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"COMMUNITY MEDIATION IN DISPUTE RESOLUTION- A COMPARATIVE STUDY"

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CERTIFICATE

This is to certify that MAHIMA SAJANI JACOB, Register No: LM0123022 , has submitted her dissertation titled "**COMMUNITY MEDIATION IN DISPUTE RESOLUTION - A COMPARATIVE STUDY**" in partial fulfilment of the requirement for the award of Degree of Master of Laws in Constitutional and Administrative Law to the National University of Advanced Legal Studies, Kochi, under my guidance and supervision. It is also affirmed that the dissertation submitted by her is original, bona fide and genuine.

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DECLARATION

I declare that this dissertation titled "Community Mediation in Dispute Resolution-A Comparative Study" is researched and submitted by me to the National University of Advanced Legal Studies, Kochi, in partial fulfilment of the requirement for the award of Degree of Master of Laws in Constitutional and Administrative Law, under the guidance and supervision of Dr. Aparna Sreekumar, Assistant Professor, NUALS, and is an original, bona fide and legitimate work and it has been pursued for an academic interest. This work or any type thereof has not been submitted by me or anyone else for the award of another degree of either this University or any other University.

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LLM-CONSTITUTIONAL AND ADMNISTRATIVE LAW

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MAHIMA SAJANI JACOB

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LIST OF ABBREVIATIONS

ADR	Alternative Dispute Resolution
AIR	All India Reporter
Edn.	edition
et al.	and others
etc	etcetera
CM	Community Mediation
CMC	Community Mediation Centre
Co.	Company
CPADR	Civil Procedure Alternative Dispute Resolution
Ibid	Same as above
IIAM	Indian Institute of Arbitration and Mediation
ISLDSL	Institute for Development of Legal Systems
KSMCC	Kerala State Mediation and Conciliation Centre
Ltd.	Limited
NAFCM	National Association For Community Mediation

Ors.	Others
SCC	Supreme Court Cases
SIMI	Singapore International Mediation Institute
UNCITRAL	United Nations Commission on International Trade Law
UNCISA	United Nations Convention on International Settlement Agreements
Vol.	Volume

CHAPTER- I: INTRODUCTION

1.1 BACKGROUND

Dispute Resolution is a key aspect of administration of justice. Courts play a pivotal role in resolving differences. However, the increased burden on Courts and delay in justice delivery has encouraged the adoption of Alternative Dispute Resolution (hereinafter referred to as ADR) processes. Mediation is the least formal in nature of all ADR processes. Community mediation is one such process that aims to resolve dispute in a more prompt, cost-effective manner. Community mediation refers to a form of alternative dispute resolution in which disputes are resolved by members of the community, often with the assistance of trained mediators who are not part of the formal legal system. The method paves way for the realization of several democratic ideals and the principle of restorative justice. Moreover, it also enables community empowerment and self-determination of individuals. Different countries have made use of this method in ways suitable to their cultural and societal set-up. In several countries, different levels of legal system have existed through the centuries giving rise to a concept called 'legal pluralism.'

Legal pluralism may be defined as the "situation where two or more legal systems coexist in the same social field."[1] This is further highlighted in decolonized countries where indigenous legal system gave way for colonial norms and rules during colonization. Many of the developed countries like the United States, United Kingdom, and New Zealand etc. have formalized community mediation mechanism to solve disputes in the community level. The study of community mediation, till now, has led to the identification of few models of its working like the transformative model, personal growth and development model, services delivery model etc. Different countries make use of these models in a way that aligns with their social and economic goals.

[1] S E Merry. *Legal Pluralism,* Volume: 22 Issue: 5, Law and Society Review (1988)

Several Asian countries like Sri Lanka, Singapore, China, and India etc. have had traditional community mediation processes serving dispute resolution goals since many centuries. The dissertation will throw light on the status of community mediation in few countries through a comparative study. Some of these countries have legally recognized this process. For instance, Sri Lanka has included community mediation in the ambit of its enactment, Mediation Boards Act, 1988. In China the People's Mediation Law of 2010 to constitute People's Mediation Committees. In Singapore, community mediation came about with the enactment of the Community Mediation Centers Act of 1997. In the African dispute resolution setup, Rwanda has its Gacaca Courts and Abunzi mediation committees. Even though the Gacaca Courts have now been disbanded, Abunzi mediation is a constitutionally backed system of community mediation. In the modern sense, the evolution of community mediation is noteworthy in the United States of America. The growth of community mediation centres and neighbour justice centres occurred to address racial tensions. However, they have shown tremendous progress when it comes to resolving disputes.[2]

In the Indian scenario, forms of community mediation have been prevalent in India in the form of panchayats etc. even prior to the arrival of the British. In fact, the degree of practice decreased during the colonial rule. The Indian Constitution advocates the welfare of the people through easy and effective methods of dispute resolution. To fulfill the ideals reflected in part III and IV of the Constitution, adoption of alternative and beneficial dispute resolution mechanism is necessary. In light of this, the dissertation will closely examine the recent development of inclusion of community mediation in the Mediation Act, 2023 enacted by the Indian Parliament. The Act is a welcome move to encourage community mediation and thereby dispute resolution in the local level. The research will also attempt to analyse the legal provisions related to the same and put forward suggestions for its better utilisation.

[2] Sally Engle Merry & Neal A. Milner, eds., *The Possibility of Popular Justice: A Case Study of Community Mediation in the United States. Law, Meaning, and Violence* (University of Michigan Press 1993).

1.2 SIGNIFICANCE OF THE STUDY

The benefits of community mediation are numerous. With the enactment of the Mediation Act, 2023, the status of community mediation has been elevated. Moreover, the literature related to community mediation is quite limited. This study is based on the comparative study of community mediation in select few countries with that of India to benefit the future research in the field. The study is based on scan of relevant literature in the field.

1.3 SCOPE OF THE STUDY

The scope of study includes the dispute resolution and the role of mediation in dispute resolution. Then, it moves on to study community mediation in dispute resolution. In relation to this, a comparative approach has been used. The community mediation frameworks of six countries namely, Rwanda, Sri Lanka, Singapore, China, the United States of America and India have been assessed. These countries have been chosen for their notable customary dispute resolution tradition. Rwanda represents the practice in the African continent. Sri Lanka, China and Singapore bring in the Asian values of community mediation. The United States of America highlights the modern facets of community efforts in dispute resolution. This involves a study of the historical background, legal framework and impact of community mediation in these countries. The study of Indian community mediation is done in light of the recently enacted Mediation Act, 2023. The final chapter deals with observations gathered from the study and the recommendations.

1.4 STATEMENT OF PROBLEM

Dispute resolution is instrumental to administration of justice. Community Mediation is a tool for restorative justice. It has the ability to enhance the participation of citizens in dispute resolution. The use of the process in other countries will offer better understanding of its potential. It is highly pertinent to evaluate the scope of community mediation in other countries with that present in India in light of the Mediation Act, 2023 to assess the effective utilisation of this process in India.

1.5 RESEARCH OBJECTIVES

The objectives of this research are:

1 To understand the concepts of dispute resolution and the role of mediation in dispute resolution.

2 To trace the nature, growth, evolution and various models of community mediation

3 To conduct a comparative study of community mediation in few countries

4 To critically examine the legal provisions dealing with community mediation in the Mediation Act, 2023.

5 To put forward suggestions for better utilisation of this technique based on the comparative study

1.6 HYPOTHESIS

The Mediation Act, 2023 will enhance the credibility of community mediation as a process of dispute resolution in India.

1.7 RESEARCH METHODOLOGY

This dissertation has made use of doctrinal approach and an empirical method of interview in one of the chapters. The sources include statutes, books, case laws, journals, reports and various other essential documents. This includes an analysis of statutes of the chosen countries for the comparative study as well.

1.7.1 RESEARCH QUESTIONS

The following research problems will be addressed by this dissertation:

1. What is the role of mediation in dispute resolution?

2. What is the status of community mediation in few other countries?

3. What is the scope of community mediation in speedy justice delivery and dispute resolution as envisioned by the Indian Constitution?

4. What is the current status of regulation of this process in India?

5. What are the possibilities and challenges of the process in dispute resolution in India?

6. What are the suggestions to better the existing status of community mediation in India?

1.8 LITERATURE REVIEW

1.8.1. BOOKS

- The Possibility of Popular Justice: A Case Study of Community Mediation in the United States. Law, Meaning, and Violence (University of Michigan Press, 1993) by Sally Engle Merry and Neal A. Milner.

  The book revolves around the concept of popular justice in relation to community boards in the United States. It offers an overview of popular justice in the global level and then proceeds to assess he types of popular justice, community mediation and the challenges associated with the concept.

- Mediation Practice & Law. The Path to Successful Dispute Resolution (2nd Edn, Lexis Nexis, 2015) by Sriram Panchu

  The book offers a comprehensive understanding of mediation as a form of dispute resolution. It delves into the suitability, pros, cons and challenges of mediation. It also deals with the growth of mediation in India. It offers an overview of the unexplored potential of mediation.

- Ideology of Popular Justice in Sri Lanka: A Socio-Legal Inquiry by Neelan Tiruchelvam (New Delhi: Vikas Publishing House 1984.)

  The book is based on the study of popular justice in Sri Lanka. It is interdisciplinary in nature and analyses the sociological aspects of justice delivery before the setting up of Mediation Boards in Sri Lanka.

1.8.2 ARTICLES

- "Ideological Production: The Making of Community Mediation." Christine B. Harrington, and Sally Engle Merry. Law & Society Review, vol. 22, no. 4, 1988, pp. 709–35. JSTOR

  The article throws light on the two aspects of justice put forward by community mediation-community justice and consensual justice. The author says that ambiguities in community mediation are being overtaken by consensus on the nature of the mediation process itself.

- "The Power of Community Mediation: Government and Formation of Self-Identity." By George Pavlich, Law & Society Review, vol. 30, no. 4, 1996, pp. 707–33. JSTOR

  The article discusses the intersection of community mediation with community identity and the machineries of the State. It criticizes community mediation as another instrument of State control.

- "The Devil and the Deep Blue Sea? A Critique of the Ability of Community Mediation to Suppress and Facilitate Participation in Civil Life." By Linda Mulcahy, Journal of Law and Society, vol. 27, no. 1, 2000, pp. 133–50. JSTOR This article discusses the conflicting notion of community mediation being another medium for state control and also a way for better participation of citizens. The article does not consider community mediation as an alternative of the state or its agent. It talks about how mediators can act as the link between the state and the civil society.

- 'Indian and U.S. Community Mediation', James A. Wall, Vairam Arunachalam, and Ronda Roberts Callister, Available at Social Science Research Network, 2003

  It is an empirical study conducted on the use of community mediation in India and the U.S. It explores the scope of the process in both these countries. The study has compared the community mediation centres in the UUNited States with the Panchayat system in India.

- Community Mediation as a Hybrid Practice: The Case of Mediation Boards in Sri Lanka, Sepalika Welikala, 3 Asian Journal of Law and Society 399–422 (2016)

  This article is based on an empirical study conducted on mediation boards in Sri Lanka. Mediation Boards Act of 1988 established mediation boards in the country. The paper traces the evolution of community mediation and its present status in Sri Lankan society. The relevance and benefits of community mediation boards have been studied in great length in this study.

- Mediation: Its Origin & Growth In India, Hamline Journal of Public Law and Policy by Anil Xavier

  This article traces the growth and evolution of mediation in India. The paper highlights the relevance of mediation in present world where it can be used for an array of matters. It argues that there is a need for legal professionals and the general public to understand the potential of mediation and employ it as a suitable means of dispute resolution. It also addresses the present challenges in the Indian dispute resolution system.

- "Community Mediation in the People's Republic of China." by James A.Wall and Michael Blum. The Journal of Conflict Resolution, 1991

  This article focuses on the growth of mediation in China. China has its mediation rooted in the teachings if Confucius. It traces the evolution, growth and legal recognition of community mediation efforts in the Chinese society. Chinese Village Courts have played a significant role in imparting justice and resolving disputes. It has highlighted the relevance of people's participation in maintenance of peace and harmony in the society.

- "Mediation with a Traditional Flavor in the Fodome Chieftaincy and Communal Conflicts." by Ahorsu Ken, and Robert Ame. African Conflict and Peacebuilding Review, vol. 1, no. 2, 2011

  This article discusses the synergy between traditional dispute resolution systems and the formal Court system. It throws light on how infusing traditional flavor in dispute resolution has benefitted the African societies. Customary dispute resolution have always supported dispute resolution in the African continent. Traditional chiefs, elders, clan leaders have guided and imparted justice for centuries.

- The evolving concept of access to justice in Singapore's mediation movement by Dorcas Quek Anderson. (2020). International Journal of Law in Context. 16, (2)

  This paper deals with the mediation and access to justice movement n Singapore. It traces the evolution, growth and present status of mediation in the country.

- Mediation Training Manual for Referral Judges. Mediation and Conciliation Project Committee, New Delhi: Supreme Court of India

Apart from these aforementioned sources, community mediation reports, statutes, online resources and newspaper articles have been part of the literature.

1.9 CHAPTERIZATION

CHAPTER I – INTRODUCTION

The chapter deals with the background of dispute resolution, mediation and community mediation, scope of the present study, significance of the study, research objectives, hypothesis, chapterization and the review of related literature. The scope highlights the boundaries of the study and the issues that have been addressed. The statement of problem mentions the need to undertake the study. The chapterization explains the matters included in each chapter and gives an overview of the chapters.

CHAPTER II-ROLE OF MEDIATION IN DISPUTE RESOLUTION

This chapter deals with an overview of dispute resolution and the role of mediation in dispute resolution. It begins by defining the aspects of conflict and dispute and goes on to delve into the concept, history, and advantages of mediation in dispute resolution. The concept of conflict resolution refers to the process and the structure of the conflict. The concept of mediation includes the definition and characteristics of mediation. The chapter discusses the stages of mediation, its advantages as a dispute resolution process and its limitations.

CHAPTER III- COMMUNITY MEDIATION- THE ART OF EMPOWERING COMMUNITIES

This chapter throws light on the process of community mediation. It touches upon the history of community mediation. This includes an analysis of the earlier civilizations notable for its community efforts in dispute resolution. The theoretical considerations to understand the scope of community mediation have also been dealt with in detail. This includes community empowerment, restorative justice, popular justice and conflict transformation. The chapter also discusses different models of community mediation based on its growth in the United States of America. The salient features of the process have also been addressed. The concluding part deals with the limitations of the process.

CHAPTER IV-COMMUNITY MEDIATION AROUND THE WORLD

This chapter is a comparative study of select few countries viz. Rwanda, Singapore, Sri Lanka, China and the United States of America. The historical background legal recognition and impact of community mediation in these countries have been analysed in this chapter. This comparative study is done in light of the inclusion of community mediation in the recently enacted Mediation Act, 2023.

CHAPTER V-COMMUNITY MEDIATION IN INDIA

This chapter exclusively deals with mediation and community mediation in India. The historical background of mediation has been traced along with its complete legal recognition with the enactment of the Mediation Act, 2023.The interview response recorded from an expert has also been included. It also deals with the challenges to community mediation in India.

CHAPTER VI-CONCLUSION AND SUGGESTIONS

This is the final chapter summarizing the entire research. It lists the observations made from the study and the suggestions to overcome the problem addressed in the study.

CHAPTER-II: ROLE OF MEDIATION IN DISPUTE RESOLUTION

2.1. DEFINING DISPUTE AND CONFLICT

In common parlance, the terms conflict and dispute are often used interchangeably. The Oxford English Dictionary has defined a conflict as "a serious disagreement" and "the clashing or variance of opposed principles, beliefs, interests, etc."[3] According to K.W. Thomas[4], a conflict is the process which begins when one party perceives that another has frustrated, or is about to frustrate, some concern of his." A conflict is a dynamic process. It usually elicits a reaction from the opposite person and the extent of the responses increases with time. Conflict is not localized and the effect is more general in nature.[5]

Dispute, on the other hand, is concerned with specific situations. It is the underlying aspect of every conflict. In other words, it is a stage in the chain of events escalating a conflict. The differences initiating a conflict eventually evolve into a dispute. A dispute is a conflict or a controversy based on claims or rights, assertion of right faced by contrary claims on the other. [6] However, the terms are used synonymously to signify differing interests between parties. All conflicts are generally propelled by issues of identity, self-worth, power, fear, caring etc.[7]

To understand the evolution of a conflict, a theoretical paradigm consisting of two aspects may be considered. The first aspect is the process of conflict and the second is the structure of the conflict.[8]

[3] The Oxford English Dictionary (Oxford University Press, 2d ed. 1989).
[4]. K.W. Thomas, "*Conflict and Conflict Management*" in Handbook of Industrial and Organizational Psychology, M.D. Dunnette ed., (Rand McNally 1st ed. 1976)
[5] Sriram Panchu, *Mediation Practice & Law: The Path to Successful Dispute Resolution* (Lexis Nexis 2d ed. 2015).
[6] Black's Law Dictionary (6th ed. 1990).
[7] Jennifer E. Beer & Caroline C. Packard, *The Mediator's Handbook* (4th ed. 2012).
[8] K.W. Thomas, "*Conflict and Negotiation Process in Organizations*" in Handbook of Industrial and Organizational Psychology, M.D. Dunnette & L.M. Hough eds., (2d ed. 1992).

