RESEARCH PAPER

Conciliation as an Effective Mechanism of Alternative Dispute Resolution

Nalla Rajasekhar[1], Pro K Sitamanikyam[2]

[1] Research Scholar, Dr B R Ambedkhar College of Law, Andhra University, Visakhapatnam. (M.A., LL.M., MSc., BLISc.)

[2] Principal, Dr B R Ambedkhar College of Law, Andhra University - 530003 (M.A., M.L., PhD., LL.D.)

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ABSTRACT

In recent decades, Alternative Dispute Resolution (ADR) mechanisms have experienced significant growth across both developing and developed jurisdictions. However, despite their increasing acceptance, questions persist regarding their effectiveness in enhancing procedural efficiency and broadening access to justice. Empirical studies from the United States, along with observations of ADR practices in India, indicate that parties generally value the informal, flexible, and conciliatory nature of these processes. Arbitration, once regarded as a cost-effective and efficient alternative to traditional litigation, has gradually become more complex and financially burdensome. Rising costs associated with legal representation and arbitrator fees have diminished its accessibility and appeal for disputing parties. Against this backdrop, this paper argues that conciliation whether facilitated directly between parties or through a trusted individual or institution offers a more viable and effective approach for achieving timely dispute resolution. The emphasis is placed on fostering mutually acceptable settlements, ensuring that disputes are resolved in a manner where neither party feels aggrieved. Rather than adversarial "win–lose" outcomes, ADR should aim to promote cooperative "win–win" resolutions that preserve relationships and advance substantive justice.

Keywords: adr, arbitration, access to justice, conciliation, remedy, Settlement.

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1 .Introduction

Conciliation occupies a significant position within the framework of Alternative Dispute Resolution (ADR) in India, functioning as a flexible, non-adjudicatory mechanism aimed at securing amicable settlements. Unlike adversarial litigation, conciliation emphasizes cooperation, voluntariness, and consensus-building, thereby reducing procedural rigidity and fostering harmonious dispute resolution[1].The statutory foundation of conciliation in India is primarily contained in Part III of the Arbitration and Conciliation Act, 1996, which is largely based on the UNCITRAL Model Law and provides a structured yet flexible procedural framework.

The role of the conciliator under the Act is facilitative rather than adjudicatory. Sections 67 to 73 empower the conciliator to assist parties in an independent and impartial manner, guiding negotiations and, where appropriate, proposing terms of settlement. Importantly, any settlement agreement reached through conciliation attains the status of an arbitral award on agreed terms, thereby ensuring enforceability under law[2]. This feature distinguishes conciliation from other informal settlement processes and enhances its credibility within the legal system.

[1]Avtar Singh, Law of Arbitration and Conciliation (Eastern Book Company, latest edn).

[2]Arbitration and Conciliation Act, 1996 ss 67–73.

Judicial recognition of conciliation as an effective dispute resolution mechanism has further strengthened its institutional relevance. In Salem Advocate Bar Association v. Union of India, the Supreme Court emphasized the importance of ADR mechanisms, including conciliation, in achieving expeditious justice and reducing judicial backlog. Similarly, in Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd., the Court elaborated upon the scope of Section 89 of the CPC and clarified the suitability of different ADR methods, recognizing conciliation as particularly appropriate in disputes requiring preservation of relationships and mutual adjustment of interests[3].

The integration of conciliation within the civil justice system is further reinforced by Code of Civil Procedure, 1908, which mandates courts to refer disputes to ADR mechanisms where elements of settlement exist. Section 89, read with Order X Rules 1A–1C, institutionalizes conciliation as a court-annexed process, thereby bridging the gap between formal adjudication and consensual dispute resolution[4]. This statutory linkage reflects a broader policy shift toward participatory justice and aligns with the constitutional mandate of access to justice under Article 39A.

Conciliation also shares a close functional relationship with Lok Adalats constituted under the Legal Services Authorities Act, 1987. While Lok Adalats operates as statutory forums for compromise-based settlements, their working philosophy is fundamentally conciliatory in nature. The emphasis on mutual agreement, absence of adjudication, and informality of procedure in Lok Adalats mirrors the essential characteristics of conciliation[5]. Consequently, Lok Adalats can be viewed as a practical institutional manifestation of conciliation principles within the Indian legal system.

In the international context, conciliation assumes an even more significant role due to its flexibility and neutrality. Instruments such as the UNCITRAL Model Law on International Commercial Conciliation (2002) provide a harmonized legal framework, enabling cross-border dispute resolution while respecting party autonomy[6]. The adaptability of conciliation to diverse legal systems and cultural contexts underscores its growing importance in global dispute resolution.

