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Mediation as an Effective Alternative Dispute Resolution Mechanism in India: A Legal and Empirical Study

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Abstract: The Indian judicial system is currently grappling with a profound crisis characterized by an overwhelming backlog of cases and prolonged litigation periods, often rendering the pursuit of justice a functional impossibility for the marginalized. This study evaluates the role of mediation as a pivotal Alternative Dispute Resolution (ADR) mechanism within the Indian legal landscape. Utilizing a mixed-methodological approach—combining doctrinal analysis of the current legal framework (including the Arbitration and Conciliation Act, 1996, and Section 89 of the Code of Civil Procedure) with empirical field observations—the research explores the effectiveness of mediation in delivering accessible, cost-effective, and harmonious justice. The findings indicate that while mediation offers significant advantages in terms of preserving interpersonal relationships and reducing the burden on the judiciary, its full potential is hindered by several systemic challenges. These include a lack of public awareness, a shortage of standardized training for mediators, and the absence of a consolidated legislative framework for the enforcement of mediated settlements. The study concludes that for mediation to truly transform the Indian legal system, there is a dire need for robust institutional support, enhanced legal awareness, and a unified statutory mandate to ensure that "access to justice" moves from a theoretical ideal to a practical reality.

Keywords: Mediation, Alternative Dispute Resolution (ADR), Indian Judiciary, Legal Reform, Access to Justice, Section 89 CPC.

INTRODUCTION

A major problem in today's judicial system is the ever-increasing backlog of cases. Cases remain pending in courts for years, significantly delaying justice. In such a situation, there is a need for an alternative to the traditional judicial system that can provide people with quick and satisfactory solutions without compromising the principles of equality, justice, and good conscience. This need makes the concept of Alternative Dispute Resolution (ADR) important.

The objective of ADR is to provide quick, accessible, and equitable solutions. The traditional court process is often lengthy, complex, and expensive. The saying "Justice delayed is justice denied" is still relevant

today. When a person has to wait for years for their rights, the true meaning of justice is diluted. Therefore, ADR is a practical means that can save time and deliver effective justice. In a welfare state like India, the concept of social justice is crucial. A large population here is economically weak, deprived, and marginalized. For such people, simply accessing court is a challenge, as the costs of litigation, lawyers' fees, and lengthy procedures are beyond their means. In this context, ADR offers a ray of hope. It is a less expensive, less formal, and relatively simple method, allowing even ordinary people to participate in the justice process.

ADR not only reduces costs but also allows disputes to be resolved without acrimony. In traditional

litigation, both parties face off against each other, attempting to prove their point through arguments and evidence. This often leads to strained relationships. In contrast, ADR methods—such as mediation and arbitration—are based on cooperation and compromise. The emphasis is on finding solutions, not on judging who is right or wrong. The true meaning of "access to justice" is that individuals become active participants in the judicial process, not mere spectators. When individuals participate in resolving their own problems, the outcome is more acceptable and sustainable. As society has evolved and become more complex, the nature of disputes has also become more complex. Therefore, the methods of accessing justice must be timely and flexible.

Mediation, an important form of ADR, is based on amicable resolution. In this, a neutral third party (mediator) facilitates dialogue between the two parties. They neither rule in favor of nor punish anyone, but instead help resolve disputes through mutual understanding and consensus. The key characteristics of this process are confidentiality, impartiality, and flexibility.

Thus, alternative dispute resolution is not merely an alternative to courts, but a sensitive and constructive system that provides justice while maintaining social harmony. It makes justice accessible, affordable, and meaningful to the common people, thereby achieving the true objective of justice—social balance and equality.

Description of Problems:

The challenges facing the current judicial system can be summarized as follows:

I. Growing Awareness of Rights

Increasing education and literacy rates have increased public awareness of their rights. The common citizen has become more conscious, aware, and active about their legal and constitutional rights. As a result, whenever their rights are violated, they seek recourse to the courts. This has led to a rapid increase in the number of cases in the courts.

II. Overburdened Judiciary

We are dealing with a judicial system that is already overburdened. Millions of cases are pending in various courts. This makes it practically impossible to expect speedy justice. Delays in justice also impact public confidence.

Objectives of the Study:

The main objectives of this study are:

1. To study the level of awareness about mediation among the general public.
2. To analyze the effectiveness of mediation.
3. To determine whether mediation is truly successful

in resolving disputes.

