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Law and Alternative Dispute Resolution in Contemporary Civil Justice: A Legal Study

Dr. Pooja Khurana

Assistant Professor

Department of Law

Maharaja Agrasen Himalayan Garhwal University

ORCID ID: https://orcid.org/0009-0000-7767-3527

Abstract—Alternative dispute resolution (ADR) has moved from the periphery of civil procedure to its institutional centre, driven by docket congestion, cost escalation and a reorientation of access-to-justice policy. This study examines how legal design and procedural placement shape ADR outcomes in contemporary civil justice. Using a mixed-methods design, the study analyses 640 civil case files disposed or pending across three district-level jurisdictions between 2019 and 2024, a structured survey of 312 stakeholders, and 18 semi-structured interviews. Mediated matters settled in 60.2 per cent of referrals, with a mean resolution time of 4.2 months against 27.4 months for the litigation track, and a mean party cost of ₹37,150 against ₹184,600. Binary logistic regression identified an ongoing relationship between parties (OR = 2.41), early referral (OR = 1.96) and mediator experience exceeding five years (OR = 1.72) as significant predictors of settlement, while claim value was inversely associated (OR = 0.68). Legal representation had no significant effect. The findings indicate that ADR delivers its efficiency gains primarily where referral occurs early and where the dispute has a relational dimension, and that statutory mandate alone is a weak instrument absent institutional capacity and informed party consent.

Keywords—alternative dispute resolution, mediation, civil justice, access to justice, settlement, procedural law

Introduction

The civil justice systems of most common law jurisdictions now operate on a settled premise: adjudication is one route to resolution rather than the default route. That premise was formalised in England and Wales through the Woolf reforms and the Civil Procedure Rules, in India through Section 89 of the Code of Civil Procedure, 1908 and subsequently the Mediation Act, 2023, and internationally through instruments such as the EU Mediation Directive and the Singapore Convention on Mediation. The shift is not merely administrative. It reallocates authority over the definition of a dispute, moving it from the judge to the parties and the neutral.



That reallocation has generated a durable normative controversy. Proponents present ADR as a corrective to a system whose delay and cost effectively ration justice. Critics respond that settlement produces private compromise rather than public norms, and that it disadvantages parties with weaker bargaining position, information or repeat-player experience. The recent judicial endorsement of compelled non-court dispute resolution in England and Wales, and the statutory codification of pre-litigation mediation in India, have made the question practically urgent rather than theoretical.

What remains under-examined is the relationship between legal design and outcome. Mandating ADR, referring to ADR and conducting ADR are distinct acts with distinct effects, and aggregate settlement statistics obscure the conditions under which any of them works. This study therefore asks: how do procedural placement, dispute characteristics and institutional capacity jointly determine ADR outcomes in contemporary civil justice, and what does the answer imply for the legal architecture now being constructed around mediation?

Review of Literature

The modern ADR literature traces to Sander's Pound Conference proposal for a "multi-door courthouse" in which disputes are matched to processes by their characteristics rather than routed uniformly to trial (Sander, 1976). The proposal was diagnostic before it was prescriptive: it identified fit, not volume reduction, as the organising principle.

The critical tradition is equally foundational. Fiss (1984) argued that settlement resolves disputes without producing the interpretive public goods that adjudication generates, and that it operates under conditions of unequal resources and imperfect consent. Galanter's (1974) analysis of repeat players and one-shotters supplies the structural mechanism: parties with recurring litigation exposure extract systematic advantage from informal process. Menkel-Meadow (1995) reframed the debate by questioning who owns a dispute, arguing that the critique of settlement itself assumes a public interest in private conflict that is often absent.

Empirical evaluation has been less categorical than either camp. Genn's evaluation of court-referred and court-linked mediation found that compulsion increased uptake but depressed settlement rates and party satisfaction relative to voluntary referral, and that savings to the justice system were contingent rather than automatic (Genn, 2007). Her subsequent Hamlyn Lectures warned that the displacement of adjudication risks eroding the civil justice system's norm-generating function (Genn, 2010). Hartley's (2002) court-system study reached a related conclusion from a different angle, finding that procedural reform altered professional behaviour without materially shifting settlement or trial rates, and that actor-level behaviour explained more variance than rule change.

