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MEDIATION IN INDIA: A DOCTRINAL OVERVIEW OF JUDICIAL AND STATUTORY DEVELOPMENTS

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Abstract

Mediation has emerged as a structured and legally recognised component of the alternative dispute resolution framework in India, reflecting a gradual shift towards consensual and participatory modes of dispute resolution. Judicial encouragement, procedural reforms, and legislative intervention have collectively contributed to the institutionalisation of mediation within the Indian legal system. Over time, Indian courts have played a significant role in promoting mediation by interpreting statutory provisions, encouraging settlement of disputes involving private rights, and facilitating the establishment of court-annexed mediation mechanisms.

This article undertakes a doctrinal examination of mediation in India by analysing its conceptual foundations, judicial evolution through Supreme Court jurisprudence, and statutory recognition under the Mediation Act, 2023. The study traces the development of mediation from its initial judicial endorsement under Section 89 of the Code of Civil Procedure, 1908, to its consolidation as a comprehensive statutory framework governing mediation proceedings and mediated settlement agreements. Particular emphasis is placed on the role of the Supreme Court in clarifying the scope, applicability, and procedural contours of mediation across various categories of disputes.

Adopting a descriptive doctrinal methodology, the article relies on statutory provisions, authoritative judicial pronouncements, and relevant scholarly literature to present a consolidated understanding of mediation as a legally recognised dispute resolution mechanism in India. The article refrains from normative or critical evaluation and instead focuses on outlining the evolution, scope, and legal framework governing mediation, highlighting its position within the broader ADR landscape and its role in supplementing the formal justice delivery system.

Keywords

Alternative Dispute Resolution; Mediation; Mediation Act, 2023; Section 89 CPC; Court-Annexed Mediation; Indian Judiciary

I. Introduction

The justice delivery system in India has historically been centred on adjudication through courts as the principal means of dispute resolution. While adjudication remains essential for the determination of rights and enforcement of legal obligations, the growing volume of litigation and persistent delays in the disposal of cases have underscored structural

challenges within the judicial system.⁴⁵⁰ These challenges have prompted increased attention towards supplementary mechanisms capable of resolving disputes in a more efficient, flexible, and participatory manner. In this context, Alternative Dispute Resolution (ADR)

⁴⁵⁰ Code of Civil Procedure, 1908, § 89 (India).

mechanisms have assumed growing importance within the Indian legal framework.

ADR encompasses a range of processes, including arbitration, mediation, conciliation, and negotiation, each offering alternatives to conventional courtroom litigation.⁴⁵¹ These mechanisms are designed to reduce procedural rigidity, encourage party participation, and facilitate expeditious resolution of disputes.⁴⁵² Among the various ADR processes, mediation occupies a distinctive position due to its consensual and facilitative nature. Unlike adjudicatory mechanisms that result in a binding determination imposed by a judicial or quasi-judicial authority, mediation is premised on party autonomy and voluntary participation.⁴⁵³

Mediation involves the assistance of a neutral third party who facilitates communication between disputing parties with the objective of enabling them to arrive at a mutually acceptable settlement. The mediator does not adjudicate upon the dispute or impose a decision; instead, the process is guided by dialogue, cooperation, and consensus. The outcome of mediation depends entirely on the voluntary agreement of the parties, making it fundamentally different from arbitration and litigation. Confidentiality, flexibility, and informality further characterise mediation and contribute to its growing acceptance as an effective dispute resolution mechanism.

Indian courts have progressively recognised mediation as a constructive process capable of resolving disputes while preserving relationships and reducing procedural complexity. Judicial encouragement of settlement has been particularly evident in disputes involving private rights, such as matrimonial matters, commercial disputes, contractual conflicts, and insurance claims. Through judicial interpretation and procedural reforms, courts have actively

facilitated the integration of mediation into the justice delivery system, notably through statutory provisions enabling referral to ADR and the establishment of court-annexed mediation centres.

Procedural reforms under civil and commercial law have played a significant role in advancing mediation as an institutionalised process. The insertion of provisions enabling courts to refer disputes to ADR mechanisms reflects a conscious effort to promote amicable settlement alongside formal adjudication. Over time, these judicial initiatives have been supplemented by the framing of mediation rules by High Courts and the development of institutional mediation infrastructure across jurisdictions.

The enactment of the Mediation Act, 2023 represents a legislative culmination of these judicial developments.⁴⁵⁴ The statute provides a comprehensive framework governing mediation proceedings, recognises mediated settlement agreements, and promotes both pre-litigation and court-referred mediation. By conferring statutory recognition upon mediation, the Act consolidates its position within the Indian legal system and reinforces its role as a structured and legally recognised ADR mechanism.⁴⁵⁵

Against this backdrop, this article undertakes a doctrinal overview of mediation in India. It examines the conceptual framework of mediation, traces its judicial development through key Supreme Court pronouncements, analyses its statutory recognition under the Mediation Act, 2023, and reviews relevant scholarly literature. Adopting a descriptive doctrinal approach, the article seeks to present a consolidated understanding of mediation as an integral component of the Indian dispute resolution framework, without engaging in normative or critical evaluation.

