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# Environmental Disputes and Resolution through Mediation in India: A Study of Environmental Dispute Resolution Mechanism

**Dipankar Sharma[1], Dr. Aditi Choudhary[2]**
[1]Research Scholar of Law, Manav Rachna University Faridabad India, https://orcid.org/0009-0004-4353-0762, dipankarsharma2026@gmail.com
[2]Assistant Professor, Manav Rachna University Faridabad India, aditi@mru.edu.in

***Abstract[1]***
*Environmental disputes in India have proliferated in recent decades due to rapid industrialization, urbanization, and growing public environmental awareness. Traditional litigation – via Public Interest Litigations (PILs), High Courts, the Supreme Court, and the National Green Tribunal (NGT) – has played a pivotal role in enforcing environmental laws (such as the Environment Protection Act 1986) and developing principles like sustainable development and the polluter pays doctrine. However, court-centered resolution is often protracted and adversarial, leading to* ***delays in environmental justice*** *and mounting case backlogs. This review paper examines the potential of* ***mediation*** *as an alternative dispute resolution (ADR) mechanism for environmental conflicts in India's legal context. It provides an overview of existing judicial mechanisms and their limitations, discusses the concept and advantages of environmental mediation (drawing on global experiences and India's own cultural history of consensus-building), and analyzes the current legal framework for mediation in India, including the recent Mediation Act 2023. Landmark instances – such as the Indus Waters Treaty (an internationally mediated water dispute), the Bhopal Gas Tragedy settlement, and the protracted Cauvery river dispute – are reviewed to glean insights into when mediation succeeds or fails. The paper further identifies* ***benefits*** *of mediation (speed, stakeholder participation, creative solutions) and* ***challenges*** *(power imbalances, public interest concerns, enforceability) specific to environmental disputes. It concludes with recommendations for integrating mediation into India's environmental dispute resolution system, arguing that with appropriate legal safeguards and stakeholder engagement, "green mediation" can complement the courts and help resolve environmental conflicts more effectively without compromising environmental justice or development goals.*
***Keywords:*** *Environmental Disputes; Mediation; Alternative Dispute Resolution (ADR); National Green Tribunal; Environmental Law; Environmental Justice; Sustainable Development; India*

## INTRODUCTION

Environmental protection has deep roots in India's legal and cultural framework. The Constitution of India – through Directive Principles and Fundamental Duties – enjoins the State and citizens to safeguard the environment (e.g. Article 48A directs the State to protect and improve the environment, and Article 51A(g) imposes a duty on citizens to cherish the natural environment). Since the 1980s, Indian courts have been proactive in expanding environmental rights under the rubric of the fundamental right to life (Article 21), interpreting it to include the right to a healthy environment. This activism gave rise to public interest litigations (PILs) wherein NGOs and citizen groups approach the higher judiciary to address environmental harm. Over time, courts have developed key environmental law principles – such as the **polluter pays** principle, the **precautionary principle**, the **public trust doctrine**, and **sustainable development** – to balance ecological protection with development.

Despite robust environmental laws like the Water (Prevention and Control of Pollution) Act 1974, the Air Act 1981, and the comprehensive Environment (Protection) Act 1986, **disputes over environmental harm and compliance have surged**. Industrial projects, pollution incidents, resource extraction, and land-

**[1] Author- Dipankar Sharma, Research Scholar of Law, Manav Rachna University Faridabad India**
**https://orcid.org/0009-0004-4353-0762**

**Co-Author- Dr. Aditi Choudhary, Assistant Professor, Manav Rachna University Faridabad India**

use changes frequently trigger conflicts between developers and affected communities or between different states (in the case of river water sharing). Indian judiciary has witnessed a dramatic rise in environmental cases due to active intervention by public interest groups, environmental activists, indigenous communities, and others who use litigation as a tool to influence environmental policy. These disputes often involve threats to access to land and natural resources, pollution of air and water, public health hazards, and loss of livelihoods. Notably, India has one of the highest numbers of documented environmental conflicts in the world – an environmental justice atlas identified **347 major environmental disputes** in the country as of 2023.

Crucially, **environmental matters are urgent**; unresolved ecological harm can worsen irreversibly over time, and delayed justice may render victories pyrrhic. Yet, the conventional court system in India has struggled to deliver timely resolutions. The judiciary is **overburdened with a massive backlog** – over 4.7 crore (47 million) cases were pending across Indian courts as of 2019, of which more than 50,000 were environmental cases. Environmental litigation, often technical and evidence-heavy, can span years or decades. For instance, a development project conceptualized in 2005 was still tied up in legal battles 15 years later, prompting the Supreme Court to observe that prolonged environmental litigation not only hurts the environment but also stifles development. As Justice A. H. Benjamin aptly noted, "Environmental conflicts require quick action or response, which is incompatible with the slow pace of the Court system".

