

---

# **MEDIATION AS AN ALTERNATIVE TO LITIGATION: AN ANALYSIS OF EFFICIENCY, COST AND ACCESS TO JUSTICE IN INDIA**

---

Disha Agarwal, LL.M., School of Law Justice & Governance, Gautam Buddha University, Greater Noida, U.P.

Dr. Rama Sharma, Assistant Professor, School of Law Justice & Governance, Gautam Buddha University, Greater Noida, U.P.

## **ABSTRACT**

Litigation has been the main way of settling disputes in the Indian justice delivery system. The increasing pendency of cases, delays in the process and the increasing litigation costs have posed serious challenges to the Indian judicial process. To meet these challenges, mediation has become an important form of Alternative Dispute Resolution (ADR) which offers an expedient, negotiated and inexpensive process for resolving disputes.

This paper critically examines mediation as an alternative to litigation in India and explores how well mediation works and the challenges that exist in implementing mediation in India.

The study adopts a comparative method to discuss the mediation and litigation under three principles of efficiency, cost and access to justice. It reflects the evolution of mediation in India, from the traditional and informal community-based system of resolving disputes to a legalized system of mediation.

The paper also discusses the statutory and institutional mechanisms and processes that facilitate mediation such as the Legal Services Authorities Act, 1987, court-annexed mediation centres and the recently enacted Mediation Act, 2023. The paper also reviews the role of the judiciary in creating an enabling environment for mediation, both by landmark judgments and policy changes.

The study concludes mediation can help to save judicial time, process quicker, save the relationship between the parties and equality of justice to the ordinary people. At the same time, it identifies certain factors which are getting in the way of general use of mediation, such as lack of awareness, inadequate infrastructure, inadequate supply of trained mediators and

continued use of litigation as the preferred method of dispute resolution.

The paper recommends Mediation and Litigation can be a tool to complement and balance each other in the justice delivery system in India and can provide the expeditious, affordable and effective justice in India. It has brought attention to the need for strengthening of the institutions, awareness and professional training of mediators and the effective implementation of the Mediation Act, 2023 so as to make Mediation more accessible, affordable and speedy, which is a part of the objective of accessible, affordable and speedy justice in India enshrined in the Constitution of India.

## INTRODUCTION

One of the core values of a democratic legal system is access to Justice. The traditional justice delivery system in India has been largely formalized litigation in courts. The pendency of cases, however, litigation costs and delays have brought serious questions into sharp focus with regard to the efficiency of the adversarial system. In this context, alternative dispute resolution processes have become important options to complement litigation and enable early resolution of disputes, including mediation.<sup>1</sup>

Litigation is a formal procedure for the resolution of disputes in courts of law, as regulated by court procedure laws like the Code of Civil Procedure, 1908 and Criminal Procedure Code, 1973. It is competitive and has a final decision maker who renders a judgement which is binding. Litigation provides legal certainty and enforceability, but can be criticized for being time consuming, costly, and “rigid” in procedure.<sup>2</sup>

The alternative dispute resolution (ADR) process of mediation, on the other hand, is a consensual and facilitative process in which a neutral party helps the parties to arrive at a mutually agreeable solution. Mediation is non-adversarial, flexible, confidential and party directed, as opposed to litigation. It focuses on a cooperative approach instead of confrontational, which helps avoid loss of relationship between parties, particularly in civil, commercial and family conflicts.<sup>3</sup>

Over the years the role of ADR mechanisms, including mediation, has been increasingly

---

<sup>1</sup> S.K. Chawla, *ADR in India: Theory and Practice* (LexisNexis, 2020).

<sup>2</sup> P.C. Rao & William Sheffield, *Alternative Dispute Resolution: What it is and How it Works in India* (Universal Law Publishing, 2002).