Although mediation is playing an active role as a form of alternative dispute resolution (ADR), it is still important to understand the public's awareness of this process.

Research Method & Field Study

This study was primarily theoretical and doctrinal with empirical research is essential to understand the actual effectiveness of mediation.

Mediation is a complex process involving a variety of relationships and processes between various parties. Direct experience and observation are essential to understand all these aspects. Therefore, a field study was conducted.

It is clear that the increasing burden on the judicial system, the lack of judicial resources, and growing awareness have increased the need for alternative dispute resolution, especially mediation. If implemented properly and public awareness is raised, it can make justice more accessible, affordable, and effective.

Legal Provisions for ADR and Development of Mediation in India

The concept of arbitration in India has evolved over time and today it is governed and operated by several statutes, rules and judicial guidelines.

The legal architecture for Alternative Dispute Resolution (ADR) is primarily anchored in the Code of Civil Procedure (CPC) and supplemented by specialized acts.

1. Code of Civil Procedure (CPC), 1908

- **Section 89:** This is the "soul" of ADR in India. It empowers the court to refer a dispute to any of the five ADR methods if it appears that there are elements of a settlement.
 - **Methods recognized:** Arbitration, Conciliation, Judicial Settlement (including Lok Adalat), and Mediation.
- **Order X (Rules 1A, 1B, 1C):** These rules prescribe the procedure for the court to direct parties to opt for an ADR method after the "admission and denial" stage of the trial.
- **Order XXXII-A:** Focuses on the settlement of family-related disputes, mandating the court to make every effort to assist parties in arriving at a settlement.

2. The Mediation Act, 2023

- **Purpose:** The first standalone legislation dedicated to mediation in India.
- It provides for pre-litigation mediation in civil or commercial disputes and gives

mediated settlement agreements the same status as a court decree (Section 27).

3. Arbitration and Conciliation Act, 1996

- **Part III (Sections 61–81):** Governs the process of Conciliation, where a neutral third party (conciliator) assists parties in reaching an agreement.

- **Section 30:** Encourages arbitrators to use mediation or conciliation during arbitral proceedings to encourage settlement.

4. Legal Services Authorities Act, 1987

- **Sections 19–22:** Provides the statutory basis for Lok Adalats (People’s Courts). Decisions made here are final and binding, with no provision for appeal.

Significant Law Commission Reports

The Law Commission of India has been instrumental in recommending ADR to solve the "judicial lag" and case pendency.

Report No.	Year	Focus & Recommendations
76th Report	1978	First major review of the Arbitration Act, emphasizing the need for structured out-of-court settlements.
129th Report	1988	Specifically recommended Urban Litigation-Mediation as an alternative to adjudication to reduce the burden on civil courts.
222nd Report	2009	Titled " <i>Need for Justice-dispensation through ADR etc.</i> " It emphasized that ADR is a constitutional necessity under Article 39A (Free Legal Aid).
238th Report	2011	Recommended amendments to Section 89 of the CPC to remove ambiguities and streamline the referral process.
246th Report	2014	Focused on amendments to the Arbitration and Conciliation Act to make India a hub for international commercial arbitration.

Constitutional & Judicial References

- **Article 39A (Constitution of India):** Mandates the State to ensure that the legal system promotes justice on the basis of equal opportunity and provides free legal aid.
- **Leading Case Law:** *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd. (2010)*. In this landmark judgment, the Supreme Court clarified the "mix-up" in Section 89 and provided a list of cases suitable vs. unsuitable for ADR.

The Arbitration and Conciliation Act, 1996 was originally enacted for arbitration and conciliation. It was later amended to include provisions relating to arbitration. After the 2019 amendment, the Act became an important statutory basis for arbitration in India. Under Section 12A of the Act, the parties involved in the dispute can be referred to arbitration and the terms of the agreement reached through arbitration under Section 44 (2) can be enforced.

The Arbitration and Conciliation Rules, 2014 were enacted by the Ministry of Law and Justice, Government of India in the year 2014 with the objective of establishing a uniform framework for conduct of arbitration proceedings throughout the country.

Rule 3	The process of selecting a mediator
Rule 9	Procedure to be followed during mediation proceedings
Rule 10	The Process of Preparing a Settlement Agreement
Rule 14	Mediation ensures complete confidentiality of the proceedings.

