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# SERVICE MATTER LITIGATION AS AN IMPEDIMENT TO ACCESS TO JUSTICE: USE OF ADR TO REDUCE PENDENCY BEFORE COURTS

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## ABSTRACT

India's judicial system is struggling under the weight of over five crore pending cases, and a substantial share of this burden comes from the government itself. Service matter disputes, which are conflicts between the State and its own employees over promotions, pensions, transfers, and disciplinary actions, etc. have become a leading cause of docket explosion across courts and tribunals. This paper examines how the government's tendency to litigate reflexively, without accountability or merit-based filtering, undermines access to justice for ordinary citizens who are left waiting years for relief. It further argues that Alternative Dispute Resolution mechanisms, particularly mediation and conciliation, are well-suited to resolve the vast majority of service disputes before they reach a tribunal or court. Drawing on legislative developments such as Section 89 of the Code of Civil Procedure, the Mediation Act, 2023, and the National Litigation Policy, 2010, the paper proposes a court-annexed ADR model for the CAT as a practical and effective structural solution.

**Keywords:** Service Matter Litigation, Alternative Dispute Resolution, Central Administrative Tribunal, Access to Justice, National Litigation Policy

## INTRODUCTION

The backlog of cases in Indian courts has reached a point where our legal system is itself at jeopardy. Unprecedented delays in resolution of cases have reached enormous magnitudes. It has derailed the public's faith to get prompt assistance over their grievances.<sup>1</sup> “Justice delayed is justice denied”. The delay in adjudication has become obnoxiously obvious and notorious. It is a malignant progression that, if left untreated, would develop into a deadly disease.<sup>2</sup>

It has been reiterated time and again that the Right to Speedy Trial is a Fundamental Right under Article 21.<sup>3</sup> The purpose of Judiciary is to adjudicate upon the truth in apposite time before it turns into injustice to the victim and they lose all faith in the adversarial system.<sup>4</sup> Justice Krishna Iyer in a landmark judgment observed that-

*“Our justice system even in grave cases, suffers from slow motion syndrome which is lethal to 'fair trial' whatever the ultimate decision. Speedy justice is a component of social justice since the community, as a whole, is concerned in the criminal being condignly and finally punished within a reasonable time and the innocent being absolved from the inordinate ordeal of criminal proceedings.”<sup>5</sup>*

Whereof, the paradox at the heart of Indian legal system lies in the fact that; the State, which is the upholder of the rule of law and the guarantor of constitutional rights of citizens, simultaneously turns out to be the nation's most active litigant. Central and State Governments and their agencies, Public Sector Undertakings; are involved in the vast bulk of lawsuits presently cluttering the Indian legal system.<sup>6</sup>

As of April 2026, the Supreme Court of India carries a pendency of 94,035 cases at an all-time high, while the aggregate pendency across all courts has crossed the staggering figure of 5,52,62,160 cases.<sup>7</sup> Currently, 29,171 Service Matter are pending before the Supreme Court and new cases are being appealed before the Apex Court every day.<sup>8</sup> This creates a situation of

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<sup>1</sup> M.L. Shrimal, “Delay in the Administration of Justice”, (1982) 2 SCC J-44.

<sup>2</sup> *Ibid.*

<sup>3</sup> Hussainara Khatoun v. Home Secretary, State of Bihar, Patna AIR 1979 SC 1369.

<sup>4</sup> Judicial Academy Jharkhand, “Strategic Action Plan for Reduction of Civil Cases” 4.

<sup>5</sup> Babu Singh And Ors vs The State Of U.P 1978 SCC (1) 579.

<sup>6</sup> Union of India v. Kiran Kanjia, 2023 SCC OnLine Del 5947.

<sup>7</sup> Available at: [https://njdg.ecourts.gov.in/njdg\\_v3/?app\\_token=](https://njdg.ecourts.gov.in/njdg_v3/?app_token=) (last visited on April 18, 2026).

<sup>8</sup> *Ibid.*

docket explosion therefore the legal remedies available to the people are not expedient.

