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# BEYOND FORMAL ADJUDICATION: THE EVOLVING DYNAMICS OF NEGOTIATION IN THE INDIAN ADR FRAMEWORK

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Angel Singh, Army Institute of Law

## ABSTRACT

This paper explores the evolving role of negotiation within India's Alternative Dispute Resolution (ADR) framework. While traditional legal mechanisms have historically favoured court litigation, modern dispute resolution increasingly relies on consensual approaches. By tracing the journey of negotiation from informal community practices to its formal recognition under contemporary legal statutes, the study analyses the procedural and substantive benefits of negotiation. Despite its flexibility and party autonomy the reliance of negotiation remains hindered by the lack of a stand-alone legal framework, litigation oriented legal culture and power imbalances between parties. Drawing on key judicial precedents, this paper analyses current legislative efforts such as pre litigation, mediation and online dispute resolution to access how negotiation can be better institutionalized. Further, to strengthen the ADR ecosystem, the paper proposes targeted recommendations, including the formalization of pre-litigation settlements and the integration of negotiation skills in legal education. Ultimately, the paper advocates for dedicated legislative backing and structured legal training arguing. The study concludes that negotiation is essential for a sustainable and consensual dispute resolution and building a more accessible justice system in India.

**Keywords:** Alternative Dispute Resolution, Negotiation, Party Autonomy, Consensual Dispute Resolution, Pre-Litigation Negotiation, Court-Annexed Settlement, Unequal Bargaining Power.

## INTRODUCTION

Disputes are an unavoidable part of social, commercial, familial and institutional relationships. What has changed over time is not the existence of disputes, but the manner in which societies choose to resolve them. Traditionally, adjudication through courts was regarded as the principal means of obtaining justice. Litigation, however, is not always capable of addressing every dimension of a dispute. It may determine legal rights, but it can also be expensive, time-consuming, adversarial and, in certain circumstances, destructive of relationships that the parties may still wish to preserve.

The increasing complexity of modern transactions and the enormous volume of litigation before Indian courts have consequently encouraged greater reliance upon Alternative Dispute Resolution (ADR)<sup>1</sup>. ADR represents a broad group of processes through which disputes may be resolved without following the entire conventional trial process. Arbitration, mediation, conciliation, negotiation, Lok Adalats and other consensual mechanisms form different parts of this larger dispute-resolution landscape<sup>2</sup>.

Among these mechanisms, negotiation occupies a distinctive position. Unlike arbitration, negotiation does not transfer decision-making authority to a third party. Unlike mediation, it does not necessarily require the intervention of a neutral facilitator. The parties themselves communicate, identify their respective interests, exchange proposals and attempt to arrive at an arrangement acceptable to both sides. In its simplest form, negotiation may consist of nothing more than a conversation between two disputing parties

Negotiation is therefore the most fundamentally consensual form of dispute resolution. The parties retain control over both the process and the outcome. No negotiator can impose a decision upon them merely because one side has a stronger legal case. The settlement emerges from agreement.

This characteristic makes negotiation particularly relevant to the contemporary Indian ADR framework. At the same time, an important legal difficulty arises that India does not presently have a single comprehensive statute devoted exclusively to negotiation. Negotiation exists

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<sup>1</sup> Law Commission of India, 129<sup>th</sup> Report on Urban Litigation – Option of Bargaining and Settlement Mechanisms (1988)

<sup>2</sup> The Code of Civil Procedure, 1908 (Act 5 of 1908), s. 89.

across the legal system through contractual principles, compromise provisions, court-referred settlement mechanisms, conciliation and mediation frameworks, labour legislation, commercial dispute-resolution mechanisms and Lok Adalats. Its legal significance has therefore developed incrementally rather than through one legislative enactment.

The present project examines the changing role of negotiation within India's ADR framework. It traces its historical development, examines its relationship with other ADR mechanisms, analyses the statutory provisions supporting negotiated settlement, studies important judicial precedents, identifies existing limitations and considers the future prospects of negotiation in India. The project ultimately argues that negotiation should be recognised as an essential part of India's dispute-resolution culture while preserving its fundamental characteristics of voluntariness, flexibility, confidentiality and party autonomy.

## **TRACING THE HISTORICAL TRAJECTORY OF ADR AND NEGOTIATION IN INDIA**

- **Traditional Indian Methods of Dispute Resolution**

The idea of resolving disputes without approaching a formal court is deeply rooted in Indian social history. Before the development of the modern judicial system, disputes within communities were frequently dealt with through village-level institutions, community elders, family councils and panchayats<sup>3</sup>. These mechanisms were not identical to contemporary ADR and cannot be treated as their direct legal equivalent, but they reflected an important social preference for resolving disagreements through dialogue, compromise and restoration of harmony<sup>4</sup>.

Traditional dispute resolution was particularly significant because the objective was often broader than simply determining legal liability. A dispute between members of a village or family could affect the wider community, and therefore the preservation of social relationships was an important consideration. The parties could be persuaded to compromise rather than continue a dispute indefinitely.

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<sup>3</sup> Upendra Baxi, *The Crisis of the Indian Legal System*, p. 68, (Vikas Publishing house, New Delhi, 1<sup>st</sup> edn., 1982)

<sup>4</sup> Marc Galanter, "Justice in Many Rooms: Courts, Private Ordering, and Indigenous Law", p. 19 *Journal of Legal Pluralism and Unofficial Law* (1981).

Negotiation, in its simplest form, was naturally embedded within these practices. Parties or their representatives could communicate their grievances, make concessions and arrive at an understanding acceptable to both sides. Although there was no separate legal profession of negotiators or comprehensive statutory framework, the underlying concept of consensual settlement was familiar to Indian society<sup>5</sup>.

- **Development of Formal Courts and the Shift Towards Adjudication**

The establishment and gradual expansion of formal courts during the colonial period altered the manner in which disputes were resolved. The introduction of formal procedural laws and institutional courts provided greater uniformity and predictability, but it also encouraged a more adversarial understanding of dispute resolution.

The court became the principal forum in which competing claims were presented, evidence was examined and legal rights were determined. This development was essential for the rule of law, but it also meant that settlement mechanisms received comparatively less institutional attention.

Negotiation did not disappear. Parties continued to compromise disputes privately, particularly in commercial and family matters. However, it largely remained an informal activity undertaken either before litigation or alongside it. It was not regarded as a distinct professional or statutory ADR mechanism in the manner in which arbitration later came to be understood<sup>6</sup>.

- **Early Statutory Recognition of Compromise**

The Code of Civil Procedure, 1908 contains an important statutory recognition of settlement through Order XXIII Rule 3. The provision permits a court to record a lawful agreement or compromise by which a suit is adjusted wholly or partly<sup>7</sup>.

