

# A Comparative Analysis of Conciliation Versus Litigation: Pros and Cons from Indian and Global Perspectives

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## **Abstract:**

This comparative analysis will examine Conciliation and Litigation as two distinct yet interrelated mechanisms for resolving disputes, highlighting their respective advantages and disadvantages within both Indian and global contexts. Conciliation, on one side, offers flexibility and cost-effectiveness, fostering opportunities for “cooperation” and aiding in the maintenance of a “working relationship,” thereby preserving any undamaged aspects of the relationship despite the dispute at hand. Conversely, it lacks binding authority and can be susceptible to exploitation due to existing power imbalances. In contrast, Litigation offers legal certainty, enforceability, and public accountability but is often lengthy, expensive, and inherently adversarial. This paper will explore the increasing significance of conciliation in the overwhelmed judiciary of India as well as on an international scale. Additionally, it is essential to evaluate the adaptability of conciliation in relation to the formal authority of litigation within an effective dispute resolution framework, ensuring that access to justice remains equitable and efficient across various legal systems.

**Keywords:** Conciliation, Litigation, Flexibility, Enforceability, Power Imbalances.

## **1.Introduction:**

Conciliation and litigation represent two alternative methods of resolving disputes, each with its own particular advantages and disadvantages. Understanding the relationship between these two methods is vital to the assessment of their effectiveness in different legal and cultural environments. While both conciliation and litigation have their own strengths, their effectiveness may also depend on the legal system and the particular disputes at hand. We thus proceed to a discussion of an overview of conciliation as well as of litigation and consider the interrelation of these dispute resolution methods by comparing their pros and cons in the Indian, as well as global contexts.



(Above is an image representing the contrast between conciliation and litigation)

## 2. Conciliation:

Conciliation is a method of ADR in which the parties work together to resolve their issues with the help of a neutral third party, who is called the conciliator. Unlike in arbitration or mediation, in conciliation, there is an active conciliator who can make some suggestions and help in creating some dialogue between the parties. It is described as informal, voluntary, and oriented to collaboration.

## 3. Benefits of Conciliation:

**a. Flexibility:** Conciliation tends to be more flexible than litigation since the parties are not under any tight compulsion from strict legal procedures. This kind of flexibility permits the parties to fashion the process in whatever manner that will suit their peculiar needs, like settling business disputes, problems at workplaces, or family matters.

**b. Speed and Efficiency:** A major advantage of conciliation is that it offers speedier solutions to disputes. While litigation can drag on for years because of procedural delays, conciliation generally results in settlements more quickly and keeps a lid on the emotional and financial strain on the parties.

**c. Cost-Effectiveness:** Conciliation is typically less costly than litigation since it avoids the financial burdens of lengthy trials, including fees for attorneys, court costs, and protracted discovery. This kind of cost-effectiveness can be very vital for the country, like India, where the courts are greatly delayed.

**d. Preservation of Relationships:** The conciliation's main aim is to ensure that after dispute resolution, the parties are able to go back and continue or at least sustain friendly relations in the future. This feature makes conciliation particularly useful for cases under family law, employment disputes, and business partnerships where the relationships are on an ongoing basis.

**e. Confidentiality:** Conciliation is a private process and that is the strength of this process to those individuals who want their disputes not to come into public notices which is very advantageous as

contrasted with litigation wherein the court proceedings and decisions generally become a part of public record.

#### 4. Drawbacks of Conciliation:

**a. Absence of Binding Authority:** One major disadvantage of conciliation is that it has no binding authority, which case litigation has. As conciliation depends on the voluntary agreement of the concerned parties, there is a possibility that one or more parties may not abide by the terms agreed to, which may eventually compel the aggrieved party to go in for litigation for enforcement. This lack of enforceability may render the conciliation process less effective.

**b. Imbalanced Power Dynamics:** Where one party is very much more powerful than the other (such as in employer-employee disputes), conciliation may not result in an outcome that is fair. The disadvantaged party may feel as if they are being forced to agree to terms - ones that are not in their favour—if, especially, they are without adequate legal representation.