There are two major kinds of litigation that involves the Government. Firstly, where a Government employee sues the State over service related matters such as pending salaries and wages, compensation and gratuity payment, promotion and demotion etc. Secondly, the intra-state litigation between different agencies of the State severely curtails the justice dispensation capacity of the Courts which is at just 17 Judicial Officers for every 10 Lakh Citizens.<sup>9</sup>

Within this infinite ocean of pending litigation, service matters disputes arising from the employment relationship between the State and its civil servants occupy a uniquely corrosive place. These disputes range across promotions denied, seniority wrongly fixed, disciplinary proceedings vitiated, pensions delayed, and transfers made with malicious intentions. The unique character of these disputes is not their legal complexity but in their institutional origin: it is that the Government itself that is the primary defendant, the primary appellant, and, in many cases, the primary generator of the dispute.<sup>10</sup>

Every citizen who joins government services carries with them constitutional expectations arising from Articles 14, 16, and 311 of the Constitution of India regarding fair and just treatment in matters of employment. Yet the empirical reality is that the vindication of these rights has become easily possible through unwarranted, expensive, and exhausting judicial proceedings. One service matter often times engulfs hundreds of co-employees who share similar service conditions, creating what the Law Commission has repeatedly characterized as 'docket explosions' in which a single policy impasse translates into mass litigation.<sup>11</sup>

The Central Administrative Tribunal (CAT), established by the Administrative Tribunals Act, 1985 to provide for speedy and specialised justice in service matters, witnesses vast impending pendency in its each bench. The Parliamentary Standing Committee Personnel, Public Grievances, Law and Justice has candidly observed that the purpose of the CAT is “far from

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<sup>9</sup> Dr. Aparna Singh, Dr. Rajeev Kumar Singh, “Access to Justice and Government Attitude as a Litigant: Challenges and Plight,” 2 *Dehradun Law Review* 133-150 (2024).

<sup>10</sup> “PM Modi laments depts working in silos, settling disputes in courts”, *Indian Express*, 20th January 2018, available at: <http://indianexpress.com/article/india/pm-narendra-modi-addresses-joint-conference-of-tourism-culture-and-sports-ministries-via-video-conference-4483620/> (last visited on April 18, 2026).

<sup>11</sup> Law Commission of India, “Report No. 272 on Assessment of Statutory Frameworks of Tribunals in India” (October, 2017).

being achieved” and that over 48,000 cases remained pending before it.<sup>12</sup> Far from ending service litigation, the CAT seems to have added one more tier to an already congested appellate hierarchy because CAT orders are subject to writ and appeal jurisdiction before the High Courts, and from there, to appeals before the Supreme Court.<sup>13</sup>

The argument advanced in this paper is straightforward: excessive service matter litigation is not an inevitable consequence of democratic governance. It is the product of two specific institutional failures. First, the absence of personal accountability on the officers who authorise infructuous appeals, ensuring that litigation remains a cost-free default option for every bureaucratic decision-maker.<sup>14</sup> Secondly, the absence of any independent machinery capable of mediating between the Government as employer and the citizens as the employee. The aggrieved employee have only two choices to either endure the injustice in silence, or pursue legal action that will take years of time and money.

## NATURE AND SCOPE OF SERVICE MATTER LITIGATION IN INDIA

Service matters, as defined under Administrative Tribunals Act, 1985, includes disputes relating to recruitment, appointment, pension, and leave; etc., of persons in public employment.<sup>15</sup> Their distinguishing feature is that both parties to the dispute- the employee and the employing authority are creations of the same constitutional and statutory framework. Thus, State is simultaneously the respondent, the legislating authority, and also the rule-making body.

The CAT was established under Article 323 sub-clause (A) of the Constitution of India as the exclusive forum for resolving service disputes of Central Government employees. It operates through 19 Benches and 19 Circuit Benches spread across the country.<sup>16</sup> Most frequent types of disputes that are brought before the CAT, are of promotions and seniority, disciplinary proceedings, recruitment process and wrongful transfers.<sup>17</sup> A single administrative decision,

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<sup>12</sup> S. Dhingra, “Purpose of Central Administrative Tribunal far from being achieved: Parliamentary panel” *The Print* 09 March, 2020 available at - <https://theprint.in/india/governance/purpose-of-central-administrative-tribunal-far-from-being-achieved-parliamentary-panel/378156/> (last visited on April 18, 2026).