The core of any dispute can be broadly understood by this classification of its stages. In this continuum of tension, conflict is the elevated degree of a dispute.[9]

The **process of the conflict** comprises the temporal sequence of the dispute. It traces the advancement of a difference to a dispute and ultimately to a conflict. It is imperative to understand the process of conflict to aptly assess the emotions and behavioural aspects of the parties involved. It includes mindsets, ideologies, intentions, awareness about the conflict etc. Any compromise or peace can only be brought about by appealing to the emotions of the parties. The response from parties may be one of avoidance, accommodation, compromise, competition or collaboration.[10]

The **structure of the conflict** consists of the constant factors of the framework that shape the conflict process. Normally, these factors or parameters remain constant for a considerable period of time.[11] There are mainly four categories of variables associated with this structure namely, behavioural dispositions, social pressures from the parties or bystanders, stakes of the parties involved in the dispute and the standard rules and procedures governing the interaction process.[12]

Based on the kind of interest involved, conflicts may revolve around values, relationships, structural issues, interests, interpretation of data etc.[13] In fact the first step in any dispute resolution process is the analysis of conflict. The conflict is broken down to understand its hidden nuances. Hence, it is quite essential that an effective mediator listens to the parties, assess the specific situation and delve deep into the conflict. Conflict analysis enables the mediator to identify the causes of the conflict, the parties involved, their relative position and roadmap of how to go about the situation. [14]

[9] Supra note 4
[10] Supra note 5
[11] Ibid at pp. 54
[12] Ibid at pp.54
[13] Christopher Moore, *The Mediation Process: Practical Strategies For Resolving Conflict*, Jossey-Bass Publications, 3rd Edn, 2003.
[14] Brinkmann, C. "*Steps For Peace: Working Manual For Peace Building And Conflict Management*." German Development Service, 2005

2.2. MEDIATION AND DISPUTE RESOLUTION

2.2.1 INTRODUCTION

Mediation has become the most-preferred ADR method in recent years. It is opted for matters ranging from simple family disputes to complex commercial transactions. However, it has existed in one form or the other in every legal system. Many indigenous legal systems highlight the importance of mediation as a consensual and peaceful form of dispute resolution. Mediation has attained the status of a structured process with countries enacting legislations to institutionalize the same. With enhanced flexibility and success rate than regular litigation, the process is, at present, endorsed by the legal fraternity, corporates etc. Mediation centres have been set up to provide proper training to individuals interested to mediate disputes. Court-annexed mediation, private mediation, community mediation etc. have already gained importance in the dispute resolution sphere.

2.2.2 CONCEPT

Mediation is a widely used, well established method used to settle an array of community level disputes where a neutral third-party aids the disputants to arrive at a settlement.[15] It is a voluntary, party-centered and structured negotiation process where a neutral third party assists the parties in amicably resolving their dispute by using specialized communication and negotiation processes.[16] It is a process in which the mediator, an external person who is neutral to the dispute, works with the parties to find a solution which is acceptable to all of them.[17] The external third party is the mediator, who essentially does not exert any influence on the outcome of the process. The mediator ensures that the parties properly exercise their power to take informed decisions. He/she streamlines the process, but the parties decide the end-result. It is voluntary in nature. Hence, the parties do not experience any kind of undue influence or compulsion from any other external party.

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[15] Saul, J.A. . *'The Legal and Cultural Roots of Mediation in the United States'* Opinio Juris in Comparatione (1) 2012

[16] Mediation and Conciliation Project Committee, Mediation Training Manual for Referral Judges. New Delhi: Supreme Court of India, p.6. at http://www.sci.gov.in/pdf/mediation/Mediation%20Training%20Manual%20for%20Referral%20Judges.pdf

[17] Supra note 5

The parties retain complete control over the mediation process and the mediator merely acts as a facilitator.[18] It is often termed as an assisted-negotiation process.[19] The parties are encouraged to talk about the facts of the case, their contentions etc. and ultimately see eye to eye on the matter.

However, it should also be kept in mind that the absence of adequate training of mediators, inability to distinguish between formal and informal justice systems, tendency of coercion on the part of the mediator may denigrate the purpose of using mediation in dispute settlement.[20]

2.2.3 HISTORY OF MEDIATION

Mediation has existed as a method for conflict resolution in several cultures since their inception. Modern day mediation has been heavily influenced by mediation efforts in Roman culture.[21] Even prior to this, references to mediation can be found in the Mesopotamian and Sumerian civilizations.[22] In fact, mediation, as documented, was experimented for the first time to resolve a conflict between two Sumerian cities.[23] The practice of an ardent mediation culture can be found in the middle-east from Biblical, Islamic and Jewish references. In the Chinese tradition, mediation is rooted in Confucianism and the civilization is famous for its usage of the method to peacefully resolve disputes. In the United States of America, mediation saw its growth with the rise in industrialization and labour relations. These movements attempted to reap the benefits of mediation as a possible method to better relationship between the worker and employer. It was felt that alternative methods would enhance peaceful resolution of matters.

[18] Supra note 16
[19] Ibid
[20] Ibid
[21] María del Carmen Lázaro Guillamon, *Conflict Resolution by Consensus in Roman Law: Historical Approach to Mediation*, No. 2, STS Science Ltd., 11/2020,
[22] David Ravenscroft, *The Evolution of Mediation*, RAVENSCROFT AND SCHMIERER, Aug, 2022, https://www.rs-lawyers.com.hk/post/the-evolution-of-mediation
[23]Lesley Terris,. "*Unintended Consequences Of International Mediation*." Oxford Research Encyclopedia of Politics. November 22, 2022. Oxford University Press. Date of access 13 Jun. 2024, <https://oxfordre.com/politics/view/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-1916>

The United States Government set up the Federal Mediation and Conciliation Service in 1947 to promote smooth management of labour matters.[24] It is responsible for providing dispute resolution services to industrial establishments, government bodies etc.[25] In the international level, bodies like the erstwhile League of Nations and its successor, the United Nations have stood for ADR mechanisms to bolster conflict resolution and to maintain international peace and security. This was especially highlighted for commercial transactions where the traditional legal tools were found ineffective due to excessive time and resource consumption. The United Nations Commission On International Trade Law (UNCITRAL) formulated the Conciliation Rules in 1980 and these rules were later amended to include Mediation Rules in 2021.[26] UNCITRAL has unequivocally accepted the efficacy of these rules to harmonize the mediation and conciliation practices in commercial transactions.

In 2018, the United Nations Convention on International Settlement Agreements resulting from Mediation was adopted to synchronize the international legal framework on mediated agreements with the national legislations.[27] Also referred to as the Singapore Convention, it aims to ensure uniform application and enforcement of mediation settlement agreements in commercial transactions. It was also adopted to promote peaceful and strong bodies as per Sustainable Development Goal 16 of the United Nations.[28] In the field of mediation, the Singapore Convention serves similar purpose as the New York Convention of 1958 does in arbitration. With fewer grounds for opposition and an easier time obtaining the implementing court's support, the Singapore Convention might even be more revolutionary than its New York equivalent. Additionally, it's important to remember that mediation is a non-adversarial process in which the parties come to a decision that is in their best interests together and proceed to put it into action without a judge's directives. Unlike arbitration, where every case is fiercely argued all the way to the conclusion of the

[24] Federal Mediation and Conciliation Service, Federal Register, the Daily Journal of the United States Government, http://www.fmcs.gov/internet/, accessed on 12 June, 2024
[25] Ibid
[26] International Commercial Mediation, United Nations Commission On International Trade Law,
[27] United Nations Convention on International Settlement Agreements Resulting from Mediation (New York, 2018) (the "Singapore Convention on Mediation"), United Nations Commission On International Trade Law, https://uncitral.un.org/en/texts/mediation/conventions/international_settlement_agreements
[28] Ibid

execution proceedings, extremely few cases need to be enforced by a court.[29] In the absence of the Convention, any party depending on a mediation agreement would essentially need to go to court to enforce it, at which point any legal defences, including fraud and misrepresentation, would come into play. A lawsuit would need a lot of time and be open to execution procedures and appeals. An outsider jurisdiction could turn into the location. Because different legal systems exist throughout the world, it can be highly difficult and time-consuming to obtain a court judgment in local courts and enforce it in a foreign jurisdiction.[30] Numerous polls, notably those carried out in 2014 by the International Mediation Institute (IMI) and in 2016–2017 as part of its Global Pound Conference (GPC), emphasised the necessity of the Convention. Views were offered by participants from a variety of backgrounds, including corporate lawyers and business leaders that a major factor in the reticence to use the process was concerns regarding the enforcement of the mediation settlement in international issues. The scope of the Singapore convention is focused only on enforcement of international commercial disputes resolved by mediation. It does not cover family or personal disputes including inheritance or employment. The Convention excludes those settlements which have been reached in the course of a court proceeding or have been approved by the authority of a court or are enforceable as a judgment in the country of that court where enforcement is sought, and those that have been recorded or are enforceable as arbitral awards.

2.2.4 STAGES OF MEDIATION

Mediation is a flexible and less formal process. It can be broken down into four stages, namely:

- The first stage consists of the introduction and the opening statements.[31] The parties or the counsel will be present at this stage. The mediator will begin by declaring his qualifications and the purpose of his/her assignment. The parties

[29] Supra note 3
[30] Ibid
[31] Mediation and Conciliation Project Committee, Mediation Training Manual for Referral Judges. New Delhi: Supreme Court of India, p.6. at http://www.sci.gov.in/pdf/mediation/Mediation%20Training%20Manual%20for%20Referral%20Judges.pdf.

are expected to be at ease at this stage and be comfortable with the mediation environment.

- Joint session aims to familiarize the subject matter between the parties and to create a rapport between them. The facts are introduced and the key issues are contemplated. This stage grants the parties the power to gradually control the outcome of the process. It prepares a conducive environment for discussion.[32] Both parties are given opportunities to present their side of the dispute. This stage ensures communication between the parties and the exchange of perspectives.
- The separate session stage involves the discussion between the mediator with the individual parties. It involves the exchange of confidential information by each party. The mediator shall make it a point to maintain confidentiality to ensure overall integrity of the proceedings.
- In the closing stage, a settlement may or may not be made. If a settlement is made, then it is reduced into writing based on the agreed terms and if no such settlement is made, the proceedings will be brought to a close without resolution.

2.2.5 ADVANTAGES OF MEDIATION

Mediation is often labelled as the most-preferred dispute resolution method. The benefits of the method are gradually being discovered by countries. Several countries have passed legislations to institutionalize the same in to their legal systems. The Indian Parliament enacted the Mediation Act, 2023 to embed mediation practice into the Indian legal system.

- In mediation, the parties are allowed to exercise control over the proceedings in terms of its scope, matter, outcome etc. This practice of empowering the disputants instills faith and confidence in their minds. Then, the resolution of the dispute becomes an easier task. Moreover, the mediator ensures that no undue influence or coercion takes from his/her part. The voluntary nature of mediation determines the binding effect of the final outcome. This aspect of self-determination is significant for successful mediation efforts.

[32] Ibid at pp. 34

- It is participatory in nature. This means that the parties will get an opportunity to present their case and put forward issues that they find to be critical. Hence, like any other ADR process, mediation is based on the efforts of the parties. They are not dictated by the strict rules of formal legal system. This aspect helps the parties to build trust on the process and on each other. [33]

- In this, the financial burden on the parties is quite less compared to ordinary litigation. Moreover, it is less time consuming and maintains a stress-free atmosphere of mutual understanding. These aspects make it more efficient with better outcome.

- The procedure is simple and more flexible than formal legal system. The flexibility allows it to cater to the needs of the parties.[34] The parties exercise the freedom to tailor the mediation process according to their wishes. Moreover, flexibility also ensures that the proceedings do not interrupt the daily schedule of the disputants.

- Unlike the formal court system that considers full-blown disputes, mediation can address conflicts in its initial stage to bring the parties to compromise.[35] It believes in prevention more than cure. It can be used before the initiation of proceedings in a court, during the proceedings and even after the pronouncement of the final decision by the court.

- It is based on fairness and impartiality of the mediator. He/she is supposed to ensure that no sort of prejudice in the minds of either parties may affect the mediation process. Hence, the mediator is responsible for creating a cordial, conducive environment for the disputants. It is upon the mediator to balance the power inequalities between the parties and resolve their differences.

[33] Supra note 16
[34] Ibid
[35] Supra note 5

- The process ensures easy and effective communication between their parties regarding their differences. Most disputes arise due to misunderstood facts and may result in destruction of human relationships. The mediator urges the parties to put their side of an issue with confidence. This facilitates introspection and gradual mending of relationship between the parties.

- Mediation takes into account long term aspirations and interests of the parties in a dispute. This includes determining the scope of the subject matter, the terms of the negotiation, outcome etc. The parties enjoy the freedom to contemplate the possible alternatives and their interests. This ensures comprehensive resolution of the dispute. As a result of this collaborative effort, creative outcomes can be arrived at by the parties.

- It can be used for an array of matters ranging from commercial disputes to family matters. The litigation delay may be avoided by opting for alternative processs like mediation which serves the primary goal of resolving differences in a short span of time promptly.

2.2.6 LIMITATIONS OF MEDIATION

Mediation, as ADR process, suffers from certain inherent limitations. First of all, the decision arrived at in a mediation proceeding is non-binding. This non-binding nature is due to the role of a mediator as a facilitator and not a judge. Since, the process itself is voluntary; the parties can drop the same at any time.

The power imbalance that may exist between the parties may also denigrate the fruits of the mediation efforts. This may result in one party influencing the other that may severely affect the final outcome.

Another instance is when the mediation proceeding is used to confidential information form the other party.[36] Such practices taint the integrity of the mediation process.

Further, it cannot be used in certain matters where formal adjudicatory procedure has to be followed. When there is a need to ascertain liability or culpability, mediation cannot be a good option to administer justice to the aggrieved party.

[36] Sriram Panchu, *Mediation Practice & Law. The Path to Successful Dispute Resolution*, 2nd Edn, Lexis Nexis, 2015

2.3 CONCLUSION

Mediation is referred to as the sleeping ADR[37] because of its undiscovered potential. The field of dispute resolution is gradually realizing the power of mediation. It displays the flexibility to be used in a gamut of matters ranging from commercial contracts to petty neighbourhood disputes. In all commercial matters, the method is a better alternative instead of the traditional Court system. Conflicts which are narrow or wide can be handled with the help of mediation. This includes environmental disputes, disputes related to planning and development etc.[38]

Unlike litigation, mediation enables handling of conflicts at its initial stage thus preventing subsequent escalation. Moreover, for a process that is based on the decision making power of the disputants, the success rate of mediation is quite high.[39]

Even if the parties fail to come to consensus through mediation, the proceedings offer a better perspective in relation to the dispute. This may even result in a reformed relationship between the parties. The ability of mediation to explore the depths of the conflict is a noteworthy aspect. Most countries have included the process through legislations to their legal system. India passed the Mediation Act, 2023 to provide impetus to mediation in the country. It has certain new aspects like online mediation, community mediation etc. which can transform the dispute resolution landscape in the country.

[37] Ibid
[38] Ibid
[39] Ibid

CHAPTER III- COMMUNITY MEDIATION-THE ART OF EMPOWERING COMMUNITIES

3.1. CONCEPT

Community disputes can be defined as social conflicts involving two or more parties representing diverging sets of goals on issues that are relevant to all sides, often relating to a number of different system levels.[40]

Community mediation is often considered to be a form of social justice by many scholars[41] because of its capacity to address injustice transcending cultural and ethnic barriers. Courts do not always exhibit the ability to accommodate different interests in a welcoming manner. Community mediation allows the display of cultural diversity among mediators.[42] It is a process in which he individual's ability of self-determination is restored with a special reliance on the community. It enhances the participatory actions of the community in decision making and empowers them to work for the overall development of the society.