In conclusion, conciliation represents a vital component of the Indian ADR framework, combining statutory backing, judicial endorsement, and institutional support. Its emphasis on consensus, efficiency, and relationship preservation makes it particularly suited for a wide range of disputes. When read in conjunction with Section 89 CPC and the functioning of Lok Adalats, conciliation emerges as a cornerstone of India's evolving justice delivery system, contributing significantly to the realization of speedy, accessible, and equitable justice[7].

1.1 How Conciliation is Better than Other Alternative Modes of Dispute Resolution

The time has passed when arbitration was regarded as a simple, cost-effective, and efficient method of resolving disputes. Today, the situation has changed significantly. Arbitration proceedings have increasingly become technical, time-consuming, and expensive.

In this regard, the observations of the Hon'ble Supreme Court of India in *Guru Nanak Foundation v. Rattan Singh & Sons* are noteworthy[8]. The Court highlighted that the lengthy, complex, and costly procedures of litigation had encouraged legal thinkers to look for alternative forums that are less formal, more efficient, and capable of delivering speedy justice. This

[3]Salem Advocate Bar Association v. Union of India; Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd..

[4]Code of Civil Procedure, 1908 s 89; Order X rr 1A–1C.

[5]Legal Services Authorities Act, 1987 ss 19–22.

[6]UNCITRAL, Model Law on International Commercial Conciliation (2002).

[7] M P Jain, Indian Constitutional Law (LexisNexis, latest edn); see also Constitution of India.

[8] *Guru Nanak Foundation v. Rattan Singh & Sons*, AIR 1981 SC 2075.

thinking eventually contributed to the enactment of the Arbitration Act, 1940. However, the Court also noted with concern that the manner in which arbitration proceedings are now conducted and frequently challenged in courts has made legal professionals uneasy and jurists disappointed. What was originally intended to be a simple and informal dispute resolution mechanism has, over time, been burdened with excessive legal complexity and procedural technicalities. As a result, arbitration has often become an intricate legal process rather than a swift alternative to litigation.

In contrast, conciliation offers several clear advantages when parties are able to reach a reasonable settlement of their disputes. These benefits can broadly be categorized as follows:

1. **Speed**: Conciliation helps resolve disputes quickly, allowing parties to save time and redirect their energy towards more productive activities.
2. **Economy**: It significantly reduces financial burden, as parties avoid the high costs of prolonged litigation and can instead utilize their resources more effectively.
3. **Social Harmony**: It helps restore peace between parties, allowing them to move forward without hostility or resentment. In many cases, it prevents conflicts from escalating or continuing across generations.
4. Conciliation as an **Effective Mode of Alternative Dispute Resolution** System
5. The United Nations General Assembly adopted the Conciliation Rules through a resolution dated 4th December 1980 and also recommended their use in resolving international commercial disputes. Many countries have subsequently adopted the Model Law prepared by the United Nations Commission on International Trade Law (UNCITRAL) on International Commercial Arbitration, along with its Conciliation Rules. Based on these international developments, India enacted the *Arbitration and Conciliation Act, 1996*.
6. In addition, the International Chamber of Commerce (ICC) has introduced the ICC Rules for Optional Conciliation, which provide a structured framework aimed at promoting amicable settlement of disputes.

III. Conciliation Procedure

The process of conciliation is initiated when one party to a dispute proposes to the other party that the matter be resolved through conciliation. Conciliation proceedings formally commence only upon acceptance of such a proposal by the other party; in the absence of such acceptance, no conciliation proceedings can be said to exist[9].This voluntary element underscores the consensual nature of conciliation as a dispute resolution mechanism.

Ordinarily, the parties appoint a sole conciliator by mutual agreement. However, where the parties are unable to agree on the appointment, they may seek the assistance of an appropriate national or international institution for the designation of a conciliator. There is no legal prohibition against appointing more than one conciliator. In cases involving multiple conciliators, each party may appoint one conciliator, and the third conciliator is appointed jointly by the parties. Unlike arbitration, where a presiding arbitrator assumes a dominant role, conciliators function collectively without any hierarchical distinction[10].

A conciliator is required to maintain strict neutrality and impartiality throughout the proceedings. The conciliator is expected to act in accordance with principles of fairness, objectivity, and justice, while also taking into account relevant trade usages, prior dealings between the parties, and the surrounding circumstances of the dispute. Importantly, conciliation proceedings are not governed by rigid procedural or evidentiary rules, thereby ensuring flexibility and informality[11].

[9] Arbitration and Conciliation Act, 1996 s 62.

[10] Arbitration and Conciliation Act, 1996, § 64 (India) — dealing with the number and appointment of conciliators.