**c. Narrow Scope for Complex Legal Issues:** Conciliation is not likely to be ideal for disputes with sophisticated legal issues - for instance, constitutional matters or cases that require judicial interpretation of statutes. The informal nature of conciliation in such cases may impede comprehensive exploration of all relevant legal principles.

**d. Possibility of Non-Compliance:** While the above is the potential result of a successful conciliation that may lead to a settlement, there is always in the corner of the agreement the possibility that one party or the other may not be willing to comply. In that case, the aggrieved party would be required to institute action in a court of law for enforcement of the settlement, thereby defeating the whole purpose for opting conciliation as a faster and less costly alternative.

#### 5. Litigation:

Litigation is the judicial resolution of disputes, with a judge or jury deciding on the legal merits of the case. This process is formal, it follows strict procedural rules, and usually it renders a decision that is binding and enforceable at law. In some cases, however, it can also be appealed.

#### 6. Benefits of Litigation:

**a. Legal Certainty and Precedent:** Results of litigation are decisions that can be enforced in law, based on principles and statutes. This framework provides certainty and predictability because court judgments normally create a precedent for future cases. In complicated legal settings, litigation offers a system for providing justice.

**b. Enforcement of Rights:** Litigation is essential to the assertion and enforcement of legal rights and duties. Courts have the mandate to order compliance with their judgments to ensure the administration and delivery of justice. In the case of criminal acts, human rights violations, or large breaches of contract, litigation may be the only way left to get a fair outcome.

**c. Public Accountability:** Litigation provides a public Accountability Channel, which is also a function of increasing accountability. Because courtroom proceedings are public domain, this promotes transparency and litigation becomes a critical tool in ensuring that things are fair - especially in cases that concern public interests or corporate governance.

**d. Comprehensive Resolution:** Litigation generally results in a more comprehensive way than conciliation since it covers all the legal issues in the case to see to it that every aspect of the dispute is

looked into and settled. Conciliation, on the other hand, tends to strive for a solution that is mutually acceptable to the parties and may not cover each and every legal technicality.

### 7. Drawbacks of Litigation:

**a. Lengthy Process:** It is, undoubtedly, a lengthy process. For instance, in India, court cases may take years or even decades to be resolved due to procedural setbacks, congested dockets, and frequent adjournments. This protracted duration may have financial and emotional burdens on the parties.

**b. High Expenses:** The costs associated with litigation are potentially exorbitant. Especially for everyday individuals and small businesses. Legal fees, fees for the courthouse, and evidence-gathering costs all pile up fast, making litigation very expensive. If this were to act as a financial burden, it may limit low-income litigants' access to justice.

**c. Adversarial Nature:** The inherent adversarial nature of litigation processes often leads to a win-lose outcome that may escalate conflicts (rather than resolve them) and, at worst, leave a residue of ill will. This contentious dynamic may strain relationships between the parties and is thus wholly unsuitable for disputes one can imagine in which ongoing relationship features heavily - family matters (divorce, custody) or business partnerships. In these instances, we can imagine far better venues in which dispute resolution could take place than in a court of law.

**d. Rigid Procedures:** Unlike conciliation, litigation is bound by very rigid procedures that offer little flexibility for negotiation or innovative solutions in dispute resolution. Processes are bound by evidence rules, court timelines, and legal technicalities that can bind the parties' hands in influencing the outcome of their dispute.

### 8. Literature Review: Conciliation vs. Litigation:

The discussion on the topic of conciliation and litigation as methods of alternative disputes resolution has drawn attention from legal scholars, practitioners, and policymakers around the world. Since the alternative method in the settlement of disputes, conciliation has garnered immense attention through its effectiveness in relieving the judiciary of its extra burden and bringing about amicable settlements to the parties involved. Conversely, litigation goes hand in hand with the traditional process, which is court-based, and it proves to be very important given its formal structure and enforceability.

Conciliation has come to be a viable ADR mechanism, especially in dealing with civil, commercial, and family disputes. One major feature of conciliation is flexibility; as compared to litigation, where a judge gives the decision, here the parties have the control over both the process and the outcome. Negotiation and conciliation were stressed by Gulliver (1979) as important means through which private agreements could be reached without resorting to dispute; this shows how conciliation can lead to innovative solutions that are specifically tailored to the particular needs of the parties involved.