Like any other kind of mediation, it involves a neutral third party acting as a mediator to resolve differences between two disputants. The noteworthy feature of community mediation is its sensitivity to cultural nuances and reception of customs and traditions followed in the society.[43] This ability of community mediation infusing community values for dispute resolution is instrumental to keep human relationships intact. Moreover , it has the ability to address issues that are seldom taken up by the formal justice system.[44]

[40] Laue, J., & Cormick, G. (1978). *The ethics of intervention in community disputes*. In G. Bermant, H. C. Kelman, & D. P. Warwick (Eds.), The ethics of social intervention (pp.205-232). Hemisphere Publishing Corporation.
[41] Martha Weinstein, *Community Mediation: Providing Justice and Promoting Transformation*, 19 CONFLICT RESOL. Q. 251 (2001).
[42] Ibid
[43] Council for National and International Commercial Arbitration (CNICA), Community Mediation: A Pathway To Resolving Conflicts In India, https://cnica.org/arbitration-times/community-mediation-a pathway-to-resolving-conflicts-in-india/
[44] Ibid

3.2 HISTORY

It is not possible to exactly pinpoint the inception of community mediation. Ever since, humans began to live in groups, communities have played a significant role in mitigating tensions. Primitive communities have had their elders act as effective mediators to resolve differences between individuals. All traditional societies have had their system of dispute resolution. The African and Asian communities have followed the practice of community mediation as part of their indigenous legal system before the advent of the European legal system. For instance, the concept of 'Ubuntu' is a contribution of the African society that recognizes the interconnectedness and interdependence between individuals in a society.[45] However, this does not mean that the needs of the individuals are sacrificed in the process of resolution, but that peace of the individual lies in the upliftment of the community in general.[46]

In China, the roots of mediation in communities can be traced back to the Confucian philosophy. Similarly, all Asian countries have had distinct forms of dispute resolution like the local councils called village panchayats in India, the Gamsabhas in Sri Lanka, the clan leaders in China etc. The Gacaca Courts and Abunzi mediation in Rwanda, Ubuntu mediation in Kenya are notable examples of community involvement in the African continent. In fact, these systems got disrupted with the arrival of colonialism and some practices even got disbanded due to excessive influence from the formal legal practices. In contrast to this, the growth of community mediation in the United States came about in the aftermath of the enactment of the civil Rights Act of 1964. This led to the creation of neighbourhood justice centres and community mediation centres. It gave voice to members of different communities to vent their grievances in an informal manner. Countries have now realized the significance of these traditional systems and have given impetus to these through legislations.

[45] Simon Khayala, *A Model For Conflict Transformation: Ubuntu, Mediation, and Forgiveness*, International Journal of Innovative Science and Research Technology, 2015
[46] David W Lutz, 2009, "*African Ubuntu Philosophy and Global Management*." Journal of Business Ethics. 84, no. 3 SUPPL.: 314. (Accessed on June 10, 2024))

3.3 THEORETICAL CONSIDERATIONS

Community mediation as a movement draws its inspiration from various concepts. Major influences include restorative justice, popular justice, community empowerment, social cohesion etc. The ideological aspects form the basis for proper understanding and utilization of the process.

3.3.1.RESTORATIVE JUSTICE

Community mediation infuses the essence of restorative justice in dispute resolution. Any action that distorts the equilibrium of the community can be considered harmful for the overall dynamics of the community. The approach aims to mend the harm caused by a dispute to revitalize communities. It is based on collaboration, strengthening relationships and responsibility. It ensures that a rapport is built between those who caused the harm and those who suffered the harm. Priority is given to addressing the human- needs of the participants and to empower them to communicate their thoughts and feelings in an open and honest way.[47] The idea is to encourage understanding, accountability and thereby pave way for better healing of relationships in the community.

The goal is to build understanding, to encourage accountability, and to provide an opportunity for healing. The approach does not try to define the persons who caused the harm and those who suffered. But it has been observed that parties in mediation often long for validation, acceptance from those who mediate for them and restoration of their equanimity prior to the conflict. Community mediation programmes try to uphold the tenets of restorative justice. It works parallel to the methods of restorative justice. The result is the generation of positive changes in the community through collaboration and active participation of the members.

This is what makes community mediation quite different from other modes of the adversarial system. For instance, in the United States, these efforts actively benefitted the civil rights movement in the 1960s. Some form of community mediation has

[47] J. Cooley, S. Blaker, *Restorative Justice: Recommitting to Peace and Safety*, RCMP Community Contract and Aboriginal Police Services, 2010 ed.

always existed around the world in varied circumstances, the new form of community mediation in the United States is quite unique.

3.3.2 POPULAR JUSTICE

Community mediation propagates a form a popular justice.[48] Milner and Merry highlight four traditions of popular justice that saw its growth in recent times, namely, reformist, socialist, communitarian and anarchic.[49] Each of these traditions has a particular vision of popular justice.

The reformist and socialist traditions advocate for state control whereas the communitarian and anarchic traditions stand for law and order based on indigenous systems.[50] In erstwhile colonies, the attempt to revive indigenous dispute resolution practices has resulted in the formation of Conciliation Boards like in Sri Lanka[51], Indian Village Councils[52] etc.

In the United States, this form of popular justice has encouraged third parties to be more sensitive to feelings and human relationships rather than interests.[53] It aligns with healing consciousness with an ardent focus on individuality and expression.[54] Merry and Milner have highlighted the San Francisco Community Boards as an expression of this form of popular justice.[55] Popular justice may be placed on the line demarcating formal legal system and customary dispute resolution. Community efforts in dispute resolution are sometimes referred to as informal justice.[56]

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[48] Sally Engle Merry & Neil Milner, *The Possibility of Popular Justice -A Case Study of Community Mediation in the United States*, University of Michigan Press, 1993
[49] Ibid at pp.41
[50] Ibid at pp. 41
[51] Tiruchelvam, Neelan. 1984. *The Ideology of Popular Justice in Sri Lanka: A Socio-Legal Inquiry*. New Delhi: Vikas Publishing House.
[52] Meschievitz, Catherine S., and Marc Galanter. 1982. "*In Search of Nyaya Panchayats: The Politics of a Moribund Institution*." In The Politics of Informal Justice, ed. Richard L. Abel, 2:47-81. New York: Academic Press.
[53] Merry and Milner, Supra note 46
[54] Bellah, Robert N., Richard Madsen, William M. Sullivan, Ann Swidler, and Steven Tipton. *Habits of the Heart: Individuals and Commitment in American Life.* New York: Harper and Row, 1986
[55] Merry, supra note 48
[56] Ibid

3.3.3 COMMUNITY EMPOWERMENT

Community Mediation can be analyzed with the help of the empowerment theory. According to Zimmerman,[57] empowerment is a value and an orientation that can help individuals in a community to better their lives. This is under conditions of social, political, economic and cultural inequalities.

The concept facilitates deeper understanding of community efforts in society's progress. In the context of community mediation, dispute resolution allows communities to realize their worth. The value of cohesion and collaboration will empower communities in the long-run.

Mediation empowers the individuals as well to express themselves freely and have a say in the final outcome.[58] This is quite unlike the formal legal system that can be burdensome, expensive and depressing at times.

3.3.4 TRANSFORMATION OF THE CONFLICT

Peace-making processes often attempt to explore the aspect of conflict transformation. This concept advocates for change in personal, cultural, functional facets of the conflict through the peace-making process.[59] Therefore, the aim is not to simply resolve dispute but also to make way for positive changes in the individual and society. This is closely related to the ideas of reconciliation and maintenance of human relationships. The transformative approach of conflict resolution reaps much more benefits than mere resolution of differences.[60] It helps build a healthy environment for exchange of perspectives and foster peace and harmony instead of violence.

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[57] Zimmerman, M. A. (2000). *Empowerment theory: Psychological, organizational, and community levels of analysis.* In J. Rappaport & E. Seidman (Eds.), Handbook of community psychology (pp. 43–63). Kluwer Academic Publishers.

[58] Ibid

[59] Jonathan Shailor, *Conflict Transformation, Key Concepts in Intercultural Dialogue*, No. 65, 2015

[60] Ibid

Based on their study of community mediation programmes in the United States, Harrington and Merry[61] have identified three ideological models, namely, the delivery of dispute resolution services model, social transformation model, and the personal growth model. These models are helpful to delineate the benefits of community mediation.

- Delivery of dispute resolution services model: This model is based on the realization that the dispute resolution body should fit the kind of dispute. It can be traced to the need for alternative mechanisms of dispute resolution instead of Courts. It is based on the idea that the 'forum should fit the fuss' and advocates for streamlining appropriate resolution processes for different disputes.[62] This aspect of specialized dispute resolution, efficient decision-making, and adequate allocation of resources are the key highlights of mediation in general.[63]
- Social transformation model: This model is based on transforming the social milieu by the appreciation of informal justice mechanisms. In the United States, the model gained popularity with the revolutionary circumstances in Cuba, Chile, and Portugal.[64]In these places, the revolution paved way for informal justice system being used as an arena for powerful socialization experiences.[65] This influenced the growth of neighbourhood justice centres in the United States to restructure the existing societal setup.[66] The model emphasizes on the decentralized decision-making, replacement of professional dispute resolvers with community members etc.[67] This forms the foundation for the revival of self-governance in community structures. However, this model is based on complete detachment of community mediation from the formal state-sponsored justice system.
- Personal growth and development model[68]: This model fundamentally aims for the growth and overall development of the disputants. The consensual

[61] Harrington, Christine B., and Sally Engle Merry. "*Ideological Production: The Making of Community Mediation*." Law & Society Review, vol. 22, no. 4, 1988, pp. 710.
[62] Sander, Frank E.A. (1976) "*Varieties of Dispute Processing,*", 70 Federal Rules Decisions 79.
[63] Supra note 61
[64] Ibid
[65] Ibid
[66] Auerbach, Jerold S. (1983) *Justice Without Law?* New York: Oxford Uni-versity Press.
[67] Supra note 61
[68] Ibid

resolution of disputes will enable the parties to understand their difference without any influence or tension. Moreover, the self-determining nature of community mediation allows the parties to exercise more control over the final outcome. It focuses on keeping human relationships intact by harbouring peace and harmony. It should restore the self-esteem of the parties through the process.[69] Basically, the satisfaction reported in community mediation programmes is a reflection of this model.[70] Certain mediation programmes have been inspired by religious movements to better an individual's spiritual well-being.[71]

Community mediation stresses on several key aspects of conflict resolution[72], namely:

- Self-determination of individuals: The practice of community mediation allows the individuals realize the goal of self-determination. The parties retain their decision making authority and hence exercise more autonomy in the dispute resolution process. This begins with the consideration of the matter by the mediator, the extent of the participation of parties and the final result of the mediation efforts. In some jurisdictions, community mediation programmes ensure widespread participation and governance by individuals. This highlights their efforts in better service delivery of such programmes.

- Community self-reliance:

  The object of almost every community mediation programme is to build string communities. Exploring the possibilities of community capacity is quite essential to further the practice. Along with this, it also provided changing conflict patterns to understand conflict resolution better. As some scholars term the practice,[73] it is truly dispute resolution "of the people, by the people, for the people."

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[69] Ibid

[70] Pearson, Jessica (1982) "*An Evaluation of Alternatives to Court Adjudication,*" 7 Justice System Journal 420

[71] Beer, Jennifer E. (1986) *Peacemaking in Your Neighborhood: Reflection on an Experiment in Community Mediation*. Philadelphia: New Society Publishers.

[72] Timothy Hedeen, *The Evolution and Evaluation of Community Mediation: Limited Research Suggests Unlimited Progress* CONFLICT RESOLUTION QUARTERLY, vol. 22, no. 1–2, Fall–Winter 2004

[73] Ibid at pp. 101

- Equal access to justice for all:

  All processs of ADR vouch for better access to justice for all individuals. Community mediation does the dual purpose of facilitating conflict resolution along with empowerment of communities. When conflicts interact with long-winded relationships between individuals, communities and governments, these practices ensure cost-effective, less time-consuming settlement of disputes.[74]

- Fairness in the system

  Community mediation is often reported to ensure fairness in the dispute resolution process. This was common among members who were first- time users of the process. The presence of a neutral third party in the form of a mediator brings in fairness to the proceedings.[75] His/ her presence makes reinforces the need for both parties to be heard adequately. This welcoming change is quite different from the traditional legal system.

- Avoidance of violence

  It may appear strange but community mediation has the ability to prevent situation anticipating extreme violence. The experiences of United States and Rwanda in this regard are noteworthy. In the Unites States, community mediation has been used to curb violence in situations ranging from new gun legislation to confederate gun displays.[76] In Rwanda, Abunzi mediation, a form of community mediation arose in the aftermath of the Rwandan genocide to primarily address ethnic differences.

[74] Adler, P. S. (1992). *State offices of mediation: Thoughts on the evolution of a national network*. Kentucky Law Journal, 81(4), 1013-1027.
[75]Felicia Washington et al., NAFCM Report on the State of Community Mediation 2019
[76] Supra note 67

- Peace-making

  Peace-making is the ultimate aim of any dispute resolution method. Community mediation also strives for the attainment of a peaceful outcome.[77] Communities prefer to live in peaceful environment and hence maintenance of peace is seminal to ensure law and order. A peaceful intervention in a community dispute can deter a localized dispute that may result in a communal conflict, massacre, genocide etc. Peace-making is a hallmark of the community mediation process. This attribute is not displayed by the state's legal machinery. This is one of the reasons why the process is preferred by ethnic minorities in the United States.[78]

3.4 LIMITATIONS OF COMMUNITY MEDIATION

No dispute resolution method is free of flaws. Community mediation also suffers from almost the same defects as regular mediation. The first major setback is the inherent power imbalance present in the process. Since there is no scope of representation by parties in community mediation as in formal legal proceedings, there is a tendency for the more influential party to pressure the other party. It is upon the mediator to carefully balance the inequalities and resolve the differences. Moreover, it is also affected by cultural, ethnic sensitivities, which are to be properly taken care of by the mediator. At times, community mediation may fail to meet its objective of resolving the dispute but, the process makes the parties more receptive about their situation and relative opinions.

Another limitation is related to the subject-matter. The process may be not be used in every matter. In matters requiring deep analysis of legal aspects, community mediation may not serve the purpose of justice delivery.

[77] Mohamed Munas…[et al.]. -Community mediation: dispute resolution of the people, by the people and for the people : a sociological enquiry about people's perceptions and experiences of mediation boards : Northern, Eastern and Uva Provinces, Colombo : Centre for Poverty Analysis, 2018

[78] Ibid

3.5 CONCLUSION

Asian societies generally prefer outside court settlement in dispute resolution, which is in part a reflection of their inherent values. This preference is not just to further customary dispute resolution but due to the inability of justice systems in few countries.[79] Community mediation has been recognized by formal legal systems in many countries through legislations. In some countries, at present, community mediation centres are just a revival of their traditional dispute resolution system. Whereas, in countries like the United States, it began in the form of neighbourhood justice centres and community mediation centres in response to racial violence. The process of community mediation has immense potential to strengthen communities and preserve societal harmony. Sensitization of communitarian aspects helps the individuals to identify themselves better in the decision-making process. It enables them to exercise the power of self-determination.

[79] V. Bath and L. Nottage *Foreign Investment And Dispute Resolution Law And Practice In Asia*, , eds., Routledge, 2011, Sydney Law School Research Paper No. 11/20

CHAPTER-IV: COMMUNITY MEDIATION AROUND THE WORLD -

A COMPARATIVE STUDY

"By simultaneously fostering individual participation and restoring peace to conflict-ridden situations, community mediation is said to rebuild and strengthen community ties".[80]

4.1 COMMUNITY MEDIATION AND LEGAL PLURALISM

Communities have played an instrumental role in dispute resolution over the years. It has been prevalent in every country in one way or the other. This is especially true in the case of erstwhile colonies where indigenous legal systems were slowly replaced by the colonial legal system. Mediation as a dispute resolution mechanism has its roots in China and tribal Africa. Despite the social changes that African societies have undergone since colonialism, they remain as composite societies since traditional and modern institutions run parallel to each other.[81] In many African countries, traditional institutions like Dare in Zimbabwe, Abunzi and Gacaca courts in Rwanda, Bashingantahe in Burundi play a pivotal role in dispute resolution.[82]

These institutions preside over matters like land disputes, other civil disputes and in some cases even criminal matters. Few countries in Africa, like Rwanda, have given legal recognition to these systems whereas in others, these systems work as extra judicial dispute resolution mechanisms. This idea of legal pluralism emerged with reference to the dichotomy between indigenous normative ordering and the colonial/European legal system especially in the non-Western cultures in Africa, Asia,

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[80] Pavlich, George. "*The Power of Community Mediation: Government and Formation of Self-Identity." Law & Society Review*, vol. 30, no. 4, 1996, pp. 707–33.

