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A COMPARATIVE STUDY OF THE PROMISING NATURE OF ADR IN THE SETTLEMENT OF INDUSTRIAL DISPUTES IN INDIA, CHINA, AND THE EU

ABSTRACT

Conflict is an inescapable part of work and business. With the rise of industrialization, the conflict between 'labour' and 'capital' has become central theme all over the world. Workers became aware of their rights and awards they are entitled to, the fight for what is rightfully theirs like fair wages, right to strike gave way to numerous numbers of industrial and labour disputes. These conflicts have received considerable attention across the globe and many has approached labour courts for relief. A mechanical legal proceeding involved in settling these disputes took myriad days because it is practically near impossible for every worker, employers, and employees to file a law suit and get fair justice in time. Alternate Dispute Resolution came into picture to provide speedy and effective reliefs. Alternate Dispute Resolution has gained popularity across the world and is being accepted in field of law at national and international level. However, it is difficult to evaluate which countries excelled the ADR schemes in resolving the labour disputes. The most practiced Alternate Dispute Resolution method is Mediation. The terminology may differ from society to society where some might call it Conciliation, others call it Arbitration. Surprisingly the attention that mediation attracted for settling collective labour disputes is not considerate. Principles of ADR and the mechanism in which they are implemented vary from country to country and their legal preferences and practices. This paper provides a comparative study of ADR in settling the labour disputes in India, China, and EU (especially Belgium, Spain, Sweden, United Kingdom, and France) with mediation as the primary tool in resolving collective labour disputes, thus examine the similarities of these scheme across different countries and their distinct characteristics.

Keywords: Mediation, Conciliation, Social Dialogue, Belgium, France, Spain, Sweden, UK, India, and China

INTRODUCTION

Never cut what you can untie.

-Joseph Joubert

Max Lucado believes 'Conflict is inevitable but Combat is optional.' Justice continues to be the ultimate desire of any conflicted party. The crusade to achieve Justice has been ideal to mankind of all society and generations. Despite the zeal, effort and hard work, people find themselves caught in the web of litigation and long tiring period to resolve the conflict and obtain justice. People use the term conflict and dispute interchangeably, but they do have difference. While dispute refers to short disagreement, conflict refers to long term concerns deeply infused between individuals that are termed 'non-negotiable.' But not all conflicts need a combat necessarily. In order to fasten the delivery of justice to the parties, the concept of Alternate Dispute Resolution has begun to take its roots in the legal arena. Alternate Dispute Resolution can be defined as a process of settling conflict without court trial through Arbitration, Conciliation, Mediation, Negotiation and Lok Adalat (as far as India concerns). This technique of dispute resolution comes with various advantages, one such is reducing the burden of already piled up court cases. ADR can be applied in various fields including Labour disputes, criminal cases, consumer cases and so on. With increasing number of labour conflicts among the workers and employers, ADR proves to be a blessing. Long time court proceedings may result in poor financial conditions of workers and ultimately comes in their way of getting Justice. Mediation is a growing trend in the Labour industry sector to resolve collective conflicts, offering speedy relief to workers and sustain their life conditions. This paper throws light on conciliation and mediation in collective labour conflicts among various countries across the globe considering European Union countries (Belgium, Spain, Sweden, United Kingdom, and France), India and China, their common themes, and contrasts.

HISTORY OF ADR:

Alternate Dispute Resolution is a quasi-judiciary system which is as old as civilisation and the world has been familiar with it for long time. Therefore, it can be understood that ADR is not an invention but a process that was in practice for ages. The first statutory recognition was given 1698 when William III passed 'firm Arbitration' (a form of ADR). This act ensured and promoted better rendering of awards by the arbitrators over the issues brought to them by traders and merchants. The next major step was taken by introducing provisions in Common

Law Procedure which empowers court to stay an action if the parties agreed to settle the matter through ADR. It also provided for the appointment of arbitrators, making award, and settling disputes through arbitration. In 1950, consolidation of Arbitration Act, 1889 and 1934 took place through Arbitration Act, 1950. Arbitration Act, 1975 gave effect to New York Convention on Recognition and Enforcement of Foreign Arbitral Award.

Prof. Frank Sander correctly predicted in his book 'Varieties of Dispute Processing' that in future there will not be only a courthouse but also multi door ADR centre for resolving the disputes among the parties. The year 1976 has significant importance in Bangladesh legal timeline, since Gram Adalat was passed by the union to promote speedy trial and settlement of minor criminal and civil cases. In 1981, Supreme Court of India acknowledged the expenses of delay in disposing the cases and piling up of cases before the courts. In *Guru Nanak Foundation vs Rattan Singh & Sons*[1] , the court expressed, "Interminable, time-consuming, complex and expensive court procedures impelled jurists to search for an alternative forum, less formal, more effective and speedier for resolution of disputes avoiding procedural claptrap and this led them to[2]…"

Richard Abel in his book, 'Politics of Informal Justice' summarizes why disputant prefers informal justice than the court proceedings. ADR prefers harmony over conflict, it is easily accessible by all irrespective the privilege, speedy remedy, cheap expenses, every party having say in the decision making not just restricted to professionals.

LABOUR DISPUTES, GENERAL CONCEPTS EXPLAINED

Conflict exists at many levels like individual, team, group, and management. It is safer to say that conflict comes into existence when one party is offended by other. Major labour conflicts take place between organisation and group(unions). Before devolving into the various mechanisms adopted by different countries in dispute resolution, it becomes mandatory to identify kinds of dispute that prevail in labour and industrial sector. **Individual disputes** involve single individual or a worker whereas **collective dispute** refers to group of workers more significantly trade unions. It is to be noted that collective disputes sub categorised into **rights dispute** and **interest disputes.** Rights dispute arises when there is a disagreement as to the implementation of already existing statutory rights or existing contracts. Interest dispute arises when there is conflict as to modification of rights and obligation that are in existence and

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

refers to disagreements pertaining to collective bargaining where no collective agreement exists and disagreement over determination of statutory rights. Similarly, conflicting party can be at sectoral, national, international level. Depending upon the countries, the mode of resolution of these disputes varies. Some countries draw no difference between conciliation, mediation, and other overlapping terms while others give a subtle variation to these terms. Both the processes involve third party intervention but **conciliator has no active role in recommending suggestions other than facilitating communication, mediator is given an additional role to give recommendations and proposal for settlement of disputes.**