According to the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015, it is mandatory for parties in a commercial dispute to attempt mediation before filing a suit in the court.

- Section 12A: Provision for referring the dispute to arbitration
- Section 12B: Provision for enforcing the agreement reached through arbitration by recording it as a decree of the court¹.

The Code of Civil Procedure, 1908 (CPC) provides for court-annexed mediation in civil disputes. Section 89²: Provision to refer dispute to methods of Alternative Dispute Resolution (ADR) including arbitration. Rule 1A of

¹ The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015: <https://www.indiacode.nic.in>

² The Code of Civil Procedure, 1908: <https://www.indiacode.nic.in,THE-CODEOF-CIVIL-PROCEDURE-1908.pdf>

Order X: Arrangements relating to the process of mediation.

Mediation and Conciliation Project Committee (MCPC) The Mediation and Conciliation Project Committee (MCPC) was set up by the Supreme Court of India in 2003 to promote Alternative Dispute Resolution (ADR). This committee developed training programmers’ and guidelines for mediators³.

Development of Judicial Guidelines

In 2005, in Salem Advocate Bar Association, Tamil Nadu v. Union of India⁴, the Supreme Court issued preliminary guidelines for the conduct of arbitration in India. In the case of Falcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd. in 2017⁵, these guidelines were updated to be more comprehensive, making the process of arbitration clear and effective.

Amendment of 2015 (Arbitration and Conciliation Act, 1996) through this amendment, it was allowed to refer disputes to arbitration before the commencement of arbitration proceedings.

Section 24: Provision for adjournment of arbitral proceedings during mediation
 Section 29A: Specifies the time limit for arbitration.
 The amended Act recognizes an agreement reached through arbitration as an arbitral award and provides for its enforcement.

How is mediation different from other alternative dispute resolution (ADR) methods?⁶⁷

Mediation is a key method of alternative dispute resolution (ADR) in which an impartial third party-called a mediator-assists parties to a dispute in reaching a mutually agreed solution. The following points illustrate how mediation differs from other ADR methods:

Mediation is voluntary:	Unlike other ADR methods, such as arbitration or court-referred conciliation, mediation is a completely voluntary process. Parties to a dispute are under no legal compulsion to participate and can withdraw from the process at any time.
Mediation is facilitative in nature:	The mediator's role is simply to facilitate dialogue and help the parties identify their objectives, needs, and concerns. The mediator does not make a decision or impose a solution, but rather guides the parties to reach a mutually acceptable solution.
Mediation is informal:	Mediation takes place in a more informal environment than other ADR processes. It can take place in a meeting room, office, or even online. It does not require adherence to strict rules regarding procedure or evidence.
Mediation is flexible:	The mediation process can be tailored to the specific needs of the parties. The mediator encourages positive dialogue by using various techniques—such as joint sessions or separate meetings
Mediation is confidential:	Unlike court proceedings, mediation is a private process. Except where required by law, the parties agree that any information revealed during the mediation will not be made public.

*(SOURCE: ADITYA KRANTI: THE EFFECTIVENESS OF MEDIATION AS A DISPUTE RESOLUTION IN INDIA, CHANAKYA LAW REVIEW (CLR) VOL. IV (ISSUE 01) JAN-JUNE 2023, pp. 69-85)

Different Stages of Mediation:

- I. Opening Statement: The mediator declares their appointment, impartiality, and lack of any interest in the dispute.
- II. Joint Session: Both parties present their arguments without interruption. The mediator encourages dialogue and maintains discipline.

³ The Mediation and Conciliation Project Committee: <http://www.mcpcindia.org/>

⁴ AIR 2005 SC 3356

⁵ AIR 2010 SC 3236

⁶ Lempert, Lauren B., et al. Alternative Dispute Resolution: A Conflict Diagnosis Approach. Wolters Kluwer Law & Business, 2010.

⁷ American Bar Association. “What is Mediation?” 2022, https://www.americanbar.org/groups/dispute_resolution/resources/DisputeResolutionProcesses/mediation/.

- III. Separate Session: The mediator speaks with each party separately to understand the depth of the dispute and discuss the strengths and weaknesses of their positions.
- IV. Closing: The mediator clarifies the issues, develops resolution options, and uses "reality check" techniques when necessary.

What are the advantages of mediation over litigation in India?