<sup>13</sup> L. Chandra Kumar v. Union of India, (1997) 3 SCC 261.

<sup>14</sup> *Supra* note 9 on 6.

<sup>15</sup> The Administrative Tribunals Act, 1985 (Act 13 of 1985), s. 3 (q).

<sup>16</sup> Central Administrative Tribunal, Introduction, available at <https://cis.cgat.gov.in/catlive/introduction.php> (last visited on 18 April 2026).

<sup>17</sup> All to Know About Service Matter Cases in CAT, available at <https://patraslawchambers.com/all-to-know-about-service-matter-cases-in-cat> (last visited on 18 April 2026),

such as a new promotion policy, might result in hundreds of identical Original Applications submitted by workers under similar circumstances.

The scale of pendency at each tier and the volume of such litigation is absolutely staggering. At the CAT level, the 272nd Law Commission Report noted 44,333 pending cases as of 2016-17.<sup>18</sup> At the High Court level, where CAT orders are challenged under Articles 226 and 227, service matters constitute a significant proportion of the writ docket. The disposition of one case often triggers fresh litigation; government compliance with tribunal and court orders is frequently delayed or partial, generating contempt proceedings and further rounds of judicial engagement.

Despite best efforts from the Law Commission of India to instigate dialogue on amplified Government litigation, the full scale of it and the total cost incurred in the same has not yet been comprehensively evaluated.<sup>19</sup> Constant legal battles between the State and its employees prevents the former from completing its executive function, for “once litigation commences there is considerable expense of time, money and labour in all quarters”<sup>20</sup>

Furthermore, these laden Gringott’s vaults of service matter litigation cause significant loss to the State machineries as well. Long drawn out adversarial proceedings deliver a lethal blow to the time, human and financial resources of the Government, the resources which in all fairness can be attributed towards socio-economic growth rather than frivolous litigation. If any case over recruitment is not resolved at the earliest stage, then those number of people who are parties to the suit never contribute to their institution until their allotment is finalized by a court order. Similarly, if an employee is suspended pending disciplinary action, he will continue to receive due arrears of his position without actually working. All these cumulatively cause huge losses to the Government and its agencies.

## **A CRITICAL EXAMINATION OF THE GOVERNMENT AS THE BIGGEST LITIGANT**

The classification of the State as the largest single litigant in the country is not a polemical assertion but rather an established fact. As per a 2019 study citing Union Ministry of Law and

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<sup>18</sup> *Supra* note 7 at 5.

<sup>19</sup> Report, Law Commission of India Report, “100<sup>th</sup> Report on Litigation By And Against the Government: Some Recommendations for Reform, 1984” (1984).

<sup>20</sup> *Id.* at Para 3.3.

Justice, the Government including public sector undertakings and autonomous bodies is a party to approximately 46 per cent of all court cases in India.<sup>21</sup> In the words of former Chief Justice of India N.V. Ramana - the State being the “biggest litigator” is a “major culprit” accountable for approximately half of the Court’s litigation backlog.<sup>22</sup> Justice B.V. Nagarathna of the Supreme Court recently observed that the State becomes “both the complainant and the cause.”<sup>23</sup> In her learned words, “government raises concerns about backlog in courts while simultaneously feeding that pendency through relentless litigation.”<sup>24</sup>

The causes of this phenomenon are structural rather than merely attitudinal and can be attributed to following chief reasons. Firstly, there is a complete absence of personal accountability for the government officer who interprets any case against the State a court challenge. Unlike in private litigation where the litigant bears costs and risks, a government officer who directs that a hopeless appeal be filed faces no disciplinary consequences when the appeal fails. These officers are often showcase fixed-pie bias and henceforth, continue a protracted litigation instead of employing inter-agency and out of court resolution mechanism. It is also always safer for a bureaucrat to 'let the court decide' than to accept a subordinate's or a tribunal's adverse finding.<sup>25</sup>

Secondly, the process for government litigation is systemically flawed wherein, approvals for filing litigation are routinely provided by Senior Government Counsel and law officers in a mechanical fashion, without granular examination of merits. The Supreme Court has noted in numerous service matters that the government counsels often appears without proper instructions or incomplete briefs.<sup>26</sup>

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<sup>21</sup> Action Plan to Reduce Government Litigation *available at* - [https://taxguru.in/corporate-law/action-plan-to-reduce-government-litigation.html#google\\_vignette](https://taxguru.in/corporate-law/action-plan-to-reduce-government-litigation.html#google_vignette) (last visited on 18 April 2026).