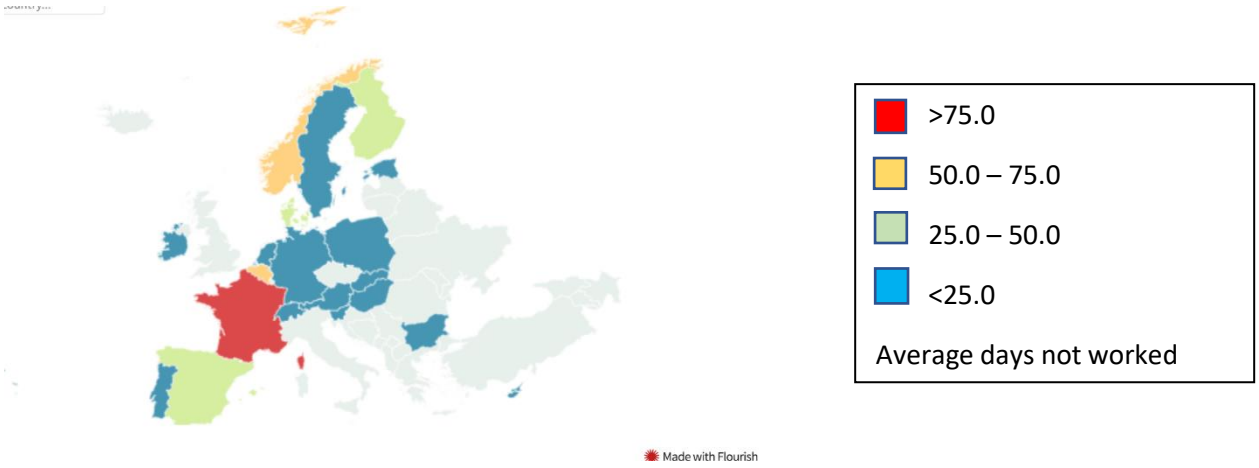
COLLECTIVE LABOUR CONFLICT:

Collective labour conflict is an inevitable part of any organizational life. There will always be a tension between rights and interests of the employees and employers. These tensions can take a destructive turn leading to strike. Every legal system has a legal set up for resolving these types of conflicts. In traditional approach, parties seek labour courts for resolution. These collective labour conflict not only affects the employer and employees involved, but also causes impediments in daily work of the society. For example, the recent strike in Germany by the '*ver.di*' trade union over wages and working condition resulted in cancellation of 2300 flights.[3] There is expectation of many other travels strike in Europe and it has become hive of strike action[4]. In some countries, collective labour conflicts like strike are considered legal while some others prescribed conditions to be fulfilled to become legal. For example, many countries have provided in their labour code that strike can be legal only after failed attempt of negotiation in resolving conflict[5]. Usually, parties go to court for solving their issues but owing to delay, costs, and inefficiency in solving conflict, they undergo arbitration and mediation. We can witness a global trend of party shifting to Alternate Dispute Resolution, before labour courts and has become a part of conflict management system. In either way of resolution for conflict, third party plays an important role. There are array of arbitrators, mediators, negotiator, and conciliator across the world who can act as third party. In many high-stake conflict politicians, actors, public service officers become third party. However, there are also an institution of professional arbitrators, negotiator, mediator, and conciliator.

[3] NDTV, https://www.ndtv.com/world-news/terminals-empty-german-airports-strike-grounds-over-2300-flights-3790732 (last visited April 15,2023

[4] EURONEWS, https://www.euronews.com (last visited April 15, 2023)

[5] The Committee on Freedom of Association has specified that such conditions "should be reasonable and in any event not such as to place a substantial limitation on the means of action open to trade union organizations" (ILO, 1996d, para. 498).



Strike map of EU

Source: ETUI

MEDIATION AND OTHER THIRD-PARTY INTERVENTION:

Mediation can be defined as the process in which two disputed parties resolve their conflict in the presence of third impartial neutral person/persons helping in achieving resolution. The term third-party used in the definition refers to person holding different position in the society, having different roles and vary according to the conflict in picture.

- RRR Model of mediation[6]:

This model has been postulated by Bollen, Euwema, and Munduate which can be used in determining essential dimension that are needed to be considered while mediating a collective labour conflict. The three dimensions of mediation are **Regulation, Roles,** and **Relations.** These dimensions can be arranged in a different level into a pyramid with broader context in the bottom to climbing unto the third-party intervention at the top.

The bottom part of pyramid which include context of mediation and conflict management, conflict culture and availability of third parties represents more general characteristics of the mediation, for example right to strike, position of trade union etc., whereas the top tier represents more specific mediation outcomes. For example, mediation structure represents types of mediators; whether single or team. Mediation style refers to different approaches in

[6] Bollen, K., Euwema, M., & Munduate, L, *Advancing workplace mediation through integration of theory and practice.* Springer Cham, 1-17 (2016).

mediation i.e., 'schools' of mediation. Strategies refers to a plan of action to be taken to resolve the conflict and tactics are the actual detailed behavioural approach chosen by the mediators.

MEDIATION OUTCOMES

REGULATIONS:

The dimension regulation refers to different regulatory framework that exists in collective conflicts. It can be sectoral, societal, and organizational level. In sectoral and societal level, regulation includes labour laws and negotiation agreements between parties. In organizational level, special human resource policies that include rights of employer, workers and union unilaterally wanting mediation.

ROLES

The dimension roles refer to roles that are expected to be played by the conflicting parties and sometimes what is expected to be played by the mediators. For example, some parties prefer to resolve the conflict without any third-party intervention. They famously say "Professional solve their problems themselves." In such culture, it becomes difficult to accept mediation to resolve conflicting interest. Another important feature of this dimension is that it explores all

the possibility of actors who can play a mediator or third-party. He can be a leader, politician, arbitrators, legal counsellor, judges, union member and even a religious leader.

RELATIONS:

The dimension relation refers to the characteristics of relation that prevail between the parties. It includes what kind of relation they share, what are the factors that affect power balance, what kind of method they prefer and to what extent they wish reconcile their conflict. In major organisational conflict, the parties are represented by agents who have their own agenda and can be replaced. These factors help in determining the top tier of the pyramid i.e., strategies, style, structure, and tactics.

Therefore, 3-R model helps in understanding the mediation in its context and help in better resolving disputes[7].

- ESCALATION OF CONFLICT

Escalation of a conflict can be defined as a process of intensification of conflict. It can happen when one of the conflicting party refuses to accept the claim of another or does not cooperate to resolve the conflict, when issues or conflicting parties increases, goals being shifted or harder tactics are adopted. Escalation can take place in three stages[8]: win-win (both parties try to realise and maximise their goals); win-lose (when realisation becomes difficult, power struggle become dominant and party focus on winning against the other) and lose-lose (they start to blame and shame the other party and cause hurt). An empirical study shows that every conflict goes through all these three stages and based on the level of escalation, third party interventions are designed. According to Zartman, 'ripeness' of the conflict is needed to come to solution. He proposed two criteria in support of his theory; (1) the party must experience "hurting stalemate" and (2) hope that there can be change in circumstances and improvement. These factors help party to search for third party intervention and acceptable solution.