<sup>3</sup> Chitra Narayan, *Mediation: Policy and Practice* (OakBridge Publishing, 2021).

acknowledged by the Indian legal system, in a number of ways including through statutory provisions like Section 89 of the Code of Civil Procedure (CCP), 1908 and the establishment of institutional mechanisms such as court-annexed mediation centres. The judiciary has also actively engaged itself in encouraging mediation as a tool to alleviate the burden on courts and improve access to justice, manifested in judicial pronouncements and judicial policy reforms.<sup>4</sup>

Comparing mediation with litigation is keyed to efficiency, which is one of the parameters. Mediation could offer quicker dispute resolution, although litigation might involve the delay of several years due to procedural issues and backlog, as well as the chance of appeal. This saves time, not only for the judiciary, but also for the quicker restoration of the rights and obligations, and contributes to the overall effectiveness of the justice system. The cost is another significant aspect of the comparative study.

Litigation is an expensive process, and can be a costly way to resolve issues, particularly if it extends the length of the lawsuit significantly with the costs of court fees, attorneys' fees and other costs associated with long-term litigation. Compared with mediation, mediation is normally more affordable, with less of the formalities of a court process, and will shorten the time that it takes to resolve the dispute.

Thus mediation is especially significant for the economically weaker section in order to have accessible justice. The availability and effectiveness of dispute resolution mechanisms have a major impact on access to justice. Although litigation is a formal means of justice, it is not available to marginalized groups who frequently lack the funds and process to access litigation. Mediation is also a process which promotes access to justice because it is participatory, informal and less intimidating in nature and thus, consistent with the vision of Article 39A of the constitution which stipulates equal justice and free legal aid. The purpose of this doctrinal comparative study is to critically examine the efficiency, cost and access to justice issues of mediation and litigation in the Indian legal system.

It aims to assess the possibility of mediation as an alternative or parallel process to litigation in the quest for speedy and affordable justice as guaranteed by the constitution. The study also delves into the transformation of the role of ADR and its impact on the legal landscape in India over the years, and its impact on changing the landscape of legal justice.

---

<sup>4</sup> Prakash Babu, "Judicial Activism in Promoting ADR in India" (2020) *NUJS Law Review*.

## EVOLUTION OF THE CONCEPT OF MEDIATION IN INDIA

Mediation in India has changed a lot from being informal systems of resolving conflict in the village to a formal and legalised process of formal justice delivery. Past times, social conflicts were resolved between the elders of the community, panchayats and the norms of the society with the main emphasis on reconciliation and social harmony. The application of these indigenous systems was early examples of dispute settlement based on consensus, instead of adjudication. In the colonial era, courts became more formalized, and these informal methods were pushed aside, as adversarial litigation controlled over time.<sup>5</sup>

What springs to mind in India while considering the "contemporary" definition of mediation is strongly influenced by the international development of ADR (Alternative Dispute Resolution) techniques. There were a number of reasons that led to the development of ADR, such as the recognition of the inefficiencies of traditional litigation, including delays, costs, and inflexibility of the traditional litigation process. Mediation is one of the main elements of ADR which is founded on the idea that problems are better solved by the parties themselves, with the help of an impartial facilitator. This is different from the state's adjudicative process, and seeks to enhance participatory justice and autonomy.<sup>6</sup>

Consensual justice, which means that outcomes of mediation are based on consensus rather than imposed, is the basis of the mediation philosophy. Mediation is not adversarial like litigation and it emphasizes negotiation, collaboration and compromise. A change of paradigm in law from punishment to peaceful resolution of conflict. The mediator is not a decision maker but a facilitator of the communication to help the parties to a dispute see the common ground and agree to settle the dispute on a voluntary basis.<sup>7</sup>

It was with the beginning of India's constitutional acceptance of mediation in Article 39A which states that the State shall ensure equality of justice and free legal aid that the conceptual acceptance of mediation began to get formal recognition in India. This principle of justice opened the door to ponder other means to bring justice to the people and make it more easily available and less cumbersome. Realising the lack of resources in the traditional court system, the judiciary slowly started to approve mediation as a viable alternative to court proceedings,

---

<sup>5</sup> N.R. Madhava Menon, *Justice Delivery System in India* (Universal Law Publishing, 2016).