<sup>22</sup> Dr. Jasmine Gill, “Judicial Delay and Digital Delivery: The Role of E-Courts in Addressing India’s Case Backlogs,” Vol. 7 Iss 2 *International Journal of Legal Science and Innovation* 199-213 (2025).

<sup>23</sup> The Hindu Bureau, “Government complains about backlog, but feeds it too as the biggest litigator, says Supreme Court judge Nagarathna,” *The Hindu* March 21, 2026 *available at* - <https://www.thehindu.com/news/national/government-complains-about-backlog-but-feeds-it-too-as-the-biggest-litigator-says-supreme-court-judge-agarathna/article70770137.ece> (last visited on 18 April 2026).

<sup>24</sup> U Anand, “who is the biggest litigator?” Supreme Court pulls up Centre, imposes penalty” *Hindustan Times* April 02, 2026 *available at* - <https://www.hindustantimes.com/india-news/who-is-the-biggest-litigator-supreme-court-pulls-up-centre-imposes-penalty-101775072140582.html> (last visited on 20 April 2026).

<sup>25</sup> *Supra* note 9 at 6.

<sup>26</sup> Ministry of Law and Justice, Department of Legal Affairs, Government of India, “National Litigation Policy, 2010,” (June 2010).

Thirdly, the inter-departmental litigation wherein one wing of the government sues another and therefore, leaving important issues to be resolved by courts instead of through executive functions.<sup>27</sup>

## **THE INEVITABILITY OF SERVICE LITIGATION AND THE BURDEN OF MANAGING IT**

A fundamental premise that is often ignored is that the service matter litigation is not an abnormality but rather an obvious legal consequence of the complex relationship between the State as employer and its employees as rights-bearing citizens. The employment relationship between the government and its servant is governed by a dense matrix of constitutional provisions and statutory rules. The most crucial issue that has remained unaddressed for decades now is not whether service litigation will occur, but rather how this conflict will be handled when it does?

The key areas which contribute to the maximum amount of service matter litigation can be elaborated as-

### **Recruitment**

The rules for recruitment do not generally make qualifying requirements sufficiently clear. This includes the types of institutions that will be considered, the minimum marks required, the different types of certificates acceptable, etc. In cases where such requirements have been left vague or have been changed after the process begins, litigation becomes inevitable. There is another category of conflicts arising from compassionate cases, reservations, and programs for the dependents of dead or disabled government employees. While these programs serve to help those in need, they can also give rise to conflicting claims that the current laws cannot fully resolve, such as conflicting family members' claims, conflicts of proof based on age requirements, and conflicting claims based on the health requirement. Every un-resolved claim goes to the court.<sup>28</sup>

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<sup>27</sup> The Problem of Excessive Government Litigation, *available at* <https://www.clearias.com/government-litigation/> (last visited on 18 April 2026).

<sup>28</sup> DVLN Murthy A. Vijay Krishna, "Service Litigation: A Case Study of Andhra Pradesh Administrative Tribunal" Vol 3 *NALSAR Law Review* 86-99 (2006).

## **Promotion, Seniority, and the Ad Hoc Appointment**

Seniority and promotion issues altogether represent a sizable number of service cases amounting to roughly between one-fourth and one-third of the total number of cases filed in tribunal.<sup>29</sup> The cause behind these is the prevalent trend among governments of appointing individuals in ad hoc positions, making temporary promotions, and assigning in-charge posts without regularising these through the proper and rule-governed procedures. After years of delaying and, many times, doing so retrospectively, the process of regularisation results in a string of controversies related to seniority.

## **Disciplinary Proceedings and Suspension**

Disciplinary action or suspensions also form a reliable basis for claims relating to poor quality services. The rules that govern departmental investigations are quite clear; among them are rules of natural justice such as notice of charges, a hearing before imposition of penalty, and appointment of an impartial investigating officer. These are mandatory conditions, the breach of which makes the penalty unfair. However, there has been a steady stream of cases in which such fundamental procedures were overlooked.<sup>30</sup> When a government servant is placed under suspension, he draws a subsistence allowance which is typically a fraction of his regular salary. The financial cost to the public exchequer of maintaining employees under indefinite suspension is substantial and overtime turns to Atlas's burden.