- DIFFERENT PHASES OF THIRD-PARTY INTERVENTION

[7] Folger, J. P., & Bush, R. A. B, *Transformative mediation and third-party intervention: Ten hallmarks of a transformative approach to practice*, (1996).
[8] Deutsch, M. *Trust and suspicion. Journal of Conflict Resolution*, SAGE Journal 2(4), 265–279 (1958).

The focus of escalation of conflict is on the progress or growth of conflict. However, it can be noticed that all the theory starts from the already existing conflict in the picture. Similarly collective labour conflict also starts with dispute or threat of strike. Industrial relations are prone to strong conflict potential given high interests of employers and employees are involved along with interdependence. There are five phases of development of collective conflict. These five phases are the stepping stone for third party intervention in collective labour dispute resolution. With respect to these phases, the corresponding intervention by third party would be:

1. Latent Content – Training
2. Early Stage – Informal Facilitation
3. Confrontation – Mediation and Conciliation
4. Hot Conflict – Arbitration Court
5. Rebuilding Working Condition – Facilities.

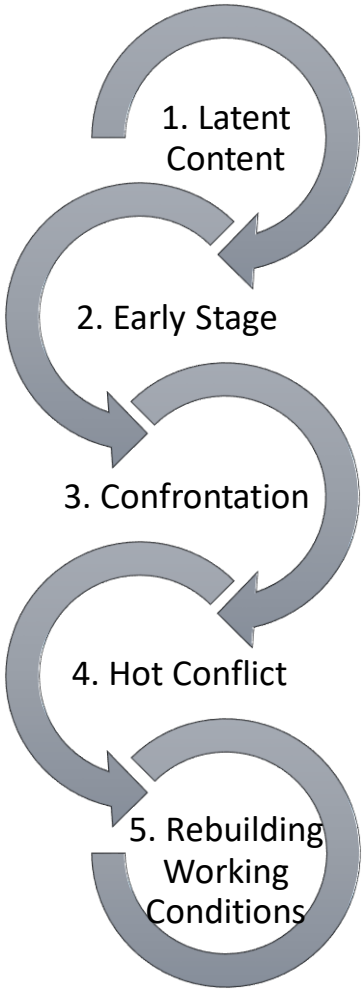
Training during latent period:

Best house is built during good weather similarly healthy industrial relations are established in peaceful times. Investing in developing clear infrastructure for social dialogue and team spirit shall pay off in crisis. Training Competences for social dialogue at individual, team and organisational level can be developed easily during this period.

Facilitation during Early Stage:

It can be understood that during early-stage conflict has come into clear picture. During this period, 'Facilitator' tries to bring in a common interest between the parties, initiate constructive, problem-solving attitude in the minds of the parties[9]. These are early stage of intervention and training for problem solving mechanism.

[9]Cutcher-Gershenfeld, J., Kochan, T., & Calhoun Wells, J. *In whose interest? A first look at national survey data on interest-based bargaining in labor relations*. Industrial Relations: A Journal of Economy and Society, 40, 1–21 (2001).



DIFFERENT PHASES

1. LATENT CONTENT: No visible conflict. However, there is a presence of conflict of interest, small discrepancies, misinterpretation of behaviour
2. EARLY STAGE: Dialogue are replaced by debate, clear presence of issues at the table and open discrepancies
3. CONFRONTATION: any means of negotiations are blocked. Party adopts threat and competitive tactics
4. HOT CONFLICT: communication bridges are blocked. Party attempt to hurt the other conflicting party through strikes or lay-offs.
5. REBUILDING WORKING CONDITIONS: parties try to end conflict and work together, if the organisation still exists. Through mediation or other means of alternate dispute resolution mechanisms. Facing the resulted damages and replacing key actors.

Conciliation when conflict appear:

When the parties explicitly recognise the presence of dispute or conflict, they often turn to third party for assistance. They are mostly social action, inviting a conciliator for searching any common ground for the parties. At times, conciliator is involved without any formal recognition of dispute. Mediation is considered as the next step after conciliation. Some countries find no difference between conciliation and mediation but conciliation is more informal tan mediation where parties voluntarily participate, search for common ground with the support of third party.

Mediation when conflict escalates:

When the conflict intensifies, parties start to threaten other, disrupting the dialogue. They pressurize each other to take unilateral actions leading to non-co-operation in resolution. In such times, voluntary conciliation is highly impossible and thus higher authorities appoint mediators and third-party intervention is also accepted by the party as they consider mediator for their high and wise knowledge.

Arbitration when the conflict results in high costs:

When the conflict continues to escalate, the mediation becomes more authoritative and highly evaluative. The parties present their case and the third-party asked questions so that they can come to conclusion on recommendations. Sometimes mediator acts as both mediator and arbitrator so that they can offer the parties to come into agreement and resolve the issues. This kind of practice is not uncommon in China for collective labour conflicts.

Court ruling:

Parties may also approach courts for ending conflict. Many legislations provide for special labour courts for dealing with industrial disputes. The ruling from the labour court shall end the conflict or they can be referral also. They can refer the conflict for arbitration or mediation.

Facilitating Rebuilding Relations:

Every storm leaves its trace so is any industrial disputes. There is material lose as well as distrust, resentment and want for revenge among the parties. Conflicts may come to an end but the aftermath of the conflict is difficult to deal with, they may give rise to another fresh conflicts. Whether they require third-party assistance in this phase is still not evidently clear due to lack of literature affirming the actual practice.

MEDIATION OF COLLECTIVE LABOUR CONFLICT IN EUROPEAN UNION:

Collective labour conflict can be generally understood as collective disputes that deals with collective interests and rights of generic group of workers or employers.

First trend where collective labour conflict can be defined is under Art 151 of Procedural Labour Law of Spain, as "**Claims that affect the general interests of a generic group of**

workers and that concern the application and interpretation of a State norm, collective agreement, whatever its effectiveness, or a decision or practice of the company…."[10]

Second trend attempts to define Collective Labour Conflict not on basis of collective interest of any generic group but based on **how parties to conflict decides to deal with it**. (For instances, French[11] and Belgium law). Majority of countries in European Union has adopted this definition in their labour legislation.

THE SOCIAL DIALOGUE IN RESOLVING OF COLLECTIVE LABOUR CONFLICT:

Every country has their own mechanism of social dialogue depending upon the social partners and collective agreements which may preclude the government intervention and direct to private social dialogue by professional mediator or arbitrator.