This provision is significant to the history of negotiation because it establishes a legal connection between private settlement and judicial proceedings. Parties may negotiate independently, but where their settlement concerns a pending suit, the law provides a

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<sup>5</sup> Law Commission of India, 222<sup>nd</sup> Report on Need for Justice-Dispensation Through Alternative Dispute Resolution System (2009).

<sup>6</sup> M.P. Jain, *Outlines of Indian Legal and Constitutional History*, p. 112 (LexisNexis Butterworths Wadhwa, Nagpur, 6<sup>th</sup> edn., (2009).

<sup>7</sup> The Code of Civil Procedure, 1908 (act 5 of 1908), o. XXIII, r. 3.

mechanism through which that compromise can receive legal effect.

The Supreme Court in *Gurpreet Singh v. Chatur Bhuj Goel*<sup>8</sup>, examined the requirements of a compromise under Order XXIII Rule 3 and emphasised the importance of a completed agreement satisfying the requirements of the Rule. The decision illustrates an important principle: negotiation may be informal during its development, but when the parties seek judicial recognition of the resulting compromise, legal requirements concerning the form and validity of the settlement become significant.

Thus, even before the modern ADR movement developed, Indian civil procedure recognised that litigation need not necessarily culminate in a contested judgment. A lawful compromise could bring the dispute to an end.

- **Constitutional Recognition of Access to Justice**

The constitutional development of ADR is also linked with Article 39A of the Constitution of India. Article 39A directs the State to ensure that the operation of the legal system promotes justice on the basis of equal opportunity<sup>9</sup> and that opportunities for securing justice are not denied because of economic or other disabilities.

Article 39A does not expressly create a right to negotiation or mediation. Its significance lies in the larger principle of making justice accessible and effective. ADR mechanisms can contribute to this objective by providing methods of dispute resolution that may be quicker, less expensive and more flexible than prolonged litigation.

Negotiation is particularly relevant in this context because it may allow parties to resolve a dispute before substantial litigation expenses have been incurred. It can therefore function as an early form of access to justice rather than merely an alternative available after litigation has already become lengthy.

- **Emergence of Modern ADR in India**

The modern ADR movement developed more substantially during the latter part of the twentieth century. The Legal Services Authorities Act, 1987 gave statutory recognition to Lok Adalats, while the Arbitration and Conciliation Act, 1996 created a comprehensive framework

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<sup>8</sup> *Gurpreet Singh v. Chatur Bhuj Goel*, (1988) 1 SCC 270.

<sup>9</sup> The Constitution of India, art. 39A.

for arbitration and conciliation. The institutionalisation of these mechanisms reflected the growing recognition that adjudication should not be the only means of resolving disputes.

The introduction of Section 89 into the Code of Civil Procedure further strengthened this approach. The provision enables courts, where elements of settlement exist, to refer appropriate disputes to ADR mechanisms such as arbitration, conciliation, judicial settlement including Lok Adalat and mediation<sup>10</sup>.

This development changed the position of negotiation indirectly. Negotiation began to be viewed not simply as a private activity but as part of a wider legal culture favouring consensual resolution. Mediation and conciliation, although distinct from negotiation, frequently depend upon negotiation between the parties for the formulation of the final settlement.

- **Contemporary Shift from Litigation to Settlement**

The twenty-first century has witnessed a more deliberate movement towards early settlement. The Commercial Courts Act, 2015 introduced pre-institution mediation for specified commercial disputes, and the Supreme Court in *Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd.*, treated compliance with Section 12A as mandatory in cases falling within its scope<sup>11</sup>.

The Mediation Act, 2023 has further strengthened this settlement-oriented approach. It seeks to promote mediation, facilitate institutional mediation, enforce mediated settlement agreements and encourage online and community mediation<sup>12</sup>.

Consequently, the historical development of ADR in India can broadly be understood as a movement from informal community-based settlement, through court-recognised compromise, towards increasingly institutionalised and legally supported consensual dispute resolution.

## **CONCEPTUALIZING NEGOTIATION WITHIN THE INDIAN ADR FRAMEWORK**

- **Meaning and Nature of Negotiation**

Negotiation may broadly be understood as a voluntary process through which two or more

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<sup>10</sup> CPC, s. 89 (*supra* note 2 at 2).

<sup>11</sup> The Commercial Courts Act, 2015 (Act 4 of 2015), s. 12A; *Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd.*, (2022) 10 SCC 1.

<sup>12</sup> The Mediation Act, 2023 (Act 32 of 2023).

parties communicate directly, or through their authorised representatives, with the objective of resolving a dispute or reaching agreement on a particular issue.

Its essential characteristics are:

1. **Party autonomy:** the parties determine whether to negotiate and what terms they are prepared to accept.
2. **Absence of adjudication:** no third party has the authority to determine the dispute merely because negotiations take place.
3. **Flexibility:** the process is not ordinarily governed by the strict procedural rules applicable to courts.
4. **Confidentiality by agreement or applicable legal rules:** parties can structure communications and settlement discussions to encourage candid negotiations<sup>13</sup>.
5. **Interest-based settlement:** negotiation permits parties to consider commercial, practical and relational interests in addition to strict legal rights.
6. **Consent:** a final settlement ordinarily depends upon the agreement of the parties.
7. **Relationship preservation:** negotiation can resolve the dispute while allowing the underlying relationship to continue.

Negotiation may therefore be regarded as the most basic and flexible form of consensual dispute resolution. It can occur before a dispute reaches court, during the pendency of litigation, during arbitration or as part of mediation or conciliation.

- **Negotiation and Mediation: A Distinction**

Negotiation and mediation are closely related but legally distinct processes. In negotiation, the parties generally communicate directly or through their representatives. Mediation introduces an independent third person who facilitates communication and assists the parties in reaching a settlement.

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<sup>13</sup> The Bharatiya Sakshya Adhiniyam, 2023 (Act 47 of 2023), s. 17.

The distinction is particularly important after the enactment of the Mediation Act, 2023. The Act expressly defines mediation around the assistance of a mediator, whereas direct negotiation can take place without such third-party assistance<sup>14</sup>.

In practical terms, however, negotiation is often the foundation of mediation. A mediator does not impose a decision. Instead, the mediator assists the parties in exploring possibilities, and the final settlement is still based on the parties' agreement. Thus, negotiation remains present even when the formal ADR mechanism is mediation.

- **Negotiation and Arbitration**

Arbitration differs fundamentally from negotiation because the arbitral tribunal has adjudicatory authority. Parties agree to submit their dispute to arbitration and, subject to the applicable law and agreement, the tribunal determines the dispute through an arbitral award.