[81] Tasew Tafese , *Conflict Management through African Indigenous Institutions: A Study of the Anyuaa Community*, Institute for Peace and Security Studies, Addis Ababa, Ethiopia,January 31, 2016,

[82] Ahorsu, Ken, and Robert Ame. "*Mediation with a Traditional Flavor in the Fodome Chieftaincy and Communal Conflicts*." African Conflict and Peacebuilding Review, vol. 1, no. 2, 2011, pp. 6–33.

and Oceania.[83] Griffiths defines legal pluralism as "that state of affairs, for any social field, in which behavior pursuant to more than one legal order occurs."[84]

The efforts to revive and maintain community mediation practices stem from the need to maintain a pluralistic aspect of legal system. The idea is not distort the equilibrium of formal legal structures but rather to empower communities to sort out differences in their own way. This comparative study will take into account the community mediation systems in Rwanda, Singapore, Sri Lanka, China and the United States of America at length. There are many reasons to justify the study of the mediation systems in these countries.

The Community mediation in Rwanda termed as Abunzi mediation is a model for balancing community interests and dispute resolution. Since, mediation also has its roots in Africa, Abunzi mediation can be a model for grass-root level participation of citizens in justice delivery. Moreover, Rwandan mediation also offers an idea of how community peace-building can be carried out in post-conflict situations like the Rwandan genocide. In many instances, social relations may have been deeply fractured by the dynamics of war, which deepen or transform divisions based on gender, caste, class, ethnicity, politics, and more.[85]

The Asian countries have showcased immense potential in benefitting from alternative dispute resolution mechanisms. Singapore has played a pivotal role in highlighting the significance of mediation to the world. In Sri Lanka, the community mediation program began as part of collaboration between the Ministry of Justice and The Asia Foundation.[86] Since the Mediation Boards Act of 1988, mediation boards have become widely used across the country. Most of these Asian countries were erstwhile colonies and the traditional systems of dispute resolution have existed here for centuries. Similarly, in China, people's mediation committees are quite beneficial in catering to the needs of dispute resolution. It has a history of extensive usage of mediation efforts to maintain harmony.

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[83] Sepalika Welikala ,*Community Mediation as a Hybrid Practice: The Case of Mediation Boards in Sri Lanka*, Open University of Sri Lanka, Asian Journal of Law and Society, 3 (2016), pp. 399–422
[84] Griffiths, John (1986a) "*What is Legal Pluralism?*," 24 Journal of Legal Pluralism 1
[85] Marc, A., Willman, A., Aslam, G., Rebosio, M. and Balasuriya, K. (2013) '*Societal Dynamics and Fragility: Engaging Societies in Responding to Fragile Situations,*' Washington, DC: World Bank.
[86] Craig Valters, *Building Justice And Peace From Below? Supporting Community Dispute Resolution In Asia*, Working Politically In Practice Series, Case Study No. 9 , October 2016

On the other hand, community mediation boards in the United States emerged in the 1960s during the civil rights' movement to address issues related to race, gender, and ethnicity at the community level. Often labelled as symbols of state-oppression, these boards have been successful in dispute resolution to a limited extent. The history of community mediation in the aforementioned countries along with the existing legal framework will be discussed in detail in this chapter.

4.2 RWANDA

4.2.1. HISTORICAL BACKGROUND

Indigenous forms of dispute resolution based on the essence of consent and conciliation have existed in African societies for quite long.[87]In Rwanda, the modern ADR system has tried to incorporate values from traditional society to ensure better conciliation efforts as evident from the Abunzi Mediation committees established in the post-genocide era.[88] The Rwandan Gacaca Court is an example for such system functioning parallel to modern ADR in African societies.[89] Abunzi mediation and Rwandan Gacaca Courts are based on community efforts in resolving conflicts to maintain peace and harmony.

RWANDAN GACACA COURTS

The Rwandan Gacaca Courts were a form of transitional justice based on the community set up in the aftermath of the Rwandan genocide in 1994. However, this was just an incorporation of the traditional form of Gacaca based on the Rwandan community to the formal Court system. The term 'Gacaca' comes from the Kinyarwandan word 'umugaca' which means 'short grass.' Thus, these courts came to be known as 'justice on grass.'[90] The Rwandan social system, prior to colonization, was divided into principalities governed by kings, the 'Muamis.' The Muamis were

[87] Jacqueline Nolan-Haley, *Mediation and Access to Justice in Africa: Perspectives from Ghana*, 21 Harv. Negot. L. Rev. 59 (2015)
[88] Phyllis E. Bernard, *Begging for Justice? Or, Adaptive Jurisprudence? Initial Reflections on Mandatory ADR to Enforce Women's Rights in Rwanda*, 7 CARDOZO J. CONFLICT RESOL. 325, 339–49 (2006) 347–51.
[89] Ibid at pp. 328
[90] Ingelaere, Bert, "*Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences*" (PDF). International Institute for Democracy and Electoral Assistance 2008.

advised by the 'Abiru' or wise men.[91] However, every issue was first presented before the heads of different tribes for resolution to be solved at the community level. These Courts primarily aimed to reinstate peace and harmony in the community and were not much concerned with the ascertainment of liability and truth.[92]

In fact, a major criticism against the modern Gacaca Courts instituted in the post-genocide era was the backsliding of truth and justice. The old Gacaca courts had the preservation of human relationships as its major aim. But, the new Gacaca Courts, with its state-imposed rules and regulations are viewed as pure 'instruments of the State.'[93]

ABUNZI MEDIATION

The Abunzi mediation in Rwanda is worth mentioning with regard to the synergy between local communities and justice delivery system. It is a suitable example that testifies for the collaboration between formal and informal legal structures. In Rwanda, even though the abunzi institution pre-dates colonialism, its current form and approach to justice is modelled along the ADR jurisprudence.[94] The literal meaning of 'Abunzi' is 'those who reconcile. Abunzis are local mediators in Rwanda who are supported by the State to resolve disputes ensuring mutual solutions for conflicts.

They are usually chosen on the basis of qualities like integrity and their ability to handle local and sensitive issues of civil and criminal nature. At present, there are more than more than 30,000 Abunzi mediators in Rwanda. Abunzi mediation in Rwanda developed as a result of the communal distortion caused by the Rwandan genocide in 1994. The Hutu, Tutsi, and Twa are three of the three predominant ethnic groups of Rwanda. Historically, the mass murder of members of the Tutsi tribe sensitised the legal system to set up a parallel form of dispute resolution in the community level. There was a need to revive the traditional structures to decide punishment for those who took part in the genocide owing to the heavy burden on the formal legal structures to decide on the same. This is one of the key reasons why the

[91] Ibid at pp. 31
[92] Ibid at pp.32
[93] Ibid at pp.44
[94] Dr. Martha Mutisi, The Abunzi Mediation in Rwanda: Opportunities for Engaging with Traditional Institutions of Conflict Resolution, ISSUE # 012 October 2011

Government of Rwanda enacted the Organic Law of 2006 for the creation of Abunzi Mediation Committees and further by Organic Law 02/2010/OL on the jurisdiction, functioning and competence of mediation committees.The system was highlighted by the Rwandan government in the post-2000 era to make the justice system more accessible at the local level. The resuscitation of the Abunzi is part of the Rwandan government's repertoire of initiatives designed to make justice and governance available to citizens at every level.[95] These Community Mediation Committees were necessary to channelize dispute resolution through mediation in the post-genocide era. These were set up to not just solve conflicts but also to mediate interests between parties at family and village levels.

4.2.2.LEGAL FRAMEWORK

The Rwandan government passed the Organic Law (No. 31/2006) to recognize the Abunzi mediators and their role in conflict resolution. Typically, the Abunzi mediators are usually persons holding good reputation in the community. The level of integrity of the mediator is usually linked to his/her honesty and strong moral background as member of the community. The municipal authorities choose these mediators and the Ministry of justice vets their background. The Abunzi mediators address local matters of criminal and civil nature such as land disputes, breach of agreements etc. The Abunzi mediation committees take up those matters submitted before them by the parties. The parties of the dispute get to choose the members from the committee to chair their session. This type of mediation involves a public hearing of both sides. It can also be done otherwise by the request of the parties or by the mediator. A dispute must be settled within one month from the day the dispute is registered and the verdict must be written and signed by the Abunzi on every page of the mediation agreement and made available within ten days after the dispute is resolved. [96]The Abunzis try to ensure that a compromise is reached between the parties, keeping in mind the cultural aspects, social background of the parties and their own understanding. The final solution must be one which is not against the written law. Abunzi mediators follow a process to arrive at the final decision. The Law of 2016 defines three stages of the decision, namely, the primary decision, the

[95] Ibid
[96] LAW No.37/2016, Government of Rwanda, 2016,

secondary minutes and the tertiary verdict. This pattern follows the ordinary course of mediation process.[97] Article 33 of the law mandates the Ministry of justice to provide adequate training and infrastructure for the smooth working of the Abunzi committees. Moreover, the local government is also bound to ensure that these committees are able to work effectively. The decision of the Abunzi is based on consensus within the committee, when there is no consensus; decision is governed by majority's votes. The Law of 2016 also specifies the format of a verdict by the Abunzi committee.

The details to be included in the verdict include:

- the parties' identification
- the subject matter of the dispute
- the arguments of both the parties
- the decision accepted by both parties
- the decision accepted by one of the parties
- the date and place of the settlement
- the signatures of both parties
- the names of Abunzi and signatures
- the rapporteur's names and signatures

The decision of the Abunzi is meant to be written and signed by each one of the members and should be made available to the parties within 10 days from the day on which the decision is given. Disciplinary proceedings may be initiated against the Abunzi if they fail to do the same. The Abunzi sessions are conducted in public, only the selected Abunzis shall exercise the right to vote in a given session. The verdict is usually considered as mediated agreements between the disputant parties and shall not be enforceable against third parties. Any party who is not satisfied with the verdict at the cell level can go for appeal at the sectoral level. The option for appeal against the verdict is also available in the primary court. Additionally, the Abunzi system has

[97] Ibid

opened spaces for ordinary citizens to participate in public processes, such as justice delivery and governance reform.[98]

4.2.3 IMPACT

Community mediation is a significant part of the Rwandan culture as in other African societies. African mediators attempt to create an 'honourable compromise' to preserve the self-respect of both the parties.[99] The old Gacaca Courts were open spaces for disputants to identify their interests and resolve differences. This incorporation of traditional values in formal court system led to the formation of the new Gacaca Courts that tried offences committed during the period of Rwandan Genocide. Over 12,000 Gacaca Courts tried around 1.2 million cases of the genocide era since their establishment in 2005.[100] These Courts were closed down after achievement of their designated purpose. The usage of community-based forums for administration of justice in matters like genocide was heavily criticized by several scholars. Few survivors claimed that the Judges were tainted with partiality, selfish interests and that the perpetrators did not receive the adequate punishment for their actions.[101]

In the case of Abunzi Mediation, the mediation committees are specific in their subject-matter and hence act as effective media for proper resolution of disputes. At present, there are over 38,000 mediation committees in Rwanda to decide upon over 100,000 disputes.[102] It acts as a bridge between formal legal system and customary dispute resolution methods.

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[98] Laura Ospina, *Abunzi Mediation: traditional conflict resolution for community empowerment and participation*, 2023 , https://www.sdg16.plus/policies/abunzi-mediation-traditional-conflict-resolution-for-community-empowerment-and-participation/#policy-reference-15

[99] Nabil N. Antaki, *Cultural Diversity and ADR Practices in the World*, in ADR IN BUSINESS: PRACTICE AND ISSUES ACROSS COUNTRIES AND CULTURES (Jean- Claude Goldsmith et al. eds., 2006) at pp. 286

[100] Rwanda: Mixed Legacy for Community-Based Genocide Courts, Human Rights Watch https://www.hrw.org/news/2011/05/31/rwanda-mixed-legacy-community-based-genocide-courts

[101] de Brouwer, A. L. M., & Ruvebana, E. *The legacy of the Gacaca courts in Rwanda: Survivors' views*. International Criminal Law Review, 2013, 13(5), 960.

[102] Dr. Isaboke Peter Kennedy Nyataya, PhD. "*Conflict Mediation Committees Spurring Development of Communities in Rwanda* " International Journal of Research in Sociology and Anthropology (IJRSA), vol 6, no. 1, 2020, pp. 23.

4.3 SINGAPORE

4.3.1. HISTORICAL BACKGROUND

In Singapore, the practice of mediation was introduced in three main levels namely, Courts, commercial transactions and community. Community mediation has exited here like many other Asian societies. For centuries, communities have relied on the conciliation practices prevalent within their communities. However, with colonization and disappearing importance of tribes, formal legal system gradually became the preferred dispute resolution method for individuals.[103]

Formal mediation found its way to the legal system through the mediation programme set up in 1994 under the pioneering efforts of former Chief Justice of the Supreme Court of Singapore, C.J. Yong. Court Mediation Centres were later established which are known as State Courts Centre for Dispute Resolution, at present.[104]

The development of community mediation as a method for dispute resolution in Singapore can be traced back to the step taken by the then minister for Law Prof. S. Jayakumar in the creation of an inter-agency committee in May, 1996. This committee came to be known as the Committee on Alternative Dispute Resolution and was set up to delve into the possibilities of alternative dispute resolution mechanisms in the country. The Committee comprised of representatives from the Ministry of Law, Ministry of Community Development, Ministry of Home Affairs, the Courts, Attorney General's Chambers, the Singapore Academy of Law, the National University of Singapore, the Singapore International Arbitration Centre, the Law Society of Singapore and Members of Parliament.[105] The Committee on Alternative Dispute Resolution made several key recommendations in its report submitted in July, 1997. It suggested that the adoption of new methods must ensure that dispute resolution becomes less adversarial, less expensive and more comfortable for the parties. It was meant to resolve several commercial, social and community conflicts. From among the various alternative dispute mechanisms, the committee

[103] Yong, P H (former Chief Justice) (1996) Speech at the Opening of the Legal Year 1996. In Hoo Sheau P (1996) Speeches and Judgments of Chief Justice Yong Pung How. Singapore: FT Law & Tax Asia Pacific
[104] Ibid at pp. 8
[105] Community mediation in Singapore, https://cmc.mlaw.gov.sg/about-us/history/

highlighted the potential of mediation in dispute resolution. This was because mediation put forward several aspects of the traditional Asian dispute resolution mechanisms. The move was, in a way, to revive the long lost community based dispute resolution in Asian societies before the advent of formal legal system. Community Mediation Centres were, henceforth, set up to cater to the vision of amicable dispute resolution of the committee. This was meant to promote harmony and social adhesion in the community level. The committee's recommendations were considered by the Ministry of Law in 1997. This led to the enactment of the Community Mediation Centre Act of 1998. [106]The Community Mediation Centre set up its first centre, CMC (Regional East) at Marine Parade District Hall.

4.3.2. LEGAL FRAMEWORK

The Government of Singapore passed the **Community Mediation Centres Act** in 1997 to provide for the establishment of Community Mediation Centres (hereinafter referred to as CMC) to mediate certain disputes in the community level. The Act came into force on 9 January, 1998 for the first time. It was later revised in 1998 and came into operation on 30 May, 1998. Amendments wwere made to the Act in subsequent years due to changes in related Act like the Criminal Procedure Code 2010, Subordinate Courts (Amendment) Act 2014, Family Justice Act 2014 etc. Another milestone in the field of community mediation was the enactment of the Community Disputes Resolution Act in 2015.

The CMC Act, 1997 laid the foundation for the growth of community mediation Singapore. Section 3 of the Act provides for the creation of CMC at premises as specified by the Minister. Each CMC is to be dealt with by Directors appointed by the Minister. The Minister exercises the power to appoint mediator on the aid and advice of the Director of each centre. The Director of is responsible for functioning and management of the centre. No dispute shall be given to a mediator without the consent of the Director of the centre. Section 11 of the Act provides for the subject matter of mediation disputes.

[106] Ibid

This can be a case concerning a family, social or community dispute that does not involve a seizable offence under any written law.[107] Participation in a mediation session is voluntary and can be withdrawn by the parties at any point during the mediation proceedings. Section 13 of the Act mandates the mediated settlement to be in writing and signed by both the parties. A mediation agreement in non-written format is considered void under the Act. The Act also provides for referral of disputes by the Magistrate for community mediation. Section 22 states that Director and all members of the staff, employees and officers of the Community Mediation Centres shall be deemed to be public servants for the purposes of the Penal Code. [108]

The **Community Disputes Resolution Act**, 2015 was passed to facilitate the resolution of community disputes by providing for a statutory tort for community disputes and for the establishment of Community Disputes Resolution Tribunals to deal with such disputes, and for matters connected therewith.[109] This Act has a narrow ambit of dealing with tortious acts of a person interfering with the rights of another. The Act defines 'Court' as a court of competent jurisdiction including a Community Dispute Resolution Tribunal (hereinafter referred to as CDRT). The Tribunal has the power to grant orders for injunction, damages, specific performance etc. like that of a civil court. Section 14 of the Act provides for the creation of the Community Dispute Resolution Tribunal. The presiding judge of the State Court exercises the power to designate one or more state courts as CDRT. Section 30 of the Act deals with the referral of cases by the tribunal judge to Community Mediation Centres set up under the 1998 Act.

