

UNIT – 3

Conciliation

Meaning • Kinds • Conciliator • Stages • Statutory Framework

Alternative Dispute Resolution Systems

Unit Overview

This unit examines conciliation as a consensual ADR process – its meaning, different kinds (facilitative, evaluative, court-annexed, voluntary, compulsory), the qualities, duties and role of the conciliator, the stages and procedure of conciliation, and the statutory framework under the Industrial Disputes Act, Family Courts Act, Hindu Marriage Act and the Arbitration and Conciliation Act 1996.

What You Will Learn

01 Meaning

Define conciliation and distinguish it from mediation and arbitration

02 Kinds

Identify facilitative, evaluative, court-annexed, voluntary and compulsory conciliation

03 Conciliator

Explain the qualities, duties and role of a conciliator

04 Stages

Describe the stages and procedure of conciliation

05 Statutes

Apply the conciliation provisions in ID Act, Family Courts Act, HMA and 1996 Act

06 Settlement

Understand the status of a settlement agreement

MEANING

Meaning of Conciliation

Conciliation is a process in which a neutral third party (the conciliator) assists the parties to reach an amicable settlement of their dispute. The conciliator may suggest terms of settlement.

Consensual

Outcome is reached only if parties agree

Active Neutral

Conciliator can propose solutions (more evaluative than pure mediation)

Non-binding

Until a settlement agreement is signed

Flexible

Procedure is informal and party-driven

Confidential

Discussions are generally without prejudice

KINDS

Different Kinds of Conciliation

Facilitative

Conciliator helps communication; parties generate options

Evaluative

Conciliator assesses the merits and suggests terms

Court-annexed

Referred by the court under Section 89 CPC or other provisions

Voluntary

Parties choose to enter the process

Compulsory

Required by statute before litigation (e.g., certain industrial disputes)

QUALITIES

Qualities of a Conciliator

Impartiality

Must be neutral and free from bias

Integrity

Honesty and ethical conduct

Communication

Excellent listening and facilitation skills

Patience

Ability to manage emotion and deadlock

Knowledge

Understanding of the subject-matter and of negotiation dynamics

Creativity

Ability to generate options for settlement

Duties and Role of the Conciliator

Independence

Must remain independent and impartial

Disclosure

Disclose any conflict of interest

Fairness

Ensure both parties have opportunity to present their case

Assistance

Help parties understand each other's interests

Proposals

May make proposals for settlement at any stage

Confidentiality

Maintain confidentiality of the process

STAGES

Stages of Conciliation

Initiation	Agreement to conciliate or court referral
Appointment	Selection of conciliator(s)
Preliminary	Introduction, ground rules, opening statements
Exploration	Joint and private sessions; identification of interests
Bargaining	Generation and evaluation of options
Settlement	Drafting and signing of settlement agreement
Closure	Termination if no settlement; or implementation

PROCEDURE

Procedure under the 1996 Act (Part III)

Commencement	Written invitation accepted by the other party
Number	Usually one conciliator; parties may agree on more
Role	Assist independently and impartially; may make proposals
Disclosure	Parties must disclose relevant information
Settlement	If successful, drawn up and signed – has status of arbitral award (s.74)
Termination	By settlement, or by written declaration of conciliator or parties

Conciliation under Industrial Disputes Act, 1947

Object	Promote settlement of industrial disputes through conciliation
Conciliation Officers	Appointed by government; duty to mediate and promote settlement
Board of Conciliation	For more important disputes
Settlement	Binding on parties and workmen; enforceable
Failure	Report to government; may lead to adjudication

Conciliation under Family Courts Act & Hindu Marriage Act

Family Courts Act

Duty of Family Court to assist parties to arrive at settlement

Counsellors

Family Courts use counsellors for reconciliation efforts

Hindu Marriage Act

Section 23(2) – duty to make effort at reconciliation before granting relief

Matrimonial

Mediation and conciliation strongly encouraged by courts

Best Interest

Child welfare is paramount in family disputes

LANDMARK

Important Cases on Conciliation

Afcons

Clarified referral to conciliation under Section 89

K. Srinivas Rao

Mandatory effort at mediation/conciliation in matrimonial cases

Industrial

Cases on the binding nature of conciliation settlements under ID Act

1996 Act

Settlement agreement under Part III has the status of an arbitral award

Salient Features of Conciliation

Consensual

No imposed decision

Evaluative Option

Conciliator can suggest terms

Statutory Backing

ID Act, Family Courts, HMA, 1996 Act

Enforceability

Settlement under 1996 Act = arbitral award

Confidentiality

Protected under the 1996 Act

Flexibility

Procedure can be adapted to the dispute

ESSENTIALS

Core Points

Meaning

Neutral assists parties to settle; may propose terms

Kinds

Facilitative, evaluative, court-annexed, voluntary, compulsory

Conciliator

Impartial, skilled, may make proposals

Stages

Initiation → exploration → bargaining → settlement

1996 Act

Part III – settlement = arbitral award

Statutes

ID Act, Family Courts Act, HMA reinforce conciliation

Conciliation vs Mediation

In practice the line between conciliation and mediation is often blurred. Traditionally, a conciliator is more proactive and may suggest settlement terms, while a mediator is purely facilitative. The 1996 Act uses “conciliation”; many court-annexed processes use “mediation”. The skills required largely overlap.

HIGHLIGHTS

Key Highlights

Part III

Conciliation under the 1996 Act

s.74

Settlement agreement has the status of arbitral award

ID Act

Compulsory conciliation machinery for industrial disputes

Family

Strong statutory and judicial push for reconciliation

Role

Conciliator can be facilitative or evaluative

Confidentiality

Statutory protection under the 1996 Act

When to Prefer Conciliation

Relationship

Parties need to continue a relationship

Flexibility

Creative, interest-based solutions are possible

Speed

Quick resolution is important

Cost

Parties want to avoid the cost of arbitration or litigation

Statute

Where the law requires or strongly encourages conciliation

Must-Remember Points

- Conciliation is a consensual process in which a neutral assists the parties to reach a settlement and may propose terms.
- It can be facilitative or evaluative, voluntary or compulsory, ad hoc or court-annexed.
- The conciliator must be impartial and may play an active role in generating options.
- Under the 1996 Act a successful settlement agreement has the status of an arbitral award.
- Industrial and family laws give special importance to conciliation.
- Conciliation is particularly suitable where relationships matter and creative solutions are needed.

Key Takeaways

1. Conciliation sits between pure mediation and arbitration on the ADR spectrum.
2. The conciliator's ability to propose terms distinguishes it from classic mediation.
3. Statutory frameworks in industrial and family law make conciliation especially important.
4. A settlement under Part III of the 1996 Act is enforceable as an award.
5. Skills of communication, neutrality and creativity are essential for a conciliator.

Next Unit: Negotiation.