Negotiation, on the other hand, preserves complete decision-making power with the parties. This distinction explains why negotiation is generally more flexible. Parties can agree to commercial or practical arrangements which a court or arbitral tribunal may not be able to order as a remedy.

The Arbitration and Conciliation Act, 1996 nevertheless recognises settlement during arbitral proceedings<sup>15</sup>. Section 30 permits an arbitral tribunal, with the agreement of the parties, to use mediation, conciliation or other procedures to encourage settlement. If the parties settle, the settlement may be recorded as an arbitral award on agreed terms in accordance with the statutory requirements.

- **Negotiation and Conciliation**

Conciliation under the Arbitration and Conciliation Act, 1996 is another process closely connected with negotiation. Under Section 67, the conciliator assists the parties independently and impartially in their attempt to reach an amicable settlement. Section 72 specifically permits parties to submit suggestions for settlement, while Sections 73 and 74 deal with settlement agreements and their legal effect.

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<sup>14</sup> The Mediation Act, 2023 (Act 32 of 2023), s. 3(h).

<sup>15</sup> The Arbitration and Conciliation Act, 1996 (Act 26 of 1996), s. 30.

The distinction again lies in the role of the third party. A conciliator may actively assist and even formulate proposals, whereas ordinary negotiation does not require such intervention.

- **Negotiation as a Process of Party Autonomy**

The greatest strength of negotiation is party autonomy. The parties are not restricted to the precise remedies that a court can grant. They can formulate solutions according to their economic, personal or commercial interests.

For instance, two companies involved in a payment dispute may agree that the outstanding amount will be paid in instalments while their business relationship continues. A court may determine the amount payable, but negotiation allows the parties to address the wider commercial relationship.

This flexibility explains why negotiation has become increasingly valuable in commercial disputes, family disputes, employment relationships and partnership matters.

## **THE LEGAL ARCHITECTURE GOVERNING NEGOTIATION IN INDIA**

Negotiation in India does not presently operate under one comprehensive statute. Its legal foundation is distributed across several statutes which recognise compromise, settlement, conciliation, mediation or other forms of consensual resolution<sup>16</sup>. It is therefore important to distinguish between statutes that directly regulate settlement mechanisms and statutes that indirectly facilitate negotiation.

- **The Constitution of India, 1950**

Article 39A provides the constitutional background for the development of accessible dispute-resolution mechanisms. It requires the State to ensure that the legal system promotes justice on the basis of equal opportunity<sup>17</sup>.

Although the Article does not specifically refer to negotiation, its emphasis on access to justice supports the broader development of ADR. Negotiation can contribute to this constitutional objective where it enables parties to resolve disputes without prolonged litigation and excessive

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<sup>16</sup> Law Commission, *supra* note 5 at 4.

<sup>17</sup> *supra* note 9 at 5.

expenditure.

The constitutional principle is therefore best understood as the foundation upon which later statutory developments have been built rather than as a direct statutory source of negotiation.

- **Code of Civil Procedure, 1908**

The CPC remains one of the most important statutory sources for settlement-oriented dispute resolution. Section 89 provides for settlement of disputes outside the court where elements of settlement appear to exist. It recognises arbitration, conciliation, judicial settlement including Lok Adalat and mediation as mechanisms through which disputes may be resolved<sup>18</sup>.

The Supreme Court's decision in *Salem Advocate Bar Association, T.N. v. Union of India*<sup>19</sup>, was particularly significant in explaining the operation of Section 89 and the ADR framework introduced through the CPC amendments. The Court considered the procedural modalities necessary to make Section 89 effective and encouraged institutional mechanisms for ADR.

The significance of Salem Advocate Bar Association lies not merely in the interpretation of one provision. It represents the judicial recognition that courts should not function merely as places where disputes end after years of trial; they can also facilitate consensual resolution.

Order XXIII Rule 3 is directly relevant to negotiated compromise. Where the parties arrive at a lawful agreement or compromise, the court may record the same in accordance with the Rule<sup>20</sup>.

The significance of these provisions is that they connect private settlement with formal legal proceedings. Negotiation may begin outside court, but once a legally valid compromise is reached, procedural law provides a mechanism through which it can receive judicial recognition.

The Supreme Court in *Gurpreet Singh v. Chatur Bhuj Goel*, considered the requirement that a compromise be in writing and signed by the parties under Order XXIII Rule 3<sup>21</sup>. The judgment demonstrates the distinction between the process of negotiating a settlement and the

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<sup>18</sup> CPC, s. 89 (*supra* note 2 at 2).

<sup>19</sup> *Salem Advocate Bar Association, T.N. v. Union of India*, (2005) 6 SCC 344.

<sup>20</sup> *supra* note 7 at 4.

<sup>21</sup> *Gurpreet Singh*, *supra* note 8 at 4.

legal formalisation of that settlement. Negotiations may consist of letters, meetings and proposals, but when a party seeks to have the settlement recognised as a compromise decree, the procedural requirements of the CPC become important.

Further in *Banwari Lal v. Chando Devi*, the Supreme Court considered the validity of a compromise decree and the circumstances in which a party may challenge an alleged compromise. The case underscores the need for courts to ensure that a compromise is genuine and lawful rather than mechanically recording a settlement<sup>22</sup>. This principle is particularly relevant to negotiation because consensual resolution cannot be equated with unregulated settlement. Consent must be genuine and legally valid.

- **Indian Contract Act, 1872**

The Indian Contract Act, 1872 is relevant because most negotiated settlements ultimately depend upon agreement between the parties. Negotiation may result in a new agreement, modification of an existing obligation, remission, alteration or substitution of contractual obligations<sup>23</sup>.

The law of contract is therefore important in determining whether the final terms negotiated by the parties create legally enforceable obligations. A discussion or preliminary offer does not automatically become a binding settlement. The intention of the parties and the requirements of a valid agreement remain important.

This is particularly significant in commercial negotiations, where parties often exchange several drafts before executing a final settlement agreement.

- **Family Courts Act, 1984**

The Family Courts Act, 1984 provides another important example of settlement-oriented legislation. Its very long title states that Family Courts are established with a view to promoting conciliation and securing speedy settlement of disputes relating to marriage and family affairs. Section 9 specifically places a duty upon the Family Court to make efforts to bring about a settlement.

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<sup>22</sup> *Banwari Lal v. Chando Devi*, (1993) 1 SCC 581.

<sup>23</sup> The Indian Contract Act, 1872 (Act 9 of 1872), ss. 10, 62 & 63.

This statutory approach recognises that family disputes cannot always be satisfactorily resolved through a purely adversarial determination. Parties may have to continue interacting after the proceedings, particularly where children, maintenance or family relationships are involved.