The CMC's mediators are volunteers who have undergone basic mediation training before they are appointed for two years. The content of the training includes understanding the objective and philosophy of mediation, the mediation process, processs of communication, and counseling skills.[110]

[107] Community Mediation Centres Act, 1998
[108] Ibid
[109] Community Dispute Resolution Act, 2015
[110] Hanna Binti Ambaras Khan, *Community Mediation in Malaysia: A Comparison Between Rukun Tetangga and Community Mediation in Singapore*, Journal of Literature and Art Studies, March 2013, Vol. 3, No. 3, pp. 191

Full-time public service officers of the Ministry of Law manage the administration of mediation cases, management of CMC Volunteer Mediators, publicity and outreach work as well as other administrative matters.[111]

4.3.3.IMPACT

Mediation, in general, has been quite a successful venture in the Singaporean dispute resolution system. The country has paid significant attention to the promotion of ADR processs. The Community Mediation Centres Act of 1997 has been quite instrumental in reviving the Asian tradition of community dispute resolution. The services provided by the CMCs have been subsidized and hence, there is high likelihood of people opting for such methods. At meager fee of five Singapore Dollars, the process can be initiated by one of the parties and no fee is charged for subsequent sessions.[112] This has helped in the quick resolution of matters by trained community mediators.

Moreover, the Act has stipulated the qualification to become a community mediator. They are usually respectable members of the community with considerable mmoral standing and competence. These mediators are volunteers from varied professions and they are trained and appointed by the Ministry of Law, Singapore. The qualification includes a minimum level 1 Accreditation of the Singapore International Mediation Institute (SIMI).[113] The CMCs have been able to infuse confidence in the minds of the people to a certain extent. They have been successful in removing the complexities and formalism of ordinary Courts to resolve petty issues. Hence, the mediation movement in Singapore has evolved from experimentation to institutionalization and convenience catering to community aspirations as well.[114]

[111] Community mediation in Singapore, https://cmc.mlaw.gov.sg/about-us/history/
[112] Yadav, Pitamber, *Affordability, Accessibility and Reliability – The Community Mediation Model of Singapore* (May 20, 2022). Available at SSRN: https://ssrn.com/abstract=4123529
[113] Ibid
[114] Dorcas Quek Anderson. *The evolving concept of access to justice in Singapore's mediation movement*. (2020). International Journal of Law in Context. 16, (2), 128-145.

4.4 SRI LANKA

4.4.1 HISTORICAL BACKGROUND

The dispute resolution mechanisms in Sri Lanka at the community level can be traced back to the Gamsabhas in the fifth century B.C. These were tribunals or councils at the village level and consisted of a village headman. The reference to these councils can be found in the Buddhist chronicles such as Mahavamsa when village boundaries were established. For years till the advent of the Dutch and the Portuguese, these councils functioned as efficient units of dispute resolution at the local level. It was the British that tried to revive the lost culture of community mediation in the island through the Ordinance for rural courts in 1945. However, this was practically ineffective. Therefore, the Conciliation Boards Act was introduced in 1958 to amicably settle minor disputes with the assistance of impartial conciliators. [115]The main weaknesses in this mechanism were cited as the politicisation of the selection process of the mediators and the jurisdiction of the boards going beyond the capacity of lay persons, in that these boards included legally binding decisions and lacked training for the conciliators[116]..

Community Mediation Boards were established in 1990 in Sri Lanka by virtue of the Mediation Boards Act No. 72 of 1988. The Mediation Programme established Mediation Boards in every Divisional Secretary Division island-wide. The intention of establishing mediation boards was to remedy delays in the formal justice system by providing an alternative to expensive and time-consuming litigation which is quick, cheap, community-led and accessible to people. The boards have been actively contributing towards amicable resolutions for inter-personal and community level disputes and offences for over 30 years. The Boards commonly address disputes between private parties related to land issues, family disagreements, financial disputes and minor offences. Within a 30-year span, Sri Lanka has equipped the nation with 329 Community Mediation Boards with over 8,500 active volunteer Mediators across

[115] Gunawardana, M. *A Just Alternative: Providing access the justice through two decades of Community Meditation Boards in Sri Lanka*. Colombo: The Asia Foundation, 2011
[116] Ibid

the country. At present, Sri Lanka's Mediation Boards Programme is the third largest mediation system in the world[117] and is often cited as a model by other countries.

4.4.2 LEGAL FRAMEWORK

The Mediation Boards Act No. 72 of 1988 passed by the Sri Lankan legislature provides for the establishment of Community Mediation Boards in Sri Lanka. The Act established mediation boards in every secretary division all around the island. The Mediation Boards Commission monitors the working of these mediation boards. The Act was amended in 1997, 2011 and 2016 to enable the facilitation of voluntary settlement of minor disputes.[118] The Community Boards in Sri Lanka showed greater success compared to other dispute resolution mechanisms of the state due to its ability to connect with a wider section of the society. These Community Mediation Boards operate on the principle of interest-based negotiation or facilitated negotiation where the mediators guide the disputants to understand the root causes of the conflict and reach a solution that is acceptable to the parties involved while also factoring the interests of disputing parties.[119]

The Mediation Boards Act, 1988 provides for the creation of Mediation Boards and a commission to monitor the functioning of these Boards. The President is empowered to choose the five members of the Commission among which at least three members must have previously held judicial office in the Supreme Court of Sri Lanka or the Court of Appeal. The Chairman and the members shall remain in the office for a term of three years. Section 5(2) stipulates the qualifications for the mediator in a mediation board. The commission appoints such people of respectable standing who are given training for mediation through various training sessions. These Boards are under the supervision of the Sri Lankan Ministry of Justice and Law Reform.

Section 9 of the Act provides for the constitution of the mediation board.

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[117] C.W. Moore, Trainee's Manual, Community Mediation Programme

[118] Siriwardhana, C. 2011. Evaluation of the Community Mediation Boards Program in Sri Lanka. Colombo: The Ministry of Justice.

[119] Community mediation: dispute resolution of the people, by the people and for the people : a sociological enquiry about people's perceptions and experiences of mediation boards : Northern, Eastern and Uva Provinces, Sri Lanka / Mohamed Munas…[et al.]. - Colombo : Centre for Poverty Analysis, 2018, https://www.cepa.lk/wp-content/uploads/2020/08/Community-Mediation-Study-2-WPS-29-2018.pdf

The board typically consists of:

- A member selected by each disputant
- A member selected by the members chosen by the disputants

The mediation boards in Sri Lanka work as effective means of dispersing justice through alternative dispute resolution mechanism. Members of the boards are not judges or authority figures who make decisions or tell disputants their course of action. Rather, they are termed as "process assistants" who facilitate effective problem-solving procedures that assist in dispute resolution. The Mediation Boards Act provides for both voluntary and court-directed mediation. The primary objective of MBs was to offer an alternative mechanism of dispute resolution for local and minor conflicts outside the framework of the overburdened state legal system.[120] If a dispute is settled within three sessions, a settlement certificate is issued to the parties. According to a study conducted in three provinces of Sri Lanka, generally, the level of satisfaction in relation to Community Mediation Boards is higher when compared to formal dispute resolution mechanisms.[121]

However, the Boards have tried to make its presence known in areas inhabited by ethnic minorities etc. The Boards are also perceived as symbols of the state's justice delivery mechanism by some sections of the society. This can benefit as well as back-fire the efficacy of the Boards. The formal outlook of the boards helps in adding more credibility to its decisions. On the other hand, the aspect of formality can also deem it as another mechanism of the state.

[120] Gunawardana, Michelle, A Just Alternative, Colombo: The Asia Foundation, 2011

[121] Mohamed Munas…[et al.]. -Community mediation: dispute resolution of the people, by the people and for the people : a sociological enquiry about people's perceptions and experiences of mediation boards : Northern, Eastern and Uva Provinces, Colombo : Centre for Poverty Analysis, 2018

4.4.3 IMPACT

Community Mediation Bards in Sri Lanka have been able to revive the lost traditional dispute resolution practices of the island nation. The community mediators are chosen form divisional secretariat areas that ensure that the demographic characteristic of the area is adequately represented.[122]This also includes addressing the representation of women members in the Boards. In general, Boards have instilled a sense of confidence in the people that approach these. This is evident from the fact that more people consider Community Mediation Boards as a more viable option than the Courts.[123] Land disputes, matters for monetary damages etc. form the major chink of complaints before the Boards.

The general satisfaction of parties in this process is higher than those through formal legal system.[124] This is a key indicator of the success and extent of community mediation boards in the nation. Mediation Boards resolved approximately 69,000 disputes with a settlement rate of about 70 percent in 2023.[125]

In 2023 alone, the Mediation Boards resolved nearly 68,000 disputes, achieving a 69 percent settlement rate and consistently high satisfaction among parties. On collaboration with other justice development institutions, the Ministry of Law has taken several steps to better the quality of mediators through professional training, workshops etc.[126]

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[122] Community mediation: dispute resolution of the people, by the people and for the people : a sociological enquiry about people's perceptions and experiences of mediation boards : Northern, Eastern and Uva Provinces, Sri Lanka / Mohamed Munas…[et al.]. - Colombo : Centre for Poverty Analysis, 2018, https://www.cepa.lk/wp-content/uploads/2020/08/Community-Mediation-Study-2-WPS-29-2018.pdf

[123] Ibid

[124] Ibid

[125]Enabling Citizen Access to Justice and Community Harmony: Three Decades of Support for Sri Lanka Mediation Boards, Asia Foundation, https://asiafoundation.org/2024/05/23/enabling-citizen-access-to-justice-and-community-harmony-three-decades-of-support-for-sri-lanka-mediation-boards/

[126] Ibid

4.5 CHINA

4.5.1 HISTORICAL BACKGROUND

The Chinese society has traditionally been a supporter of mediation efforts. The roots of mediation can be traced back to the tenets of Confucianism.[127] Confucian philosophy upheld harmony as the most desirable state and tried to avoid any situation that desired this state. The suffering of the consequences was weighed less important than any blow to the state of harmony. In short, Confucianism highly valued compromise and persuasion as well as the intermediary who was able to secure them.[128] This encouragement for the practice of mediation was continued through the centuries by various dynasties. The rulers urged village leaders and elders (li-lao) to mediate between parties. However, this form of mediation was voluntary and further actions could be talked in the local court. With the increasing case overload in local courts, the village elders took matter into their hands by actively disputing civil disputes. At around 1500 AD, there came a point when very few cases came before the local courts due to the intense form of dispute resolution within the village.[129]

Moreover, the government mechanism was tainted with corruption and the magistrates were not interested to resolve petty civil disputes. The local courts were also situated in distant *yamen*[130] which posed a challenge for the disputants. All these factors put an impetus on mediation efforts within the village by respectable villagers and elders. This went on till the nineteenth century when local mediators exercised immense power in dispute resolution at the village level. The mediation practice continued through the 'cultural revolution' of Mao Zedong in 1966. Although, the regime claimed to present a different kind of mediation system, it fundamentally reflected its non-communist part of the past. The practice of community mediation is still prevalent all over China even in the post-reform movement. This mediation is informal in that it is carried out by respected people within the community (and is

[127] Wall, James A., and Michael Blum. "*Community Mediation in the People's Republic of China*." The Journal of Conflict Resolution, vol. 35, no. 1, 1991, pp. 3–20.
[128] Cohen, J. A. *Chinese mediation on the eve of modernization*. California Law Review 54: 1201-26, 1966.
[129] Smith, A. H. 1899. *Village life in China*. New York: Greenwood.
[130] A yamen is the place where the office of magistrate is located.

outside the court), but it is formal in that the mediator is a recognized community official.[131]

4.5.2 LEGAL FRAMEWORK

The 16th meeting of the Standing Committee of the National people's Congress passed the People's Mediation Law of the People's Republic of China on 28th August, 2010. The Law came into effect on 1st January, 2011. People's mediation is not the only form of mediation in China. The country also has Court-connected mediation, administrative mediation, arbitration-mediation etc.[132] The Law contains six chapters namely, General Provisions, People's Mediation Commissions, People's Mediators, Mediation Proceedings, Mediation Agreement and Supplementary Provisions. The main objectives of the Law are to improve the people's mediation system, regulate the people's mediation activities and, to timely solve disputes among the people and maintain social harmony and stability.[133] Article 2 of the Laaw defines People's mediation as, "*a process that a people's mediation commission persuades the parties concerned to a dispute into reaching a mediation agreement on the basis of equal negotiation and free will and thus solves the dispute between them*."[134]

Article 3 further stipulates the principles based upon which the mediation efforts will take place:

- Mediating on the basis of free will and equality of the parties concerned;
- Abiding by laws, regulations and policies of the state; and
- Respecting the rights of the parties concerned, and refraining from stopping the parties concerned from protecting their rights through arbitration, administrative means or judicial means in the name of mediation.[135]

Chapter II of the Law deals with People's Mediation Commissions (hereinafter referred to as PMCs). These are mass-based organizations legally formed to settle disputes among the people. [136]These commissions are usually formed by villagers' committees and neighbourhood committees. However, public institutions and

[131] Supra note 127.
[132] The People's Mediation Law of China has been in force for 10 years, Ting-Kwok IU (Kwok, Ng & Chan, Solicitors & Notaries)/February 2, 2021, Kluwer Mediation blog
[133] The People's Mediation Law of the People's Republic of China, 2010
[134] Ibid
[135] Ibid
[136] Ibid

enterprises are free to form these commissions. These are usually composed of three to nine members with one director and two or more deputy director based on their needs. The commission shall have female members and members from ethnic minorities to ensure their representation in dispute resolution.

The members are usually elected at the villagers' meeting or residents' meeting. They are elected for a term of three years and are eligible for re-election. People's mediators must be adult citizens who are impartial, decent and dedicated to the people's mediation work, and have a certain level of education, policy understanding and legal knowledge.[137] The Law also has provisions to provide compensation and preferential treatment to people's mediator who suffer any harm during the mediation proceedings. People's mediators may adopt various means to mediate disputes among the people in light of the actual circumstances of disputes, hear the statements of the parties concerned, explain the relevant laws, regulations and state policies, patiently persuade the parties concerned, propose solutions on the basis of equal negotiations and mutual understanding between the parties concerned, and help them reach a mediation agreement on free will.[138]A mediation agreement may be with written or in oral form. If it is in the oral form, it should later be written down for the disputants. The agreement is arrived at by the people's mediation is binding on both the parties and shall be fulfilled as agreed by the parties. It usually contains all necessary details as mandated in a regular mediation agreement.

After the agreement is made, it can be brought before the people's court for confirmation. It is enforced by the court if the agreement is confirmed. If one of the parties refuses to follow the agreement, the court can exercise its power to enforce the agreement. The Chinese constitution established PMCs as independent organizations to mediate civil disputes. Today, there are about 4 million people's mediators in China, far more than the number of judges or lawyers.[139] China has also amended its Civil Procedure Law to accommodate mediation, qualifications of mediators etc. for wider acceptance of mediated settlements.