⁴⁵¹ *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*, (2010) 8 SCC 24 (India).

⁴⁵² C.K. Takwani, *Civil Procedure* 1028–1035 (9th ed. 2022).

⁴⁵³ Law Comm'n of India, 129th Report on Urban Litigation—Mediation as an Alternative to Adjudication (1988).

⁴⁵⁴ Mediation Act, 2023, No. 32, Acts of Parliament, 2023 (India).

⁴⁵⁵ Statement of Objects and Reasons, Mediation Bill, 2021.

II. Conceptual Framework of Mediation under ADR

Mediation is generally understood as a voluntary, confidential, and structured process in which a neutral third party assists disputing parties in resolving their disputes through facilitated negotiation.⁴⁵⁶ The mediator's role is limited to enabling communication, clarifying issues, and assisting parties in exploring settlement options. The mediator does not possess adjudicatory authority, and the parties retain control over both the process and the outcome.

The principle of party autonomy forms the cornerstone of mediation.⁴⁵⁷ Parties are free to decide whether to participate in mediation, the manner in which discussions are conducted, and whether to accept any proposed settlement. Confidentiality further distinguishes mediation from adjudicatory processes, allowing parties to communicate openly without apprehension that statements made during mediation will be used against them in subsequent proceedings.

Within the broader ADR framework, mediation differs from arbitration and conciliation. Arbitration results in a binding award delivered by an adjudicatory authority, while conciliation may involve a more interventionist role by the neutral party. Mediation, by contrast, focuses on collaborative problem-solving and consensual outcomes.

Mediation may take various forms depending on its institutional context. Court-annexed mediation is conducted pursuant to judicial referral under statutory provisions or procedural rules framed by courts.⁴⁵⁸ Private mediation involves parties independently appointing a mediator. Institutional mediation is conducted under recognised mediation centres that

provide administrative support and panels of trained mediators. In India, mediation has been applied across matrimonial disputes, commercial conflicts, contractual disagreements, and insurance claims, reflecting its adaptability and scope.

III. Judicial Development of Mediation in India

A. Section 89 of the Code of Civil Procedure, 1908

The judicial development of mediation in India is closely associated with the insertion of Section 89 into the Code of Civil Procedure, 1908.⁴⁵⁹ The provision empowers courts to refer disputes to ADR mechanisms, including mediation, where elements of settlement appear to exist. Section 89 reflects legislative intent to integrate ADR processes into the civil justice system and to encourage amicable resolution alongside adjudication.

B. Salem Advocate Bar Association v. Union of India

In *Salem Advocate Bar Association v. Union of India*, the Supreme Court examined the constitutional validity of procedural reforms introduced through amendments to the Code of Civil Procedure.⁴⁶⁰ The Court upheld the validity of Section 89 and emphasised the importance of ADR mechanisms in facilitating settlement and reducing judicial backlog. The judgment underscored the role of courts in actively encouraging parties to explore amicable resolution and directed the framing of rules to regulate mediation and other ADR processes.

C. Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.

The scope and implementation of Section 89 were further clarified in *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*⁴⁶¹ The Supreme Court identified categories of disputes generally suitable for mediation,

⁴⁵⁶ Astha Kothari & Arryan Mohanty, *Mediation in India: A Breakdown of the 2023 Act*, SSRN (2023).

⁴⁵⁷ United Nations Commission on International Trade Law, **UNCITRAL Model Law on International Commercial Mediation** (2018).

⁴⁵⁸ Supreme Court of India, **Mediation and Conciliation Project Committee (MCPC)**, Annual Reports

⁴⁵⁹ Code of Civil Procedure, 1908, § 89 (India).

⁴⁶⁰ *Salem Advocate Bar Ass'n v. Union of India*, (2005) 6 SCC 344 (India).

⁴⁶¹ *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*, (2010) 8 SCC 24 (India)

including commercial disputes, matrimonial matters, and disputes involving private rights. The Court also outlined procedural principles governing judicial referral to ADR, thereby contributing to uniformity in practice and strengthening mediation as a structured process within civil litigation.

D. Mediation in Matrimonial and Family Disputes

Judicial recognition of mediation has been particularly prominent in matrimonial and family disputes. In *K. Srinivas Rao v. D.A. Deepa*, the Supreme Court emphasised the role of mediation in resolving matrimonial conflicts and encouraged courts to explore settlement through mediation before proceeding with adjudication.⁴⁶² The decision acknowledged mediation as a constructive process capable of facilitating reconciliation and amicable resolution.

