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FROM SOCIAL DIALOGUE TO MEDIATION: GLOBAL TRENDS IN LABOR CONFLICT RESOLUTION

Ishaan Deepak Joshi¹

ABSTRACT

This article provides a comprehensive exploration of the global shift towards Alternative Dispute Resolution (ADR) in collective labour disputes, emphasizing the role of quasi-judicial mechanisms and third-party institutions both within and outside the European Union. It examines the practices in the EU, focusing on social dialogue and ADR, and extends its analysis to China, India, and other nations, highlighting variations in mediation techniques and industrial relations. The article underscores the importance of early interventions and preventive measures, assessing the post-conflict reconstruction phase and identifying disparities, challenges, and opportunities in third-party interventions worldwide. It concludes by advocating for standardized metrics to evaluate mediation systems and promoting international collaboration for the advancement of effective dispute resolution practices.

KEYWORDS

Alternative Dispute Resolution, Collective Labour Disputes, Social Dialogue, Mediation Techniques, Global Third-Party Interventions

I. INTRODUCTION

Through this article, we explore the worldwide shift towards Alternative Dispute Resolution (ADR) in collective labour disputes, whereby parties are facilitated in reaching a consensus as a substitute for court

¹ NALSAR University of Law and MIT-WPU Faculty of Law.

judgements.² Both domestic and international governments have advocated for the establishment of quasi-judicial mechanisms and third-party institutions inside and outside the European Union.³ These entities aim to assist in the settlement of collective disputes via non-political means. The most significant distinctions are to the degree of formalisation and the extent to which these institutions may be regarded as judicial, as opposed to being conducted by non-legal experts.⁴

II. EU SOCIAL DIALOGUE AND ADR: A CROSS-COUNTRY PERSPECTIVE ON INDUSTRIAL RELATIONS

The European Union (EU) has a well-established practice of formalised social dialogue at the organisational level, supported by regulatory frameworks that promote institutions for systematic, ongoing, and productive communication at various levels between employers and workers.⁵ The primary objective of these systems is to avoid and regulate group disputes. The prominence of work councils in influencing organisational decision-making is evident in Germany, Denmark, and the Netherlands, whereas their influence is comparatively limited in the USA, India, and South Africa.⁶

Another approach to encouraging effective dispute resolution is by using alternative dispute resolution (ADR), namely mediation. The European Union has released Directive 2008/52/EC with the objective of enhancing access to alternative dispute resolution and encouraging the peaceful resolution of conflicts by promoting the use of mediation and

² Bollen, K., Euwema, M., & Munduate, L. (2016). *Advancing workplace mediation through integration of theory and practice*. Springer International Pu

³ Weltz, C. (2008). *The European social dialogue under Articles 138 and 139 of the EC treaty*. Amsterdam: Kluwer Law International.

⁴ Brinkert, R. (2016). An appreciative approach to conflict: Mediation and conflict coaching. In *Advancing Workplace mediation through integration of theory and practice* (pp. 173–187). Cham: Springer.

⁵ Warneck, W. (2007). *Strike rules in the EU27 and beyond: A comparative overview*. Brussels: European Trade Union Institute.

⁶ Brown, W. (2014). Third party processes in employment disputes. *The Oxford Handbook of Conflict Management in Organizations*, 135–149.

maintaining a harmonious correlation between mediation and legal processes.⁷

Different member states execute this directive in diverse ways, resulting in varying degrees of success and obstacles. The field of industrial relations is undergoing global transformations, and the most effective approach to establishing effective techniques in many situations may include experimentation and international benchmarking.⁸

III. GLOBAL PERSPECTIVES ON LABOUR DISPUTE RESOLUTION: CHINA, INDIA, AND EUROPE

We can examine the variations in worldwide and EU dispute resolution processes, with a specific emphasis on labour mediation techniques in China and India. The diverse range of mediation techniques in China may be attributed to the early development of mediation within a rapidly transformed economic landscape.⁹ China is seeing an increase in labour disputes and a rising need for mediation services, which vary in their development and are also influenced by various industries and areas. India's reliance on outdated systems is exacerbating due to a lack of government support, leading to their deterioration.¹⁰

Notwithstanding the diverse economic and political contexts of each nation, there are significant similarities. Spain and other once-judicious nations are seeing a decline in their legal systems. Countries like Britain,

⁷ Wall, J., & Dunne, T. (2012). Mediation research: A current review. *Negotiation Journal*, 28, 217–244.