Negotiation is therefore especially valuable in family disputes because the desired outcome may involve arrangements concerning future conduct rather than merely determining past liability.

- **Legal Services Authorities Act, 1987**

The Legal Services Authorities Act, 1987 provides statutory recognition to Lok Adalats. The Act empowers the legal services authorities to organise Lok Adalats for securing settlement of disputes through compromise. Sections 19 to 22 deal with the organisation, cognizance, awards and powers of Lok Adalats.

Lok Adalats are important to the development of negotiation because they institutionalise a settlement-oriented approach. The participants are encouraged to arrive at a mutually acceptable resolution rather than merely contesting the dispute until a judicial determination is made.

The Supreme Court in *State of Punjab v. Jalour Singh*<sup>24</sup>, emphasised the conciliatory character of Lok Adalats and distinguished their role from that of ordinary courts. Their functioning demonstrates how negotiation and compromise can be incorporated into an institutional legal process.

- **Arbitration and Conciliation Act, 1996**

The Arbitration and Conciliation Act, 1996 is particularly relevant because its conciliation provisions expressly facilitate settlement discussions. Section 67 provides for the role of the conciliator, Section 72 allows parties to make suggestions for settlement, Section 73 provides for settlement agreements, Section 74 deals with their status and effect, and Section 75 protects confidentiality. These provisions demonstrate that negotiation is not isolated from formal ADR. Parties may negotiate within a conciliation process, and the resulting settlement can

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<sup>24</sup> *State of Punjab v. Jalour Singh* (2008) 2 SCC 660.

acquire significant legal force.

Section 30 is also important because it permits settlement during arbitral proceedings. Thus, even when parties have selected adjudication through arbitration, the law preserves their ability to resolve the dispute consensually.

- **Industrial Disputes Act, 1947**

The Industrial Disputes Act, 1947 reflects the importance of settlement in employment and industrial relations. The Act establishes conciliation officers and contains provisions dealing with the duties of conciliation officers, boards and other authorities. Section 12 specifically concerns the duties of conciliation officers.

Industrial disputes demonstrate why consensual resolution can be preferable to prolonged adjudication. A dispute between an employer and employees may affect production, wages and the continuing employment relationship. A negotiated settlement may therefore address the practical interests of both sides more effectively than a purely adjudicatory outcome.

The Act consequently forms part of the broader statutory tradition in India of encouraging settlement before a dispute becomes an extended legal contest.

- **Commercial Courts Act, 2015**

The Commercial Courts Act, 2015 introduced a particularly significant development through Section 12A, which provides for pre-institution mediation and settlement in specified commercial disputes where urgent interim relief is not contemplated. Section 12A specifically as "Pre-Institution Mediation and Settlement."

The significance of Section 12A lies in its timing. Instead of waiting for litigation to commence and then encouraging settlement, the law requires parties in specified circumstances to explore settlement before instituting a commercial suit.

The Supreme Court's in *Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd.*<sup>25</sup>, strengthened this policy by holding that compliance with Section 12A is mandatory for suits falling within its scope, and a suit instituted without complying to this statutory requirement is

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<sup>25</sup> Patil Automation, *supra* note 11 at 6.

liable to rejection under order VII, Rule 11 of CPC, 1908, subject to the temporal qualification laid down by the Court.

Although Section 12A is formally a mediation provision, its significance for negotiation is considerable. Before the parties reach a mediator, commercial disputes are often preceded by correspondence, meetings, legal notices and settlement proposals. The legislative preference is therefore increasingly moving towards early consensual engagement before full-scale litigation.

- **Consumer Protection Act, 2019**

The Consumer Protection Act, 2019 contains a dedicated chapter on mediation. Sections 74 to 81 provide for mediation centres, empanelment of mediators, the procedure for mediation, settlement through mediation and recording of settlement.

Consumer disputes are particularly suitable for consensual resolution because they often involve relatively standardised claims where parties may benefit from a quick settlement instead of prolonged proceedings.

The legislation therefore demonstrates the gradual expansion of settlement mechanisms beyond traditional civil litigation and commercial disputes.

- **Micro, Small and Medium Enterprises Development Act, 2006**

The MSMED framework is another important example of statutory encouragement of consensual settlement. Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 provides a mechanism for reference of disputes concerning amounts due to micro and small enterprises to the Micro and Small Enterprises Facilitation Council. The statutory mechanism incorporates conciliation before arbitration in the circumstances contemplated by the Act.

This is particularly relevant because disputes involving smaller enterprises frequently concern delayed payments and working capital. Early settlement can be commercially important because prolonged litigation may itself threaten the financial viability of a small business.

The MSMED framework therefore illustrates how consensual dispute resolution can be

connected with substantive economic policy.

- **Mediation Act, 2023**

The Mediation Act, 2023 represents the most recent major development in India's statutory ADR framework. Its stated objective is to promote and facilitate mediation, particularly institutional mediation, provide for enforceability of mediated settlement agreements, encourage community mediation and make online mediation an acceptable and cost-effective process.

The Act should not, however, be incorrectly described as a statute governing negotiation. Negotiation remains distinct because it does not necessarily involve a mediator. The significance of the Act is instead that it strengthens the overall settlement ecosystem within which negotiation operates.

Section 5 permits parties, subject to the statutory framework, to voluntarily undertake pre-litigation mediation. In specified commercial disputes, Section 12A of the Commercial Courts Act continues to govern pre-institution mediation.

The Act also gives statutory recognition to online mediation. This has implications for the future of negotiation because the same technological environment can facilitate direct settlement discussions between parties located in different places<sup>26</sup>.

## **CHANGING DYNAMICS OF NEGOTIATION IN INDIA**

- **From Informal Settlement to Recognised ADR Practice**

The role of negotiation has changed substantially. Earlier, it was commonly treated as a private activity through which parties attempted to settle their differences before approaching court. Today, it is increasingly understood as a legitimate professional dispute-resolution strategy.

Lawyers routinely negotiate settlement terms, payment schedules, contractual modifications, withdrawal of claims and other arrangements. In many cases, the dispute may never reach formal ADR or court because negotiations succeed at an early stage<sup>27</sup>.

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<sup>26</sup> The Mediation Act, 2023 (Act 32 of 2023), s. 28.

<sup>27</sup> Madabhushi Sridhar, *Alternative Dispute Resolution (ADR)*, p. 42 (Butterworths Wadhwa, Nagpur, 2006).

- **Negotiation as the First Step Towards Settlement**

Negotiation frequently functions as the first stage of the ADR process. Parties may initially exchange correspondence, hold meetings or engage their advocates. If these discussions do not succeed, the matter may proceed to mediation or conciliation.

