Arbitration and Conciliation Act, 1996 is a legislative framework, there is diversity of procedure, technique, and enforcement in practice. Some use international best practices based on UNCITRAL, while others use ad hoc practices, resulting in inconsistency in terms of quality and success. Such inconsistency minimizes predictability, an essential consideration for parties contemplating ADR procedures. Also, in cross-border or multi-jurisdictional disputes, these inconsistencies confuse and deter the utilization of conciliation as a reliable technique. To overcome this problem, there is a necessity for a standard regulatory system that prescribes minimal procedure standards, ethics, training, and enforcement. Harmonization with international practices would also increase trust in conciliation as an internationally accepted tool. Through standardization, India can establish conciliation as a standardized and trusted mechanism, leading to domestic as well as foreign.

CHAPTER -6

Conclusion

This research aimed to comparatively examine mediation and conciliation in India with regard to their legal framework, procedures, practical implementation, and challenges. The results of the research point to the following major areas:

Legal Foundation

Mediation in India is mainly recognized under Section 89 of the Civil Procedure Code, 1908, with the help of court-annexed schemes and judicial pronouncements. The proposed Mediation Bill, 2021 seeks to give a holistic legislative structure but remains to be legislated. Conciliation, however, has a wider statutory footing under Part III of the Arbitration and Conciliation Act, 1996, in conformity with the UNCITRAL Model Law. Crucially, conciliation agreements are enforceable at law as an arbitral award under Section 74.

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Procedural and Functional Differences
Mediation is informal, facilitative, and voluntary. The mediator helps communication but does not suggest solutions, leaving full control to the parties. Conciliation is relatively more formalized. The conciliator is actively involved by proposing solutions and preparing settlements, which can be enforceable by law when agreed upon.

Application in Practice
Mediation is largely applied in family, matrimonial, community-based, and court-referred cases. Its focus on confidentiality, flexibility, and preserving relationship makes it a good fit for delicate and interpersonal issues. Conciliation is used more frequently in commercial, industrial, and contractual matters in which enforceability and certainty of settlement are extremely important.

Effectiveness and Challenges
Both the processes save time, cost, and judicial burden. There are gaps, though, in the effectiveness. Mediation is plagued by the lack of a uniform statute, variable practices in states, and excessive reliance on judicial referral. Conciliation, though given statutory recognition, lags in awareness, inadequate institutional infrastructure, and inadequately trained conciliators.

Strengths Relative to Each Other
Mediation is most appropriate for the maintenance of long-term relationships and offering adaptive, interest-based solutions. Conciliation is used where enforceability through law and finality are a must. They produce, together, a well-balanced ADR system, presenting parties with options responsive to their cases.

Final Observation
From the analysis, it is clear that mediation and conciliation are complementary but not competing mechanisms in India's conflict resolution system. Both are meant to play different roles: mediation creates cooperation, discussion, and social concord, while conciliation offers organized, enforceable agreements in commercial and industrial contexts.

- India's justice system, which is burdened with millions of pending cases, badly needs to be fortified through ADR mechanisms. For this, a number of steps are needed
- Statutory Clarity: The passing of the Mediation Bill, 2021 will give much-needed legislative support, and uniformity and credibility will be brought to mediation. Likewise, harmonization of conciliation process with international best practices will also increase trust in its result.
- Institutional Strengthening: Creation of well-facilitated mediation and conciliation centers in urban and rural belts, and accreditation mechanism for neutrals, will assure professionalism and accountability.
- Awareness and Training: Increased public awareness campaigns, inclusion of ADR as a course of study in law schools, and professional training of mediators and conciliators are crucial to mainstream these processes.
- Cultural Shift: In addition to legal and institutional changes, there must be the development of a culture of acceptance of consensual dispute resolution, weaning away from litigation-oriented attitudes.

Finally, both conciliation and mediation have huge potential to revolutionize the dispute resolution landscape of India. If they are provided with proper support of law, institutions, and consciousness, they can alleviate judicial pendency, deliver affordable justice, and generate a spirit of cooperation. An equitable application of these processes—conciliation for commercial and industrial disputes, mediation for social and relational conflicts—can bring into existence an effective and sustainable ADR system.

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