⁸ Budd, J. W., & Colvin, A. J. (2008). Improved metrics for workplace dispute resolution procedures: Efficiency, equity, and voice. *Industrial Relations: A Journal of Economy and Society*, 47(3), 460–479.

⁹ Valdés Dal-Ré, F. (2003). Synthesis report on labour conciliation, mediation and arbitration in the European Union countries. In: *Labour Conciliation, Mediation and Arbitration in European Union Countries*. Ministerio de Trabajo y Asuntos Sociales.

¹⁰ Bush, R. A. B. (2002). Substituting mediation for arbitration: The growing market for evaluative mediation, and what it means for the ADR field. *Pepp. Disp. Resol. LJ*, 3, 111.

which formerly relied more on voluntary procedures, are now intensifying the regulation of collective disputes.¹¹

As the European Commission recommended in 2000, European countries have demonstrated a significant preference for voluntary methods. The prevalence of voluntary conciliation, mediation, and arbitration methods for resolving disputes can be attributed, in part, to their cost-effectiveness and efficient resolution, as well as their ability to foster and sustain long-term relationships between the parties involved.¹²

The design of these systems transitions from a formal model, including hearing and advice, to a more casual support for the discourse between the participants.¹³ Empirical evidence from many nations demonstrates that the focal point of a state's mechanism for resolving disputes should prioritise conciliation and mediation processes. These procedures are designed to aid the parties involved in reaching a mutually agreed-upon settlement while ensuring that the settings closely resemble those of a typical negotiation process.¹⁴

Collective labour disputes are often classified into conflicts based on differing interests and conflicts based on differing rights.¹⁵ Disagreements about interests mostly pertain to the explicit subject matter of the dispute, while conflicts over rights include the understanding and implementation of established regulations, such as laws or collective agreements. Third-party interventions vary in both the tactics used and their level of efficacy.

¹¹ Schein, E. H. (2013). *Humble inquiry: The gentle art of asking instead of telling*. Berrett-Koehler Publishers.

¹² Costantino, C. A., & Merchant, C. S. (1996). *Designing conflict management systems: A guide to creating productive and healthy organizations*.

¹³ Schein, E. H. (1999). *Process consultation revisited: Building the helping relationship*. Reading, MA: Addison-Wesley.

¹⁴ Cummings, T. G., & Worley, C. G. (2014). *Organization development and change*. Cengage Learning.

¹⁵ Roche, W. K., Teague, P., & Colvin, A. J. (Eds.). (2014). *The Oxford handbook of conflict management in organizations*. Oxford University Press

The existing body of research on collective labour conflict mostly draws from the labour relations tradition, resulting in a narrow focus on the specific sorts of conflict that may be resolved via formal structures.¹⁶ The formal mediation procedure in various European nations is only available for conflicts of interest or for unions that have an institutional position in the process. To what degree do organisations include mechanisms for third parties to resolve collective conflicts?

The implementation of conciliation and mediation services would be very advantageous in resolving these issues, aligning with the evolving dynamics in workplace relations. The domain of collective labour disputes is intricate and diverse, characterised by notable distinctions among the parties engaged.¹⁷ These disputes often arise from divergent interests among different employee groups, including professionals, older and younger workers, and permanent and non-permanent personnel. Formal mediation or conciliation is seldom used to address these concerns, resulting in the frequent neglect of the interests of vulnerable groups.¹⁸

Collective labour disputes in most countries often include employers, their representatives, and employee representatives, generally in the form of labour unions.¹⁹ Within Europe, two primary institutional players representing employees are work councils and health and safety committees, together with unions advocating for workers' interests. The entities mentioned are associated with various forms of conflict, with the majority of literature and legislative rules concentrating on either work

¹⁶ Cutcher-Gershenfeld, J., Kochan, T., & Calhoun Wells, J. (2001). 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), 1–21.