<sup>6</sup> Sumeet Malik, *ADR Mechanisms in India* (Eastern Book Company, 2019).

<sup>7</sup> Sriram Panchu, "Mediation Practice in India" (2018) *Economic and Political Weekly*.

especially in civil and family matters.<sup>8</sup>

The notion of mediation was developed further when the process of mediation was made a statutory process. The introduction of Section 89 in the Code of Civil Procedure, 1908 was a major paradigm change where cases were to be referred to alternative dispute resolution (ADR) processes, such as mediation. This was an admission from the legislature that the backlog of cases can't be addressed through litigation. It also marked a move towards the consensual resolution of conflicts in the formal legal system.<sup>9</sup>

Judicial interpretations have played a pivotal role in contributing to the conceptualization of mediation in India. The Supreme Court has been focussing on mediation as a viable alternative to dispute resolution. Through precedent cases, the courts have determined mediation to be not just an alternative to litigation, but an alternative process in parallel with litigation. The judicial endorsement has been one of the factors which has shaped the overall conceptualisation of justice delivery in India by incorporating the concept of mediation.<sup>10</sup>

The process of conceptualizing mediation has been further strengthened through the establishment of institutional arrangements, such as court-annexed mediation centres and the recent Mediation Act, 2023. These changes have made mediation a formalized process, with procedures and guidelines, and more legal than ever before. Another aspect the Act emphasises is the pro-active approach to dispute prevention, rather than the more typical dispute resolution approach, through pre-litigation mediation.<sup>11</sup>

To conclude, the development of concept in India, which is moving a paradigm shift from an adversarial justice system to consensual justice system of dispute resolution. It is a sign of the increasing awareness that justice is not just about victory or defeat but about coming to a resolution of the issues that is mutually acceptable, avoids social conflict and maintains relationships. This change is indicative of the changing contours of law in India that are increasingly geared towards providing more efficient, cost-effective and easily accessible justice. Mediation has emerged as an essential and valuable element in the modern legal

---

<sup>8</sup> Prakash Babu, "Judicial Activism in Promoting ADR in India" (2020) *NUJS Law Review*.

<sup>9</sup> Anurag K. Agarwal, "Court-Connected Mediation in India" (2015) *Journal of Dispute Resolution*.

<sup>10</sup> Amrita Das, "Access to Justice and ADR Mechanisms" (2022) *Journal of Indian Law Institute*.

<sup>11</sup> Mediation Act, 2023.

system, meeting these criteria.<sup>12</sup>

## LIMITATIONS TO THE LITIGATION SYSTEM

The Indian litigation system is constitutionally strong, and well structured, but it has seen certain structural limitations which are affecting its efficiency and accessibility. Litigation is based on the adversarial model and is intended to be fair because of the formalities, the use of evidence to adjudicate, and the scrutiny of the judge. The recent escalation of conflict, however, has also revealed serious flaws and weaknesses in the justice delivery system that slow the administration of justice. These restrictions are not only formal but inherent, related to the structure and operation of the judicial system.<sup>13</sup>

Delay in disposals of cases one of the most important challenges is and one of the more worrying issues is delay in disposal of cases. Although the concept of speedy justice is in the Constitution but it is not properly implemented in practice. In India cases are often pending for years and sometimes decades without any clear lines being adjudicated to them. Longevity of litigations involved in the trial, appeal, revision and review stages. This lag means that people lose faith in the judiciary and that the real value of legal rights is reduced.<sup>14</sup>

Case backlog, a closely related issue to delay, is a problem. Indian court in all levels from subordinate court to Supreme Court has tremendous pendency of cases. This backlog is the result of lack of judges for populations, rising litigations, and insufficient infrastructural support. However, because of this, courts are not able to resolve cases within reasonable timeframes and cases pile up even more, causing further strain on the system. The backlog feeds on itself, with new cases being added to it at a faster rate than old cases are closing.<sup>15</sup>