In **Belgium,** joint committees of equal representation[12] are given two-fold task:

1. Negotiation of collective agreement[13]
2. Conciliation of collective labour dispute.

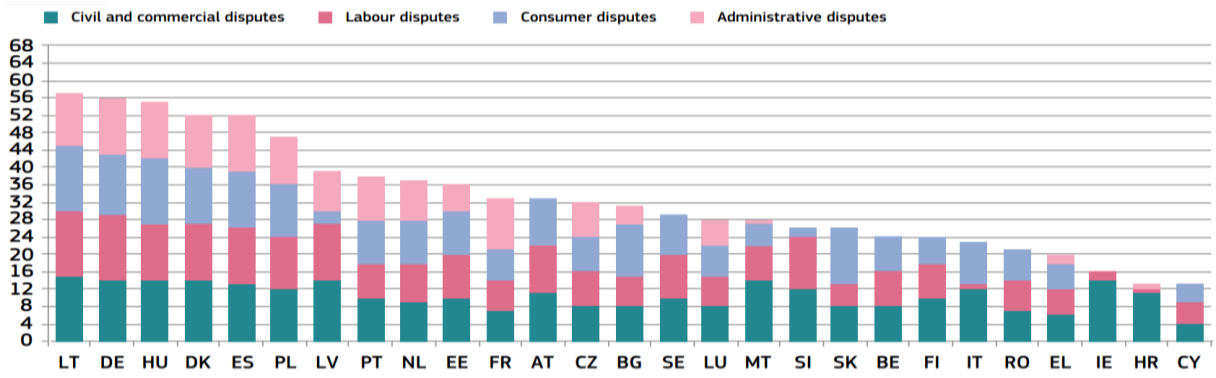
Spain also has a quite conventional form in social dialogue. Terms of social dialogue, procedure to establish and institutions for social dialogue to organise is decided by majority trade union members and the interprofessional accord and they are not system of legitimate institution by law or Government. The first agreement on this purpose was Acuerdo sobre Solución Extrajudicial de Conflictos Laborales, concluded in 1996. This agreement established a national body, Servicio Interconfederal de Mediación y Arbitraje which shall intervene in case of dispute in more than one region. In some aspects, resorting to collective autonomy for dispute resolution has been useful: the goal of advocating for alternative dispute resolution methods was to reduce the inadequacies in the legal system while backing collective bargaining as a regulatory instrument.

[10] Ley de Procedimiento Laboral states "Se tramitarán a través del presente proceso las demandas que afecten a intereses generales de un grupo genérico de trabajadores y que versen sobre la aplicación e interpretación de una norma estatal, convenio colectivo, cualquiera que sea su eficacia, o de una decisión o práctica de empresa".

[11] Code du Travail, 2016, § 2,1(b), Act of parliament, 2016 (France) [Tout désaccord relatif aux relations socio professionnelles et aux conditions générales de travail, entre les travailleurs et l'employeur, parties à une relation de travail et, non résolu dans le cadre conventionnel de conciliation.]

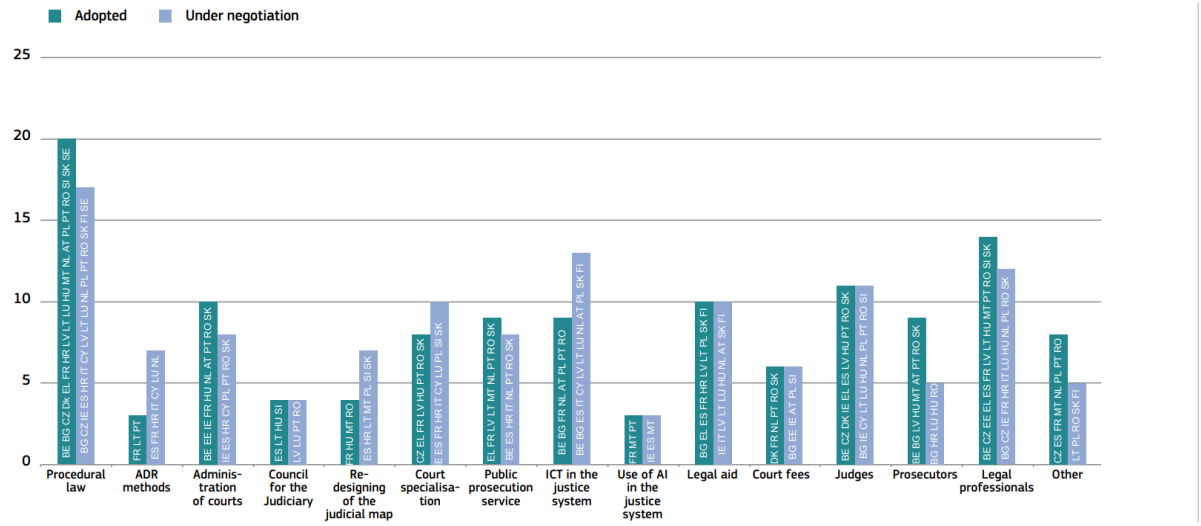
[12] Article 38 of Act of 5 December 1968, (Belgium) Task of joint commissions

[13] Article 5 of Act of 5 December 1968, (Belgium) Definition of collective labour agreement



Promotion of and incentives for using ADR methods, 2021

source: EU Justice Scoreboard 2022.



Legislative and regulatory activity concerning justice systems in 2021

Source: EU Justice Scoreboard 2022

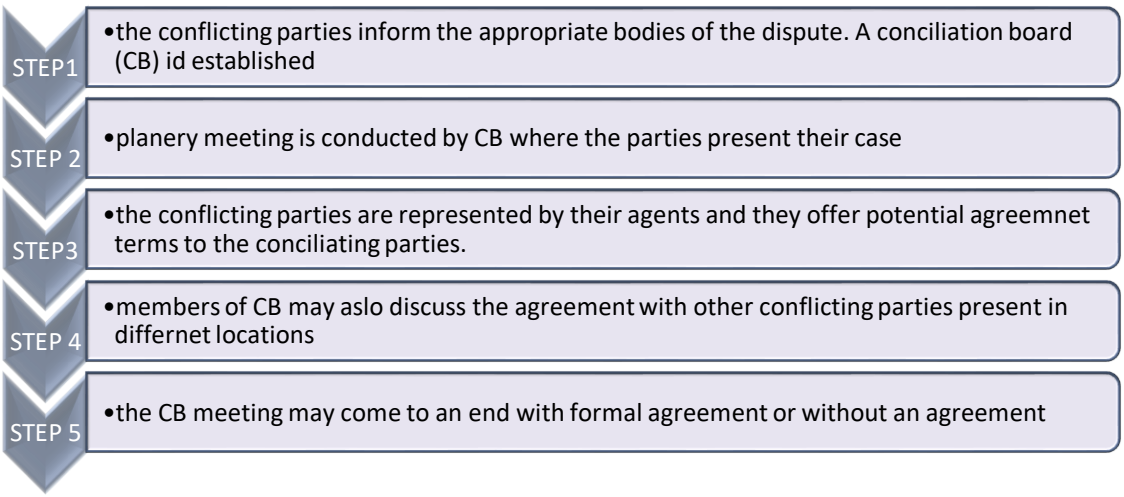
In **Sweden,** contractual agreement between parties decides the creation, organisation, and administration of resolution procedure and therefore, they hardly refer to institutional conciliation or mediation bodies. These agreements led to the establishment of NMO (National Mediation Office) – Medlingsinstitutet.