This makes negotiation significant even when another ADR mechanism is ultimately used. The mediator or conciliator does not create the settlement independently. The final outcome still depends upon the willingness of the parties to negotiate and compromise.

- **Increasing Importance in Commercial Disputes**

Commercial disputes provide particularly fertile ground for negotiation. Businesses often have continuing relationships and therefore may not want a dispute to destroy an otherwise profitable association.

Negotiation allows commercial parties to consider business realities alongside legal rights<sup>28</sup>. A settlement may involve future contracts, revised payment terms, continued supply, credit arrangements or modifications of performance obligations.

- **Preservation of Relationships**

One of the most important advantages of negotiation is that it can reduce the hostility associated with adversarial litigation. This is particularly relevant in family disputes, partnership disputes, employment relationships and long-term commercial arrangements.

A negotiated settlement can provide the parties with an opportunity to move forward instead of remaining permanently focused upon the dispute.

- **Reduction of Time and Cost**

Negotiation can also reduce the financial and procedural burden associated with litigation. Early settlement can prevent expenditure on pleadings, evidence, repeated hearings, expert opinions and appeals.

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<sup>28</sup> S.C. Srivastava, "Alternative Dispute Resolution: A Pragmatic Approach to Justice Delivery", 48 Journal of the Indian Law Institute 112 (2006).

This advantage, however, should not be overstated. Complex negotiations can themselves require significant time and professional resources. The real benefit lies in the possibility of resolving a dispute proportionately rather than allowing every disagreement to become prolonged litigation.

## **LANDMARK PRECEDENTS SHAPING NEGOTIATION**

The Indian judiciary has played a crucial role in transforming ADR from an optional concept into an increasingly important part of legal practice. Although there is no separate judicial code governing negotiation, the Supreme Court's decisions concerning compromise, settlement, mediation, and conciliation have significantly shaped the legal environment in which negotiation functions.

### **1. Salem Advocate Bar Association, T.N. v. Union of India<sup>29</sup>**

#### ***Facts of the Case:***

The litigation arose from challenges concerning amendments to the Code of Civil Procedure, particularly the amendments intended to improve civil procedure and promote ADR. Section 89 CPC was one of the significant provisions under consideration because it sought to provide a mechanism for settlement outside the court.

#### ***Issue:***

The Supreme Court was required to consider how the ADR provisions introduced through the amendments, particularly Section 89 and the connected procedural provisions, should practically operate.

#### ***Decision and Principle:***

The Supreme Court recognised the importance of ADR and examined the practical framework required to make Section 89 effective. The Court's approach demonstrated that ADR should not remain merely a legislative declaration but should be integrated into the functioning of civil courts.

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<sup>29</sup> *Salem Advocate Bar Association, T.N. v. Union of India*, (2005) 6 SCC 344.

The decision helped establish the principle that courts have an important role in identifying appropriate cases for settlement and facilitating the use of ADR.

***Relevance to Negotiation:***

The judgment is relevant to negotiation because it reflects the broader judicial shift from a purely adjudicatory approach towards a settlement-oriented justice system. Negotiation can operate most effectively when courts and lawyers treat settlement as a legitimate method of dispute resolution rather than merely as an informal alternative to litigation.

**2. Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.<sup>30</sup>*****Facts of the Case:***

Afcons Infrastructure Ltd. had undertaken a construction project for the Cochin Port Trust and had subcontracted part of the work to Cherian Varkey Construction Co. The subcontract did not contain an arbitration agreement. A dispute arose concerning payment, and the respondent instituted a civil suit.

During the proceedings, the respondent sought reference of the dispute to arbitration under Section 89 CPC. The appellant objected because there was no arbitration agreement between the parties. The trial court nevertheless referred the matter to arbitration, and the High Court upheld the order.

***Issue:***

The principal question before the Supreme Court was whether a court could refer parties to arbitration under Section 89 CPC without their consent when no arbitration agreement existed.

***Decision and Principle:***

The Supreme Court held that arbitration could not be imposed upon unwilling parties merely by invoking Section 89 CPC. Arbitration is fundamentally based upon consent, and the absence of an arbitration agreement could not be overcome simply through judicial reference.

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<sup>30</sup> *Afcons infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*, (2010) 8 SCC 24.

The Court also clarified the operation of Section 89 and distinguished arbitration from the more settlement-oriented processes such as mediation and judicial settlement.

### ***Relevance to Negotiation:***

The judgment is important for negotiation because it reinforces the principle of party autonomy. Courts may encourage settlement, but consensual dispute resolution cannot lose its voluntary character.

Negotiation depends even more fundamentally upon consent than arbitration. The parties must remain free to decide whether they wish to negotiate, what they are willing to offer and whether they accept the final settlement. The reasoning in *Afcons Infrastructure* therefore supports the voluntary foundation of negotiation.

### **3. Gurpreet Singh v. Chatur Bhuj Goel<sup>31</sup>**

#### ***Facts of the Case:***

The dispute concerned an agreement relating to property. During the course of the proceedings, the parties reached an understanding concerning settlement of the dispute and statements were made before the court. However, the compromise was not reduced into a written document signed by the parties in the manner required by Order XXIII Rule 3 CPC.

#### ***Issue:***

The question before the Supreme Court was whether such an arrangement could be treated as a valid compromise under Order XXIII Rule 3 despite the absence of the required written and signed agreement.

#### ***Decision and Principle:***

The Supreme Court emphasised that a compromise intended to be recognised under Order XXIII Rule 3 must comply with the requirements of the Rule. A settlement cannot simply be treated as a compromise decree without satisfying the statutory conditions.

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<sup>31</sup> *Gurpreet Singh v. Chatur Bhuj Goel*, (1988) 1 SCC 270.

***Relevance to Negotiation:***

The judgment demonstrates the importance of distinguishing between negotiations and a concluded settlement. Parties may exchange numerous offers and counter-offers before reaching an agreement. Once an agreement is reached, however, its terms should be properly documented.

For lawyers, this is an important practical lesson. Successful negotiation is not merely the achievement of verbal consensus; the final agreement must be drafted carefully so that its legal effect is clear and enforceable.

**4. State of Punjab v. Jalour Singh<sup>32</sup>*****Facts of the Case:***

The case concerned the nature and powers of a Lok Adalat under the Legal Services Authorities Act, 1987. The issue arose in the context of the extent to which a Lok Adalat could determine a dispute where settlement had not been reached.

***Issue:***

The Supreme Court was required to clarify whether a Lok Adalat could adjudicate the dispute on merits in the absence of compromise between the parties.

***Decision and Principle:***

The Court explained that a Lok Adalat is primarily conciliatory in character. Its jurisdiction is based upon settlement and compromise, and it does not function as an ordinary court which independently adjudicates the merits of a contested dispute.