Another big problem with litigation is its rigidity. While the Code of Civil Procedure, 1908 and other procedural laws provide specific guidelines for pleadings, evidence and hearings, these regulations are designed for fairness and tend to lead to technical delays. The numerous adjournments, objections and compliance requirements extend litigation when they are not needed. This rigidity makes it more difficult for courts to adjust their processes as per the nature

---

<sup>12</sup> S.K. Chawla, *ADR in India: Theory and Practice* (LexisNexis, 2020).

<sup>13</sup> Id.

<sup>14</sup> Amrita Das, "Access to Justice and ADR Mechanisms" (2022) *Journal of Indian Law Institute*.

<sup>15</sup> P.C. Rao & William Sheffield, *Alternative Dispute Resolution: What it is and How it Works in India* (Universal Law Publishing, 2002).

and urgency of the conflicts, thereby impacting the efficiency of the courts.<sup>16</sup>

Litigation also makes it less accessible due to the cost burden. The costs incurred by litigants over the course of a lengthy litigation, including court costs, attorney fees, and documentation fees, must be borne by the litigants. These costs are unaffordable, especially for the economically weaker sections, thus limiting access to formal justice. Even when legal aid is provided, litigation is an expensive choice due to indirect costs and the time involved.

Access barriers also become an essential constraint on the litigation system. People are frequently unable to engage with courts due to geographic, economic and social barriers. The distance, legal unawareness and insufficient legal assistance are some of the problems faced by the rural population, especially. Moreover, the complexity of the procedures renders the system less user friendly to the common people, resulting in the imbalance of access to justice.

The other structural issue is that litigation is too formal. Procedural rules and evidentiary rules must be kept to strict letter of the law, but this at times trumps justice in the substantive sense. The procedures are more important than the results because of minor technical errors that may be the reason for dismissal or delay of cases. It may be very problematic in situations where there are vulnerable or unrepresented parties involved.

The lack of staffing and facilities add to these constraints. The system is less efficient due to a shortage of judges, poor court facilities and inadequate administrative support. Judges may be involved in several cases at once, and may end up spending less time per case and thus delaying the actual judgment. This institutional stress directly affects the quality and timeliness of adjudication.<sup>17</sup>

To conclude, structural constraints like time, the backlog of pending cases, the inflexibility of the litigation process, its cost, and the access problems associated with the process, demonstrate the need for alternative dispute resolution mechanisms. Litigation is necessary to ensure that legal rights are upheld and that a determination is made by the courts; however, it has limitations, and other options such as mediation are crucial. These restrictions offer a solid doctrinal framework to examine alternative models of justice delivery in India that are more

---

<sup>16</sup> S.K. Chawla, *ADR in India: Theory and Practice* (LexisNexis, 2020).

<sup>17</sup> Amrita Das, "Access to Justice and ADR Mechanisms" (2022) *Journal of Indian Law Institute*.

efficient, flexible and accessible.<sup>18</sup>

## INSTITUTIONAL FRAMEWORK SUPPORTING MEDIATION

The system of mediation in India has been evolving gradually over the years and steps have been taken in the form of legislation, judicial orders and policy changes to lessen the burden on the courts and promote alternative means of dispute resolution. Unlike litigation, which is a fully developed judicial practice, mediation has developed, a mixture of both statutory recognition and judicial innovation. This model depicts India's shift towards a multi-door justice system and the complementary and parallel nature of mediation. The key piece of statute that confers power on the courts to refer disputes to alternative dispute resolution continues to be section 89 of the Code of Civil Procedure, 1908 (CPC).

This is added in order to promote settlement of disputes out of court in a situation where there are elements of compromise. It validates by statute, where this may be the case, the ability to achieve consensual resolution goals as effectively as adjudication, and that adjudication is not the only road to justice.