¹⁷ Rahim, M. A. (2017). *Managing conflict in organizations*. Routledge.

¹⁸ De Dreu, C. K., & Van de Vliert, E. (Eds.). (1997). *Using conflict in organizations*. Sage.

¹⁹ Prein, H. (1987). Strategies for third party intervention. *Human Relations*, 40(11), 699–719.

councils or unions. Conciliation and mediation, which are third-party interventions, are often provided in many nations.²⁰

IV. UNIONS, CONCILIATION, AND MEDIATION PRACTICES

In the European Union, unions possess exclusive authority to initiate a strike, and prior to taking any social action, efforts are made to resolve the dispute via conciliation or mediation. Work councils serve as official forums for communication between management and elected employee representatives.²¹ In most European Commission member states, organisations are required to notify, consult, and seek the works council's permission for actions that affect workers, such as restructuring.²² The Netherlands and Denmark provide third-party help to resolve these disagreements.

In many nations, including the United Kingdom, workers have the ability to directly request conciliation or mediation. Similarly, the same phenomenon is seen in China and India. A significant consideration arises about the eligibility for accessing mediation services, especially when these services are offered or financed by governments, in light of the increasing education of workers, more diversity, and declining union membership globally.²³ The International Labour Organisation (ILO) advocates for the provision of services to workers belonging to groups who may not have elected representation.

Mediation and conciliation play crucial roles in averting the escalation of disputes, facilitating their resolution, and facilitating the discovery of

²⁰ Della Noce, D. J. (2009). Evaluative mediation: In search of practice competencies. *Conflict Resolution Quarterly*, 27(2), 193–214.

²¹ Pel, M. (2008). Referral to mediation: A practical guide for an effective mediation proposal. Sdu Uitgevers.

²² Dix, G., & Oxenbridge, S. (2004). Coming to the table with Acas: From conflict to co-operation. *Employee Relations*, 26(5), 510–530.

²³ Munduate, L., Euwema, M., & Elgoibar, P. (2012). Ten steps for empowering employee representatives in the new European industrial relations. Madrid: McGraw H

mutually agreed-upon alternatives.²⁴ Nevertheless, there is a divergence in international nomenclature compared to other fields, and these two ideas are often used interchangeably in scientific publications. Conciliation refers to the use of a neutral third party to assist in resolving a disagreement, with the aim of minimising differences between the parties involved and reaching a mutually acceptable resolution or agreement. If the attempt at conciliation fails to resolve the problem, the next course of action might be mediation. Mediation is a more structured procedure when mediators assume an evaluation role and provide suggestions to the involved parties.

V. THE 3-R MODEL AND STAGES OF COLLECTIVE DISPUTES

According to societal norms, cultural dynamics, the level of conflict, and the parties involved in the situation, third parties may take on a variety of roles and positions. The wide range of terms used leads to ambiguity, and in many nations, the practice referred to as "mediation" has mostly arbitration-like traits, frequently entailing a very formal procedure when representatives of the opposing parties engage in negotiations to reach resolutions.²⁵

The domain of conciliation and mediation would greatly benefit from more precision and uniformity in its language. The 3-R model, including the dimensions of regulations, roles, and relations, is used for categorising various systems and assessing the efficacy of mediation. The way these systems fit into the environment determines their success.²⁶ Proper alignment of components is an essential prerequisite for the optimal operation of systems. Notable instances of effective alignment include the

²⁴ Elgoibar, P., Euwema, M., & Munduate, L. (2017). Conflict management. In: Oxford research encyclopedia of psychology (pp. 1–28). Oxford University Press.