Another important study is that of Sourdin (2008) on the rising prevalence of conciliation in commercial disputes, hence its cost-effectiveness and confidentiality. According to him, the first big advantage of conciliation is a major lowering of expenses for litigation while secondly attaining privacy - the latter being of paramount importance for businesses. This steers directly away from the public nature related to litigation in which privacy-sensitive secrets could be aired in open court.

As per the Arbitration and Conciliation Act of 1996 in India, there is no statutory basis for conciliation, though its reference is very much present within the Act itself. Referred to as one of the provisions, conciliation is a method outside the courts and based on self-determination. It is flexible and allows the



parties to agree upon suitable methods of procedure to become binding. Conciliation process in India may have served as an address to the large number of pending cases in courts needing mandatory alternative dispute resolution. However, its non-binding nature can present a problem also because it can make the parties go back to litigation.

Litigation remains the dominant means of resolving disputes in many jurisdictions when the parties are looking for binding and enforceable results. Galanter's (1983) study on the Indian judicial system pinpointed the contribution of litigation to the setting up of legal precedents and sustenance of justice in intricate cases wherein imbalances of power could cast doubt on the impropriety of fair ADR approaches such as conciliation. He contended that litigation was necessary to protect people's legal entitlements and to create a jurisprudential edifice to inform other cases for future decision-making.

As brought out by Hodges (2009), "Litigation plays a very important role in ensuring accountability and public transparency, especially in cases of public interest disputes." Although conciliation may carry a veil of secrecy, the shining bus of litigation cruises with open processes of legal proceedings; this is key in ensuring powerful entities are held accountable. According to Hodges, through litigation, the acting party can get the necessary reliefs that had earlier provided the good faith during conciliation.

Litigation is still one of the most important avenues of dispute resolution, more particularly in constitutional matters or criminal issues or a case of public interest litigations. Madhavan (2018) noted that the delays and the backlog in Indian judiciary are increasingly making the litigation process time-consuming and expensive. Advocates aside, he also established that litigation seems to be the preferred course in matters that need an authoritative pronouncement, especially concerning property disputes and criminal law, where binding precedents are vital.

In a related development, researchers have undertaken comparative studies to assess the relative trade-offs of opting for conciliation vis-à-vis litigation. Thus, Menkel-Meadow (2000) compared ADR processes, including conciliation, with litigation in terms of time, expense, and outcomes. According to her findings, though conciliation is generally quicker and more economical, it is inappropriate in some cases for very complex or highly adversarial disputes. Litigation is time-consuming but provides a final and enforceable decision that can set legal precedents.

Chodosh (1999) balanced his analysis by taking a worldwide perspective on conciliation and litigation, across different legal systems in the U.S., the U.K., and India. He found that though conciliation was flexible and fast, it was unutilized because it generally lacks the authority and enforceability that comes with litigation. To broaden the scope of conciliation, it was essential to completely eliminate the cultural concepts ingrained in legal systems. This posed a significant challenge, particularly for jurisdictions like India, where the court system is severely overloaded. Consequently, the cultural factors emerged as the primary hurdle.

Though conciliation has its advantages, it is easier said than done. According to Sivakumar (2016), one of the major worries about conciliation is that it may not be conducted on an equal footing, with one of the parties being allowed to dominate the other in the course of negotiations, more so in cases pitting big corporates against individual claimants. In this regard, litigation may offer a more level-playing field, with judicial oversight to see that there is some form of procedural fairness.

Also, the enforceability of conciliation agreements presents ongoing issues. Fry (2013) examined obstacles of the parties trying to enforce conciliation settlements, especially in international disputes. He argued that there should be more harmonization of laws to make certain that conciliation agreements are equally as binding and enforceable as court judgments.