Section 89 CPC has been an effective tool in the hands of judiciary. The Supreme Court in an important judgment such as **Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd**<sup>19</sup>. provided detailed guidelines for the procedure of referring a case to mediation and has delineated kinds of disputes that are suitable for mediation. This judicial interpretation has added a meaning to Section 89 and has made it effective in put into practice in the trial Court across India. It has also helped to strengthen the confidence of institutions in mediation as a formal dispute resolution mechanism.

In the recent years, one of the important institutional initiatives is the enactment of Mediation Act, 2023 which provides a detailed framework of mediation proceedings in India. The Act sets out the pre-litigation mediation, institutional mediation and enforcement of mediated settlement agreements. It also creates a framework for the regulation of mediators and mediation institutions, thus providing uniformity and credibility in the mediation process. This bill is a good first step in achieving the ultimate objective of having mediation, rather than

---

<sup>18</sup> Sumeet Malik, *ADR Mechanisms in India* (Eastern Book Company, 2019).

<sup>19</sup> (2010) 8 SCC 24.

exception, become the way mediations are conducted.

The Mediation Act 2023 also recognises other fundamental principles of mediation including voluntary participation, neutrality or confidentiality of the mediation. The Act provides statutory recognition to mediated settlement agreements, helping to make them more enforceable and reduce settlement uncertainty. This is building confidence in the mediation process and promotes parties to consider settlement rather than protracted court battles.<sup>20</sup>

The other important feature of the institutional set up is the court annex mediation centre in various High Courts and District Courts in India. The centres are part of the judicial system, and provide a framework of mediation services to litigants referred by Judges. Mediators typically are trained retired judges or attorneys who facilitate the process of dispute resolution in a structured and impartial setting. This connection makes mediation a formal justice process and flexible.<sup>21</sup>

An important law that facilitates the mediation process through Lok Adalats as statutory mechanism for amicable settlement of disputes is the Legal Services Authorities Act, 1987. Lok Adalats are for settling disputes and providing speedy disposal of cases without going to court. The judgment which Lok Adalats deliver is considered as judgement of a civil court and the same is binding. This mechanism not only helps to reduce the burden of litigation to a great extent but also contributes to providing justice at the grassroots level.

Institutional level support of mediation is strengthened through training programs, mediation cells and a system of accreditation for mediators. The judicial academies and mediation institutes are organising regular trainings aimed at enhancing the professionalism and quality of mediation practices. The institutional arrangements are significant not just in facilitating an effective informal process of mediation, but also in the context of a formal legal process of mediation.<sup>22</sup>

To summarize, the institutional framework in India that enables mediation process comprises Section 89 of CPC, Mediation Act, 2023, Lok Adalats and court annexed mediation centres, all of which demonstrate a coordinated approach towards mainstreaming mediation in the

---

<sup>20</sup> Chitra Narayan, *Mediation: Policy and Practice* (OakBridge Publishing, 2021).

<sup>21</sup> Sumeet Malik, *ADR Mechanisms in India* (Eastern Book Company, 2019).

<sup>22</sup> Henry Brown & Arthur Marriott, *ADR Principles and Practice* (Sweet & Maxwell, 2018).

mainstream justice system. The structure is not very different from the policy shift towards reducing dependency on litigation and making the dispute resolution process more efficient, effective and user friendly which is in tune with the overall policy of Indian legal system.

## **JUDICIAL INTERPRETATION AND EXPANSION OF THE ADR MECHANISMS**

The judiciary of India has been instrumental in giving a dynamic interpretation to the statutory provisions and introducing a settlement culture for the promotion of Alternative Dispute Resolution (ADR), especially mediation. The Supreme Court of India has repeatedly stated that litigation is not the only form of dispute resolution and the Courts should actively promote conciliation in all possible ways. It has certainly helped to make mediation more institutionalized as an alternative process to litigation.