[137] Supra note 127
[138] Ibid
[139] Jiang Heping and Andrew Wei-Min Lee, *From the Traditional to the Modern:Mediation in China*, Weinstein International Foundation, https://weinsteininternational.org/mediation-in-china/

4.5.3 IMPACT

Mediation has been part of Chinese social fabric since many centuries. At present, People's Mediation Committees perform the role of community mediation in China. People's mediation is a process wherein the mediators help the disputants to arrive at an amicable settlement. These committees with Constitutional backing usually take up civil disputes[140] and may also be set up by enterprises, social organizations etc.[141]

The Law of 2011 also states that the services of the committees will be provided free of cost. Most of the disputes brought before these committees are family matters along with neighbourhood disputes and housing disputes.[142]

These committees are regulated by the Government and receive government funding for professional training etc. These committees play a pivotal role in ensuring social harmony and cohesion in the Chinese social setup. It is convenient, culturally proximal and cost-efficient. Perhaps, these are the reasons for its higher preference among people. All disputes there, any and every one - trivial or serious, simple or complex, sensitive or not - are mediated. In the dispute resolutions, the mediators seem to follow the steps of their ancestors. Considering themselves a quasi-arm of the law, they aggressively "persuade" the disputants to return to a proper harmonious relationship.[143]

[140] The People's Mediation Law of the People's Republic of China, 2010
[141] Ibid at art.34
[142] Hongwei Zhang, "*Revisiting people's mediation in China: practice, performance and challenges*" Restorative Justice vol.1, no.2(2013) at pp. 250.
[143] Supra note 127

4.6 UNITED STATES OF AMERICA

4.6.1 HISTORICAL BACKGROUND

In the United States (hereinafter referred to as the US), the concept of community mediation is labelled as a form of popular justice. Colonial mediation often involved a third party who "intervened in a dispute to aid the principals in reaching an agreement" and who generally operated within ecclesiastical society.[144] Laura Nader notes that the Massachusetts community of Dedham, established in 1636, used mediation as the primary process for resolving disputes and avoided adjudication for virtually fifty years. In the modern sense, community mediation burgeoned during the 1970s and 1980s to streamline a form of dispute resolution that was not of the State. The idea was to create a dispute resolution network that was not state-sponsored. The need for such an effort arose from the legal reforms movement in 1970s and the demand for organizing these communities.

The disputes are referred to Community Mediation Centres (hereinafter referred to as CMCs) by the local Courts or by offices closely related to the justice machinery, like the prosecutor's office etc. Ray Shonholtz divided community mediation into two models: the neighborhood justice centre and the community mediation centre.[145]The local conflicts were encouraged to be resolved in community based forums. In this manner, an enhanced practice of local self-governance was to be nurtured in the United States. 'Neighbourhood policing' and 'neighbourhood dispute resolution systems' propelled the community mediation efforts in different American states. Like in every other country, the idea was to confine local problems within the limits of the community and to resolve problems amicably.

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[144] L. Nader, ed., *The Disputing Process: Law in Ten Societies* (New York: Oxford University Press, 1978) at 10 [Nader, Ten Societies].

[145] R. Shonholtz, "*Community Mediation Centers: Renewing the Civic Mission for the TwentyFirst Century*" (2000) 17 Med. Q. 331.

At the heart of the early community mediation movement were principles of democratic participation, drawing on citizen rights and responsibilities and the involvement of networks of community organizations.[146] The formalistic nature of justice delivery system by the State enhanced the importance of lawyers and this was replaced by less formal members of community who could mediate disputes at a quicker pace. In the United States, community mediation programmes evolved from 'neighbourhood justice centres' as they were called in the beginning of the initiative.

4.6.2 LEGAL FRAMEWORK

The neighbourhood justice centres reflect the community model and the CMCs reflect justice system model.[147] A presidential commission on Law Enforcement and the administration of justice attempted to delve into the case of America's increasing case overload. One of its key findings was to "help build consensus around the need for reform and experimentation in and around the court system, with particular focus on minor criminal cases involving neighbors, relatives and other acquaintances."[148] The findings of the commission led to the creation of several other programmes including the Philadelphia Municipal Court Arbitration Tribunal(1969), the Columbus Night Prosecutor programme(1971), the Miami Citizen Dispute Settlement programme (1975) etc. A set of hallmark principles was formulated to guide the practice of community mediation in the United States by prominent community mediators in 1992. This association came to be known as the National Association for Community Mediation (hereinafter referred to as NAFCM). It was created to act as the national organization for promoting community mediation in the states. It serves as the hub for the community mediation movement initiated by the 1964 Civil Rights Act.

Apart from this, the United States Department of Justice Community Relations Services provides structured community mediation to resolve community disputes across the country. It was set up through title X of the Civil Rights Act, 1964 and the subsequent Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act of 2009. In most of the states , the matters dealt with by the community mediation

[146] Community mediation, https://www.aboutrsi.org/special-topics/community-mediation-basics
[147] Hanycz, Colleen M., "Whither Community Justice?: The Rise of Court-Connected Mediation in the UnitedStates" Windsor Yearbook of Access to Justice 25.1 (2007): 159. pp. 193
[148] S. Bradley and M. Smith, "Community Mediation: Reflections on a Quarter Century of Practice" (2000) 17 Med. Q. 315.

include animal nuisance, consumer issues, damages, unpaid wages, worthless checks, balances owed, contract disputes, neighborhood disputes, family conflicts, unsatisfactory services and almost any case appropriate for Small Claims, Circuit Civil, and/or County Civil court. The less formal nature of these centres puts forward the aspects of accessibility and participation of citizens at the local level. The failure of the state-sponsored justice delivery system also got reflected by the growth of these community mediation programmes.

4.6.3 IMPACT

In the United States, Community mediation bifurcated into the neighbourhood justice centres and the community mediation centres. These centres have contributed considerably to the redressal of grievances among members of various ethnic, racial communities. Even though, community mediation in the US began during the 1960s, it quickly became a vehicle for change in the local level. The neighbour hood justice centres followed the community model to enhance representation and empowerment of the communities, partly due to the inefficiency of the state-sponsored legal system.[149] Whereas the Community Mediation Centres based on the justice system model stressed on the need for alternative methods of dispute resolution outside the Courts. Community mediation centers handle 400,000 disputes annually and 75% of these centers provide mediation for small claims courts and 49% for civil courts, thus demonstrating the continued connection between community mediation and courts.[150]

For instance, the San Francisco Community Boards model has been lauded as an attempt to establish community relationships in an era of complex urban issues.[151]

The NAFCM has been successful in setting up centres in almost every state and offer online and offline services for conflict resolution. Moreover, it has also been instrumental in securing Congressional funding to expand the Community Relations Services under the Department of Justice. It also collaborates with educational institutions to educate legal professionals on the aspects of community mediation.

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[149] Hancyz, Collen M., Supra note 142
[150] Merry, Sally Engle, and Neal A. Milner, eds. The Possibility of Popular Justice: A Case Study of Community Mediation in the United States. Law, Meaning, and Violence. Ann Arbor: University of Michigan Press, 1993.
[151] Ibid

4.7 CONCLUSION

It is evident from the study that the practice of community mediation in African and Asian societies is heavily influenced by their traditional dispute resolution structures. However, proper training in mediation is a requirement in the aforementioned countries for effectiveness of community mediation. A synergy between traditional structures and the formal legal structures is essential to improve community mediation. In the United States, community mediation is a medium to address racial, ethnic and cultural tensions between individuals. Mediation, as a method for dispute resolution stemmed from the conflict management in labour relations and commercial disputes

Community mediation is a voluntary form of dispute resolution, even if court ordered mediation is suggested by the formal courts in these countries. The mediation agreements are binding on the parties and the parties can go for appeal before the formal court structures. Mediation Boards have been successful in securing peoples' trust in informal justice system in countries like Sri Lanka. This is evident form the greater satisfaction of people with the services of mediation boards.[152] Whereas in countries like the United States, it is also criticized as a symbol of state's oppression and the individuals are less interested to go through the proceedings due to increased formality.

Community mediation has displayed potential to significantly decrease the burden on formal court system. For instance, in China, the number of community mediators is more than the number of lawyers and judges, at present. But the aspect of whether all of these mediators are qualified to handle dispute is to be considered by the justice system.

[152] Supra note 117

CHAPTER- V: UNDERSTANDING COMMUNITY MEDIATION IN INDIA IN LIGHT OF THE MEDIATION ACT, 2023

5.1. TRACING THE ROOTS OF COMMUNITY MEDIATION IN INDIA

Dispute resolution by community efforts is a core value of Asian societies. Most countries have had this form of resolution in one way or another. In India, the village councils or panchayats have, for centuries, played this role effectively. These had much resemblance to mediation process. Even prior to this, the Vedic period had the usage of reason, prudence and fairness to resolve differences.[153] Justice was administered by learnt men or elders. The formation of assemblies or associations to resolve differences between members of trade associations was also quite common. The writings of Yajnavalkya reveal the existence of associations called Kula, Puga and Shreni that dealt with matters within a family, tribe,caste, clan etc.[154]

These guilds or trade association saw tremendous growth in commerce due to speedy redressal mechanisms within the associations. Neutral third parties have acted as mediators among businessmen and were commonly termed as 'Mahajans.'[155] They used arbitration and conciliation to resolve disputes informally. Pre-British India had a culture of mediation and community efforts in a great degree. Before the setting up of the formal legal system, people laid more trust in community leaders, elders etc. for administration of justice.

[153] Mediation and Conciliation Project Committee, Mediation Training Manual for Referral Judges. New Delhi: Supreme Court of India, p.2. at http://www.sci.gov.in/pdf/mediation/Mediation%20Training%20Manual%20for%20Referral%20Judges.pdf

[154] Ibid

[155] Xavier, Anil. MEDIATION: ITS ORIGIN & GROWTH IN INDIA, Hamline Journal of Public Law and Policy, Vol. 27

In fact, these practices have been more authentic and successful than the Anglo-Saxon adversarial system. During the medieval era, the Mughals also encouraged the functioning of such community efforts. The rulers were careful enough to not disturb this kind of dispute resolution systems. India has the Panchayat system which is based on village and community councils. These institutions have been pivotal in handling community-level disputes and delivery of justice for centuries.[156]

These efforts resembled mediation in many aspects. The Panchas, a group of five elders would hear the grievances and decide upon it and the other members of the community would accept the decision with utmost respect.[157] The head of the group is the sarpanch and is known by many different titles such as Chaudhri, Pedhan,

Mahto, Jamadar, Takht, Muquddam, Badshah, Mehtar, Mahati, or Saqui.[158] These members will be respected people of the community acting as neutral third-parties.

The third neutral party was not only concerned with the welfare of the disputants alone, but also the overall well-being of the community.[159] Hence, the decision of these councils were gave finality to matters due to the trust laid by members of the community. However, unlike modern mediation, voluntariness was not a feature of these efforts. Parties to a dispute were supposed to be present during the hearing, otherwise punitive action was taken against them.[160] The proceedings also lacked confidentiality of matters.

The introduction of the English legal system led to the decline of these village councils. However, there are still some parts of the country where the opinion of the Panch is much valued. The decisions of the elders had considerable value. [161]

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[156] Ibid

[157] Sriram Panchu, Mediation Practice & Law. The Path to Successful Dispute Resolution, 2nd Edn, Lexis Nexis, 2015

[158] Wall, James A. and Arunachalam, Vairam and Roberts Callister, Ronda, Indian and U.S. Community Mediation. 2003, Available at SSRN: https://ssrn.com/abstract=398160

[159] Supra note 154

[160] Ibid

[161] Supra note 155

Conlon has described the panchayat as an 'intravenor' who could influence the final decision but also had the liberty no do it.[162] The cases brought before the elders were usually decided according to customs and the general principles followed by the people. These local bodies were based on collective decision-making and conciliaton. The Constitution of India offers adequate backing for the growth of ADR processes. Article 21 has the right to speedy justice as a right implicit in the right to life and personal liberty. In Hussainara Khatoon & Ors. v. Home Secretary, State of Bihar[163], the Court highlighted the need for speedy trial in the case of numerous under-trial prisoners. Hence, processes that hasten the delivery of justice are envisioned by the Constitutional provisions as well. Article 39-A of the Constitution provides for free legal aid.[164] The primary goal is to enhance access to justice to people from all walks of life.

The Constitution also envisions local bodies to as 'units of self-governance'. Community mediation is in line with the aspirations of the Constitution in this regard. It envisages the communities to offer better participation in the dispute resolution framework. Further, the Legal Services Authorities Act, 1987 was introduced as a significant step to enhance access to justice to members from all strata of the society. Lok Adalats also referred to as People's Courts were set up to fulfill this purpose. These offer a open platform for people to discuss reconcile and resolve their disputes amicably. The mediation Act, 2023 has now made an attempt to revive the lost tradition of community mediation in the country.

5.2. LEGAL RECOGNITION OF MEDIATION

The point at which the concept of mediation was recognized by the legislature can be traced back to the Industrial Disputes act, 1947. The Act stipulated the appointment of conciliators who were given the duty to mediate between parties to an industrial dispute under section 4. The Legal Services Authority Act, 1987 enacted by the Indian Parliament was another major milestone in elevating the status of outside court-settlement mechanisms. The Act set up the legal service authorities at the centre, state and district levels with the Chief Justice of India as the patron-in-chief at

[162] Conlon, D.E., Carnevale, P.J., & Murnighan, J.K. . Intravention: Third-party intervention with clout. Organizational Behavior and Human Decision Processes, 57, 1994, 387-410
[163] 1979 AIR 1369
[164] Constitution of India, 1950

the national level. The 129th Law Commission Report on Urban Litigation and Mediation as Alternative to Adjudication in 1988 highlighted the severe pendency of cases in courts and the time consuming process associated with the formal court settlements. The report stressed on the need to have outside court settlement systems to reduce the caseload on the courts. The Malimath committee, also known as the Arrears committee, was constituted around this time by the Government of India to look into the grave concern of arrears in courts and make recommendations in this regard.[165] The report of the committee in 1990 recommended the setting up of conciliation courts. In 1999, the Indian Parliament passed the CPC Amendment Act of 1999 inserting Sec.89 in the Code of Civil Procedure 1908, providing for reference of cases pending in the Courts to ADR which included mediation.[166]

However, due to the hasty drafting of the provision, its introduction led to more confusion among judges. It was even termed as a 'trial judge's nightmare'[167] by the Supreme Court. The amendment came into force on 1st July, 2002. Mediation is widely encouraged as a settlement mechanism for ease of commercial transactions in civil courts. The Supreme Court of India in 1995-1996 under the leadership of the then Chief Justice, Mr. A.M. Ahmadi conducted and Indo-US study to understand the complexities of the Indian legal system. The study also encouraged the collaboration of the civil courts and the High Courts with the members of the Institute for Study and Development of Legal Systems (ISLDS), an institution based in San Francisco.

Amendment to section 89 of the Civil Procedure Code, 1908 has been pivotal in integrating ADR processes to the Indian dispute resolution system. It stands for dispute resolution outside the Court. The provision mentions four non-adjudicatory processes namely, conciliation, mediation, judicial settlement, Lok Adalat settlement and an adjudicatory process called arbitration.[168] The provision was meant to make parties opt for any of these processes before filling a suit before the Court. Order 10 Rule 1A of the CPC grants the power to civil Court to refer cases for ADR processes.

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[165] Arrears Committee. 1990. Report of the Arrears Committee 1989-1990. New Delhi: Government of India, p. 135.

[166]. Mediation and Conciliation Project Committee, Mediation Training Manual for Referral Judges. New Delhi: Supreme Court of India, p.6. at http://www.sci.gov.in/pdf/mediation/Mediation%20Training%20Manual%20for%20Referral%20Judges.pdf (accessed on April 4, 2024).

[167] Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd. (2010) 8 SCC 24 para 7.

[168] Afcons, Supra note 164

In Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.,[169] the Court highlighted the significance of consent of parties when it comes to referring cases for ADR processes. The following matters are generally considered unsuitable for such reference[170]:

- Representative suits under Order 1 Rule 8 CPC involving public interests or when interests of several persons are involved who are not parties to the suit.
- Election disputes in public offices
- Cases in which the Court grants authority viz. letters of administration etc.
- Matters involving serious fraud allegation, forgery, undue influence etc.
- Matters like claims against deities, mentally challenged persons, minors etc. These cases usually require protection of Courts.
- Prosecution for criminal matters

The abovementioned situations are excluded from the ambit of mediation or any other ADR processes. This is because these matters involve deeper analysis of rights and liabilities and not merely restoration of peace. When the consent of parties is not essential, the Court usually refers it for mediation, judicial settlement or Lok Adalat. The scope of mediation is wider in relation to dispute resolution. It is highly preferred when the suit is quite complex and time consuming.[171]

The Afcons judgment brought clarity to the matters that can be mediated before the Court. The recently enacted Mediation Act, 2023 also has a list of matters that can be mediated.

All suits and civil cases falling under the following categories can be settled through ADR processes[172]:

- Cases related to commerce, trade and contracts like disputes arising out of contracts, specific performance, supplier-customer disputes, landlord-tenant disputes, licensor-licensee disputes, insured-insurer disputes etc.
- Disputes related to marriage, partition, custody of children, coparcenery, co-ownership, maintenance etc.
- Matters where continuation of relationship is essential even in the midst of disputes like disputes between neighbours and related easementary rights,

[169] Ibid
[170] Ibid
[171] Ibid
[172] Afcons, Supra

employer-employee disputes, disputes between members of apartment association, societies etc.

- Claims involving tortious liability like motor accidents claims etc.
- All consumer matters including disputes supplier or manufacturer or trader wishes to maintain his/her goodwill, reputation or product popularity.