[11] United Nations Commission on International Trade Law, UNCITRAL Conciliation Rules, 1980, Art. 3 & 4 — providing for appointment of one or more conciliators and procedural aspects.

Unlike an arbitrator or a judge, a conciliator does not render a binding decision or adjudicate upon the rights of the parties. Instead, the conciliator facilitates dialogue, promotes understanding, and assists the parties in arriving at a mutually acceptable settlement. Where a settlement is reached, it is reduced to writing and signed by the parties, and authenticated by the conciliator. Under Indian law, such a settlement agreement has the same status and effect as an arbitral award on agreed terms, thereby ensuring its enforceability[12].

If conciliation fails to produce a settlement, the parties are free to pursue other modes of dispute resolution, including arbitration or litigation. Furthermore, a conciliator is generally precluded from acting as an arbitrator in the same dispute, unless expressly agreed upon by the parties, in order to preserve impartiality and avoid any conflict of interest[13].

Confidentiality constitutes a fundamental feature of conciliation proceedings. All communications made during the process including proposals, admissions, and settlement offers are treated as confidential and cannot be disclosed or relied upon in subsequent judicial or arbitral proceedings. Additionally, the conciliator cannot be compelled to act as a witness in any such proceedings[14].

Conciliation has gained legal recognition across various jurisdictions due to its ability to promote amicable settlement prior to resorting to formal adjudication before courts such as civil, industrial, or family courts. While it shares similarities with court-annexed mediation systems prevalent in jurisdictions such as the United States, its effectiveness historically depended on the existence of a structured legal framework. In India, this limitation has been addressed through comprehensive statutory backing, thereby enhancing its acceptance and practical utility.

3.1 Reasons to Promote Conciliation in India

Conciliation has gained increasing importance in India, primarily due to the mounting backlog of cases in courts. With delays affecting the efficiency of the justice delivery system, there is a pressing need for faster and more effective methods of dispute resolution. Conciliation addresses this need by enabling parties to reach amicable settlements without prolonged litigation[15].

A notable initiative in this regard was undertaken by the Himachal Pradesh High Court, which introduced a project to resolve pending cases through conciliation and to promote pre-trial settlement in new cases. Inspired by mediation practices in regions such as Canada and Michigan, this experiment proved successful in reducing case backlog. The Law Commission of India, in its reports, commended this approach and recommended its adoption in other states[16].[2]

Conciliation in India is further strengthened by its statutory recognition under the Arbitration and Conciliation Act, 1996, which is based on the United Nations Commission on International Trade Law Model Law. This provides both national legitimacy and international relevance, making conciliation suitable for resolving a wide range of disputes, including commercial matters[17].

Over time, the approach to conciliation has evolved. While it was earlier entirely voluntary, there is now a growing emphasis on court-directed or court-annexed conciliation, where parties are encouraged-sometimes required-to attempt settlement before trial.

[12] O.P. Malhotra and Indu Malhotra, The Law and Practice of Arbitration and Conciliation (3rd ed., LexisNexis) — discussing the role and non-hierarchical functioning of conciliators.

[13]. International Chamber of Commerce, ICC Mediation Rules -outlining institutional assistance in appointment of conciliators/mediators where parties fail to agree.

[14] Ibid ss 75–81.

[15] National Judicial Data Grid, statistics on pendency of cases in Indian courts; see also M.P. Jain, Indian Constitutional Law (LexisNexis) — discussing judicial delays and need for ADR mechanisms.

[16] Law Commission of India, 77th Report on Delay and Arrears in Trial Courts (1978); see also 13th Report recommending alternative dispute resolution mechanisms and appreciating conciliation initiatives.

[17] Arbitration and Conciliation Act, 1996, Part III; United Nations Commission on International Trade Law, Model Law on International Commercial Conciliation, 2002.

This shift is evident in states like Maharashtra, including the Bombay High Court.These developments highlight that conciliation is no longer an informal alternative but a structured and effective mechanism for dispute resolution in India.

IV. Procedure of Conciliation

4.1 Appointment and Qualification of Conciliator

The conciliator is chosen based on the mutual agreement of the parties involved. There are several ways in which this appointment can be made:

- Both parties may jointly agree on one or more conciliators.
- Each party may appoint one conciliator, and those conciliators may then agree on a third.
- The parties may also request an institution or authority to assist in appointing a conciliator[18].

In certain forums, such as family courts or labour courts, conciliation is a mandatory step before the case proceeds to trial. In such situations, government-appointed counsellors or conciliators first attempt to resolve the dispute amicably. Only if these efforts fail does the matter move forward for formal adjudication[19].There are no rigid qualifications prescribed for a conciliator. However, the individual should possess a sound understanding of the subject matter of the dispute. In cases involving technical issues, parties may choose an expert such as an engineer or a professional with relevant expertise—as the conciliator. Importantly, the conciliator does not have the authority to decide the dispute; their role is limited to facilitating communication and helping the parties arrive at a mutually acceptable settlement[20].