Collectively, all these factors demonstrate an inevitable yet avoidable pattern. In all fairness, the government cannot eliminate the conditions that generate service disputes, it will always recruit, promote, transfer, and, where necessary, discipline. However, it can manage this process in such a way as to ensure administrative transparency, which would reduce the number of disputes.

From all of the above, it becomes evident that what should concern the reader here is neither the mere presence of service litigation, nor even its increasing frequency, but rather, its mismanagement. Where litigation is unavoidable, it needs to be properly carried out, such that the government appeals only where necessary, like where there is an issue of law, or there is

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<sup>29</sup> *Supra* note 17 at 7.

<sup>30</sup> A.K. Kraipak v. Union of India, (1970) 1 SCC 328.

an obvious miscarriage of justice within the ruling itself.<sup>31</sup> Service justice is not concerned with keeping the employee out of court altogether, but rather, that in the rare occasions where he goes to court, he is able to receive a speedy, efficient and fair judgment.

### **IMPACT OF SERVICE MATTER PENDENCY ON ACCESS TO JUSTICE**

The consequences of excessive service matter litigation are not merely administrative inconveniences but it has profound impact on human lives too.

Firstly, the sheer volume of government litigation monopolizes already dwindling judicial resources. The yardstick number proposed by the Law Commission in the year 1987 was 50 judges per million citizens. However, in actuality, India has approximately 21,000 judges across all levels handling over 5 crore pending cases so roughly 14 judges per million population.<sup>32</sup> Every service matter that could have been resolved through conciliation but reaches the CAT or the High Court consumes a time slot that could have been devoted to cases involving fundamental rights, criminal trials, or civil disputes.

Second, the financial imbalance that exists between the government and the employee creates imbalance in terms of access to justice. A government servant challenging any service matter will have to hire legal counsel, pay court costs, and litigate his case over many years, often for a decade or more. During this period, the adverse service decision continues to operate, affecting seniority, pension, and career progress. Even if the employee ultimately succeeds, the relief is often Pyrrhic victory. Every unjustified government appeal that reaches the Supreme Court displaces a case involving criminal liability, environmental justice, or fundamental rights.<sup>33</sup> Every courtroom hour consumed by an unmeritorious state appeal in a service dispute is unavailable to a criminal under-trial awaiting bail, a widow seeking pension arrears, or a dispossessed farmer contesting a land acquisition.

Service matter disputes are particularly harmful because of their tendency to generate mass litigation. A single contested policy produces a number of identical Original Applications

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<sup>31</sup> V Aravinda, "India's 5.6 crore pending cases: Who is the biggest litigant of them all?", *The Federal*, 6 April 2026, available at <https://thefederal.com/the-federal-special/court-pending-cases-biggest-litigant-government-policy-237725> (last visited on 18 April 2026).

<sup>32</sup> India Justice Report, "Ranking States on the Capacity of Police, Judiciary, Prisons and Legal Aid" 22 (April 2025).

<sup>33</sup> *Supra* note 31 at 11.

before the Central Administrative Tribunal, followed by writ petitions before the High Court, followed by Special Leave Petitions before the Supreme Court.

The Supreme Court was clearly disappointed that although there existed a public policy of the government itself and despite judicial warnings to this effect, the authorities kept filing vexatious appeals which imposed an unnecessary burden on the overworked judiciary.<sup>34</sup>

*State of Uttar Pradesh and Others v. Smt. Priyanka*<sup>35</sup> served as a typical example of this tendency. A lecturer employed by the State of Uttar Pradesh died in 2009 and his widow applied for retirement gratuity, a benefit to which she was legally entitled. The application was rejected on a purely technical ground relating to whether the deceased had opted to retire at a specified age. She secured relief from the Allahabad High Court however the State of Uttar Pradesh appealed. The matter remained in litigation for thirteen years before the Supreme Court imposed a penalty of Rs. 50,000 on the State for preferring a frivolous appeal. A grieving widow, entitled to a statutory benefit, was made to litigate for thirteen years. The financial and psychological cost of that litigation that was borne entirely by the individual was nowhere accounted for.

