



Conciliation over Arbitration: Rethinking the Future of ADR in INDIA

Sameer Suman Sinha¹, Dr Richa Singh²

¹ Research Scholar, Law, LNCT University, Bhopal (Madhya Pradesh)

² Associate Professor of Law, LNCT University, Bhopal (Madhya Pradesh)

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Corresponding Author:

Sameer Suman Sinha

Abstract:

Alternative Dispute Resolution (ADR) mechanisms have emerged as vital tools in reducing the burden on formal judicial systems and promoting efficient dispute settlement. Among these mechanisms, arbitration has traditionally been the most preferred method due to its binding nature and enforceability. However, conciliation, as a non-adjudicatory and collaborative process, has gained increasing relevance in recent years. This paper critically examines the efficacy and potentiality of conciliation over arbitration in the resolution of disputes. It analyses key parameters such as procedural flexibility, cost-effectiveness, time efficiency, confidentiality, and party autonomy within the framework of the Arbitration and Conciliation Act, 1996. While arbitration resembles a quasi-judicial process often resulting in adversarial outcomes, conciliation emphasizes mutual agreement and preservation of relationships between parties. The study further evaluates the role of conciliators in facilitating amicable settlements and highlights the enforceability of settlement agreements under statutory provisions. Through doctrinal analysis and comparative evaluation, the paper argues that conciliation, in appropriate cases, provides a more harmonious, expeditious, and cost-efficient alternative to arbitration. It concludes that greater institutional support and awareness can significantly enhance the adoption of conciliation as a preferred ADR mechanism in contemporary dispute resolution.

Keywords: Conciliation; Arbitration; Alternative Dispute Resolution (ADR); Dispute Settlement

1. INTRODUCTION

Conciliation serves as a peaceful means to settle disputes arising among the parties and it thereby helps in removing the problems arising between the parties with respect to execution and completion of the relationships. Conciliation is a viable procedure for settlement of disputes. It is a non-binding procedure in which a neutral intermediary, the conciliator, assists the parties to a dispute to understand their respective positions and interest in relation to the dispute. Conciliation turns out to be the most feasible mechanism of decision making wherein matters are resolved by agreement and consent of the parties.

Conciliation is also not tenable to judicial scrutiny since, the attempts made by the conciliator for resolving disputes is not subject to judicial control. The dispute resolution process used in conciliation is mainly dependent on the wish

and desire of the parties even if this results in parties foregoing some of their rights with the hope to resolve the disputes.

2. CONCILIATION PROCEDURE

Vocabulaires juridique, published under the direction of Gérard Cornu, defines conciliation as follows: “An intervention to resolve an international dispute by a body without political authority that has the trust of the parties involved and is responsible for examining all aspects of the dispute and proposing a solution that is not binding for the Parties.¹ Conciliation as a mechanism allows the Conciliator to examine all aspects of the dispute. However, it still provides the Parties the freedom to agree or disagree with the proposals given by the Conciliator, thus the Parties are not bound to implement the body’s solution, and they are free to reject its proposals.²

It is necessary for both the parties to accept the conciliation process with open mind and have to put up the issues accordingly. Successful completion of conciliation process also depends on the appearance of the parties or the person representing the parties so as to make sure that the parties reach to an amiable settlement. The representative of the parties can be of any nationality or profession. It is debatable whether the parties can be assisted by legal counsel of their choice, without any restrictions .

Conciliation is a method used to prevent and settle Industrial Disputes through the intervention of a third party. Conciliation aims at reconciling the views of parties in dispute to bring them to an agreement. Under conciliation, services of a neutral third party are used for helping parties in dispute to lessen their differences and to come up to an agreeable settlement. . Conciliation takes place under the aegis and cultural expressions.³

3. Arbitration and Conciliation

Conciliation and arbitration can be distinguished as under “The term arbitration is used in several senses. It may refer either to a judicial process or to a non-judicial process is concerned with the ascertainment, declaration and enforcement of rights and liabilities, as they exist, in accordance with some recognized system of law. An industrial arbitration may well have for its function to ascertain and declare, but not to enforce, what in the parties, and such a function is non- judicial. Conciliation is a process of persuading parties to reach agreement, and is plainly not arbitration; nor is the chairman of conciliation boards an arbitrator Confidence, trust & Faith are the essential

¹ http://shodhganga.inflibnet.ac.in/bitstream/10603/26666/7/07_chapter%201.pdf

² <http://www.dispute-resolutionhamburg.com/conciliation/what-is-conciliation/>

³ Dr. Shinde, Ujwala, Conciliation as an Effective Mode of Alternative Dispute Resolving System, IOSR Journal of Humanities and Social Science (JHSS), Volume 4, Issue 3 (Nov. - Dec. 2012),

ingredients of conciliation. "Hence, it is observed that this branch of ADR is many a times put into use in domestic and international disputes.

