

Conciliation

Conciliation is a way to solve disputes without going to court. It is a voluntary and private process that helps people communicate and understand each other better.

In conciliation, a neutral person called a conciliator helps the parties find a solution that works for them both. The conciliator guides the discussion, helps identify the issues, encourages understanding of different viewpoints, and assists in finding common ground for agreement.

Conciliation follows specific procedures and guidelines, which can differ based on the jurisdiction or the laws that apply. In India, the Arbitration and Conciliation Act regulates the conciliation process.

Scope of conciliation

Conciliation is a process of settlement of disputes that have been widely spread throughout the centuries. In ancient cultures, parties in a dispute would visit the village oldmen for advice. They sought ways to resolve their dispute through the advice given by the old experienced men. Consequently, with the evolution of ADR, conciliation as an informal institutional practice gained popularity. This was furthered by the introduction of various guidelines framed to regulate the process of conciliation.

Process of Conciliation

Part 3 of the Arbitration and Conciliation Act 1996 discusses the process of conciliation, which is an alternative method of resolving disputes outside of court.

Step 1: Commencement of Conciliation Proceedings

To start conciliation proceedings, one party must send a written invitation to the other party, as outlined in Section 62. The process can only continue if the other party accepts the invitation. If there is no response within 30 days, this will be considered a refusal to engage.

Step 2: Appointment of Conciliators

Once both parties agree to conciliation, they need to choose a conciliator, which is explained in Section 64. They can appoint one conciliator together, or if they prefer, each can select one, making two in total. If they want three conciliators, each party will choose one, and then they will agree on a third conciliator to act as the leader.

Step 3: Submission of Written Statements to the Conciliator

The conciliator might ask both parties to write statements that explain the important facts about the case. Both parties must send these written statements to the conciliator. They also need to share their statements with each other.

Step 4: Conduct of the Conciliation Proceedings

Sections 67(3) and 69(1) explain how to run conciliation proceedings. The conciliator can choose to communicate with the parties in writing or by talking. They may hold meetings with the parties together or separately. The way the proceedings are conducted will depend on the specific situation of the case.

Step 5: Administrative Assistance

Section 68 of the Act talks about getting administrative help. The parties or the conciliator can ask for help from an organization or individual if needed. However, they must get the parties' agreement to use this help.

Termination of Conciliation Proceedings – Section 76

Section 76 of the Arbitration and Conciliation Act provides four ways in which conciliation proceedings can be terminated:

Termination by Signing of Settlement Agreement (Section 76(a))

Conciliation ends when the parties sign a settlement agreement. The signing date is the end date.

Termination by Conciliator's Declaration (Section 76(b))

The conciliator can end the proceedings with a written declaration stating that further efforts aren't needed. The declaration date is the end date.

Termination by Written Declaration of Parties (Section 76(c))

The parties can end the process by sending a written notice to the conciliator expressing their desire to stop. The notice date is the end date.

Termination by Party's Written Declaration to Other Party and Conciliator (Section 76(d))

A party can end the conciliation by sending a written notice to both the other party and the conciliator. The notice date is the end date.

In Mysore Cements Ltd. v. Svedala Barmac Ltd. (AIR 2003 SC 3493), the court examined Section 73 of the Arbitration and Conciliation Act. This section outlines the conciliator's role in resolving disputes.

Section 73(1) states that when the conciliator identifies potential settlement terms, they should present these to the parties for feedback and can adjust them based on their comments. However, the court found that no such terms were created or adjusted in this case.

If the parties agree on the terms, Sub-section (2) allows them to draft and sign a settlement agreement. Once signed, Sub-section (3) makes the agreement final and binding for the parties and their representatives. Sub-section (4) requires the conciliator to sign the agreement and provide copies to each party.