E. M.R. Krishna Murthi v. New India Assurance Co. Ltd.

In *M.R. Krishna Murthi v. New India Assurance Co. Ltd.*, the Supreme Court recognised mediation as an effective mechanism for resolving insurance disputes.⁴⁶³ The Court acknowledged the utility of mediation in facilitating settlement of claims and reducing prolonged litigation, thereby extending judicial endorsement of mediation to specialised categories of disputes.

F. Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd.

In *Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd.*, the Supreme Court recognised the importance of pre-institution mediation in commercial disputes.⁴⁶⁴ The judgment reinforced the judicial approach favouring early dispute resolution through mediation and highlighted the relevance of mediation at the pre-litigation stage.

⁴⁶² *K. Srinivas Rao v. D.A. Deepa*, (2013) 5 SCC 226 (India)

⁴⁶³ *M.R. Krishna Murthi v. New India Assurance Co. Ltd.*, (2019) 4 SCC 305 (India)

⁴⁶⁴ *Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd.*, (2022) 10 SCC 1 (India)

G. Manubhai Ratilal Patel v. State of Gujarat

An additional illustration of judicial support for non-adversarial dispute resolution is found in *Manubhai Ratilal Patel v. State of Gujarat*, where the Supreme Court highlighted the role of ADR mechanisms, including mediation, in facilitating settlement of disputes involving private rights.⁴⁶⁵ The decision reflects judicial acknowledgment of mediation as a process aligned with the broader objective of consensual dispute resolution.

IV. Statutory Framework: The Mediation Act, 2023

The Mediation Act, 2023 represents a comprehensive legislative effort to regulate and promote mediation in India. The Act consolidates judicial initiatives and provides statutory clarity regarding mediation proceedings, mediated settlement agreements, and institutional mechanisms.

The Act defines mediation broadly to include any process in which parties attempt to reach an amicable settlement with the assistance of a mediator. It recognises both pre-litigation mediation and court-referred mediation, thereby encouraging early resolution of disputes.

A significant feature of the Act is the statutory recognition and enforceability of mediated settlement agreements. Such agreements, once recorded in accordance with statutory requirements, are accorded legal validity and are capable of enforcement in a manner similar to court decrees.⁴⁶⁶

The Act also provides for mediation service providers and accreditation of mediators. Institutional mediation is promoted through recognised mediation centres adhering to prescribed standards. Confidentiality of mediation proceedings forms a core principle under the statutory framework, reinforcing the trust-based nature of mediation.

⁴⁶⁵ *Manubhai Ratilal Patel v. State of Gujarat*, (2013) 1 SCC 314 (India)

⁴⁶⁶ Mediation Act, 2023, No. 32, Acts of Parliament, 2023 (India)

V. Review of Scholarly Literature on Mediation

Scholarly literature on mediation in India has examined its evolution through judicial initiatives and legislative developments. Early academic writings focused on court-annexed mediation and the judiciary's role in promoting amicable settlement. With the enactment of the Mediation Act, 2023, academic discourse has increasingly analysed the statutory framework governing mediation, focusing on its objectives, scope, and institutional structure. Collectively, the literature contributes to a doctrinal understanding of mediation as a legally recognised ADR mechanism.⁴⁶⁷⁴⁶⁸⁴⁶⁹

VI. Conclusion

Mediation has evolved as a structured and legally recognised component of the Indian dispute resolution framework through sustained judicial encouragement and comprehensive legislative recognition. Over time, Indian courts have played a pivotal role in fostering the growth of mediation by interpreting procedural provisions, encouraging amicable settlement of disputes, and facilitating the establishment of court-annexed mediation mechanisms. Judicial pronouncements, particularly of the Supreme Court, laid a strong doctrinal foundation for mediation by clarifying its scope, suitability, and procedural contours across diverse categories of disputes.

The enactment of the Mediation Act, 2023 marks a significant milestone in this evolutionary process by consolidating earlier judicial initiatives into a comprehensive statutory framework. The legislation provides clarity regarding mediation proceedings, accords legal recognition and enforceability to mediated settlement agreements, and promotes both pre-litigation and court-referred mediation. By establishing institutional mechanisms and reinforcing core principles

such as voluntariness and confidentiality, the Act strengthens mediation's position within the formal legal system.

This doctrinal overview demonstrates that mediation now occupies an integral place within the Indian dispute resolution landscape, functioning as a structured mechanism that supplements adjudication rather than replacing it. The convergence of judicial interpretation and legislative policy has ensured that mediation is embedded within the justice delivery system as a credible and legally supported process. As an ADR mechanism grounded in party autonomy and cooperative resolution, mediation contributes to effective, participatory, and relationship-preserving dispute resolution in India, consistent with the broader objectives of access to justice and procedural efficiency.

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⁴⁶⁷ Astha Kothari & Arryan Mohanty, *Mediation in India: A Breakdown of the 2023 Act*, SSRN (2023)

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