In **United Kingdom,** dispute resolution system is characterized by the voluntary approach where the conflicting parties are free to take industrial actions such as strike or lay-offs without referring to mediation or negotiation before. there isa decline in number of workplaces that actually used these mediation process to resolve their disputes from 40% in 2004 to 35% in

2011, as per recent reports of WERS (Workplace Employment Relations Study) statistics.the reason behind is decline can be credited to low unionisation in labour sector[14].

- Conciliation and mediation in Belgium:

The Belgium legislation has favoured voluntary conciliation in the event of any collective labour dispute and not arbitration or mandatory conciliation. The parties are free to approach conciliation board for resolving the Dispute. Majority of joint committee has included on their procedural rule for referring any dispute to conciliation panel before the termination of strike deadline. However, neither the system can force any party to undergo conciliation proceedings nor the conciliation panel can make the parties required to show up at any labour tribunal.



Steps involved in mediation and conciliation in Belgium

- Conciliation and mediation in France

It can be argued that **France** has no established procedure for settling disputes. In practice, outside court settlement is not frequently used in comparison to other countries. Because the prud'hommes (Labour court in France) system includes in themselves solid conciliation and mediation processes and procedures. In addition to this, France imposes a restriction of any contractual clause that favours use of alternate dispute resolution which impede workers' right to strike. Another reason for lack of solid, traditional rules and regulation of ADR is that State

[14] VanWanrooy, B., Bewley, H., Bryson, A., Forth, J., Freeth, S., Stokes, L., Wood S, Employment relations in the shadow of recession: Findings from the 2011 workplace employment relations survey, (2014).

Labour Inspector who conciliates and mediates any industrial dispute. There can be only two ways of resolving an industrial through intervention: 1. Conciliation before judges in his chamber where the parties may seek for summary injunction and 2. Administrative intervention. Labour code stipulates that all the collective labour disputes shall be submitted for conciliation processes. Some of the collective agreement and special agreements are provided in the code which can be referred for conciliation. Other than those explicitly mentioned, can be referred to national or regional conciliation commission. Equal numbers of representatives from the unions that represent employers and employees must be included on national or regional conciliation commissions, together with representatives from the government who cannot make up more than one-third of the commission's members.[15] Chapter III of the Labour code empowers the Ministry of Labour to, at the written request of the one of the parties or suo motto, enter into any mediation process. [16]

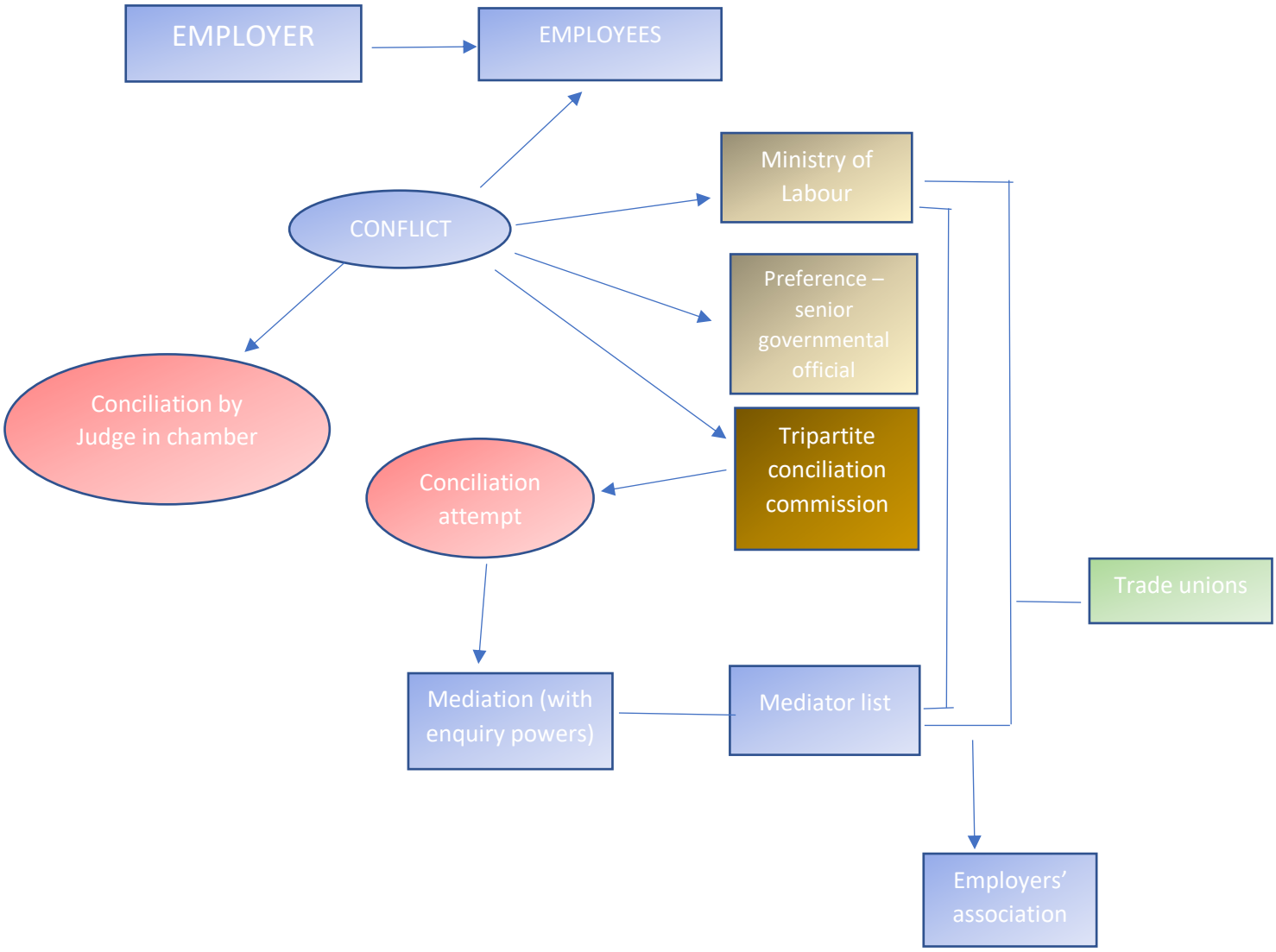
When the conciliation fails, the conflict can be subjected either to mediation or arbitration process, if the both parties agree. Mediation in France in not only uncommon but also rarely successful. The conciliation commission's chairperson invites the parties to name a mediator within a certain period of time in order to facilitate an amicable resolution of the group disagreements, which begins the mediation process.