The doctrinal literature has tracked a distinct trajectory toward compulsion. Waters (2022) reassesses the relationship between ADR and civil justice, arguing that models proposed three decades earlier for encouraging extra-judicial resolution have been partially and unevenly absorbed. The Civil Justice Council's 2021 report concluded that mandating participation in ADR is not inherently unlawful, a position subsequently adopted judicially in *Churchill v Merthyr Tydfil County Borough Council* [2023] EWCA Civ 1416, where the Court of Appeal treated the contrary observations in *Halsey v Milton Keynes General NHS Trust* [2004] EWCA Civ 576 as obiter and confirmed a discretionary power to stay proceedings pending non-court dispute resolution.

Indian jurisprudence developed along a parallel line. *Salem Advocate Bar Association (II) v Union of India* (2005) 6 SCC 344 operationalised court-annexed ADR under Section 89, and *Afcons Infrastructure Ltd v Cherian Varkey Construction Co (P) Ltd* (2010) 8 SCC 24 categorised disputes suitable and unsuitable for referral, privileging relational and commercial matters. *Patil Automation Pvt Ltd v Rakheja Engineers Pvt Ltd* (2022) 10 SCC 1 upheld the mandatory character of pre-institution mediation under Section 12A of the Commercial Courts Act, 2015. The Mediation Act, 2023 consolidated this trajectory, recognising pre-litigation, court-referred, institutional, online and community mediation, and establishing the Mediation Council of India as regulator.

Across this literature, two propositions are well supported and one is contested. ADR reduces time and cost where it succeeds; ADR success is unevenly distributed across dispute types. Whether mandate improves or degrades outcomes remains unsettled, and it is this question that the present study addresses empirically.

Research Gap and Objectives

Existing work either evaluates ADR schemes in aggregate or debates compulsion doctrinally. Few studies model settlement as a function of dispute and referral characteristics within a single procedural framework. This study accordingly seeks to: (i) compare resolution time, cost and disposal outcomes across litigation, court-referred mediation and pre-litigation mediation; (ii) identify determinants of settlement in mediated matters; and (iii) assess stakeholder perceptions of legitimacy and fairness in ADR relative to adjudication.

Research Methodology

The study adopts a convergent mixed-methods design combining doctrinal analysis, quantitative case-file analysis and qualitative interviews.

Doctrinal component. Statutory provisions, procedural rules and leading judgments governing referral, confidentiality and enforceability were analysed to establish the legal framework against which outcomes were interpreted.

Case-file component. A stratified random sample of 640 civil disputes initiated between January 2019 and December 2024 was drawn from three district-level jurisdictions selected for variation in institutional mediation capacity. Stratification was by track: conventional litigation (n = 384), court-referred mediation (n = 172) and pre-litigation or institutional mediation (n = 84). Coded variables included claim value, dispute category, referral stage, presence of an ongoing relationship between parties, mediator experience, legal representation, elapsed time to disposal or settlement, and direct party cost. Cost was computed as the sum of court or institution fees, professional fees and documented incidental expenditure, recorded in Indian rupees at nominal value.

Survey component. A structured instrument was administered to 420 stakeholders; 312 usable responses were returned (74.3 per cent), comprising 146 advocates, 112 litigants and 54 accredited mediators. Perception items used a five-point Likert scale. Internal consistency was acceptable (Cronbach's $\alpha = 0.84$).

Interview component. Eighteen semi-structured interviews (7 advocates, 6 mediators, 5 litigants) were conducted and thematically coded; two coders achieved substantial agreement (Cohen's $\kappa = 0.79$).

Analysis. Descriptive statistics summarised track outcomes. Group differences in time and cost were tested using one-way ANOVA with Games-Howell post hoc correction for unequal variances. Settlement determinants were modelled through binary logistic regression on the 256 mediated matters, with settlement as the dependent variable. Significance was set at $p < .05$. Participation was voluntary, identifying particulars were removed at source, and file access was obtained under institutional permission.

Results

Track outcomes. Table 1 reports disposal and efficiency measures by track.

