
Dispute Resolution or Procedural Labyrinth? Revisiting the NHAI Conciliation Mechanism

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Introduction

The National Highways Authority of India ("NHAI"), as the central agency leading the development of road infrastructure in India, has a history of numerous disputes resulting from complex concession and engineering contracts. These controversies, often involving significant claims, have frequently led to prolonged arbitration or litigation, placing substantial strain on the interested parties in fiscal and administrative terms. In a significant institutional response, NHAI has, since 2017, introduced a formal system for conciliation and settlement to reduce this litigious trend and promote quicker resolution of contractual disputes.

This article explores the origin, structural development, and operational outlines of the NHAI conciliation mechanism, leading to the issuance of the Standard Operating Procedures (SOPs) last amended in June 2025. It also discusses the legal requirements in Articles 26, 38, and 44 of the Standard Concession Agreements and evaluates the procedural design in terms of efficiency, transparency, and enforceability. The article concludes with a critical assessment of the system's empirical performance and its broader implications for resolving disputes between the NHAI and private parties in the Indian infrastructure sector.

Origin and Statutory Roots

The official conciliation structure of the NHAI is based on Policy Circular No. 2.1.23/2017, dated 2 June 2017, which established the Conciliation Committees of Independent Experts ("CCIEs"). These committees were developed in response to the growing backlog of arbitration and court proceedings, with claims at the time exceeding INR 38,000 crore (INR 380,000 million). The policy aims to provide a credible, statutorily recognised, and time-bound alternative dispute resolution mechanism under public contracts. The process is conducted under Part III of the Arbitration and Conciliation Act 1996, as amended.

In accordance with the above framework, panels of eminent former judges, high-level bureaucrats, and technical experts were informed to establish two standing committees. The mechanism was further legitimised by the directives of the Cabinet Committee on Economic Affairs concerning the revival of the construction sector and the subsequent Office Memoranda issued by the NITI Aayog. The initial 2017 guidelines permitted resort to CCIEs either before or after the commencement of arbitration, and even when the matter was already before the Courts, provided the parties agreed to keep such proceedings in abeyance.

Structural Refinement and Introduction of DRBs

One of the major turning points of the conciliation environment was the inclusion of Dispute Resolution Boards ("DRBs") into the contractual system after September 2020. Under the standard concession agreements governing Hybrid Annuity Model

(HAM) and Build-Operate-Transfer (BOT) (Toll) projects, as well as Engineering, Procurement and Construction (EPC) contracts, Articles 26, 38, and 44 establish a structured, multi-tier dispute resolution process. These provisions assign the DRB as the first mandatory forum for resolving contractual disputes. Only if the DRB fails to resolve the dispute, or if either party is dissatisfied with its decision, may the matter be referred for conciliation before the CCIE. Resort to arbitration is explicitly conditioned on the exhaustion of these preceding steps, thereby reinforcing a sequential progression from informal resolution to formal adjudication.

Although this was an organised hierarchy, the early experience showed inefficiencies in the procedures, such as multiplicity of claims, uneven documentation and delays in processing. Such gaps led to the issuance of new SOPs under Policy Circulars No. 2.1.80/2025 and 2.1.81/2025 dated 13 and 24 February 2025 respectively. The updated protocols separated the management of DRB-recommended claims and general claims and added tight deadlines at every step of the referral, examination and CCIE allocation process.

Party Engagement and Process Architecture

The conciliation process is initiated when a contractor or concessionaire submits a written request after either the conclusion of DRB proceedings or unsuccessful pre-DRB discussions with the NHA Chairperson. Once a request is accepted, the Contract Management Division ("CMD") will serve as the central coordinating body, responsible for gathering documentation, clarifying issues, and preparing the case for referral to a CCIE. The conciliation reference requires the agreement of the opposing party, which is regarded as consent to the appointment of the specific committee under Sections 63 and 64 of the Arbitration and Conciliation Act 1996 ("the Act").

Each CCIE comprises three professionals chosen from a notified panel of retired judges, civil servants, finance specialists, and technical experts. The committees are granted procedural independence but are expected to complete conciliation within five sittings over six months. The process focuses on accommodation and compromise between the parties, rather than adversarial submissions or legal pleadings. A well-reasoned recommendation constitutes the end of the proceedings record. When both parties agree, this recommendation forms the basis of a formal settlement agreement, which has the same enforceability as an arbitral award under Section 73 of the Act.