²⁵ Martinez-Pecino, R., Munduate, L., Medina, F. J., & Euwema, M. (2008). Effectiveness of mediation strategies in collective bargaining. *Industrial Relations: A Journal of Economy and Society*, 47(3), 480–495.

²⁶ European Commission. (2016). The implementation of the mediation directive. Directorate General 588 for Internal Policies. Workshop 29th November 2016.

ACAS system in the United Kingdom and the Belgian system, which involves a group of mediators at the Ministry of Labour who play proactive roles in preventing conflicts.

The 3-R model facilitates the examination of conciliation and mediation within its specific context by comprehending the frequency and scope of mediation implementation, the types of disputes it addresses, and the organisation and efficacy of the mediation entry process. This framework provides a means to comprehend the selection of certain mediation styles, techniques, and tactics by examining the interaction between rules, roles, and relationships.²⁷ Furthermore, it provides a method to comprehend and elucidate certain results of mediation based on the attributes of regulation, roles, and relations and how they interact with each other.

VI. STRATEGIES FOR EFFECTIVE COLLECTIVE DISPUTE RESOLUTION

Globally, there is a prevailing inclination towards increased implementation of preventive measures and treatments in the early stages. Training in integrative bargaining has shown favourable outcomes in the development of skills in collective bargaining and managing associated disputes. ACAS, Belgium, Denmark, and the Netherlands in Europe provide various types of preventative measures and early intervention.²⁸ Nevertheless, a key point to emphasise is the need to implement early interventions that have a significant potential to enhance industrial relations and mitigate the development of conflicts.

The post-conflict reconstruction phase is often underdeveloped in the majority of nations. Stakeholders acknowledge the need for assistance and tackle the absence of such assistance; nevertheless, the

²⁷ Euwema, M., Munduate, L., Elgoibar, P., Garcia, A., & Pender, E. (2015). Promoting social dialogue in European organizations. Human Resources management and constructive conflict behaviour. The Netherlands: Springer.

²⁸ Martinez-Lucio, M.M. (Ed.). (2013). International human resource management: An employment relations perspective. Sage.

responsibility for addressing this issue is delegated to organisations. Parties continue with less trust and heightened danger for further escalations. In the absence of adequate resolution, the consequences of a dispute will perpetuate a cycle, strengthening a culture of conflict.²⁹ Hence, it is crucial to allocate resources towards proactive interventions and strategies aimed at restoring confidence, rather than relying only on the internal workings of the organisation.

Studies conducted in several countries demonstrate a dearth of research examining the efficacy of conciliation and mediation in collective labour disputes. This is unexpected and impedes the progress of establishing sound methodologies. Nevertheless, there are several effective strategies that are closely aligned with a sophisticated national or regional mediation system, which has reached a level of maturity that allows for investment in training and assessment.³⁰ ACAS is an organisation that may be seen as a standard for others to follow. They do thorough qualitative assessments of their interventions, maintain a record of agreements and other results, and investigate these matters in an academic manner.

Setting standards for measuring the outcomes of conciliation and mediation, along with the methods utilised, would help the profession grow by encouraging more advanced methods, increasing acceptance by both sides, and promoting acceptance within societies, both within the EC and through international cooperation.³¹ International collaboration in the development and assessment of interventions will enhance our comprehension of the circumstances in which certain conciliation and

²⁹ Foley, K., & Cronin, M. (2015). Professional conciliation in collective labour disputes.

³⁰ Macneil, J., & Bray, M. (2013). Third party facilitators in interest-based negotiation: An Australian case study. *Journal of Industrial Relations*, 55(5), 699–722.

³¹ Folger, J. P., & Bush, R. A. B. (1996). Transformative mediation and third-party intervention: Ten hallmarks of a transformative approach to practice. *Conflict Resolution Quarterly*, 13(4), 263–278.

mediation endeavours contribute to the prevention, settlement, and restoration of relationships in conflicts.