The only similarity that appears between the two is that a 'third person' is chosen or nominated by the parties to resolve their disputes. The main points of difference between arbitration and conciliation may be stated as follows:

1. Arbitration only works if both parties already have a written agreement to handle current or future disputes through arbitration. Conciliation doesn't require that kind of agreement—people usually turn to it after a dispute actually happens. So, if you've signed an arbitration agreement, you're both stuck with it. With conciliation, though, one person can reach out in writing, and the other can simply say yes or no.
2. A conciliator's job is basically to help people find common ground and settle things peacefully. An arbitrator, on the other hand, isn't just there to help; they take charge, weigh the arguments, and then hand down a binding decision—the arbitral award.
3. If you're going through conciliation, you can ask the conciliator to keep your information private—even from the other side. That's not how it works in arbitration. Any details you bring up in arbitration get picked apart by the other party, so privacy goes out the window. Arbitration awards, in particular, aren't confidential.
4. When parties settle during conciliation, they write up their own agreement and the conciliator just makes it official. But when an arbitrator makes a decision, it's a formal judgment—signed and sealed by the arbitrator—not just a mutual settlement.
5. You can simply walk away from conciliation by sending a written notice to the other person and the conciliator—just like that, it's over. Arbitration isn't as easy to quit; you can't just end it unilaterally.
6. There are also restrictions on conciliators. Under Section 80 of the Act, a conciliator isn't allowed to later act as an arbitrator, counsel, or witness in any related proceedings. Arbitrators, or the parties in arbitration, don't face those kinds of limits.
7. Anything that comes out of arbitration, including the award itself, can show up as evidence in court. Things discussed in conciliation, though, can't be used later in any legal or arbitral hearing.
8. Finally—and this matters—a conciliator can be flexible, working towards a fair outcome even if it doesn't strictly follow the law. Arbitrators don't have that freedom. Russel puts it well: "An arbitrator is not a conciliator. He cannot ignore the law or misapply it in order to do what he thinks just and reasonable. Unlike conciliator, an arbitrator is a tribunal constituted by parties to decide disputes in accordance with the law." So, while a conciliator helps people reach a settlement, an arbitrator is there to deliver a legal ruling.

4 DISPUTE RESOLUTION PROCESS BETWEEN CONCILIATION AND ARBITRATION

The difference between arbitration and conciliation can be drawn clearly on the following grounds:

Arbitration is basically how companies and workers settle fights—each side tells their story to a neutral third person (the arbitrator), and then that person makes a decision everyone has to follow. Conciliation works differently. Here, an independent person meets with both sides—sometimes together, sometimes separately—and helps them talk things out until they reach an agreement. If you go with arbitration, you’re stuck with whatever the arbitrator decides. People have to accept it, like it or not. In conciliation, the person trying to help doesn’t get to force anyone’s hand. The parties can walk away if they want.

Arbitration only happens if there’s a written agreement in place ahead of time—kind of like signing a contract saying, “If we fight, we’ll settle it this way.” Conciliation is more relaxed; you don’t need any paperwork or agreement before starting. Arbitration can handle disputes happening now, or any that pop up later. Conciliation only comes in when there’s an argument already on the table.

Honestly, arbitration feels a lot like a mini-court: you’ve got witnesses, evidence, cross-examinations, transcripts, and usually lawyers. It’s formal and structured. Conciliation? Not so much—it’s about negotiation and finding common ground. On the contrary, Conciliation is an informal way of resolving disputes between the management and labour.

5. EFFICIACY OF CONCILIATION

Conciliation is usually used when there is no need for an official ruling. This means that both parties agree to work together to find a solution. However, if one party refuses to cooperate, conciliation will not be successful. On the other hand, arbitration is typically used when there is a need for an official ruling, such as when a contract has been breached.