In the Indian context, Pathak and Bhatia (2020) have pleaded for the betterment of conciliation services, especially in rural areas where formal litigation is most often out of the reach. They argued that such programs would bring both ‘institutional support’ and ‘legal awareness’ to conciliation and, in turn, may be one of the ways to reduce the case backlog in Indian courts while providing an easy way of dispute resolution to the common man and especially the marginalized at a low cost.

The examined literature underscores that both conciliation and litigation serve unique functions within contemporary legal systems. Conciliation offers a faster, cheaper, and more flexible way of resolving disputes - especially in civil and commercial matters. It may, however, be somewhat difficult because of its nonbinding nature and imbalances of power at times. On the other hand, through litigation - by obtaining binding judgments and legal precedents - justice is served, especially in complex cases.

The recent emphasis on ADR mechanisms particularly conciliation is a welcome trend in view of the overburdened judiciary in India. Yet, a balance has to be maintained between conciliation and litigation to see that the disputes are dealt with in an effective and just manner. There is scope for further research into the future of dispute resolution systems in emerging ADR practices within the shadow of formal legal systems and enforceability of the conciliation agreements.

## 9. Conciliation and litigation in India:

Conciliation and litigation both function in India within the four corners of the legal framework. Where, however, litigation still remains the mainstream mechanism for dispute resolution, conciliation has been assuming greater importance in recent years since the coming into force of the Legal Services Authorities Act in 1987 and later on in 1996 of the Arbitration and Conciliation Act.

### a. Challenges in Indian Litigation:

The judicial system of India is heavily burdened with an enormous backlog of cases, resulting in immense delays. By 2023, millions of pending cases in Indian courts clearly indicate the inefficiencies of the litigation system. Consistency in the velocity of litigation has made conciliation and other ADR options look attractive.

**b. Promotion of ADR in India:** The Indian Government has been actively promoting the use of ADR, including conciliation, as a means of relieving the burden on the regular courts. With the introduction of Lok Adalats (people’s courts) working for the resolution of disputes by way of conciliation, it can be said that there is a significant step taken to promote ADR. Yet, family courts, commercial courts, and labour tribunals all encourage conciliation in the settlement of disputes without a story of long litigation.

**c. Cultural and Social Context:** In India, conciliation clicks with the cultural preference for amicable resolutions and community-oriented conflict resolution. Traditional Indian society valued negotiated settlements more than going for formal legal disputes. It is this cultural affinity to conciliation that has provided ADR mechanisms with a conducive environment for growth in India.

## 10. Conciliation and Litigation in Global Perspective:

There is the fast-growing global utilization of ADR methods like conciliation, especially in jurisdictions where litigation is expensive and drawn out.

### a. Conciliation in International Commercial Disputes:

Within the sphere of international commercial disputes, conciliation provides an opportunity for resolving conflicts that cross national borders without the complexities of varying legal systems. Most multinational companies choose conciliation over litigation to avoid costs and uncertainty in foreign legal systems.

**b. The Role of Arbitration and Mediation:** Arbitration and mediation are more prevalent in the West than conciliation. But conciliation remains important in various contexts. For example, in European labour disputes, conciliation often comes after litigation or arbitration has been initiated. It provides an opportunity for contrast and compromise.

Litigation in Developed Legal Systems is still an integral avenue toward resolving disputes, more so when it involves intellectual property, regulatory compliance, or criminal justice issues. Case in point, however, the legal systems in a number of developed countries are plagued by issues - for instance, exorbitant costs and inordinate delays - as a consequence, they have seen a surge in the acceptance of ADR alternatives.

#### **Conciliation or Litigation: Which should be preferred:**

Conciliation and litigation present valuable options for dispute resolution, each with its own set of advantages and challenges. Conciliation is often preferred in situations where maintaining relationships is crucial, such as in family or business conflicts. This method focuses on reaching mutual agreements, allowing parties to find resolutions in a less adversarial and more flexible environment. Generally, conciliation tends to be quicker, more cost-effective, and less emotionally taxing compared to litigation. Additionally, it promotes confidentiality and encourages win-win outcomes, which can help preserve personal or business relationships.