VII. DISPARITIES, CHALLENGES AND OPPORTUNITIES

The examination of the existing legislation and practices reveals significant disparities across all tiers of third-party interventions. Comparing these systems and practices is challenging owing to the variations in traditions and labour relations systems. The conclusions and propositions succinctly summarise the results. Terminologies vary across nations, with the majority of countries distinguishing between conciliation and mediation in collective labour disputes. In several nations, mediation is a structured procedure where the mediator assumes the role of a fact-finder and often provides suggestions.³² Conciliation is more widely used than mediation in the majority of nations. Mediation is mostly used in situations of intense disagreement, particularly when there is a looming strike or when a strike is already underway. The role of government varies across EC member states, with the majority offering a structured public service. This may be accomplished either by government officials hired by the Ministry of Labour or through an independent or self-governing service provider financed by public funds.³³ However, Germany, Italy, and France do not have such a governmental office.

Third parties vary in terms of their availability and the degree to which disputing parties have the flexibility to choose a mediator. There is currently no globally or regionally recognised standard for conciliators and mediators involved in collective disputes. Every organisation employs its own set of criteria, mostly focused on general education (legal) and

³² García, A. B., Pender, E., & Elgoibar, P. (2016). The state of art: Trust and conflict management in organizational industrial relations. In *Building trust and constructive conflict management in organizations* (pp. 29–51). Cham: Springer.

³³ Kochan, T. A., Katz, H. C., & McKersie, R. B. (1994). *The transformation of American industrial relations*. Cornell University Press.

experience, with less emphasis on particular training in facilitation and mediation approaches.³⁴ The most significant opportunity for making a positive impact is in the avoidance of further escalation and in the time after the conflict. Only a small number of efforts exist that systematically provide third-party services, such as ACAS in the UK and Cooperation Consultants in Denmark.

There is a lack of systematic assessment and quality control in the mediation systems, which is necessary. It is important to have comparable metrics to evaluate the performance of these systems and to learn from best practices in each nation.³⁵

VIII. CONCLUSION

This comprehensive exploration of Alternative Dispute Resolution (ADR) in collective labour disputes underscores the evolving landscape of industrial relations globally. The article traverses the intricacies of ADR practices, ranging from the well-established social dialogue in the European Union to the diverse mediation techniques in China and India. Emphasis is placed on the significance of early interventions and preventive measures in fostering robust industrial relations. The post-conflict reconstruction phase is identified as an underdeveloped area in many nations, necessitating proactive strategies to restore confidence and break the cycle of conflict.

The disparities, challenges, and opportunities in third-party interventions across different jurisdictions highlight the need for standardized metrics to evaluate mediation systems. The article recognizes exemplary models, such as the ACAS system in the UK and

³⁴ Garcia, A., Munduate, L., Elgoibar, P., Wendt, H., & Euwema, M. (2017). Competent or competitive? How employee representatives gain influence in organizational decision-making. *Negotiation and Conflict Management Research Journal*, 10(2), 107–125.

³⁵ Katz, H. C., Kochan, T. A., & Colvin, A. J. (2000). *An introduction to collective bargaining and industrial relations*. IRWIN/McGraw-Hill.

Cooperation Consultants in Denmark, and advocates for international collaboration to enhance the understanding of effective dispute resolution practices.

As the global landscape of collective labour disputes continues to evolve, this research underscores the importance of aligning diverse systems with the 3-R model—regulations, roles, and relations.³⁶ By doing so, the optimal operation of these systems can be achieved, promoting a harmonious environment for dispute resolution. The call for precision and uniformity in the language of conciliation and mediation further emphasizes the necessity of establishing clear standards for practitioners.

³⁶ Prein, H. (1984). A contingency approach for conflict intervention. *Group & Organization Studies*, 9(1), 81–102.