Conciliation is often used as a first step in resolving a dispute. It involves negotiation between the parties involved in the dispute. If the parties cannot come to terms, conciliation will not result in a resolution. In contrast, arbitration is a more formal process that results in a binding decision by a third party.

Conciliation involves both parties working together and trying to come to an agreement. Arbitration can also be voluntary or mandatory. Voluntary arbitration allows parties to choose whether or not they want to participate; mandatory arbitration requires all parties involved in an issue to participate in an arbitration hearing unless they waive their right to do so.

6. WHEN TO CHOOSE ONE OVER ANOTHER?

Conciliation is usually used when there is no need for an official ruling. This means that both parties agree to work together to find a solution. However, if one party refuses to cooperate, conciliation will not be successful. On the other hand, arbitration is typically used when there is a need for an official ruling, such as when a contract has been breached.

Conciliation is often used by businesses because it is less expensive than arbitration. It also allows them to avoid having to pay legal fees. However, conciliation does not provide any guarantees. If the parties cannot reach an agreement, then they must go through arbitration.

7. PROS AND CONS OF ARBITRATION

Arbitration works like this: both sides agree to let a neutral outsider, called the arbitrator, listen to their arguments and make a final decision. Once the arbitrator decides, both parties have to accept it—unless they want to appeal the decision in court. You see arbitration a lot in business because it's usually quicker, simpler, and cheaper than taking a case to court.

One of the main perks is the speed—arbitration usually wraps up faster than a full-blown trial, and it doesn't cost as much. Plus, since the arbitrator doesn't have a stake in the outcome, people feel like things get sorted out more fairly than in regular court.

Still, arbitration isn't perfect. There's not much public oversight like you get with court cases, so decisions stay private. In places where arbitration isn't required, there simply aren't enough arbitrators to go around, which can back things up. And if someone thinks the arbitrator treated them unfairly or made a decision based on a technical mistake—like forgetting some documents or not calling a witness—they might still end up in court to fight it out.

Courts have weighed in on how arbitrators should act. In *Alcove Industries Ltd. v. Oriental Structures Engineers Ltd.*, the judges said that, right off the bat, an arbitrator has to put any possible reasons for bias in writing. Basically, if there's something that could make people doubt the arbitrator's fairness, it needs to be clear from the start. Someone who's already tried to help settle problems for one side before really shouldn't be the arbitrator, even if it's a totally new dispute.

In another case, *Welspun Corp. Ltd. v. Micro and Small, Medium Enterprises Facilitation Council and others*, Justice Kannan decided that if a state council already tried working things out between the parties and the agreement says it's okay, the council can step in as arbitrator after conciliation ends. The council basically gets to act as an arbitrator, as long as there's an agreement or clause saying that's allowed.

8. ANALYSIS OF BOTH IN COMMERCIAL SCENARIO

Arbitration, conciliation is additionally one more method for resolving questions, they two vary in numerous fundamental perspectives. The main comparability that shows up between the two is that a third individual is picked or selected by the gatherings to determine their debates. The central matters of contrast among conciliation and conciliation might be expressed as follows:-

The technique for conciliation is by and large appropriate to existing questions, while the method of discretion is accessible for existing as well with respect to what's in store debates. While making an agreement, they can enter a proviso wherein any question emerging out of their legally binding relationship in future can be alluded to conciliation. Such a provision is restricting on the gatherings. A discretion understanding is represented by the tenet of separability i.e., it is an authoritative agreement in itself which concurs mandatory execution as and when a debate emerges. {S. 7(2) of Conciliation and Arbitration Act, 1996}

The conciliation procedures start by sending a composed greeting and a composed acknowledgment in the middle of between the gatherings. The greeting might be acknowledged. {S. (62), Conciliation and Conciliation Act, 1996} or dismissed by the other party as it makes no limiting difference, being a greeting in particular. The earlier composed understanding in conciliation orders a limiting impact upon the gatherings and its break by falling back on court, propels court to allude the make a difference to the discretion and gatherings are limited by the arbitral understanding. In conciliation, the Arbitration arrangement itself recommends for redressal of debates through discretion and assuming any party approaches court,

the other party might demand the court to allude the make a difference to intervention and court will undoubtedly allude such make a difference to the arbitral Council.

➤ While conciliation procedures are underway, there is a bar on parties from starting arbitral or legal actions according to section 77 of the new Act 1996.