On the other hand, litigation plays a vital role when a legally binding resolution is necessary, particularly in cases involving serious legal violations or rights infringements where established precedents, formal evidence, and judicial authority are essential. It ensures that justice is served through a structured legal framework, which can be especially important in instances of power imbalances or when negotiations fail. Worldwide, including in India, conciliation is increasingly favoured due to its efficiency and its capacity to alleviate court backlogs. Nevertheless, litigation remains critical for complex, high-stakes matters that require formal adjudication. Therefore, the choice between conciliation and litigation is influenced by the nature of the dispute, the objectives of the parties involved, and the broader legal implications at hand.

#### **11. Supreme Court of India Court Judgments:**

In India, several laws encourage conciliation, such as the Arbitration and Conciliation Act of 1996, which establishes a foundation for resolving disputes amicably, and Section 89 of the Civil Procedure Code of 1908, which requires courts to promote conciliation in civil matters. Additionally, the Industrial Disputes Act of 1947 advocates for conciliation in labour conflicts. The Supreme Court of India regularly supports conciliation through significant judgments, reducing the strain of litigation and promoting harmonious resolutions.

In the case of **ONGC Ltd. v. Petroleum Coal Labor Union (2015)**, the Supreme Court emphasized that industrial disputes ought to be settled through conciliation prior to initiating litigation. The court underscored the significance of conciliation as the favoured approach for resolving conflicts between employers and employees, which facilitates faster and more amicable settlements.

In the case of **B.S. Krishnamurthy v. B.S. Nagaraj (2010)**, the Supreme Court highlighted the significance of conciliation and mediation in addressing matrimonial issues, particularly in divorce matters. The court recognized that these disputes, which are tied to delicate relationships, are ideally suited for amicable resolutions through conciliation, fostering peaceful and harmonious outcomes.

In the case of **M/s Sukanya Holdings Pvt. Ltd. v. Jayesh H. Pandya and Anr. (2003)**, the Supreme Court ruled that participation in conciliation under the Arbitration and Conciliation Act is voluntary, and

parties should not be forced to take part. Nevertheless, courts may endorse the conciliation process, acknowledging its significance in minimizing litigation and fostering amicable solutions.

In the case of **K. Srinivas Rao v. D.A. Deepa (2013)**, the Supreme Court highlighted the importance of conciliation and mediation in matrimonial disputes, such as those involving divorce and maintenance. The court encouraged the parties to prioritize reconciliation or conciliation, underscoring that judicial intervention should only be considered after all other options have been exhausted in family issues.

In **Salem Advocate Bar Association v. Union of India (2005)**, the Supreme Court affirmed the validity of Section 89 of the Civil Procedure Code, highlighting the significance of out-of-court settlements via conciliation and alternative dispute resolution. The court urged judges to refer cases for conciliation to alleviate court congestion.

In the case of **Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (2010)**, the Supreme Court clarified Section 89 of the CPC, underscoring conciliation as an effective method for resolving disputes. The Court noted that it is applicable to commercial, family, and civil matters, but not to criminal or intricate statutory cases.

In the case of **Sushil Kumar Sharma v. Union of India (2005)**, the Supreme Court underscored the significance of conciliation in addressing domestic violence and matrimonial conflicts, aiming to minimize the distress experienced by all parties involved. The ruling stressed the value of amicable resolutions, advocating for reconciliation instead of extended legal battles in these delicate situations.

## 12. Conclusion:

Conciliation and litigation are intertwined components of the dispute resolution spectrum, despite their distinct processes and outcomes. Each method possesses unique advantages and disadvantages, and their efficacy largely depends on the particular circumstances of the dispute, the parties involved, and the desired results. In India, conciliation is increasingly recognized as a valuable alternative to litigation, helping to ease the strain on an already overloaded judicial system. Globally, conciliation serves as a supplementary mechanism to litigation, offering a more flexible, cost-effective, and private means of resolving disputes. However, because conciliation is non-binding and may give rise to power imbalances, litigation remains crucial in cases requiring conclusive and enforceable solutions. The future of dispute resolution will be shaped by the ability to strike a balance between conciliation and litigation, ensuring that justice is accessible, effective, and fair for all parties involved.

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