The amendment to CPC was not welcomed by many lawyers and hence the amendment was challenged before the Court. The constitutional validity of the amendment inserting Sec. 89 in the Code of Civil Procedure, 1908 was considered by the apex court in Salem Advocate Bar Association. V. Union of India.[173] The court upheld the upheld the validity of Sec. 89 and directed a committee, Salem I committee, to draft rules to enhance mediation efforts and manage the pendency of cases in the courts. Pursuant to this, the committee brought out a set of guidelines titled the Civil Procedure Alternative Dispute Resolution (CPADR) Rules, 2003. These rules aimed to stimulate the referral of cases for mediation by the courts. It directed the High Courts to provide necessary training to mediators. The Salem I committee also made the Mediation Rules for every High Court. In the year 2005, the then Chief Justice R.C. Lahoti established the Mediation and Conciliation Project Committee (MCPC).[174]The MCPC was responsible for training of district judges in judicial mediation. This training was subsequently provided to lawyers at court-annexed mediation centres. In Salem Advocate Bar Association (II) v. Union of India,[175] another Supreme Court Bench was set up comprising Justice Y.K. Sabharwal, Justice D.M. Dharmadhikari, and Justice Tarun Chatterjee, which required the central and state governments to report their progress in relation to the Salem I reports within four months of the date of the judgment. This led to the gradual adoption of the CMADR Rules, 2003 by several High Courts.

Indian Institute of Arbitration & Mediation (IIAM) is one of the pioneer institutions in India, providing institutional Alternative Dispute Resolution (ADR) services, which includes international and domestic commercial arbitration, mediation and negotiation and conducting training programs in ADR. IIAM is a non-profit organization registered in India and commenced activities in the year 2001.

[173] (2003) 1 SCC 49
[174] Salem(I), supra note
[175] (2005) 6 SCC 344

The Mediation Act, 2023 has mentioned the list of non-mediatable matters in schedule I of the Act. The following matters have been excluded from the purview of the Act:

- Disputes which have been excluded form mediation by existing laws.
- Disputes relating to claims against minors, deities; persons with intellectual disabilities under paragraph 2 of the Schedule and person with disability having high support needs as defined in clause (t) of section 2 of the Rights of Persons with Disabilities Act, 2016; persons with mental illness as defined in clause (s) of sub-section (1) of section 2 of the Mental Healthcare Act, 2017; persons of unsound mind, in relation to whom proceedings are to be conducted under Order XXXII of the Code of Civil Procedure, 1908; and suits for declaration of title against Government; declaration having effect of right in rem.[176]
- Disputes involving prosecution in relation to criminal offences.
- Complaints or proceedings, initiated before any statutory authority or body in relation to registration, discipline, misconduct of any practitioner, or other registered professional, such as legal practitioner, medical practitioner, dentist, architect, chartered accountant, or in relation to any other profession of whatever description, which is regulated under any law for the time being in force.
- Disputes which affect third parties except in matrimonial disputes where a child is involved.
- Any proceeding in relation to any subject matter, falling within any enactment, over which the Tribunal constituted under the National Green Tribunal Act, 2010, has jurisdiction.
- Dispute relating to levy, collection, penalties or offences, in relation to any direct or indirect tax or refunds, enacted by any State legislature or the Parliament.[177]
- Any investigation, inquiry or proceeding, under the Competition Act, 2002, including proceedings before the Director General, under the Act; proceedings before the Telecom Regulatory Authority of India, under the

[176] Mediation Act, 2023
[177] Ibid

Telecom Regulatory Authority of India Act, 1997 or the Telecom Disputes Settlement and Appellate Tribunal established under section 14 of that Act.

- Proceedings before appropriate Commissions, and the Appellate Tribunal for Electricity, under the Electricity Act, 2003.
- Proceedings before the Petroleum and Natural Gas Regulatory Board, and appeals therefrom before the Appellate Tribunal under the Petroleum and Natural Gas Regulatory Board Act, 2006.[178]
- Proceedings before the Securities and Exchange Board of India, and the Securities Appellate Tribunal, under the Securities and Exchange Board of India Act, 1992.
- Land acquisition and determination of compensation under land acquisition laws, or any provision of law providing for land acquisition.
- Any other subject matter of dispute which may be notified by the Central Government.

5.3. MEDIATION ACT, 2023 AND THE REVIVAL OF COMMUNITY MEDIATION

Alternative Dispute Resolution processes are not alien to the Indian legal system. Earlier, the Arbitration and Conciliation Act, 1996 governed both arbitration and conciliation. With the notification of the Mediation Act on September 15, 2023, conciliation will now be governed by the Mediation Act, 2023. The Act promises a transformative approach to ADR processes and will hopefully facilitate a concerted approach between judicial machinery and outside court settlements.[179] It has recognized mediation and also made place for pre-litigation mediation, online mediation and community mediation.

All provisions of the Act have not come into force by with the enactment of the Act. On October 9, 2023,[180] the Central Government declared the following provisions to be effective:

- Section 1 - Short title, extent and commencement of the Act

[178] Ibid

[179] Khuthia, Vaibhav. Adopting a transformative vision for mediation, https://www.thehindu.com/opinion/op-ed/adopting-a-transformative-vision-for-mediation/article68171975.ece, accessed on 17 June, 2024

[180] Notification dated 9 October, 2023, Department of Legal Affairs, Ministry of Law and Justice,

- Section 3 - Definitions
- Section 26- Proceedings of Lok Adalat and Permanent Lok Adalat not to be affected
- Sections 31 to 48 (both inclusive)- Chapter VII-Mediation Council of India
- Sections 45 to 47(both inclusive)- Miscellaneous provisions dealing with mediation fund etc.
- Sections 50 to 54(both inclusive)
- Sections 56 and 57

Section 3(h) of the Mediation Act, 2023 defines the term 'mediation.' It can be classified into pre-litigation mediation, online mediation, community mediation, conciliation etc. through which parties try to settle a dispute by amicable means. The mediator, a neutral third party, facilitates this process but lacks the authority to make the settlement binding on the parties.[181]

He/she is typically appointed by the parties or the mediation service provider or by the Mediation Council. The Act permits the appointment of an individual of any nationality as the mediator with the consent of the parties. Section 3(b) defines the term 'community mediator'. It means a mediator for the purposes of conduct of community mediation under Chapter X of the Act.[182] The provisions dealing with community mediation have not been notified yet. These provisions are expected to be guided by the creation of certain rules or notifications. Chapter X of the Act comprising sections 43 and 44 mention the process of community mediation. A dispute can be taken up for community mediation by the prior consent of the parties. Any dispute that may affect the peace, harmony and tranquility in a locality can be the subject matter for community mediation.

An application for the same can be made before the District Legal Services Authority or the District Magistrate or the Sub-divisional Magistrate in places where there is no such authority. The Act mentions the setting up of a permanent panel of three mediators who are to be appointed by the Legal Service Authority or the District Magistrate or the Sub-divisional Magistrate.

[181] Mediation Act, 2023
[182] Ibid

This may be revised by the authorities from time to time. The Act prescribes the following persons to be part of the panel, namely:[183]

(a) person of standing and integrity who are respected in the community
(b) any local person who has made some contribution to the society
(c) a representative of area or resident welfare associations
(d) a person with previous experience in the field of mediation
(e) any other appropriate person

The Act mentions community mediation to consider matters concerning peace, tranquility and harmony in an area. From this, it is evident that it is an area-based process resolving disputes with the help of community members. The ideal way to conceptualise the Mediation Act is as a first step towards more accessible and, crucially, faster means of resolution for parties involved in disputes.

There could be conflicts within the community or between the communities. Similar to a panchayat, it has instituted the idea of a formal panel of three (3) mediators and mandated that they report to the local DM and SDM on the settlements and non-settlements within the community.

The fact that the community mediation settlement agreement does not have legal enforceability aligns with the lack of clarity in the provisions for creation of panel. The provisions dealing with community mediation are rather vague and need more clarity. Community mediation efforts have been encouraged by the District Legal Service Authorities of different states and also other organizations like the Indian Institute of Arbitration and Mediation (hereinafter referred to as IIAM) even before its inclusion in the Mediation Act, 2023. For instance, the IIAM introduced the concept of Community Mediation Clinic to resolve community disputes. It was launched by the then Chief Justice of India in New Delhi in the year 2009.[184] It tried to establish clinics in villages to increase access to justice by collaborating with corporate entities. It was meant to form part of the corporate social responsibility of these corporate entities. The cost was also made affordable for the general public. This project led to the creation of CMCs that dealt with family, social and commercial disputes.

[183] Ibid at p. 15

[184] Xavier, Anil. Community Mediation – Improving Access to Justice, International Mediation Institute, available at https://imimediation.org/2017/02/03/community-mediation-improving-access-to-justice/, accessed on 14 June, 2024

Even though the object behind these is speedy dispute resolution, it has also led to more understanding during decision-making. A study has shown that 70 percent of winning parties in litigations are not satisfied with the final outcome.[185] In contrast to this, CMCs allow parties to confront each other and make themselves clear.

Courts are no longer considered the best option to solve disputes by the general public. Court proceedings result in a win-loss situation whereas ADR processes guarantee a win-win situation. The discontent, defeat linked with ordinary Court process is quite diminished in ADR processes. Hence, people are eager to make use of these aspects of ADR and resolve their differences. CMCs also cater to restorative justice which focuses on restoration of human relationships. Conflict Management Programmes can be conducted in collaboration with such CMCs to explore the hidden potential of community spirit.[186]

The Madhya Pradesh Legal Service Authority had introduced[187] a Community Mediation programme that allowed Sponsoring Social Organizations (hereinafter referred to as SSOs) to nominate members from group as community mediators. Sponsoring Social Organizations include residents' association, flat owners society, religious organizations etc. The CMCs could then be established by these SSOs at their own expense. The Madhya Pradesh State Legal Service Authority would provide a 20 hour training to educate the mediators about the basic theories and principles of mediation and dispute resolution.

In Kerala, ADR processes are co-ordinated by the Kerala State Mediation and Conciliation Centre(hereinafter referred to as KSMCC). It is a joint project of the High Court of Kerala and the Kerala State Legal Services Authority to follow the goals of section 89 of CPC. It aims to enhance mediation as a favoured ADR process. At present, Smt. Jubiya A. District Judge, the Director of ADR Centre, Kerala High Court is the Director of KSMCC.[188]

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[185] Ibid

[186] Xavier, Anil. Supra note 178

[187] https://www.mpslsa.gov.in/community-mediation-program.php

[188] Kerala State Mediation and Conciliation Centre, https://ksmcc.keralacourts.in/index.php/content/about-us

The Centre regulates around 77 mediation centres across Kerala. The main activities of the Centre include:

- Court Annexed Mediation
- Pre-litigation Mediation (Nirnaya scheme)
- Training for community mediators

Community mediation in particular has been conducted by the ADR Centre even before the enactment of the Mediation Act, 2023. However, all these programmes have now been kept in halt and will be restarted soon as per the requirements of the Mediation Act, 2023. In districts like Trivandrum, Calicut, Ernakulam, community mediation volunteers have done commendable job in dispute resolution within the community. In fact, the 'nip in the bud' approach of the state's community mediation programme has received much attention from others.[189] It is based on the idea that litigation often destroys relationships between, families, community members etc. Hence, before it escalates to into an intense litigation and legal battle, the situation should be prevented through peaceful resolution processes.

The Kerala model of community mediation has received much public attention.

It introduced a grass-root level mediation programme to facilitate to reduce the caseload on Courts. Pursuant to this, twenty hour training was given to chosen people from different communities who could benefit the community mediation programme.[190] Community leaders were given awareness of propensity of likelihood within their community and the possible ways to tackle these. This was a quite significant step to maintain peace and harmony in a pluralistic society which is in constant danger of communal tensions. The Community mediation Centre run by Vijayalakshmi foundation with the help of the Kerala State Legal Services Authority has made notable contribution in this regard. However, with the enactment of the Mediation Act, 2023, all the ongoing community mediation programmes in Kerala have been brought to a halt. The subsequent community programmes will be in line with the Act. Since, the Act does not have clear provisions with regard to community mediation, subsequent rules may be made to bring in more detailing to the process.

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[189] Kerala's Community Mediation Programme : A 'Nip In The Bud' Approach, https://www.livelaw.in/news-updates/community-mediation-programme-153041, January 18, 2020

[190]Subeesh Hrishikesh, Why Should India Adopt the Kerala Model Community Mediation Volunteer System?, https://asialawportal.com/why-india-should-adopt-kerala-model-community-mediation-volunteer-system/ , January, 2020

RECORDED RESPONSES OF INTERVIEW WITH SMT. JUBIYA A., DISTRICT JUDGE, DIRECTOR, KERALA STATE MEDIATION AND CONCILIATION CENTRE ON MEDIATION ACT, 2023 AND COMMUNITY MEDIATION

As a part of the research, an interview was conducted with the Smt. Jubiya A., District Judge and Director of KSMCC and the following responses have been recorded.

Question 1: How will the Mediation Act, 2023 affect mediation practice in India? According to you, what are the key takeaways from the Act?

Mediation Act, 2023 is quite significant in terms of its objectives. Earlier, the Arbitration and Conciliation Act, 1996 dealt with arbitration and conciliation. Now, the Mediation Act will govern conciliation as well. The Act will regulate State-sponsored and private mediation and lay a framework for mediation efforts in India. Another feature is the institutionalization of pre-litigation mediation. Earlier, this was not practiced in India. The KSMCC has launched a new project called 'Nirnaya' which deals with pre-litigation mediation services. However, the settlement arrived at by this does not have the effect of a decree. Only if the provisions regarding the same get notified by the Ministry of Law and Justice, will the settlement be deemed as a decree. The present practice is that settlement agreement arrived at by mediation will further be taken to Lok Adalat.

As per the new Act, Court-annexed mediation includes pre-litigation mediation as well. Moreover, Court-annexed mediation centres will be regarded as 'service providers.' Private mediation services are also regarded as service providers if they get approval from the Mediation Council. Registration of mediated settlements is another feature of the Act which is not a compulsory requisite. Other than this, the Act also provides for community mediation and online mediation.

Question 2: The Mediation Act has conferred on the mediated settlement the enforceability of a Court decree. How is this different from the earlier practice?

Earlier, the Court would refer the matters for mediation as Court-referred mediation. After the settlement is reached, the terms would be decided by the parties assisted by

the mediator. But, the settlement would again be sent back to the Court for an inquiry as per Order 22 rule 3 of CPC . Though the scope of this inquiry is quite limited, it would enable Courts to examine the terms of the agreement. After this stage alone, the settlement would be enforceable.

But, according to the new Act, such an inquiry is no longer necessary to make a mediated settlement enforceable. If the compromise has been signed by both the parties and authenticated by the mediator, then it will have the value of decree of Civil court.

Question 3: What is the current status of community mediation in India?

Answer: Community mediation is not something new in India. There have been village councils, panchayats etc. to resolve disputes. In the modern sense, community mediation has also been implemented by Legal Service Authorities across the country. For instance, in Kerala, the Kerala State Legal Service Authority along with KSMCC has initiated community mediation practices in several districts. Community Mediation Volunteers were appointed based on specific guidelines. There were four CMCs in Kerala. CMCs were set up in collaboration with voluntary organizations. With the pandemic, this came to a halt. The new Act has now included community mediation. However, the provisions have not been notified yet.

Question 4: The Ministry of Law and Justice highlighted the revival of community efforts with the inclusion of the concept in the new Act. How do you view this in light of the increased acceptance for mediation in the country?

Answer: Community mediation have been in practice since many years in the country. State-sponsored programmes have also taken place. The expected outcome of the Act is to revive the community efforts in dispute resolution. Even before the arrival of the British, community has played a significant role in resolving disputes and restoring relationships. Villages have had respectable and older members working out differences. Disputes have been there even before the formation of Courts. Even then, communities have had their own mechanisms to deal with disputes through adequate redressal of grievances. So, this potential of communities is what community mediation is all about. Based on the needs of the parties, justice is administered and solutions are provided.

Mediation is gradually being preferred even for disputes between communities. For instance, in the case of Babri Masjid dispute, mediation took place. However, due to the sensitivity of the matter, the Supreme Court had to follow its own procedure.
This is a point at which mediation began to be accepted at a wider scale. So community mediation has an unexplored potential in the Indian dispute resolution space.

Question 5: Are the provisions in the Act for community mediation adequate for its proper implementation?
There needs a bit more clarity in the provisions dealing with community mediation. Only sections 43 and 44 specifically mention the process in the Act. The phrases like any dispute 'affecting peace, tranquility and harmony' etc. are primarily vague in definition. Even the qualifications for members to be included in the panel of community mediators are ambiguous. There is a need for better clarity in these aspects. Moreover, the settlement agreement arrived at through community mediation does not have the authority of other mediated settlement agreements or a Court decree. Since, there is a need to empanel members for community mediation, a detailed set of rules containing qualifications of these community mediators etc. can be expected from the authority in the Act.