### **1. Salem Advocate Bar Association vs Union of India <sup>23</sup>**

The Supreme Court in this historic decision upheld the constitutional validity of Section 89 of the Code of Civil Procedure, 1908 and very strongly recommended the concept of ADR mechanisms. The Court noted that Section 89 is aimed at enabling the resolution of any disputes outside court, so as to alleviate congestion and deliver prompt justice. It called for the development of proper rules for the effective implementation of mediation and conciliation procedures. This case is of landmark importance in the history of the institution of mediation in India, and represents an important judicial move towards the settlement agenda of justice.

### **2. Afcons Infrastructure Ltd vs Cherian Varkey Construction Co (P) Ltd<sup>24</sup>**

This case is an outstanding example of judicial role in the jurisprudence of ADR in India. Supreme Court has provided elaborate directives regarding the cases where court can refer a dispute to ADR process and how. Supreme Court has provided elaborate directions regarding the reference of disputes to ADR process under Section 89 of CPC. It announced that mediation is not appropriate in cases of complex law, or serious accusations, and that civil, commercial and family cases are highly suitable for settlement. The Court underscored that mediation is not an anomaly, but a part of the justice delivery system, enhancing the sense of legitimacy in the process.

---

<sup>23</sup> (2005), 6 SCC 344

<sup>24</sup> (2010) 8 SCC 24.

### 3. **B.S. Krishnamurthy vs B.S. Nagaraj** <sup>25</sup>

In this instance, the Supreme Court again emphasized that mediation is a fundamental tool when it comes to resolving civil conflicts and urged courts to seriously consider settlement options prior to the beginning of full-scale trials. The Court noted that litigants may experience emotional and economic stress with a protracted litigation process, and that "a more practical alternative" is to consider mediation. This judgment further reiterated the judiciary's promediation stance and the importance of a settlement approach in the trial court.

### 4. **M.R. Krishna Murthi vs New India Assurance Co. Ltd.** <sup>26</sup>

This ruling was an important step in the judicial efforts to make mediation a more permanent fixture in motor accident and insurance cases. The Supreme Court underscored the "irritating situation" of pending cases, saying it was time to create a streamlined mediation process, and called on the government to accept the suggestions of the parties. It instructed the government to look into establishing Motor Accident Mediation Cells. In this case, the Court shows how it is proactively bringing mediation into other areas, such as specialized areas where mediation is necessary for a quicker resolution.

### 5. **Haresh Dayaram Thakur vs State of Maharashtra** <sup>27</sup>

In this instance, the Supreme Court pointed out that ADR processes, such as mediation, play a crucial role in decongesting courts and maximizing access to justice. The Court pointed out that the use of consensual dispute resolution is conducive to social harmony and helps to minimize inter-party conflict. It further highlighted that mediation should be encouraged at all stages of litigation where settlement is possible. It was this judgment that helped develop a wider judicial philosophy that favoured negotiated settlement over adversarial adjudication.<sup>28</sup>

In these landmark decisions, the Supreme Court of India has given a progressive interpretation to the statutory provisions, significantly extending the ambit of ADR mechanisms, especially mediation. The judiciary has always been in favour of a settlement culture and strongly believes that mediation is crucial for the reduction of the backlog, the minimisation of costs and timely

---

<sup>25</sup> (2011) 15 SCC 364

<sup>26</sup> (2019) 4 SCC 18

<sup>27</sup> (2000) 6 SCC 179

<sup>28</sup> Prakash Babu, "Judicial Activism in Promoting ADR in India" (2020) *NUJS Law Review*.

justice. Taken together, these decisions signal a doctrinal evolution from the traditional adversary litigation process to a new paradigm, in which mediation is central, institutionalized, and growing in significance.<sup>29</sup>

## FINDING OF THE STUDY

The study reveals that mediation in India has slowly evolved from an informal, communitybased form of dispute resolution to a statutorily recognized process, with judicial endorsement. It is part of a wider legal paradigm shift in India towards collaborative and consensual justice with the emphasis on dispute resolution over adversarial litigation. As mediation becomes more institutionalized, it fulfils the increasing need to resolve contemporary problems of judicial delay and backlog.