The administrative body may also decide to start the mediation procedure on its own or in response to a written request from one of the disputing parties. When the parties decline to choose a mediator, one is chosen by the authority based on their moral, social, and professional expertise. Mediator is granted with the power of extensive enquiry to demand financial statements and records but can only make recommendations. Mediators are required to submit written recommendations within one month of the appointment.

However, the period can be extended with the consent of the parties. The parties can reject the recommendations given by mediators with a written reasons behind the rejection. The mediator in case of rejection, must convey the matter to Ministry of Labour within 48 hours along with a report on the dispute and the rationales offered by the parties for rejection.

[15] Code du Travail, 2016, Article L2522-7, (France)

[16] Code du Travail, 2016, Article L2522-1, (France)



Conciliation and mediation process in France

- Conciliation and mediation in Spain:

In **Spain,** inter-professional agreement establishes dispute resolution system which applies to all the collective labour dispute at industrial and sectoral level in private sector. When one of the parties to the conflict requests for mediation, it becomes obligatory on the other party to accept mediation under ASAC-V, unless where it is explicitly mentioned for consent of both parties. Despite this, mediation is a prerequisite for any industrial action before it can proceed. ASAC-V is a fifth agreement on Independent Labour Dispute Resolution enacted by Spainish Legislation. A mediator or mediators and an arbitrator or arbitrators must be chosen by the

parties of a dispute governed by this V Agreement from those on the list.[17] If the parties so expressly choose, mediation will be conducted by an amalgamation body of two or three mediators. In keeping with what is anticipated in this agreement, the mediators will make every effort to settle the issues that gave rise to the conflict.[18] The mediator or mediators will begin their work as soon as they are selected. The process will be designed to correspond with the negotiations that the mediating power deems appropriate. The mediator or mediators will get the data they deem essential to carry out their responsibilities, while constantly guaranteeing the privacy of this data.[19] After the consultation period referred to in Articles 40, 41, 47, 44.9, 51, and 82.3 of the revised text of the Workers' Charter Law and Article 64.6 of the Bankruptcy Law, the agreement reached through mediation will have the same validity as that established in the agreement. In other labour disputes, it will have the same legal force as the collective agreement and be filed, registered, and shared in accordance with Article 90 of the Workers' Charter Law's revised language. The provisions of Articles 67 and 68 of the Law Regulating Business Jurisdiction will apply to the enforceability and controversy of the mediation agreement.[20] If no conclusion has arrived in the mediation process, mediator shall notify of the same with records of the dispute, lack of agreement and reasons presented by the parties for non-acceptance. Therefore, Spain has a mixed character where, with SIMA (Servicio Interconfederal de Mediación y Arbitraje) acting as an independent agency out of judicial process providing mediation when strikes are called and as an addition to the legal system that arranges for mandatory mediation before cases involving conflicts of rights get to court. According to the conditions and time constraints outlined in Article 67 of the Law Regulating Business Jurisdiction, the mediation agreement may be contested.

- Conciliation and mediation in Sweden:

In **Sweden,** the appointment of mediators is done by NMO (National Mediation Office) when in their opinion there is a risk of industrial action or when the parties request for one. NMO can appoint special mediator in case of dispute between employer and trade union concerning

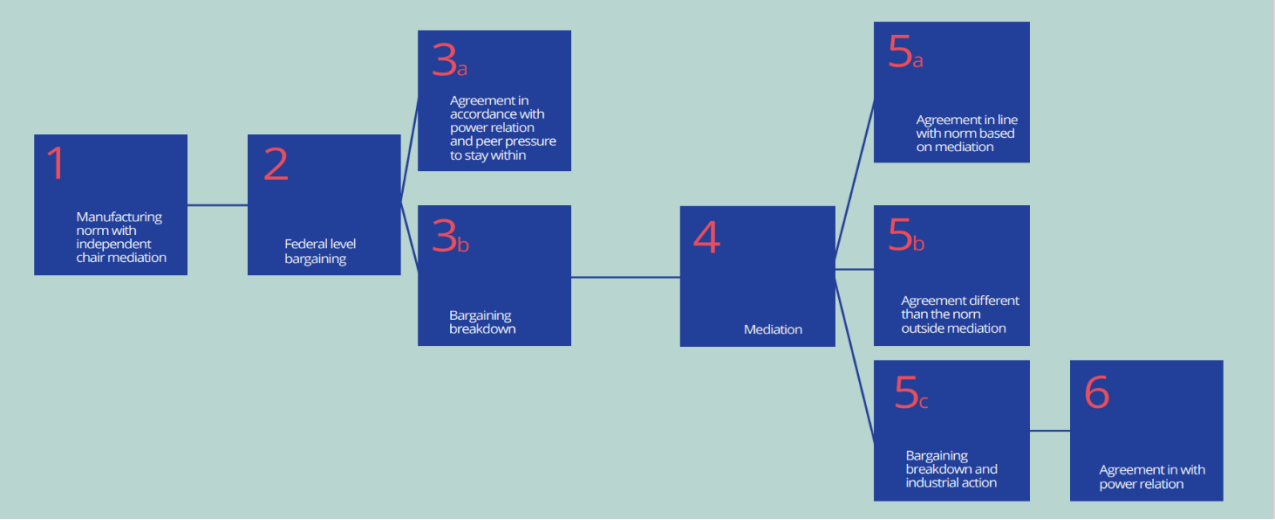
[17] ASAC-V, 2012, Article 7(2), (Spain)

[18] ASAC-V, 2012, Article 12(1), (Spain)

[19] ASAC-V, 2012, Article 15, (Spain)

[20] ASAC-V, 2012, Article 16(1), (Spain)

wages and general working condition. The law also provides for the appoint of mediators without the consent of parties provided the NMO is satisfied that good resolution can be achieved by mediation when one of the parties has given a notice of industrial action. This kind of compulsory mediation is uncommon and rarely used. NMO has discretionary to appoint mediators without consulting the parties at dispute, when the agreement is registered with NMO. The mediators so appointed are not employees of NMO but only act on their behalf. Four permanent mediators, mostly court lawyers, affiliated to different geographical plates, for one year at a time and will be assigned this assignment as secondary employment. Goal of mediation is to avoid any kind of industrial damages and resolve the disputes between the parties. They should stive to reach an agreement that is compatible for the parties with efficient wage formation. When one of the parties to the conflict fail to meet its obligation of attending the meeting, may at the mediator's request , ordered to fulfil them. Mediators are at liberty to suggest solutions that are efficient for postponing industrial action but can force it on any parties. At the request of mediators, NMO can order the parties to postpone the industrial action up to 14 days so that mediators can have more time to bring any solutions, if NMO is satisfied it for the promotion of resolution.