***Relevance to Negotiation:***

The decision reinforces the centrality of consent in settlement-oriented ADR. A dispute-resolution mechanism based on compromise cannot simply substitute adjudication with another form of compulsory decision-making. This principle directly supports the role of negotiation

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<sup>32</sup> *State of Punjab v. Jalour Singh*, (2008) 2 SCC 660.

because negotiation must remain a process through which the parties themselves formulate the settlement.

## **5. Moti Ram (Dead) through LRs v. Ashok Kumar<sup>33</sup>**

### ***Facts of the Case:***

The dispute involved a landlord-tenant relationship and was referred to mediation during the pendency of proceedings before the Supreme Court. During mediation, the parties exchanged proposals and counter-proposals concerning settlement.

The mediation ultimately failed. The mediator submitted a report indicating that the parties had not reached a settlement, but the question arose regarding disclosure of the details of the discussions and proposals made during the mediation.

### ***Issue:***

The principal issue was whether the mediator should disclose the substance of negotiations, offers and counter-offers made during the confidential mediation process after the mediation had failed.

### ***Decision and Principle:***

The Supreme Court emphasised the confidentiality of mediation proceedings and held that the mediator should not disclose the substance of the parties' negotiations when the process ends without settlement.

The Court's reasoning was based upon the need to preserve confidence in settlement processes. Parties must be able to make concessions and explore possibilities without fearing that unsuccessful proposals will subsequently be used against them.

### ***Relevance to Negotiation:***

Although the case concerned mediation, its reasoning is highly relevant to negotiation. Genuine negotiation requires parties to be able to explore compromise freely. If every proposal were

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<sup>33</sup> *Moti Ram (Dead) through LRs v. Ashok Kumar*, (2011) 1 SCC 466.

capable of being treated as an admission, parties would naturally become more rigid.

Confidentiality therefore contributes to the effectiveness of negotiation and other consensual ADR mechanisms.

## **6. K. Srinivas Rao v. D.A. Deepa<sup>34</sup>**

### ***Facts of the Case:***

The case arose out of matrimonial disputes involving allegations of cruelty and criminal proceedings between the spouses. The dispute had resulted in multiple proceedings and had become increasingly adversarial.

### ***Issue:***

The Supreme Court considered whether mediation and other settlement-oriented mechanisms could be effectively utilised in matrimonial disputes and discussed the importance of attempting settlement in appropriate family matters.

### ***Decision and Principle:***

The Court recognised the usefulness of mediation and settlement mechanisms in matrimonial disputes and emphasised the need to encourage parties to explore reconciliation and settlement where possible.

### ***Relevance to Negotiation:***

The case illustrates that negotiation is particularly valuable where the parties have an ongoing relationship. Matrimonial disputes are not always resolved satisfactorily merely by determining legal rights because the parties may continue to have responsibilities towards children and other family members.

Negotiated arrangements can therefore address practical issues such as maintenance, residence, child-related responsibilities and future interaction in a manner that a purely adversarial process may not.

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<sup>34</sup> *K. Srinivas Rao v. D.A. Deepa*, (2013) 5 SCC 226.

**7. Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd.<sup>35</sup>*****Facts of the Case:***

A commercial dispute was instituted without compliance with the pre-institution mediation requirement contained in Section 12A of the Commercial Courts Act, 2015. The dispute raised the question of whether mediation before institution of a commercial suit was merely optional.

***Issue:***

The principal issue was whether Section 12A was mandatory and what consequence followed when a plaintiff instituted a commercial suit without first complying with the statutory mediation requirement, where the dispute did not contemplate urgent interim relief.

***Decision and Principle:***

The Supreme Court held that pre-institution mediation under Section 12A was mandatory in cases falling within the statutory framework. The Court consequently gave significant force to the legislative policy of attempting settlement before commercial litigation begins.

***Relevance to Negotiation:***

The decision is important because it demonstrates the changing philosophy of Indian dispute resolution. Settlement is no longer viewed only as something to be attempted after litigation has commenced. The law increasingly encourages parties to explore consensual solutions at the earliest possible stage.

Negotiation is naturally connected with this objective because parties may begin discussions even before formal mediation is initiated.

**KEY HURDLES IN THE PRACTICE OF NEGOTIATION IN INDIA**

- **Absence of a Dedicated Negotiation Statute**

The most obvious limitation is that India does not presently have a comprehensive statute specifically regulating negotiation. Unlike arbitration and mediation, negotiation does not have

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<sup>35</sup> *Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd.*, (2022) 10 SCC 1.

one dedicated legislative framework governing its procedure.

This has both advantages and disadvantages. The absence of formal regulation preserves flexibility, but it can also create uncertainty concerning matters such as confidentiality, enforceability of preliminary settlements and the status of communications exchanged during negotiations<sup>36</sup>.

A completely rigid negotiation statute would defeat the purpose of negotiation. The better approach would be to develop limited legal safeguards without converting negotiation into a highly technical procedure.

- **Unequal Bargaining Power**

Negotiation operates on the assumption that parties can make meaningful choices. In reality, bargaining power may be unequal.

A large corporation negotiating with a small supplier may have substantially greater financial resources and legal expertise. Similarly, an individual employee may negotiate from a weaker position than an employer. The existence of consent therefore does not always guarantee substantive fairness<sup>37</sup>. Legal representation and informed decision-making become particularly important in such circumstances.

- **Lack of Awareness Among Litigants**

A significant limitation is the continuing perception that courts are the primary or only legitimate institutions for obtaining justice.

Some litigants may view settlement as an admission that their case is weak. This mindset can prevent parties from exploring negotiation at an early stage, even where settlement would serve their interests better.

Greater public awareness is therefore necessary to change the perception that choosing

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<sup>36</sup> P.C. Rao and William Sheffield (eds.), *Alternative Dispute Resolution: What it is and How it Works*, p. 85 (Universal Law Publishing, New Delhi, 1997).

<sup>37</sup> Nomita Aggarwal, "Alternative Dispute Resolution: Concept and Practice", p. 41 *Journal of the Indian Law Institute* 215 (1999).

negotiation means abandoning one's legal rights.

- **Litigation-Oriented Legal Culture**

Indian legal practice has historically been strongly oriented towards litigation. Lawyers are trained extensively in drafting, pleading, evidence and advocacy, whereas negotiation and client counselling may receive comparatively less practical attention.

This can affect the quality of negotiations. Effective negotiation requires lawyers to understand not only the legal position of their clients but also their commercial interests, risks, priorities and willingness to compromise.

- **Confidentiality Concerns**

Confidentiality is essential for genuine negotiation. Parties need to feel sufficiently secure to make proposals that may ultimately be rejected.