It is noted that, although litigation is the first and basic mode of dispute resolution in the constitution, it suffers from structural problems that influence its effectiveness. They involve long delays in case disposal, rising pendency through courts, rigidity in the established legal procedures and rising costs of long litigation. This can limit the practical availability of access to justice, especially for economically and socially vulnerable communities.

The study also reveals that mediation is a comparatively more efficient, cost-effective and easily accessible way for resolving conflicts in the right circumstances. Being informal, flexible and party-driven, disputes can be settled faster and relationships maintained. The success of mediation remains hinged on institutional support, litigants' awareness, and judges' eagerness to refer appropriate cases, suggesting that mediation's potential in the Indian legal system has yet to be realized.

Henry Brown & Arthur Marriott, *ADR Principles and Practice* (Sweet & Maxwell, 2018).

## SUGGESTIONS

1. A need to build awareness of mediation at the grassroots level to promote settlement-based dispute resolution, particularly for litigants.
2. To curb excessive litigation, pre-litigation mediation is to be more effective and become

---

<sup>29</sup> Henry Brown & Arthur Marriott, *ADR Principles and Practice* (Sweet & Maxwell, 2018).

mandatory in a broader spectrum of civil and commercial cases.

3. Mediator training and certification should be institutionalized, to ensure professionalism and quality in mediation proceedings
4. All district courts should have court annexed mediation centres and adequate facilities and administrative support
5. The judiciary officers should conduct a course of regular training to detect cases which are appropriate for mediation from the outset of litigation.
6. ADR and Mediation should be made a compulsory course in Legal Education Institutions and train future legal professionals in negotiation and settlement skills
7. Increased use of digital mediation platforms and Online Dispute Resolution (ODR) systems should be encouraged with particular reference to remote areas
8. Standard operating procedures for mediation proceedings should be established, to ensure a uniform and procedural approach in different institutions.
9. Make greater financial incentives available to those who choose to settle by providing a reduction in court fees.
10. Mechanisms to ensure compliance with mediated settlement agreements should be further strengthened.

## **CONCLUSION**

A comparison of mediation and litigation in India shows a shift in the doctrine of the justice delivery system from an adversarial process to a settlement-oriented process. Although litigation is indispensable to the enforcement of rights and the decision making of authoritative adjudications, there are elements of delay, backlog, rigidity of process, and expense of litigation which make it increasingly difficult to achieve the goals of the litigation system. These restrictions have been most detrimental to access to and the quality of formal justice.<sup>30</sup>

---

<sup>30</sup> Amrita Das, "Access to Justice and ADR Mechanisms" (2022) Journal of Indian Law Institute.

However, mediation has grown increasingly flexible, consensual and efficient as a process in which parties are encouraged to settle their own differences through a process of mutual negotiation. It's conceptually rooted in restorative and cooperative justice, and it's a good alternative when preserving relationships is significant and fast resolution is paramount. The development of mediation in India has been a growing recognition of the conciliatory nature of justice, as opposed to the adjudicatory nature of the process.<sup>31</sup>

Strong policy commitment towards mainstreaming mediation is reflected in the institutional and legislative developments including Section 89 CPC and the Mediation Act, 2023. This transition is also reinforced by judicial interventions that have been less common but more effective in actively encouraging courts to refer cases to mediation that are suitable for the process, and by the establishment of structured guidelines for mediation.