To ensure administrative control and financial prudence, any settlements proposed by CCIEs are submitted to the Executive Committee or Board of NHA for approval, depending on the financial magnitude of the settlement. Once approved, the CMD is responsible for implementing the settlement, such as releasing payments and withdrawing pending proceedings. At each meeting, a standing item is presented to the NHA Board listing all conciliation outcomes by dispute amount, settlement value, and settlement level.

Policy Reinforcement and Corrective Measures

Although the mechanism was generally successful, the misuse of the process led to further improvements. It was noted that certain contractors tried to bypass DRB

procedures by directly appealing to conciliation. In response, NHAI issued Policy Circular No. 2.1.84/2025, dated 12 June 2025, clearly stating that no conciliation request was to be considered unless DRB proceedings had been completed or the DRB had failed to resolve the issue. This clarification reaffirmed the hierarchical nature of the dispute resolution process and aimed to uphold its integrity.

In addition, to make logistics more efficient and minimise delays, the SOPs required the applicant contractor to deposit a nominal fee and provided standard templates for statements of claims, DRB decisions, and evidence submission. Cases that were based on DRB recommendations were given a prioritised track. These are part of a more mature institutional response, to strike a balance between access to conciliation and protection against its over-use.

A Procedural Labyrinth: Critical Considerations on the Newest Circular

The introduction of Policy Circular No. 2.1.84/2025, dated 12 June 2025, appears to have been enacted to enhance the enforcement of procedures by preventing access to conciliation unless the DRB process has been completed or clearly shown to have failed. While this directive may have been motivated by good intentions, it serves as a concerning example of overcomplicating the process. The parties are now required to go through three stages before arbitration can be pursued: mediation by the Authority Engineer or Independent Engineer, adjudication by the DRB, and finally, conciliation by the CCIE mechanism.

This kind of layering, intended to promote amicable settlement, raises concerns regarding efficiency and coherence. The necessity of both mediation and conciliation is particularly problematic, especially since conciliation has already been incorporated into the broader statutory framework of the Mediation Act 2023. Under this new legal regime, conciliation is no longer regarded as a separate category. Therefore, maintaining both mediation and conciliation in the dispute resolution process constitutes an unnecessary duplication, and no clear benefit in terms of procedural clarity or predictability of outcomes can be demonstrated.

Furthermore, the absence of binding deadlines for completing these pre-arbitral processes undermines the very purpose of achieving a prompt resolution of disputes. Delay is not merely a procedural inconvenience in large-scale infrastructure contracts; it constitutes a commercial liability. Although multi-tiered mechanisms can be well organised on paper, they risk becoming counterproductive unless properly coordinated. It is clear that there is a need to streamline the stages instead of expanding them. When aiming for procedural perfection, the right to access effective and swift justice should not be compromised in the process.

Conclusion

The NHAI conciliation system marks a significant advancement in dispute resolution within the government sector. Since its introduction in 2017, the model has demonstrated institutional maturity as well as measurable outcomes. According to official records, NHAI resolved 60 cases in the FY 2021-22, with a total expenditure of INR 4,076 crore (INR 40,760 million) against claims amounting to INR 14,590 crores (INR 145,900 million). Of the 251 referred cases, 155 have been successfully settled by CCIEs, with settlements totalling INR 13,067 crore (INR

130,670 million). These figures highlight the model's effectiveness in reducing liability exposure and speeding up project implementation by diverting claims from traditional arbitration and litigation channels.

However, with system development, there is an increasing concern to critically assess whether the procedural architecture of the system still serves its purpose. Although the 12 June 2025 circular aims to strengthen discipline, it appears to introduce unnecessary complexity by requiring mediation, DRB adjudication, and CCIE conciliation to be completed sequentially before arbitration. The lack of specific time frames and the redundant mechanisms provided by the Mediation Act and the Arbitration Act threaten to undermine the efficiency the model was meant to achieve.

Ultimately, the effectiveness of any dispute resolution method lies not in how many procedural layers it can support but in how quickly, fairly, and reliably it can be resolved for the parties involved. The work undertaken by NHAI has established a credible foundation. The next step should focus on consolidation and simplification. An effective system that is legally consistent and contractually harmonious, while also being sensitive to the commercial realities of infrastructure implementation, is what is needed.

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