5.4 CHALLENGES TO COMMUNITY MEDIATION

There are several challenges to community mediation in India. Community mediation is a complex processes. It deals with the sensitivities of the community sentiments and hence should be handled with care by people who are trained to do so. Training of community mediators is essential to get the best benefits out of the system. Improperly trained mediators may be the reasons of unexpected community disputes. The persons chosen as mediators must have a basic understanding of mediation, its principles and purpose. He/she must be able to respect the limitations of the process and make the best utilization of the process.

With the Mediation Act, training programmes are expected to be revamped and restructured to get better yields from the process. Lack of institutional support can also be a challenge for implementing community mediation. However, this is gradually being overcome with active participation form private and government institutions. The system should provide adequate support to community mediation programmes to empower communities. The Mediation Act is a significant move in this direction to strengthen community spirit.

Other challenge involves the lack of awareness among people about the benefits of mediation in general. People often equate traditional litigation to actual justice delivery. They are reluctant to try other forms of dispute resolution even though litigations can take years to solve differences. This may be due to a lack of trust on the alternative processes or due to the intense trust laid on the formal Courts. There is a need to guide people in relation to their specific dispute resolution needs and suggest the appropriate process.

Doubts about enforceability and effectiveness of mediation efforts may also be reasons for reluctance among people to take up community mediation. However, in many areas, the trust laid on village elders and respectable members has so encouraged people to approach such programmes. Absence of proper and timely evaluation can also undermine the benefits of community mediation. This can even result in non-delivery or improper delivery of justice

Another challenge lies in the implementation of the provisions in the Mediation Act, 2023. The provisions are vague and hence, these need to be accompanied by adequate rules to offer clarity regarding the provisions. For instance, the condition of ‘a person with standing and integrity in the community’ is quite vague and wide. This can lead to ambiguity and improper selection of mediators. In other words, community mediation promises a gamut of benefits. But these benefits can only be achieved if the challenges are tackled effectively. Community mediation embodies an aspect that has always existed in the society, i.e, togetherness. Hence, spreading the essence of this process cannot be seen as an impossible task.

5.5 CONCLUSION

Communitarian form of dispute resolution is a part of the Indian dispute resolution landscape. Community efforts have played a pivotal role in peace-making for centuries. In ancient India, the motto was "coming together for everyone," and individuals were proud to support their unity in spite of their differences.[191] Communities used customary and informal methods to settle disagreements. The idea of social peace and the strength of communities was reflected in our scriptures. Thought was firmly anchored in moral and cultural standards. It was an excellent example of working together with respected community elders and Panchayats to resolve conflicts. Long-term beneficial agreements were the belief of the wise. Naturally, there were also the accompanying drawbacks of a strict hierarchical system that resulted in unequal rights based on caste, gender, and other factors that ranked people either above or below one another. Panchayats have historically the community spirit of the country. Further, with the enactment of the Legal Services AuthoritiesAct, 1987, Lok Adalats have also popularized the impact of community efforts in reducing case-load on formal Court system. However, the Mediation Act, 2023 has now comprehensively attempted to revive the community mediation tradition of the country provisions for the same in the recent Act. This will definitely be a milestone for the growth of community mediation in the country. Many State Legal Services Authorities have already collaborated with private actors to set up CMCs. However, the statutory backing will essentially help in the proliferation of the process in relation to various matters. Communities will have a greater sense of identification and expression. This collective sense of decision-making will enhance the participation of the individuals and the communities in the overall peace and harmony of the society. The community will be empowered and human relationships will be strengthened in a higher degree with these efforts.

[191] Prerna Kohli, The Power of Community Mediation, available at https://www.livelaw.in/law-firms/law-firm-articles-/community-mediation-zeus-law-associates-260553 (accessed on 24 June, 2024)

CHAPTER VI- CONCLUSION AND SUGGESTIONS

6.1 INTRODUCTION

The process of dispute resolution should suit the needs of the parties. Maintenance of peace and harmony is the ultimate goal of any dispute resolution process. Conflict and dispute are often used synonymously. The former is general in nature whereas the latter applies to specific situations. From the present research, the following observations have been made:

The parties should be able to choose the process of dispute resolution that aligns with their needs. It is not just the delivery of justice that the process should be concerned with, but also restoration of human relationships. ADR processes have a higher hand when it comes to maintenance of the relationship between the disputants. Court system is often limited to a win-loss situation where a party is always dissatisfied. ADR processes, on the other hand, are entirely voluntary and the final outcome is accepted only based on the satisfaction of both parties. This voluntary nature of the process ensures that the settlement agreement is not imposed on the parties. Hence, there is no question of dissatisfaction on either side of the dispute on the quality of justice delivery or the process of dispute resolution. ADR processes offer more convenient, less time-consuming and party-friendly means to resolve disputes.

Mediation, as a process of dispute, resolution is gradually being preferred for dispute resolution by parties owing to its less formal nature. It offers the power of self-determination to the parties in the choice of scope, terms and interests related to the settlement agreement. Moreover, the confidentiality of the mediation process offers space to the parties to express themselves freely. Mediation has a gamut of matters in its ambit and hence, it is often referred to as the 'sleeping ADR'[192] for its unexplored potential. It is preferred for family matters to commercial matters. The mediator does not act as a judge but a facilitator of peaceful dispute resolution.

[192] Sriram Panchu, Mediation Practice & Law. The Path to Successful Dispute Resolution, 2nd Edn, Lexis Nexis, 2015

Mediation practice has existed in almost every society in one form or the other. The roots of mediation can be traced back to the Confucian philosophy of the Chinese civilization. Community mediation, as a form of mediation, is not something alien to countries. Legal pluralism has existed in erstwhile colonies where the indigenous justice systems have existed parallel to the colonial one. In fact, colonization put a halt to such system with the establishment of formal court systems. However, traditional have stood the test of time with much resilience. Community mediation basically means the resolution of disputes by the active involvement of the community. It is form of restorative justice because it not only resolves the dispute, but also restructures the relationship between the disputants. The mending of human relationship by enabling the integration of the offender with the community is a crucial aspect of restorative justice.

It is also a form of a popular and informal justice and is based on the spirit of the community. In African and Asian societies, the practice has had traditional origin whereas in the United State of America, it is often associated the growth of CMCs and neighbourhood justice centers in relation to racial tensions and other community issues. The community mediation process can be based on any of the three models viz. delivery of services, transformative and personal growth and development. An ideal community mediation programme should have qualities of all the aforementioned models. It should able to ensure justice delivery, should transform communities and human relationships and also enhance personal growth and development.

Community mediation is based on empowerment of communities and transformation of conflict. It allows communities to transform themselves into spaces of negotiation. Moreover, it provides a participatory framework in the community's overall functioning. This is quite significant to raise communities that are self-reliant and reduces the burden on the traditional court system. However, it suffers from the same defects as any other form of mediation. The power-imbalance associated with the process, the sensitivity of certain issues and the narrow scope of subject-matter are shortcomings associated with the nature of the process.

The study made use of countries from African, Asian and Western setup to understand the nuances of community mediation around the world. The community mediation practice of Rwanda is a reflection of the values of the African community. Traditional African dispute resolution is based on the philosophy of 'Ubuntu' which means humanity to others. The philosophy is omnipresent in all African dispute resolutions systems that highlight the concept of togetherness. A close study of Rwanda's community mediation system throws light on the traditional Gacaca Courts and the Abunzi mediation. Both these systems were reintroduced to dispute resolution in the aftermath of the Rwandan genocide. The utility of the these traditional systems were recognized to reduce the burden on formal court system and to encourage people to come forward with their grievances. The addition of traditional flavor to the formal court system as in the case of Abunzi Mediation committees created a synergy between traditional and formal legal systems.

Asian experience with community mediation is similar to that in the African continent. Dispute resolution through community efforts is a core value of Asian dispute resolution. Most countries have had strong customary dispute resolution systems in place before colonization. In the present study, the community mediation practice in Singapore, Sri Lanka and China have been assessed. In Sri Lanka, Mediation Boards have been source of satisfaction for a large chunk of disputants. The mediation boards were established in the Island nation by the Mediation Boards Act of 1988. According to several studies, mediation boards continue to be the first choice for parties due to their speed and convenience. These mediation boards have been set up in tune with the traditional systems of Gamsabhas etc. that were prevalent in the nation before the arrival of the colonialists.

In Singapore, CMCs were created by the Community Mediation Centres Act of 1997. services provided by the CMCs have been subsidized and hence, there is high likelihood of people opting for such methods. Moreover, efforts have also been taken to offer professional training to these mediators to familiarize them with principles and theories of mediation. The enactment of the Act has allowed communities to be more confident and self-reliant. It has also significantly reduced the burden on Court system.

In China, community efforts in dispute resolution for many centuries, This is evident from the roots of mediation in the Confucian philosophy. At a point in Chinese history, village courts were so effective that formal courts had very less burden of cases. During the Chinese Cultural Revolution, a boycott of state's legal system was advocated to make communities more self-sufficient. In the modern form, village courts were reinvented through the People's mediation Law of 2010 as People's Mediation Committees. These committees benefit the people ins living especially simple matters like neighbourhood disputes, property matters etc. A degree of reluctance among the people to access formal court system urged the country to create these committees. These committees are more accessible and convenient and aligns with traditional Chinese dispute resolution system.

Unlike the Asian and African community mediation, which is primarily based on their traditional community practice, community mediation in the United States of America saw its growth in the 1960s as a way to curb communal and racial tensions. It saw the rise of neighbourhood justice centres and the community mediation centres.

Both these forms have been successful in addressing the needs of different communities.[193] The NAFCM acts as the seminal body monitoring the functioning of community mediation across the United States. The Civil Rights Act of 1964 laid the foundation for structured community mediation in the country under the supervision of the Community Relations Service of the United States Department of Justice. These boards have allowed the disadvantaged and discriminated sections of the community to come forward and get redressal for their grievances. In the United States, these centres have played a significant role in enhancing access to justice to different sections of the society. The community mediators are provided specialized workshops and training to enhance their skills.

Hence, it is clear from the comparative study that legal recognition of community mediation has helped in reviving community efforts and participation in most countries. Moreover, it has also given more credibility to such efforts.

In India, community efforts have been an integral part of dispute resolution until the arrival of the British. Village Councils called Panchayats have played an instrumental role in resolving differences. With the introduction of the English legal system, the

[193] Merry and Milner, Supra note 2

indigenous community mediation efforts began to decline. The formal Courts have been burdened by a massive number of cases. This has led to the adoption of ADR processes for better dispute resolution and access to justice. Mediation has come to the spotlight with the enactment of the Mediation Act, 2023.The Act provides for community mediation and aims to revive the community mediation tradition of the country. This will bolster the growth and recognition of community mediation in India. However, a closer analysis of the provisions shows their ambiguous nature. The provisions are vague and require clarity for the successful implementation of the process in the country. Moreover, the requirement of rules in relation to community mediation is essential to properly revive community efforts in dispute resolution. Hence, form the aforementioned observations based on the comparative study with other countries, the hypothesis can be said to be proved. Since, the growth of community mediation has been bolstered by the enactment of specific laws in all these countries, the inclusion of community mediation in the Mediation Act, 2023 will increase the credibility of community mediation in India as well.

6.2 SUGGESTIONS

The following recommendations can be made to better the functioning of community mediation in India. The community mediation as per the Mediation Act has not commenced yet. Hence the recommendations are based on the working of the earlier community mediation programmes. The research conducted in community mediation is quite limited in India. However, the field is quite promising with unexplored potential benefits. More research will enhance its benefits and offer better dispute resolution experience. It will also enable the State to assess the impact of mediation programmes and provide suggestions for improvement.

The quality of training provided to community mediators must also be revamped to introduce the best practices that can benefit the community in general. Undertrained mediators can destroy the value of mediation. Mediators must be educated on the concept and principles of mediation. Proper standards must be laid down to become community mediators. They should be trained to handle complex aspects of community identities, Community mediation is generally considered more sensitive ordinary mediation because of the involvement of intersecting aspects of caste,

ethnicity, religion, gender etc. There is also a need to increase awareness about community mediation among general public. Dispute resolution by communities has been a part of community life. However, it declined with the introduction of adversarial legal system. The mediation at the community level has to be re-integrated to the societal fabric. Awareness programmes, workshops etc. should be conducted to increase its popularity. Moreover, the trust in community mediation can only be increased with the display of successful community mediation programmes. With increased success rate, more people will take up this process instead of formal legal system.

Another aspect is the increased institutional support for community mediation programmes. Proper guidance must be given to the mediators and the parties for successful functioning of these programmes. Evaluative research conducted in this field will also help assess the impact of these mediation programmes. This will enable better designing of these programmes. It will help overcome the shortcomings of previous programmes. At present, there are few research studies conducted on community mediation. With the implementation of community mediation as per the new Act, more research can be expected from individuals and organizations.

Another aspect can be the integration of technology in these processes. Online mediation is mentioned in the new Act. This can be applied to community mediation as well to increase accessibility for the parties. The mediators have to be given technological training also to enhance the possibilities of technology in community mediation. Furthermore, the convenience of the process is also enhanced by the use of technology. Basics of mediation should be imparted in legal education as a compulsory course to increase the possibilities, Collaborative efforts can be made with legal education institutions to provide workshops, training and awareness regarding community mediation. This is a key step taken by the NAFCM in the United States. Community mediation is a promising form of mediation. It is not something novel, it has existed in the societal fabric for centuries. It paves way for community resilience, empowerment and overall progress of the community.

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APPENDIX

CERTIFICATE ON PLAGIARISM CHECK

1.	Name Of The Candidate	Mahima Sajani Jacob
2.	Title of Thesis/ Dissertation	COMMUNITY MEDIATION IN DISPUTE RESOLUTION - A COMPARATIVE STUDY
3.	Name of the Supervisor	Dr. Aparna Sreekumar
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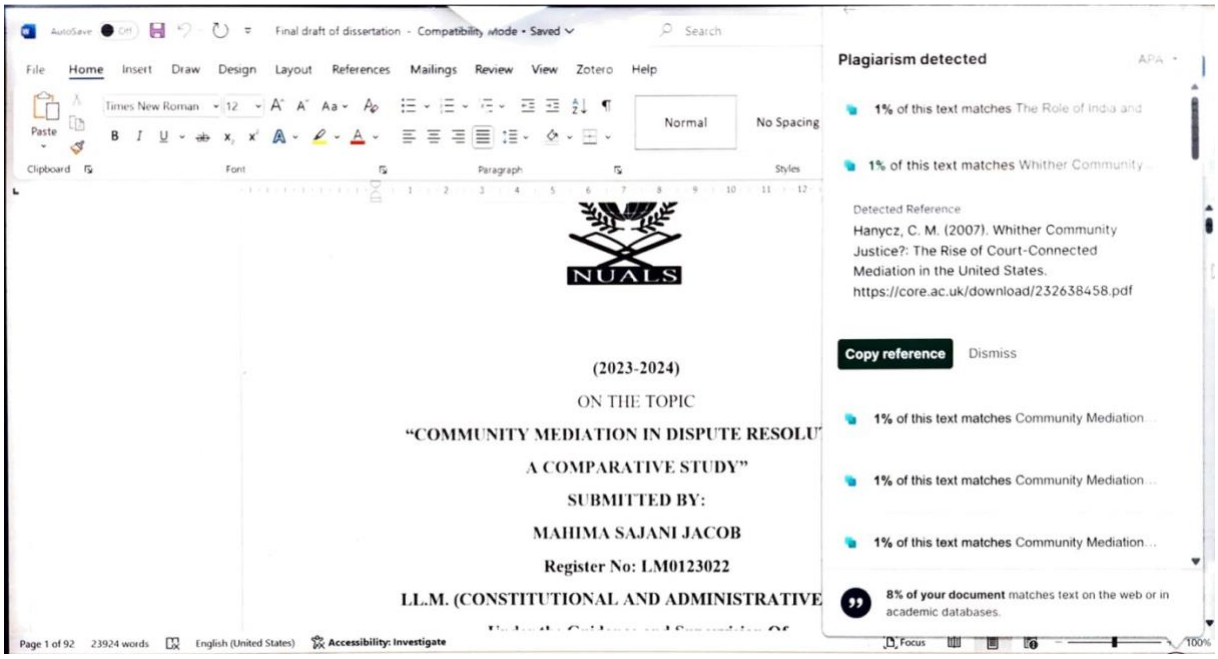
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