The reasoning in *Moti Ram v. Ashok Kumar*<sup>38</sup> demonstrates the importance of protecting settlement discussions. However, because ordinary negotiation does not operate under one comprehensive statutory confidentiality framework, parties must take care in determining how their communications are structured and protected.

- **Possibility of Coercion or Unfair Settlement**

Negotiation may become problematic where one party is pressured into accepting terms because of economic dependence, unequal knowledge or fear of prolonged litigation.

This is especially relevant in disputes involving individuals and stronger institutional parties. The objective of negotiation should not simply be to achieve settlement statistics. A settlement should represent a genuine and informed choice.

- **Unsuitability for Certain Disputes**

Not every dispute is appropriate for negotiation. Certain disputes require authoritative judicial determination, particularly where important questions of public law or statutory rights are

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<sup>38</sup> Moti Ram, *supra* note 33 at 19.

involved<sup>39</sup>.

Negotiation should therefore complement courts rather than replace them. The strength of an ADR system lies in choosing the appropriate mechanism for each dispute.

- **Emotional and Psychological Barriers**

Legal disputes are not purely legal. At times it is possible that the parties may be influenced by anger, mistrust, perceived insult, desire for vindication, fear of appearing weak or previous breakdowns in communication. A technically sound proposal may therefore fail because the parties are psychologically unwilling to accept it.

This is one reason mediation can sometimes succeed where direct negotiation fails: the neutral mediator can assist communication without becoming the decision-maker.

- **Quality of Legal Representation**

The quality of negotiation depends significantly upon the skills of the persons conducting it.

A lawyer who understands only litigation strategy may approach negotiation as a miniature courtroom argument. Whereas effective negotiation requires different skills such as active listening, interest identification, risk assessment, valuation, communication, strategic concession, drafting and understanding of commercial realities.

Indian legal education has traditionally devoted greater attention to litigation and doctrinal analysis than to structured negotiation training<sup>40</sup>.

## **EMERGING TRENDS AND FUTURE PROSPECTS OF NEGOTIATION IN INDIA**

- **Greater Integration with Pre-Litigation Dispute Resolution**

The future of negotiation is likely to be increasingly connected with pre-litigation settlement. Section 12A of the Commercial Courts Act has already moved commercial dispute resolution

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<sup>39</sup> S.P. Sathe, “*Judicial Activism: The Indian Experience*”, p. 6 Journal of the Indian Law Institute 29 (2001).

<sup>40</sup> N.R. Madhva Menon, “*Legal Education for the Twenty-First Century*”, p. 1 Indian journal of Legal Studies (2000).

in this direction, and the Mediation Act, 2023 further strengthens the broader pre-litigation settlement environment.

This means that parties may increasingly be expected to explore whether a dispute can be resolved before committing themselves to expensive litigation.

- **Growth of Online Negotiation and ODR**

Technology provides significant opportunities for the development of negotiation. Parties located in different cities or countries can communicate through online platforms without physically attending meetings.

The Mediation Act, 2023 expressly recognises online mediation, demonstrating legislative acceptance of technology-assisted consensual dispute resolution<sup>41</sup>.

Although online negotiation is distinct from online mediation, the same technological infrastructure can facilitate direct negotiations.

- **Professionalisation of Negotiation**

Negotiation is likely to become a more important professional skill for lawyers. The modern lawyer will increasingly be expected to advise clients not only about whether they can win a case but also about whether litigation is commercially sensible.

This requires training in communication, interest-based negotiation, settlement drafting, risk assessment and client counselling.

- **Greater Use in Commercial and Corporate Disputes**

Businesses are increasingly conscious of the costs associated with prolonged disputes. Negotiation can help preserve commercial relationships while resolving immediate disagreements.

Contractual dispute-resolution clauses may therefore increasingly require parties to attempt

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<sup>41</sup> *supra* note 26 at 14.

negotiation before proceeding to mediation or arbitration<sup>42</sup>.

- **Development of Specialised Negotiation Practices**

Different categories of disputes require different negotiating approaches. Commercial negotiation may focus upon money and future business relationships, while family negotiation may focus upon relationships and long-term arrangements.

The development of specialised negotiation practices can therefore improve the quality and effectiveness of settlements.

- **Integration with Mediation**

The future of negotiation should not be viewed separately from the growth of mediation. Negotiation and mediation are complementary rather than competing processes.

A party may first negotiate directly, then proceed to mediation if direct discussions fail. Alternatively, negotiations may continue throughout the mediation process. The Mediation Act's institutional framework is therefore likely to indirectly strengthen negotiation as well.

## **STRATEGIC RECOMMENDATIONS TO STRENGTHEN NEGOTIATION IN INDIA**

- **Development of a Structured Legal Framework for Negotiation**

India does not necessarily require a highly technical Negotiation Code. The informal nature of negotiation is one of its principal advantages.

However, basic standards concerning the enforceability of settlements, confidentiality of settlement communications and identification of concluded agreements would provide greater legal certainty. The objective should be regulation where necessary, rather than regulation for its own sake<sup>43</sup>.

- **Introduce Negotiation Training in Legal Education**

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<sup>42</sup> Roger Fisher and William Ury, *Getting to Yes: Negotiating Agreement Without Giving In*, (Houghton Mifflin, Boston, 2<sup>nd</sup> edn., 1991).

<sup>43</sup> V.S. Mani, "International Commercial Arbitration and Conciliation in India: Law and Practice", p. 38 *Journal of the Indian Law Institute*, 145 (1996).

Law schools should give greater practical importance to negotiation and client counselling. Students should be exposed to simulated negotiations involving commercial disputes, matrimonial disputes, employment issues and contractual disagreements. Bar Councils, law schools and judicial academies should conduct regular programmes on interest-based negotiation, ethical negotiation, settlement drafting, cross-cultural negotiation, commercial negotiation and online negotiation.

For a modern lawyer, knowing the law is only one part of effective dispute resolution. The ability to communicate the legal position and negotiate a practical solution is equally valuable.

- **Encourage Early Legal Advice**

Parties should be encouraged to obtain legal advice at the beginning of a dispute rather than only after litigation has commenced.

Early advice allows a lawyer to assess the client's legal position, likely costs, risks and realistic settlement options. This can make negotiations more informed and prevent unrealistic expectations.

- **Strengthen Court-Annexed Settlement Mechanisms**

Courts should continue identifying disputes that are suitable for settlement and directing parties towards appropriate ADR mechanisms<sup>44</sup>.

However, referrals should not become mechanical. The objective should be to identify cases where settlement has a genuine possibility rather than treating ADR as a procedural formality.