Swedish bargaining and mediation process

- Conciliation and mediation in United Kingdom:

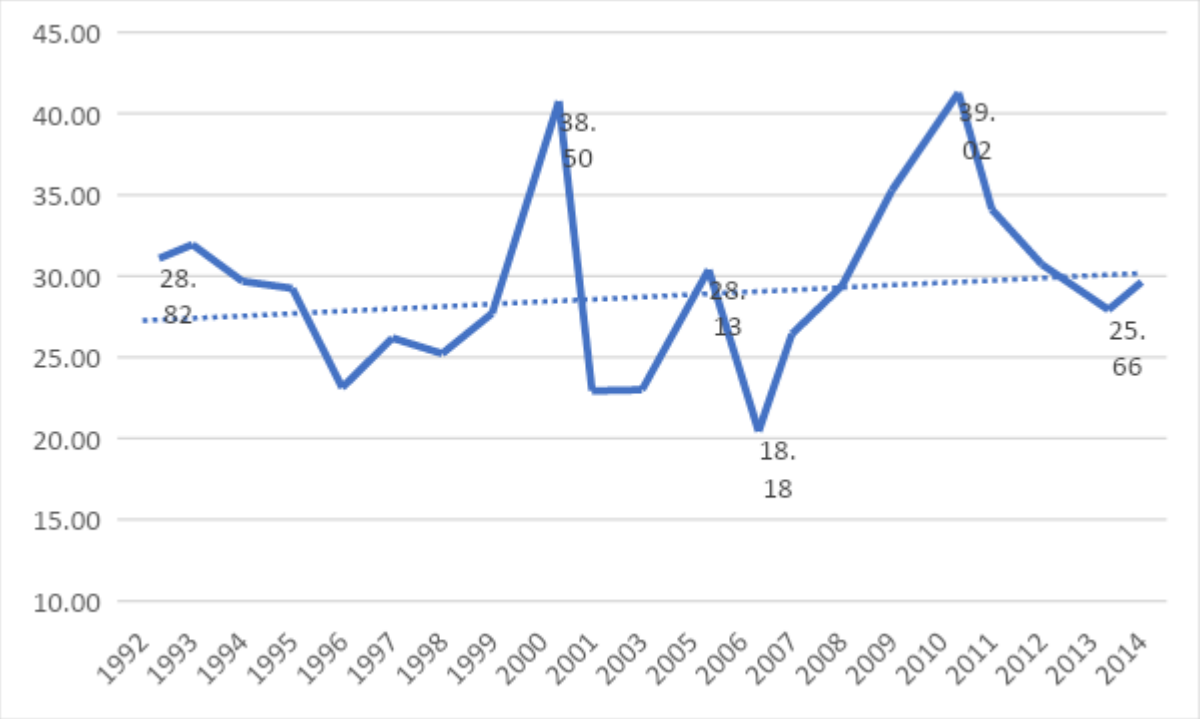
Owing to Voluntarism in labour sector and recent amendments to labour law directing proper conduct between industrial parties, there are barely any requirements to go through conciliation or mediation in United Kingdom. The process can be initiated voluntarily by any of the

disputed parties. The Trade Union and Labour Relations (Consolidation) Act TULRCA 1992 Section. 210 provides that "where a trade dispute exists or is apprehended ACAS may, at the request of one or more parties to the dispute or otherwise, offer the parties to the dispute its assistance with a view to bringing about a settlement." Collective conciliation is more favoured than other two forms. Officials of Advisory, Conciliation and Arbitration Services are involved in conciliation. The conciliators are generally civil servants employed directly by the agency. When the conciliation by officials of ACAS has failed or has not been requested by the parties, ACAS provide for independent panel of experts who are paid by ACAS based on the case to case. Interestingly, mediation is considered as 'halfway house' and not preferred as an option. When the issue escalates to procedural deficiencies, misuse of the law, dismissal of trade union can be referred to mediation. Mediators are required to give written recommendations which are not binding on the parties to accept. According to the 2018–2019 ACAS report, 84% of cases either resolved or moved closer to settlement after ACAS intervention.

MEDIATION IN COLLECTIVE LABOUR DISPUTE IN INDIA:

Mediation has been in existing since 17th Century, centuries before India was colonialized by England. Council system consisting of village elders and leaders' power-assisted in many disputes resolution. In current times, when it comes to resolution of collective industrial disputes, *Industrial Dispute Act, 1947* has given alternate dispute mechanisms like Conciliation, Mediation, Arbitration. Commercial mediation has given legal framework in 1996 by amending Cod of Civil Procedure, 1908. Section 89 of CPC, 1908 empowered courts to refer any disputes to out of court settlement by way of mediation, conciliation, or arbitration. When the Court determines that a settlement may contain elements that the parties may find acceptable, the Court shall outline the terms of the settlement agreement and provide them to the parties for their feedback. After receiving the parties' feedback, the Court may revise the terms and refer it for mediation, the Court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.[21]

[21] Code of Civil Procedure, 1908, § 89, Act of Parliament, 1908 (India)



Proportion of Work Stoppages Settled by Mediation or Conciliation of Adjudication, 1992-2014

Source: *Review of Industrial Disputes (various issues), Labour Bureau, Government of India*

India is a country which finds no difference in conciliation and mediation and they are used interchangeably. The function of a conciliating officer is to create an amicable atmosphere where the conflicting parties can arrive at a resolution.[22] The conciliating officers are empowered to hold proceedings, carry out investigation which they consider are necessary to give fair recommendation in resolving disputes. A conciliation officer shall have the same authority as a civil judge for the purposes, including the right to compel the attendance of any person for the purpose of examination, to request and inspect any document that he has reason to believe is relevant to the industrial dispute, to be required for the purpose of verifying the implementation of any award, or to perform any other duty imposed on him under this Act.[23] Section 12 and 13 deals with duties of the conciliating officer. When the conciliating officer fail to end the dispute, the matter is referred to judicial tribunal.