A neutral third party mediates dialogue and communication between parties to resolve issues. On the other hand, formal legal proceedings in a court of law are used to settle disagreements through litigation. In India, mediation has several advantages over litigation, some of which are:

Time and cost-effectiveness: Compared to litigation, mediation is generally characterized by lower time and cost expenditures. The mediation process is relatively short, ranging from a few days to a few weeks. In contrast, litigation can be a lengthy process, taking months or even years to reach a resolution. Furthermore, it is worth noting that the costs associated with mediation are significantly lower than those of litigation.

Confidentiality: Since mediation is a confidential process, the specifics of the case and the approach adopted to address it should not be disclosed to any party, including those who participated in the process. In contrast, litigation is a publicly accessible process through which the public at large is aware of both the substance of the dispute and the final decision. The mediation process is attractive to parties who wish to maintain confidentiality regarding specific sessions and decide on the outcome of the mediation at their convenience. In contrast, litigation is a rigid process that follows a set of rules and procedures, and the parties have less control over the outcome⁸.

Preserves Relationships: Mediation is a recommended course of action in situations where the parties involved share a long-standing relationship, such as business partners or family members, and aim to preserve their relationship after the conflict is resolved. In contrast to the adversarial nature of litigation, mediation offers a more amicable approach that facilitates the preservation of a positive relationship between the parties involved. Mediated settlements are more likely to be enforced. This is because the parties have voluntarily agreed to the terms of the agreement. In contrast, enforcing court decisions is challenging, especially in cases where the non-prevailing party refuses to comply. The Indian judiciary has recognized the advantages of mediation over litigation and has actively promoted the use of mediation as a dispute resolution mechanism. In the case of *Afcons Infrastructure Limited v. Cherian Varkey Construction Company (P) Limited*, the Supreme Court of India opined that mediation is a method of amicable resolution of conflicts through negotiation, facilitated by an impartial third party, and is a viable alternative to litigation.

Classification of Mediation (Diagrammatic Representation)



Lack of Judicial Infrastructure

⁸ 'Supreme Court of India, Mediation and Conciliation Project Committee (MCPC), Guidelines for Mediators, 2006'

- I. The number of judges, the number of courts, and the availability of judicial staff in the country are inadequate.
- II. The Law Commission of India, in its 120th Report (1988), recommended that the number of judges per million population in India should be increased from 10.5 to at least 50.
- III. The right to speedy justice cannot be fully ensured unless there is adequate and effective appointment of judges.

Limitations and Challenges of Mediation in India and Their Impact on Effectiveness:

Mediation is a major method of alternative dispute resolution (ADR) that has gained significant attention in India in recent years. This is primarily because it has the potential to reduce the burden of excessive litigation on the Indian judicial system. This is why mediation is gaining popularity in India. However, despite its potential benefits, several obstacles and limitations exist in the implementation of mediation in India, significantly reducing its effectiveness. The major limitations and challenges affecting the effectiveness of mediation in India are as follows:

(a) Lack of awareness and acceptance:

Due to lack of awareness about mediation, people approach the courts directly for dispute resolution rather than opting for mediation. As a result, the demand for mediation services in the country remains limited, making it difficult for mediators to sustain their practice. Furthermore, the current legal framework lacks adequate incentives to encourage parties to choose mediation. Although court-anchored mediation was introduced through the Code of Civil Procedure (Amendment) Act, 2002, the concept of mediation remains unfamiliar to a large segment of the population. Many individuals still prefer the traditional judicial system. This lack of awareness and acceptance of mediation impacts its effectiveness.

(b) Limited Participation:

Mediation in India is often limited to certain types of cases, such as family, commercial, and labor disputes. Furthermore, the reluctance of many parties to participate in the process limits their participation.

(c) Lack of Trained Mediators:

India currently faces a severe shortage of skilled and experienced mediators. A mediator's competence and practical experience play a crucial role in determining the quality of mediation services. However, not only is there shortages of trained mediators in India, but their training and certification standards are also not uniform. These factors result in the quality of mediation services falling short of their potential. Furthermore, the lack of legal

background among many mediators in India makes it challenging to understand and resolve complex legal issues.

(d) Lack of Confidentiality:

The principle of confidentiality is not strictly followed in the mediation process in India. Although mediation sessions are confidential, agreements reached during these sessions are not privileged and can be presented as evidence in judicial proceedings.