➤ Where gatherings neglect to decide the quantity of referees which ought to constantly be even, the Act gives on such inability to a sole judge. Notwithstanding, in the event of placation, as a matter of course, just a single referee is sufficient. The gatherings anyway can choose one conciliator each, these two need not designate the third one. Gatherings might concur for a few conciliators and most extreme number of conciliators can't surpass three. Where the quantity of conciliators is mutiple, they as an issue of overall guideline ought to act mutually. If there should be an occurrence of referees there is no bar on their most extreme number however the absolute ought not be considerably number. At the point when gatherings concur for three mediators, each party will choose one and these two will name the third judge who will manage referee. {S.10 and S.63, Arbitration and Conciliation Act, 1996.}

In *Ethiopian Airlines v. Stic Travels (P.) Ltd.*, the Apex Court explained the scope of this provision

“.....Two arbitrators shall appoint the third arbitrator who acts as chairman. He cannot be deemed to be an umpire even if one of the nominated arbitrators of party dies, no fresh right accrues to appoint fresh chairman.” In *Narayan Prasad Lohia v. Nikunj Kumar Lohia*, the court again explained that the section 11 will apply mutatis mutandis if the parties fail to specify the number of arbitrators. Also, in a landmark ruling in the same case, the court said that it is not necessary to appoint a 3rd arbitrator, if the two arbitrators are in consensus of giving the same award or if under section 16, the parties to the dispute fail to raise objections in the beginning regarding a two member panel or tribunal, they are deemed to have waived their right

9. CONCILIATION BENEFITS OVER ARBITRATION

While the job of conciliator is to help and help the gatherings to arrive at a genial settlement of their question {Section 72}, the mediator doesn't only help the gatherings however he additionally effectively referees and resolves the debate by making an arbitral honor.

➤ Section 62 again says that a party sending application for conciliation should momentarily recognize the subject of the debate. Notwithstanding, in an assertion understanding, the substance of debate should be plainly referenced. Normally, the gatherings consolidate a condition saying that any question emerging out of the agreement should be alluded to discretion and harms will be granted for the reasons for same as it were. This proviso is of most extreme significance. Nonetheless, such statement's presence isn't required in the event of placation.

➤ In the event of conciliation a party might require the conciliator to keep the genuine data private and not unveil it to the next party, but this is just a necessity on demand as the conciliator will undoubtedly impart all such data to the next party which assists it with bettering address its case and explain places of any charges made on it. {S.72.} However it isn't the case in discretion as the data given by a party is exposed to examination by the other party. Along these lines there is no doubt of privacy in the event of mediation grants. There is no privacy bury se the gatherings, be that as it may, all ADR frameworks are classified methods, they are not accessible to general society as points of reference as referable records of case regulations.

➤ A settlement understanding might be made by the actual gatherings and the conciliator will confirm something similar. A discretion grant on other hand isn't just a settlement understanding yet it is judgment properly endorsed by the mediator. This is the justification for why mediation is called as most looking like a court strategy of suit.

➤ The conciliation procedures might be singularly ended by a composed statement of involved with the other party and the conciliator, yet intervention procedures can't be so terminated. { S.32 and S.76} S.76 sets down four different ways of the end of conciliation procedures.

10. FLEXIBILITY OF CONCILIATION PROCEDURES

These are - (I) The conciliation procedures end with the consenting to of the settlement arrangement by the gatherings.

(ii) The conciliation procedures stand ended when the conciliator proclaims recorded as a hard copy that further endeavors at conciliation are not generally legitimized.

(iii) The conciliation procedures are ended by composed statement of the gatherings addressed to the conciliator such that the conciliation procedures are ended.

(iv) (iv) The conciliation procedures are ended when a party proclaims recorded as a hard copy to the next party and the conciliator that conciliation procedures are ended. When in doubt, the gatherings can't start arbitral or legal

procedures during the conciliation procedures in regard of a question which is the topic of the conciliation procedures. The cycle for end of arbitral procedures is unique.

11. CONCILIATION PROCEDURES AS PER SECTION 32 OF THE ARBITRATION AND CONCILIATION ACT, 1996

They can be found under section 32 of the Arbitration and conciliation Act, 1996. of procedures.-

(1) The arbitral procedures will be ended by the last arbitral honor or by a request for the arbitral council under sub-section (2).