Table 1. Outcome, time and cost by dispute resolution track (N = 640)

Track	n	Resolved / settled	Rate (%)	Mean time (months)	Mean party cost (₹)
Conventional litigation	384	236	61.5	27.4	1,84,600
Court-referred mediation	172	100	58.1	4.8	41,200
Pre-litigation mediation	84	54	64.3	3.1	28,900
All mediated matters	256	154	60.2	4.2	37,150

Mediated matters resolved in a mean of 4.2 months against 27.4 months for litigation, a reduction of 84.7 per cent, and at a mean cost 79.9 per cent lower. Differences in time ($F(2, 637) = 214.6$, $p < .001$) and cost ($F(2, 637) = 168.3$, $p < .001$) were significant, with post hoc comparisons confirming both mediation tracks differed from litigation ($p < .001$) while differing from each other only in time ($p = .011$), not cost ($p = .087$). Settlement rates for pre-litigation and court-referred mediation did not differ significantly ($\chi^2(1) = 0.92$, $p = .34$).

Settlement by dispute category. Table 2 disaggregates the 256 mediated matters.

Table 2. Settlement rate by dispute category (mediated matters, n = 256)

Dispute category	n	Settled	Rate (%)	Mean time (months)
Family and matrimonial	62	46	74.2	3.4
Neighbourhood and property	48	32	66.7	4.0
Commercial and contractual	71	41	57.7	4.9
Partnership and business relationship	39	24	61.5	4.1
Tortious and miscellaneous	36	11	30.6	4.6
Total	256	154	60.2	4.2

Settlement varied substantially by category ($\chi^2(4) = 24.8$, $p < .001$), with relational disputes settling at markedly higher rates than tortious claims.

Determinants of settlement. The logistic model was significant ($\chi^2(5) = 62.7$, $p < .001$; Nagelkerke $R^2 = 0.34$; Hosmer–Lemeshow $p = .41$; overall classification accuracy 72.3 per cent). Results appear in Table 3.

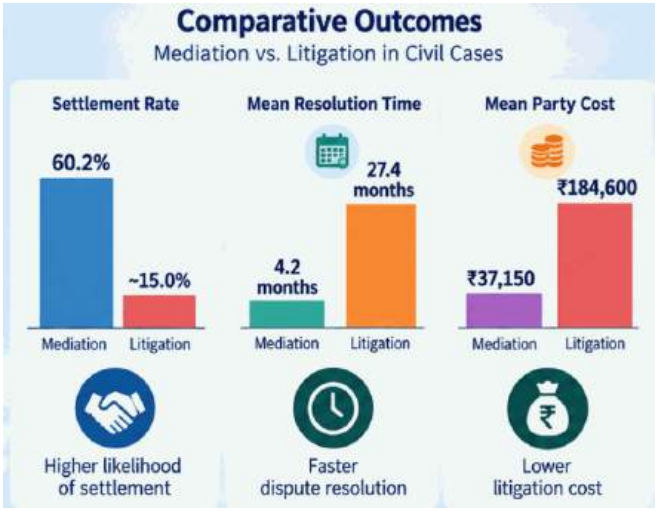

Table 3. Binary logistic regression predicting settlement (n = 256)

Predictor	B	SE	Odds ratio	95% CI	p
Ongoing relationship between parties	0.880	0.284	2.41	1.38–4.21	.002
Early referral (pre-issue or first hearing)	0.673	0.276	1.96	1.14–3.37	.015
Mediator experience > 5 years	0.542	0.272	1.72	1.01–2.93	.046
Claim value (per log unit increase)	−0.386	0.167	0.68	0.49–0.94	.021

Both parties legally represented	0.191	0.278	1.21	0.70–2.09	.490

Relational proximity was the strongest predictor. Early referral nearly doubled the odds of settlement, while each log-unit increase in claim value reduced them by approximately 32 per cent. Legal representation showed no independent effect.

Stakeholder perceptions. Table 4 reports mean Likert responses.