However, the presence of these developments has not been able to change the basic fact of litigation being the pre-dominant form of dispute resolution mechanism in India for its binding enforceability and constitutional validity. Its weaknesses have, however, required a broadening of the use of alternative dispute resolution (ADR) processes, most notably mediation, as a substitute for court proceedings.<sup>32</sup>

The Supreme Court in India has made pivotal decisions in the development of the mediation process. The constant focus on settlement culture, reduction of pendency and the encouragement of ADR is an indication of the judicial philosophy that has been adopted, which seeks to provide access to speedy and adequate justice in accordance with Article 21 of the Constitution.

The study shows that despite its efficiency, cost savings, and accessibility, mediation will only succeed if there are institutional support and awareness and acceptance of the process by litigants and legal personnel involved. Mediation cannot achieve its potential as an alternative to litigation without the necessary infrastructure and training.

To sum up, mediation and litigation should not be considered in opposition but as part of a pluralistic justice approach. For a constitutionally envisioned “access to justice for all,” an equitable mix of both is key to ensure that conflicts can be resolved fairly, efficiently and socially.<sup>33</sup>

---

<sup>31</sup> S.K. Chawla, *ADR in India: Theory and Practice* (LexisNexis, 2020).

<sup>32</sup> Sumeet Malik, *ADR Mechanisms in India* (Eastern Book Company, 2019).

<sup>33</sup> Constitution of India, art. 39A.

## BIBLIOGRAPHY

### BOOKS

1. Chitra Narayan, *Mediation: Policy and Practice* (OakBridge Publishing, 2021).
2. Neelam Tyagi, *Women, Matrimonial Litigation and ADR* (Springer, 2021).
3. Shashank Garg (ed.), *Alternative Dispute Resolution: The Indian Perspective* (Oxford University Press, 2018).
4. Vishnu S. Warriar, *Quick Reference Guide on Arbitration, Conciliation and Mediation* (LexisNexis, 2015).
5. Sumeet Malik, *ADR Mechanisms in India* (Eastern Book Company, 2019).
6. Avtar Singh, *Law of Arbitration and Conciliation* (Eastern Book Company, 2020).
7. P.C. Rao & William Sheffield, *Alternative Dispute Resolution: What it is and How it Works in India* (Universal Law Publishing, 2002).
8. Henry Brown & Arthur Marriott, *ADR Principles and Practice* (Sweet & Maxwell, 2018).
9. N.R. Madhava Menon, *Justice Delivery System in India* (Universal Law Publishing, 2016).
10. S.K. Chawla, *ADR in India: Theory and Practice* (LexisNexis, 2020).

### ARTICLES / JOURNALS

1. Rishi Sharma, "Navigating Disputes Beyond the Courtroom: ADR and CPC in India" (2024) SSRN.
2. Deeksha Jha, "The ADR Wave in India with Special Reference to Mediation Act, 2023" (2025) Indian Journal of Legal Review.
3. Mohit Mokal, "Enabling ODR and Mediation in India" (2021) ResearchGate Working Paper.

4. Xiao Chi, “Dispute Resolution in Legal Mediation with Quantitative Argumentation” (2024) arXiv Working Paper.
5. R. Sharma, “ADR Mechanisms and Civil Procedure Code in India” (2024) SSRN.
6. Anurag K. Agarwal, “Court-Connected Mediation in India” (2015) Journal of Dispute Resolution.
7. Vikrant Pachnanda, “ADR in India: Growth and Challenges” (2019) Indian Bar Review.
8. Sriram Panchu, “Mediation Practice in India” (2018) Economic and Political Weekly.
9. Amrita Das, “Access to Justice and ADR Mechanisms” (2022) Journal of Indian Law Institute.
10. Prakash Babu, “Judicial Activism in Promoting ADR in India” (2020) NUJS Law Review.

#### **LEGISLATIVE & REPORTS**

1. Code of Civil Procedure, 1908 (Section 89).
2. Arbitration and Conciliation Act, 1996.
3. Mediation Act, 2023.
4. Legal Services Authorities Act, 1987 (Lok Adalats provisions).
5. Law Commission of India, *Report on Delay and Arrears in Trial Courts* (Various Reports, Government of India).