(2) The arbitral court will give a request for the end of the arbitral procedures where- - -

(a) the petitioner pulls out his case, except if the respondent items to the request and the arbitral council perceives a genuine interest on his part in getting a last settlement of the question,

(b) the Meeting settle on the end of the procedures, or

(c) the arbitral court finds that the continuation of the procedures has for some other explanation become superfluous or unimaginable. (3) Likely to section 33 and sub-section (4) of section 34, the command of the arbitral council will end with the end of the arbitral procedures. On account of Maharashtra State Power Board v. Datar Change Gear Ltd. the court saw that it is difficult to list the conditions in which the arbitral council might hold that it is either pointless or difficult to proceed with the arbitral procedures. By and large, it might incorporate such direct by a party, in a predictable course which delivers the procedures genuinely difficult to lead.

➤ Conciliator is exposed to specific rule under section 80 of the Act and he can't go about as a referee or as a committee or an observer in any arbitral or legal procedures yet there is no such inabilities forced on a mediator or gatherings to arbitral procedures.

➤ The discretion procedures or grants might be utilized as proof in any legal actions however the conciliation procedures can't be utilized as proof in any arbitral or official procedures. This is likewise accommodated in section 81 of the Act.

12. why conciliation is important compared to Arbitration

Saves time and consumption- A large portion of the debates that emerge that are unendingly extended battling in Courts and before Arbitral Councils can be successfully settled genially which wouldn't just save numerous hours yet would likewise stay away from overabundance use caused towards Interest that mounts throughout the long term. Consistently, immense consumption is caused in provisioning for suit use, which unfavorably influences the sufficiency and Monetary record of a sound Company.

Cost agreeable conciliation- The costs associated with court suit have been expanding step by step. Accordingly, it is making equity difficult to reach for larger part of individuals who are not monetarily sound. India has begun to secure the standing of having a costly equity regulation framework. The thought being that average person can't bear to get his fundamental right of getting equity. Larger part cases in India are resolved via court based debate goal framework wherein there is dynamic association of legal advisors, judges and courts.

This makes it important to allude to the appointed authority versus populace proportion existing in various provinces of India. The appointed authority to populace proportion is alarmingly awful in the nation at the present time. Other central point adding to a circumstance of slow equity conveyance framework pervasive in courts are the absence of skill of judges, lacking offices in courts, deficient number of judges in courts, procedural obstacles and strategies utilized by legal counsellors to mint cash by deferring the cases superfluously.

Slow equity conveyance framework for business debates a really disappointing circumstance as the business interests expect that questions between the business elements are settled in an ideal and speedy way and simultaneously including lesser expenses.

High Court through various decisions like *Bharat Sanchar Nigam Ltd. versus Phone Links Ltd.*, has perceived that administration elements are defenceless against 250 Bharat Sanchar Nigam Ltd. versus Phone Links Ltd., 2010 (3) SCR 201 wherein the court commented that "... Public endeavors to try not to be blamed for malafides, predisposition or intervention burn through a large portion of their 202 questions.

Court had likewise made reference to the significant expenses associated with goal of questions by government elements and expressed that administration substances are vexed by pointless prosecutions started against them. This makes it vital for such organizations to put a lot of sum in protecting such charges.

The Commission suggested the reception of a model timetable of expenses for Courts to consider while outlining rules for fixing of the charges of judges delegated as per Section 11 of 1996 Act. The fundamental reason for the 1996 Act was to give a fast and solid debate goal component to the current legal framework, defaced with unreasonable postponements and build-up of cases.

It was pointed toward accomplishing fast question goal in this way saving the significant investment in covering their back as opposed to in accomplishing advancement and progress. At the point when courts award stay, the whole tasks or undertakings stop or get postponed. Regardless of whether at last the stay is abandoned and the objection is dismissed as bogus, the harm is finished as there is tremendous misfortune to the public endeavor concerning time and expansion in costs. costs engaged with ordinary court case.

It has likewise been thought that impromptu Arbitration has additionally not been exceptionally savvy in reasonableness. The expense of specially appointed conciliation has really become more than cost of court case. By not in any event, having the option to lessen the costs engaged with suit, Arbitration has neglected to turn into a savvy system for goal of questions. The essential goal of conciliation was to determine questions in a period viable way.

Adhoc Arbitration includes least sittings per case and thus the general expense engaged with settling the question utilizing conciliation surpasses when contrasted with that engaged with a court. One of the approaches to lessening the expenses included is to have a charge structure which is reliant upon the different phases of the question goal process.