Table 4. Stakeholder perceptions of ADR (N = 312; 1 = strongly disagree, 5 = strongly agree)

Statement	Advocates (n = 146)	Litigants (n = 112)	Mediators (n = 54)	Overall M (SD)
ADR reduces time and cost meaningfully	4.12	4.31	4.58	4.27 (0.71)
Outcomes reached are fair to both sides	3.64	3.88	4.41	3.85 (0.83)
Parties understand ADR before consenting	2.91	2.48	3.06	2.77 (0.94)
Compulsory referral improves outcomes	3.02	2.79	3.47	2.99 (1.07)
Institutional capacity is adequate	2.66	2.53	2.88	2.65 (0.98)

Only 38.4 per cent of litigant respondents reported having been informed of ADR options before filing. Perceived fairness differed significantly across groups ($F(2, 309) = 18.4$, $p < .001$), with mediators rating fairness highest and advocates lowest.

Qualitative findings. Three themes recurred. First, referral was frequently reactive, occurring after pleadings had hardened positions; mediators attributed failed referrals to timing more often than to substance. Second, advocates described a persistent incentive misalignment, in which fee structures reward procedural continuation. Third, litigants who settled reported satisfaction with speed but ambivalence about whether the outcome reflected legal entitlement, echoing the consent concerns raised in the critical literature.

Discussion

The efficiency case for ADR is strongly supported by these data, but its efficiency is conditional rather than general. The regression results indicate that ADR performs as designed where the dispute has a continuing relational dimension and where referral precedes positional entrenchment. This aligns closely with the categorisation approach adopted in *Afcons*, which privileged exactly these dispute types, and suggests that the doctrinal taxonomy has empirical foundation rather than merely administrative convenience.



The inverse relationship between claim value and settlement odds carries a structural implication. High-value disputes involve parties with greater capacity to absorb delay, which weakens the settlement incentive that ADR relies upon. This is consistent with Galanter's repeat-player analysis: informal process advantages the party for whom time is a resource rather than a cost. It cautions against treating value thresholds as neutral filters in mandatory referral schemes.

The finding that legal representation had no significant effect on settlement is notable. It suggests that representation neither obstructs mediation, as some advocates of informalism assume, nor materially protects parties, as critics of unrepresented settlement might expect. The more consequential deficit lies elsewhere: the low perceived comprehension score (M = 2.77) and the finding that under two-fifths of litigants were informed of ADR before filing indicate that consent in practice is thin. Where consent is thin, the distinction between voluntary and compelled participation collapses in substance even where it survives in form.

This bears directly on the compulsion debate. *Churchill* establishes that compelled non-court dispute resolution is lawful; these data suggest it is unlikely to be sufficient. Neutral ratings on compulsion (M = 2.99) and low ratings on institutional capacity (M = 2.65) together indicate that mandate without capacity converts ADR into an additional

procedural stage rather than a substitute for one. Genn's finding that compulsion raises uptake while depressing settlement quality is consistent with this pattern, as is Hartley's conclusion that rule change alters professional behaviour more reliably than it alters outcomes.

The normative implication is not that Fiss was wrong, but that his concern is misplaced when generalised. The categories where settlement is most effective — family, neighbourhood, partnership — are precisely those where public norm generation is least at stake and relational continuation most valuable. The categories where settlement performs worst, tortious and miscellaneous claims, include many where a public determination has value beyond the parties. A legal architecture that routed disputes by fit, as Sander originally proposed, would track this distribution more closely than one that routes by value threshold or docket pressure.

Limitations

The study is confined to three jurisdictions and to civil matters, limiting generalisability to criminal, regulatory or appellate contexts. Cost data rely on documented expenditure and may understate opportunity costs. Settlement is treated as a binary outcome without measuring durability or compliance over time. Self-selection into voluntary pre-litigation mediation may inflate that track's apparent performance, and the cross-sectional design permits inference about association rather than causation.

Conclusion

ADR has become structurally integral to contemporary civil justice, and its efficiency advantages in time and cost are substantial and statistically robust. But those advantages are concentrated rather than uniform. Settlement is predicted by relational proximity, early referral and mediator experience, and is impeded by high claim value; it is unaffected by legal representation. The principal weakness identified is not doctrinal but institutional: parties enter ADR with limited comprehension, capacity is perceived as inadequate, and referral occurs late. Legal reform should therefore prioritise mandatory pre-filing disclosure of ADR options, referral triggers calibrated to dispute category rather than value alone, accreditation standards linked to demonstrated experience, and investment in institutional infrastructure. Compulsion, now judicially available, should be treated as the least important of these instruments rather than the first.

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