In *Assistant Director, Directorate of Enforcement v. Kamal Ahsan and Another*,<sup>36</sup> the Enforcement Directorate challenged before the Supreme Court the grant of bail to a person suffering from advanced cancer who was accused in a money laundering matter. The court found the petition wholly unsustainable and departed from convention by imposing costs of Rupees 1 Lakh not on the department as an institution but personally on the officer who had authorised the filing. The court observed that no responsible authority could have sanctioned such a challenge given the medical condition of the accused. The ruling is significant not only for its outcome but for highlighting how state litigation causes impediments for access to justice.

The most recent and comprehensive illustration of National Litigation Policy violation is *Union of India v. Sukhwinder Singh*.<sup>37</sup> A CISF constable was dismissed from service on two charges: absence during a period that overlapped with sanctioned medical leave, and alleged involvement in facilitating an elopement involving a woman who later appeared during the

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<sup>34</sup> *Punjab State Power Corpn. Ltd. v. Atma Singh Grewal*, (2014) 13 SCC 666.

<sup>35</sup> [2023] 1 SCR 385.

<sup>36</sup> 2022 SCC OnLine SC 1514.

<sup>37</sup> SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 11301/2026.

disciplinary proceedings and stated she had no grievance, and had voluntarily married the constable's younger brother. Both charges were found unsubstantiated but the government nonetheless filed a Special Leave Petition before the Supreme Court that to 64 days beyond the limitation period. The NLP directs that no appeal should be filed in individual service matters with no wider legal implications where lower forums had already decided against the government. These infructuous proceedings deliver cataclysmic damage to the rule of law prevailing in India.

### **Harm Caused to State Machinery by excessive Service Litigation**

It should also be noted that when there is unwarranted service matter litigation, there is also harm to the state. In terms of cost, it is immediate since it involves legal fees, filing fees, and the court's fee, which comes directly out of the state coffers. Should costs be imposed on either the Supreme Court or High Court for such service matter litigation, these will also come out of public money. There is also an administrative cost because the officials tasked with briefing the lawyers, scheduling hearing dates, and responding to court orders are taken away from their duties in governance.

The Law Commission aptly underscores how –“ more the litigation, more the courts, and apart from the litigation cost which the state bears... the state also has to bear the expenses of setting up courts, providing personnel for manning posts”<sup>38</sup>

The National Litigation Policy, 2010 correctly diagnosed the problem, declaring that the government must cease to be a compulsive litigant and that the reflexive approach of deferring every decision to the courts must be abandoned.<sup>39</sup> As India's biggest litigant, the State has an inherent obligation to establish standards for justice. There is need for a strong National Litigation Policy that reflects the government's steadfast dedication to integrity, fairness, and the rule of law and an instrument for social change. It can be easily deduced that the state suffers as much as its employees if not more in case of prolonged service litigation.

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<sup>38</sup> The Law Commission of India, “126th Law Commission of India Report”, Para 1.9.

<sup>39</sup> *Supra* note 26 at 9.

## ALTERNATIVE DISPUTE RESOLUTION AS THE STRUCTURAL SOLUTION: CONNECTING SERVICE LITIGATION TO THE ADR FRAMEWORK

### ADR as a Systemic Response to Service Matter Litigation

Over the past three decades, the Indian legislature has increasingly recognised that adversarial adjudication cannot be the sole or even the primary mechanism for resolving disputes. The introduction of Section 89 into the Code of Civil Procedure, 1908 by the Amendment Act of 1999, was the foundational legislation. Section 89 casts a mandatory duty upon civil courts to identify, at the pre-trial stage, whether the dispute before them carries any potential for amicable settlement, and, where such potential exists, to refer the parties to one of four recognised ADR mechanisms: arbitration, conciliation, judicial settlement including Lok Adalat, or mediation.<sup>40</sup> In *Salem Advocate Bar Association v. Union of India*,<sup>41</sup> the Supreme Court upheld the constitutional validity of this provision and directed all High Courts to frame Mediation Rules, thereby indicating the judicial intention to integrate ADR into the dispute resolution mechanism.