4.2 Rules and Principles of Conciliation

A conciliator assists the parties in reaching an amicable settlement and has the flexibility to determine the procedure to be followed, as conciliation is not bound by strict procedural or evidentiary laws[21]. When the possibility of settlement arises, the conciliator may prepare draft terms based on joint and separate discussions and documents submitted by the parties, and share them for their feedback, allowing modifications until mutual agreement is reached. However, not every understanding becomes legally binding; only a settlement that is properly written, signed by the parties, and authenticated by the conciliator attains legal validity and has the same effect as an arbitral award, binding the parties and those claiming under them. The conciliator ensures that the agreement is voluntary, provides copies to the parties, and retains a record, and the conciliation process is considered successful only when such a valid settlement agreement is finalized. Throughout the process, the conciliator must act impartially, fairly, and maintain strict confidentiality, ensuring that any information disclosed cannot be used in subsequent legal or arbitral proceedings, thereby promoting openness and trust.

Applicability of Conciliation

Conciliation is available to all parties who are legally competent to enter into a contract, with the conciliator acting as an independent and impartial facilitator guided by fairness, objectivity, and the circumstances of the dispute. The conciliator may hold joint or separate meetings to better understand the positions of the parties, clarify issues, and encourage settlement, while maintaining a balance between transparency and confidentiality where requested. With the consent of the parties, joint sessions may be conducted, and if no possibility of settlement exists, the proceedings may be terminated. Where a settlement is reached, it is reduced to writing, signed by the parties, and becomes binding, having the effect of a decree or an arbitral award in appropriate cases. A core feature of conciliation is strict confidentiality, ensuring that all statements, documents, and discussions cannot be used in subsequent legal proceedings, except for enforcement purposes. Additionally, the conciliator must maintain neutrality and cannot later act as an arbitrator or representative in the same dispute unless agreed by the parties[22].

VIII. Challenges Faced by Conciliation in India

Despite the institutional presence of conciliation mechanisms such as Lok Adalats and conciliation committees, several structural and procedural challenges continue to limit their effectiveness in India. Conciliation largely remains

[18]The Arbitration and Conciliation Act, 1996, §§ 64–67.

[19]The Family Courts Act, 1984, § 9; The Industrial Disputes Act, 1947, § 4.

[20]The Arbitration and Conciliation Act, 1996, §§ 67 & 73.

[21] Arbitration and Conciliation Act, 1996, § 66.

[22] Arbitration and Conciliation Act, 1996, § 66

voluntary and dependent on the consent of parties or judicial referral, unlike certain jurisdictions where structured pre-trial settlement processes are more firmly embedded. Further, the scope of disputes referred to forums like Lok Adalats is relatively narrow, being concentrated mainly in areas such as motor accident claims and family disputes.

Another significant limitation is that conciliation proceedings are often conducted through legal representatives rather than direct participation of the disputing parties, which can dilute the prospects of genuine settlement particularly in cases involving government bodies where representatives may lack decision-making authority. Additionally, the absence of structured preliminary procedures, such as mandatory pre-conciliation meetings or joint statements of issues, reduces opportunities for early identification and resolution of disputes.

Practical concerns also arise from delays and occasional backlog in Lok Adalats, along with instances where parties may resort to conciliation strategically to prolong litigation rather than resolve disputes. Finally, the lack of a clearly defined stage for systematic referral of cases to alternative dispute resolution mechanisms results in inconsistent application across the legal system[23].

IX. Conclusion

The effectiveness of conciliation ultimately rests on three interrelated factors: the willingness of the parties to resolve their dispute, the competence and impartiality of the conciliator, and the presence of adequate institutional support. A constructive mindset—where parties are open to dialogue and compromise despite initial differences—is fundamental to the success of the process.

At its core, conciliation is built on reciprocity, trust, and mutual understanding. Whether in commercial or personal contexts, disputes are more effectively resolved when parties engage cooperatively and recognize each other's interests. The process not only facilitates settlement but also preserves relationships, which is often as valuable as the resolution itself.

In conclusion, conciliation stands out as a humane and efficient mode of dispute resolution, blending flexibility with legal enforceability. Its true strength lies in fostering trust, openness, and a genuine intent to settle disputes amicably. When supported by strong institutions and sincere participation, conciliation has the potential to significantly reduce litigation while promoting lasting harmony between parties.

[23]Legal Services Authorities Act, 1987; National Legal Services Authority (NLSA) Reports