MEDIAITON IN COLLECTIVE LABOUR DISPUTE IN CHINA:

[22] Industrial Dispute Act, 1947, § 4, No. 14, (India)

[23] Industrial Dispute Act, 1947, § 11, No. 14, (India)

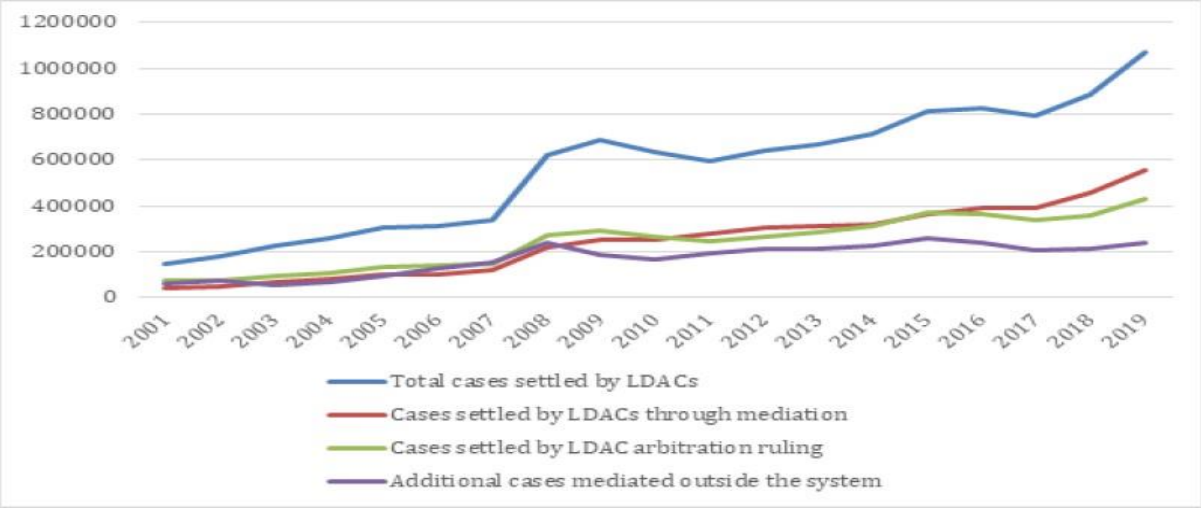
Chapter II of *law of the People's Republic of China on Labour-Dispute Mediation and Arbitration* deals with procedure involved in mediation of industrial dispute. China has established three mediation institutions;

1. Labour dispute mediation commission of enterprises,

2. People's mediation institutions at the grass root level

3. Organisation with the duty to mediate labour disputes in towns, neighbourhood.[24]

Mediators should be senior, well-educated citizen maintaining ties with people and work towards concluding the conflict.[25] Parties can apply for mediation either orally or in written. Oral applications are accepted after taking note of case background along with time of application, on the spot by the mediation institution.[26] When an agreement has been arrived after mediation, it shall be signed by both parties and mediator to take effect. The mediation agreement shall be binding on both parties and are bound to perform them.[27]



Number of cases settled by China's labour dispute arbitration committees (2001-2019)

Source: China Statistical Yearbook

[24] Law of the People's Republic of China on Labour-dispute Mediation and Arbitration, 2007, Article 10, (China)

[25] Law of the People's Republic of China on Labour-dispute Mediation and Arbitration, 2007, Article 11, (China)

[26] Law of the People's Republic of China on Labour-dispute Mediation and Arbitration, 2007, Article 12 2007 (China)

[27] Law of the People's Republic of China on Labour-dispute Mediation and Arbitration, 2007, Article 14, 2007 (China)

When the mediation fails to come to an agreement within 15 days from date of application received by the institution, parties may apply for arbitration. When an employing unit fails to comply with a mediation agreement regarding the payment of labour compensation, medical costs for work related injurie, economic damages, or damages in arrears within the time frame specified in the agreement, the affected worker may, based on the mediation agreement, apply to a people's court for the payment order in accordance with law. The payment order will be issued by the people's court in accordance with the law.[28]

COMPARATIVE ANALYSIS:

Major difference that may exist between countries regarding Mediation would be the meaning associated with it. Many countries find no difference between mediation and conciliation. For example, India have recognised no active difference between the procedures of mediation and conciliation. Whereas country like France has clearly differentiated the process, separating the conciliation from mediation.

COUNTRY	ROLE OF SOCIAL DIALOGUE	DISPUTE RESOLUTION INSTITUTION
BELGIUM	Joint committees play a crucial role in conciliation and mediation process of collective labour dispute	Social conciliator officers participate in joint sectoral committees and conciliation boards (public administrative agency in the Ministry of Labour)
SPAIN	Dispute resolution mechanism established by collective agreement gives mandatory obligation to organise mediation	The SIMA Foundation was created through inter-professional agreements and regional counterparts: the Labour inspector has the right to step in when there are conflicts of interest (either on

[28] Law of the People's Republic of China on Labour-dispute Mediation and Arbitration, 2007, Article 16, Act of parliament, 2007 (China)

		their own initiative or upon request from the parties)
SWEDEN	Dispute resolution are highly influenced by collectively agreed solution.	The National Mediation Office (NMO) is a non-departmental public entity that reports to the Ministry of Employment. The Department for Business, Energy, Industrial Strategy (BEIS) is also another non-departmental public body.
FRANCE	Preliminary negotiations are mandate to prevent industrial action, followed by mediation in case of failure of negotiation	Absence of a national conciliation office. Conflicts are handled by the labour Inspection Agency, the Ministry of Labour, or the informal conciliation before a judge.
UNITED KINGDOM	Decline in collectivism resulting in less mediation process, resolution is made through negotiation.	Access to ACAS, non-departmental public organisation run by the Department of Business, Energy, and Industrial Strategy (BEIS)
INDIA	Law provides for appointment of conciliating officer who strive to bring solution to the dispute	The board of conciliation is established under Section 5 of Industrial Dispute Act, 1947 by the appropriate government.
CHINA	Mediator who are senior, well-educated, and fair are appointed by the parties from the list of mediators present in the institution	Established Labour- dispute mediation commission, people's mediation

		institution at grass root level and township level

CONCLUSION

Mediation on collective labour disputes is a civil issue that consists of disputes over rights, interest, termination of employment, disputes between trade unions within one industrial set up. It is important to prevent disputes or disagreements from developing in any aspects of community life. Humans are social beings who understand that law is a means of regulating ways of life and interaction with other. Industrial disputes are one of the social problems that need to be understood and examined more fundamentally on conscience and principles of unity and strive towards common goal of achieving peace. Mediation offers rapid solution compared to traditional dispute resolution mechanism and therefore, protecting the interest of both parties. However, not all disputes can be mediated, when the parties realize that negotiation will not lead to resolution. Every country has duty to promote trust of parties in method other than court adjudication. It can be achieved by creating better enforceability of agreements made as a result of mediation. Strict adherence to the legislation relation to alternate dispute resolution shall give way for more success ratio and increase the rate of people approaching ADR as a means of dispute resolution.