Further, Section 12A of the Commercial Courts Act, 2015, introduced by the 2018 Amendment, went a step ahead in advancing the legislative effort by making pre-institutional mediation an essential prerequisite for filing any suit relating to commercial dispute which does not require urgent interim relief.<sup>42</sup> The Supreme Court in *M/s Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd.*<sup>43</sup> has clearly stated that the pre-institutional mediation as per Section 12A must be mandatorily followed, and failure to do so would render the suit vulnerable to being dismissed in terms of Order VII Rule 11 of the Code.<sup>44</sup> The Mediation Act, 2023 has since consolidated and extended this framework, providing a unified, and confidential mediation structure.

The Industrial Disputes Act, 1947 requires mandatory conciliation before an industrial dispute can be referred to a Labour Court or Industrial Tribunal.<sup>45</sup> The State, already operates within a

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<sup>40</sup> The Code of Civil Procedure, 1908, S 89.

<sup>41</sup> (2003) 1 SCC 49.

<sup>42</sup> Commercial Courts Act, 2015, S 12A.

<sup>43</sup> 2022 SCC OnLine SC 1028.

<sup>44</sup> Abhijnan Jha, Urvashi Misra, "Mandatory Pre-Institution Mediation — Effective Remedy to Declog Courts in India", *Supreme Court Cases Online*, October 22, 2022, available at <https://www.scconline.com/blog/post/2022/10/22/mandatory-pre-institution-mediation-effective-remedy-to-declog-courts-in-india/#fn2> (last visited on 19 April 2026).

<sup>45</sup> Industrial Disputes Act, 1947, S 10.

regime of mandatory pre-adjudicatory conciliation in its relationship with industrial workers. There is no principled basis for withholding the same protection from civil servants.

Taken together, these legislative developments articulate a coherent policy direction: that wherever there is a disputable claim, and wherever the parties' positions are capable of convergence through facilitated dialogue, ADR must be attempted before judicial machinery is activated. This paper argues that this direction must now be extended, by statute and institutional design, to service matter disputes between the government and its employees.

### **The Suitability of ADR mechanisms for Service Disputes: Mediation, Conciliation, and Arbitration**

Service disputes by design are particularly well-suited to be resolved by ADR intervention. Unlike tort claims or criminal proceedings, service matters almost invariably arise from an ongoing institutional relationship: the government and its servant remain within the same administrative structure even as they contest a promotion, transfer, or disciplinary finding. The parties share a common interest that is the efficient functioning of the public service. Their dispute is rarely about legal principle but are about concrete facts such a seniority position, a pension entitlement, a disciplinary inquiry. These are precisely the categories of dispute in which Mediation or conciliation can facilitate resolution that will satisfy both parties without the binary win or lose structure of adjudication.

Mediation is the most appropriate primary mechanism for service disputes at the pre-litigation stage. This can be done by a trained, neutral mediator with knowledge of service rules and administrative law who can facilitate a dialogue between the aggrieved employee and the departmental authority in which both sides articulate their positions, identify areas of agreement, and explore flexible remedies that a tribunal cannot order. The settlement, once signed, can be made enforceable as a decree of the CAT. The confidentiality of the process protects both the employee from reputational risk and the department from public accountability for procedural lapses.<sup>46</sup>

Conciliation has a relatively structured role because the conciliator can even offer proposals for resolving the dispute by utilizing their expertise on the regulations of the services and also

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<sup>46</sup> Mediation Act, 2023, S3(h).

the law laid down by the judiciary on such matters. As per the Arbitration and Conciliation Act of 1996, if the parties reach an agreement during the process of conciliation, the agreement will be legally binding as a final arbitral award that holds the same weight as a court decree.<sup>47</sup> Conciliation is particularly well-suited to category disputes, those involving multiple employees similarly situated, such as seniority or batch promotion cases, where the conciliator can propose a framework resolution applicable to the entire cohort, eliminating the need for dozens of identical Original Applications before the CAT.

Although arbitration is adjudicative in nature and hence less flexible than mediation and conciliation, there are clear benefits to be gained in dealing with issues of facts that arise in service disputes. An arbitrator who is a former judge or an administrative law specialist would be able to undertake a factual investigation much faster and more specialized than the CAT.