(e) Inadequate Legal Framework:

There is no uniform or consolidated legal framework or single governing act for mediation in India. The legal system is in a state of constant evolution. The lack of a uniform legal framework can lead to confusion and ambiguity during the mediation process.

(f) Enforceability of Agreements Arrived Through Mediation:

This poses a serious challenge to mediation. Unlike court decisions, mediation results are not automatically enforceable. Often, parties must revisit the courts to enforce their agreements, which can be both time-consuming and financially burdensome. Furthermore, there is no unified legal framework in India for the recognition and enforcement of mediated agreements, leading to uncertainty and ambiguity on this subject.

(g) Cultural and Social Factors:

India's diverse cultural and social structure including numerous languages, religious traditions, and cultural practices poses a significant challenge to mediation. It becomes difficult for mediators to understand these cultural and social nuances and resolve disputes. Furthermore, due to the prevailing social hierarchy in India, parties often feel uncomfortable expressing themselves openly, which can impact the effectiveness of the mediation process.

Conclusion

In recent years, mediation has gained increasing popularity in India as an effective and useful alternative dispute resolution method. This process offers numerous benefits to all parties involved in a dispute. Mediation is gaining widespread acceptance in India due to its low cost, speedy resolution, flexibility, informal nature, and collaborative problem-solving approach. This is primarily due to the high backlog of cases in Indian courts. The primary objective of this research is to evaluate the effectiveness of mediation as a dispute resolution tool in India. A key advantage of mediation is its cost-effectiveness. Judicial disputes in India can be a significant financial burden, while mediation offers a more affordable alternative to litigation. The process is relatively simple and less formal, and mediator fees

are typically lower than lawyers' fees. As a result, parties can significantly reduce court appearances, litigation costs, and other legal expenses. Furthermore, mediation is also more time-efficient. While court proceedings can drag on for weeks, months, or even years, mediation allows for a relatively short dispute resolution. In most cases, mediation enables parties to reach a consensus quickly.

The flexibility and informality of mediation are also significant advantages. Unlike the rigid procedures and formal rules of litigation, mediation provides a platform where parties can communicate openly and consider various possible solutions. The mediator encourages dialogue, facilitates constructive discussion, and helps parties find innovative solutions that would not be possible within the traditional court process. Furthermore, in mediation, parties reach a solution through negotiation rather than relying on a court decision. Mediation also provides parties with greater autonomy and active participation. In this process, the parties have a major role in determining the outcome of the dispute. In contrast, in a court dispute, the decision is primarily made by a judge, with the parties' role being limited. The mediator establishes a dialogue between the parties and encourages them to express their expectations, concerns, and objectives, leading to a mutually agreed solution. Such solutions are often more satisfactory and long-lasting. Another important benefit of mediation is that it strengthens interpersonal relationships. This process, based on cooperation and mutual respect, improves communication and enhances mutual understanding. Parties can jointly find a solution that best suits their needs and interests. This is particularly useful in cases where continued cooperation or relationships are essential in the future, such as commercial disputes or family disputes.

However, despite the many benefits of mediation, it also has some limitations. A major challenge facing mediation in India is the lack of awareness and trust. Many people are still unaware of the benefits of mediation or doubt the impartiality of the mediator and the effectiveness of the process. Furthermore, although mediation is considered a voluntary process, some parties still prefer to refuse to participate and seek a court decision. Another limitation is the lack of a clear and robust legal framework regarding the enforcement of agreements reached during mediation. Although the Arbitration and Conciliation Rules, 2004, provide a framework for the mediation process, parties are not obligated to adhere to the terms agreed upon in mediation. If a party violates the agreement, it may lead to renewed disputes and potential court proceedings. Despite these challenges, mediation has emerged as a viable and effective dispute resolution option in India and has gained widespread acceptance in recent years.

Both the executive and judiciary have recognized its importance, and efforts are being made to resolve more cases through mediation. The provision for pre-institutional mediation in the Commercial Courts Act, 2015, has further strengthened the role of mediation in resolving commercial disputes. Furthermore, the Supreme Court has also supported its use in several important cases, encouraging mediation.

So, in conclusion, with proper awareness, strong legal framework and institutional support, mediation can play a crucial role in making access to justice in India simple, speedy and effective.

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