The judges should consider the nature of the dispute, relationship between parties, possibility of settlement, urgency, power imbalance and legal/public-policy considerations before referring a case for negotiation or any other ADR mechanism.

- **Improve Protection Against Unequal Bargaining Power**

Parties who are economically or legally weaker should have access to adequate legal advice

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<sup>44</sup> Afcons Infrastructure, *supra* note 30 at 16.

before entering important settlements.

This is particularly important in consumer, employment and family disputes. A settlement should be voluntary in substance and not merely voluntary in form.

Any legal development promoting negotiation must preserve safeguards against coercion and exploitation. Parties should be informed about their legal rights, the consequences of settlement, their right to independent legal advice and the consequences of signing settlement documents.

- **Promote Digital Dispute Resolution**

Online negotiation and mediation should be encouraged where they provide practical advantages. The development of digital ADR platforms can reduce geographical barriers and facilitate faster communication.

The growth of ODR provides an opportunity to develop reliable digital negotiation systems and at the same time such platforms should incorporate secure communication, verified identities, electronic records, confidentiality protections, transparent settlement terms and mechanisms for converting settlements into legally enforceable instruments<sup>45</sup>.

- **Encourage Negotiation Clauses in Commercial Contracts**

Commercial parties should consider including appropriately drafted negotiation clauses in long-term contracts.

Such clauses can provide that senior representatives of the parties must attempt to resolve a dispute through negotiation before arbitration or litigation is commenced. This can provide businesses with an opportunity to intervene before a contractual disagreement becomes a formal dispute.

- **Increase Public Awareness**

ADR should be made more accessible through legal literacy programmes and public awareness

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<sup>45</sup> NITI Aayog, Designing the Future of Dispute Resolution: The ODR Policy Plan for India 24 (Government of India, 2021).

initiatives. People should understand that settlement is not a surrender of legal rights.

A party may choose negotiation because it considers settlement to be the most rational way of protecting its interests. This should be presented as a legitimate exercise of legal choice rather than a sign of weakness<sup>46</sup>.

### A CRITICAL APPRAISAL OF NEGOTIATION AS AN ADR MECHANISM

The development of negotiation within India's ADR framework represents an important change in the philosophy of dispute resolution. The traditional litigation model is primarily concerned with determining rights through an authoritative decision. Negotiation introduces a different idea: that parties themselves may be capable of designing a solution better suited to their circumstances.

The greatest strength of negotiation is therefore flexibility. A court is ordinarily confined to the legal remedies available within the applicable law. Parties negotiating a settlement can consider commercial, personal and relational interests which may not form part of a judicial remedy.

At the same time, negotiation should not be romanticised. It is not automatically fair merely because it is consensual. Unequal bargaining power, lack of legal knowledge and economic pressure may influence the outcome. The challenge is therefore to preserve the flexibility of negotiation while ensuring that settlements are informed and voluntary.

The Indian statutory framework reflects this balance. The CPC recognises compromise; the Legal Services Authorities Act institutionalises settlement through Lok Adalats; the Arbitration and Conciliation Act provides a structured framework for conciliation and settlement during arbitration; the Commercial Courts Act promotes early settlement of commercial disputes; the Consumer Protection Act provides mediation in consumer matters; and the Mediation Act, 2023 establishes a broader statutory environment for mediation.

Judicial decisions have reinforced this movement while preserving party autonomy. *Afcons Infrastructure*<sup>47</sup> makes clear that consensual mechanisms cannot simply be converted into

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<sup>46</sup> Upendra Baxi, "Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India", p. 29 Journal of the Indian Law Institute (1987).

<sup>47</sup> *Afcons Infrastructure*, *supra* note 30 at 16.

compulsory adjudication. *Gurpreet Singh*<sup>48</sup> demonstrates the importance of giving legal form to a settlement, while *Moti Ram*<sup>49</sup> emphasises the need for confidentiality in settlement discussions. *Patil Automation*<sup>50</sup> represents the increasing judicial willingness to require parties to explore settlement before entering commercial litigation.

The future of negotiation should therefore not be understood as the replacement of courts. Courts remain essential where parties cannot agree, where public rights are involved or where authoritative adjudication is required. Negotiation should instead form the first layer of a multi-level dispute-resolution system in which parties are given a meaningful opportunity to resolve disputes themselves before the coercive machinery of adjudication becomes necessary.

Therefore, it requires a cultural shift from the question of *"Who wins?"* to the more useful question of *"What resolution best serves the legitimate interests of the parties?"*

This does not mean compromising legal rights blindly. Rather, it means recognising that legal rights represent only one dimension of many disputes.

## CONCLUSION

Negotiation has always been present, in one form or another, within Indian dispute-resolution practices. What has changed is its legal and institutional significance. From traditional community-based settlement and compromise under civil procedure, India has gradually moved towards a structured ADR environment in which consensual dispute resolution is increasingly encouraged by legislation, courts and professional practice.

Negotiation occupies a distinctive position within this framework because it places the parties themselves at the centre of the dispute-resolution process. It does not require an adjudicator to impose a decision and does not necessarily require a neutral third party. Its principal strengths are flexibility, party autonomy, confidentiality, preservation of relationships and the ability to create solutions that may extend beyond conventional legal remedies.

The statutory framework demonstrates that negotiation does not exist in isolation. There are various legislations that provide important foundations for settlement. The Mediation Act,

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<sup>48</sup> Gurpreet Singh, *supra* note 8 at 4.

<sup>49</sup> Moti Ram, *supra* note 33 at 19.

<sup>50</sup> Patil Automation, *supra* note 11 at 6.

2023 for instance represents the latest major development in this wider settlement-oriented framework.

Nevertheless, negotiation continues to face limitations, particularly the absence of a dedicated statutory framework, unequal bargaining power, inadequate public awareness, limited practical training and confidentiality concerns. These challenges should not be addressed by converting negotiation into an excessively formal procedure. Its flexibility is precisely what makes it valuable. The future of negotiation in India therefore lies in institutional support without excessive formalisation. It should be viewed not as an admission of weakness but as a rational exercise of party autonomy<sup>51</sup>.

Ultimately, the evolution of negotiation reflects a broader transformation in India's understanding of justice. The objective of the legal system should not always be to produce a winner and a loser after prolonged litigation. Where circumstances permit, justice may be better served when parties themselves participate in designing a solution that is legally sound, practically workable and acceptable to both sides. Negotiation therefore deserves to be treated not merely as an informal preliminary step, but as a significant and evolving component of India's modern ADR framework.

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<sup>51</sup> Upendra Baxi, "Access, Development and Justice: Structural Reforms in the Legal System", 18 *Journal of the Indian Law Institute* 101 (1976).