Sanjeev Kumar Jain versus Raghbir Saran Beneficent Trust and Ors., (2012) 1 SCC 455 wherein the court commented that "... tragically delays, significant expense, successive and at times outlandish legal interferences at various stages are genuinely hampering the development of intervention as a powerful question goal process.

Conciliation was never intended to be finished in a manner like how a court continues over a case. The entire thought of recording of proclamation of case, explanation of guard, testimonies of proof, questioning of witnesses lastly getting a lawfully enforceable honor which should be executed or which meets all requirements to be tested, thoroughly invalidates the general purpose of making intervention appear.

Saving open the technique for testing the honor has made the course of conciliation ceaseless in common sense. In the present cutthroat times, organizations are not ready to take a choice which has been passed against them. In hotshot organizations, the stakes included are exceptionally high. So normally, they are not happy with the recommendation of the question essentially having being settled and that too not in support of themselves.

Conciliation, in contrast to a court case, doesn't need the gatherings to consent to specialized procedural prerequisites. These recoveries time as well as expenses and furthermore assists the gatherings with settling debates in a casual way when contrasted with Arbitration or courts. Conciliations have will more often than not become a war zone very much like courts and subsequently they have not prevailed with regards to holding together the business connection between the gatherings at debate.

It can serve both as an option as well as forerunner to discretion. Concerning costs associated with discretion, it is very much acknowledged that Arbitration doesn't stop at the phase of passing of grant. The gatherings much of the time set up request to the court under Section 34 of 1996 Act to get the Honor passed against them put away by a courtroom. of an agreement has the legal sanctity of an arbitral award under Section 74 of the Act.

13. CONCLUSION

After going through the primary and secondary data and detailed analysis of the same in the previous chapter, it has been observed that Conciliation mechanism is by far the best alternative dispute resolution mechanism in all parameters, still it does not get much attention. Thus, the scholar would like to share some of his recommendations in this regard:

1. *Need to devise an Internal mechanism for Conciliation-* Each With private substances, settlement for the most part brings analysis and subsequently, there is a basic need to have a strong construction set up. Without a trace of such

Standards and inward component, it is challenging for an association to carry out conciliation system for the settlement of debates really.

2. *Fairness in Conciliation mechanism*- In order to ensure credibility to the Conciliation Mechanism, a full proof robust system needs to be devised that is impartial and fair. To bring confidence in the parties and to ensure effective deliberation during the conciliation procedures and to guarantee careful navigation, it is likewise critical to comprise a standing board in the organization containing senior authorities from contract, finance a lawful offices.

3. *SWOT analysis* -It is high time to perform a SWOT (Strengths, Weaknesses, Opportunities, and Threats) examination of the strategy and the component concerning treatment of debates that are aimlessly embraced in Maharatna PSUs without observing the idea of question and so forth. Late equity V.R. Krishna Iyer in Dilbagh Rai Jarry v. Association of India and Ors., 1974 (3) SCC 554, noticed: "That administration should stop being an enthusiastic disputant... The simple methodology, "let the court choose", should be shunned and condemned.

4. *Avoidance -of dispute through early diagnosis and corrective action-*

It hosts been seen that in the event that gatherings can recognize the distinctions between them at a beginning phase, then there is serious sections of strength for a that such contrasts won't change over into a debate and can be effectively settled at the very start.

5. *Adopting Conciliation in all commercial contracts*- Though, the Conciliation mechanism can be taken on at any phase of the debate, whether suit/Intervention, during case/conciliation or even after judgment/grant, still it is prudent for the gatherings to resort for conciliation at the very start. Endless supply of question, the agreement ought to accommodate Conciliation as the main retreat for debate goal.

6. *Legal professionals not necessarily required*- Conciliation is simply exchange and settlement between the gatherings to guarantee Shared benefit circumstance between the gatherings. In this manner, fundamental gatherings stay casual and OK with one another while examining the settlement terms. The presence or inclusion of lawful experts might turn the whole cycle more specialized and legalistic. Hence, it is fitting that gatherings ought to manage the conciliation system all alone.

7. *No Conciliation in case of serious allegations of fraud and criminal offence-*

The Hon'ble Supreme Court in A Ayyasamy v A Paramasivam & Ors, concluded that serious claims of extortion will be treated as non-arbitrable and the equivalent ought to be chosen by the courts alone.

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