### **CAT-Annexed ADR Model for Service Disputes**

The first concrete reform measure is the institution of an ADR process attached to the Tribunal based on Section 89 of the CPC, but modified according to the nature of disputes brought before the CAT. This is a very simple process to implement. An amendment to the Administrative Tribunals Act, 1985 can be introduced whereby there will be included a provision which will serve as the “service-disputes” version of Section 89 CPC, providing that whenever there is a filing of an Original Application before the CAT, it will be the duty of the Registrar to perform a preliminary evaluation of suitability. If the dispute falls under the categories listed in the Schedule, then the dispute shall be referred compulsorily to a Conciliation Cell prior to it being heard in the Tribunal.

This methodology will be in line with the legislative reasoning behind Section 89 CPC and Section 12A of the Commercial Courts Act. Section 89 CPC recognizes the existence of settlement potential in the context and directs the court to refer the same to conciliation in light of the said recognition. Section 12A goes one step further by making mediation prior to the institution of proceedings a threshold requirement that needs to be satisfied even before approaching the court. The proposed model under CAT would stand somewhere between these two positions: it would come into play only after filing of the Oral Arguments but not earlier than that (there being a provision for seeking permission of the court in urgent cases), and even

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<sup>47</sup> Arbitration and Conciliation Act, 1996, S 74.

before listing of the matter. In other words, the model proposed will provide for mediation for all regular cases, while at the same time, keeping available the remedy for genuine urgent cases.

### **Institutional Infrastructure and the Way Forward**

The adoption of ADR in service disputes will not work out if it is limited to only adding one more procedure to the already burdened legal system. It needs to be treated as an institution-building exercise – the training and accreditation of mediators and conciliators with expertise in service regulations and administrative law; the creation of Conciliation Cells in all CAT Benches with an independent administration of their own; a proper budget allocation to ensure that the process remains free for the employee like Lok Adalat; and an evaluation system based on collecting data on settlement statistics.

In the end, ADR can never serve as a cure-all for everything. Some service disputes may involve questions of constitutional law, some might be seeking a declaration that applies to the whole class of employees, and some could concern the malafide conduct of the government. In these cases, ADR cannot work out, and the CAT must continue to exercise its judicial powers. However, these will remain exceptions, and a study of the litigation filed before tribunals in India would reveal that the vast majority of service disputes are factual in nature, and can indeed be sorted out through dialogue.

### **CONCLUSION**

The mystery of excessive service matter litigation in India is not a Sherlock's Case, it is obnoxiously obvious at this point. When the State itself ends up participating in fruitless litigation, it becomes the very force that clogs the justice delivery system. The situation of pendency in service litigation paints a dire picture like the ceaseless labor of Sisyphus-pointless, and repetitive. It creates endless dockets of cases in appellate courts, delays relief to the victim and takes a toll on the State exchequer.

Every service dispute that drags on for a decade in courts is not just a case number, it is a government employee whose pension was withheld, whose promotion was denied, or whose career was stalled; waiting for a resolution that the system owed them. It overburdens an already struggling system and like dominos, justice is further delayed for rest of the cases as well.

Therefore, there is an urgent need to introduce an alternate dispute resolution mechanism in order to take away some of the strain from the Courts and Tribunal. A well-structured out of court settlement mechanism can be speculated to produce favorable results by diverting influx of cases to a separate adjudicatory mechanism rather than creating dockets in Courts.

The venture of integrating ADR into the service dispute framework through a court-annexed model at the CAT is not a radical idea. It is a logical extension of what Parliament has already mandated in commercial disputes and what the Supreme Court has consistently encouraged in civil litigation. Service disputes are by nature between parties who share a continuing relationship and a common institutional interest in efficient governance. They are exactly the kind of disputes that ADR is designed to resolve.

A strong, enforceable National Litigation Policy, paired with a mandatory pre-hearing mechanism at the CAT level, can together begin to shift the culture from one of spontaneous litigation to one of informed and purposeful dispute resolution. If India is serious about access to justice, it must begin at the most basic level: ensuring that the government, its own most powerful litigant, leads by example.

There is imperative need for a complete overhaul of the justice dispersion system in service matter litigation and introducing alternate dispute resolution mechanism can be a plausible solution.