In response to these challenges, India established specialized forums like the **National Green Tribunal (NGT)** under the NGT Act of 2010. The NGT is a dedicated environmental court designed for **effective and expeditious disposal** of environmental cases. It is mandated to endeavor to resolve cases within **6 months** of filing, and it follows flexible procedures (guided by natural justice rather than the full Civil Procedure Code) to facilitate speedy "green justice." The creation of the NGT has indeed provided an expert adjudicatory body with judges and technical experts to handle environmental disputes. However, even the NGT has not escaped the nation's broader problem of case backlog. By 2019, the NGT had about **3,573 pending cases**, and the Supreme Court had over 100 pending environmental matters. The tribunal's ambitious six-month timeline often proves difficult to meet in complex cases, and its orders sometimes face challenges in enforcement or further appeals.

Thus, while the traditional litigation route (including PILs in higher courts and cases before the NGT) has been crucial for environmental governance, it is often **lengthy, adversarial, and unable to provide quick, consensual solutions**. This scenario has led jurists and policymakers to explore **alternative dispute resolution (ADR)** mechanisms, particularly **mediation**, as a complementary or corrective to the litigation-centric approach. Mediation – a facilitated negotiation assisted by a neutral third party – could offer a more flexible, participatory, and time-efficient means of resolving environmental conflicts. Before evaluating its role, it is essential to understand the nature of environmental disputes in India and why mediation might be well-suited (or in some cases, challenging) for such disputes.

**Environmental Disputes in India: Nature and Existing Resolution Mechanisms**

Environmental disputes are inherently complex and multifaceted. They often involve **multiple stakeholders** – for example, a polluting industry on one side and affected local communities on the other, with government agencies (regulators or project proponents) also in the mix. The issues at stake can range from compensation for environmental damage and public health impacts, to demands for halting a project, restoring a degraded ecosystem, or enforcing regulatory compliance. Many environmental conflicts in India arise from the tension between **economic development and ecological protection**. Large infrastructure and industrial projects (dams, power plants, mining, highways, factories) often lead to disputes over land acquisition, displacement of communities, loss of forests or biodiversity, and pollution. For instance, conflicts over **water resources** are prominent – India has seen contentious battles like the *Cauvery River dispute* between states (over water allocation for irrigation and drinking) and local protests over dams and hydropower projects. Environmental disputes also frequently implicate the rights of indigenous and rural communities, whose traditional lands and resources may be threatened by development; these groups have increasingly turned to courts when they feel excluded from decision-making.

Traditionally, the **judicial system** has been the main avenue for resolving environmental disputes in India. Key mechanisms include:

- **Public Interest Litigation (PIL):** Since the 1980s, the Supreme Court and High Courts have allowed public-spirited individuals and groups to file PILs for environmental causes. This unlocked the courts' epistolary jurisdiction to address issues like air and water pollution, deforestation, waste management, and wildlife protection. The higher judiciary's orders in PIL cases have led to significant outcomes – e.g. closure or relocation of polluting factories, bans on harmful substances (like the Supreme Court's ban on *toxic diesel vehicles* in Delhi's pollution case), cleaning of rivers, and recognition of environmental principles. However, PIL-driven litigation can be **prolonged**, involving continuous monitoring by courts over years. For example, the *Ganga River pollution* case and *Delhi air pollution* case remained pending with periodic directions for decades. Such prolonged judicial supervision, while impactful, underscores that courts have limited bandwidth to micromanage complex socio-environmental issues indefinitely.
- **Statutory Environmental Courts/Tribunals:** To augment the regular courts, the government set up specialized bodies. The **National Green Tribunal (NGT)**, as mentioned, is a central pillar of this effort. Established in 2010, the NGT has jurisdiction over cases relating to environmental protection, conservation of forests and natural resources, and enforcement of any legal right related to the environment. The tribunal can award relief and compensation for damages and has powers to enforce environmental laws. It was inspired by earlier experiments like environmental appellate authorities and the National Environment Tribunal Act 1995 (which was enacted after the *Oleum Gas leak* case to handle industrial accident claims, though that mechanism saw limited use). The NGT operates through five regional benches and is meant to **reduce burden on higher courts** by handling most environmental litigation in the first instance. In practice, NGT orders have significantly contributed to environmental jurisprudence, but the tribunal itself faces **overload**. Matters before the NGT can still take significant time for final resolution, and its decisions are appealable to the Supreme Court, which can introduce further delay. Thus, while the NGT improved expertise and accessibility, it has not completely solved the delay problem.
- **Regulatory Adjudication and Executive Committees:** Some disputes are addressed through administrative or executive channels. For example, inter-state river water conflicts (such as Cauvery, Krishna, Mahadayi) are typically referred to **Inter-State Water Dispute Tribunals** under the Inter-State River Water Disputes Act, and often a central government committee or even the Prime Minister's office will mediate between state governments. These efforts, however, often end up in the Supreme Court if a party is dissatisfied. In pollution cases, regulatory bodies like Pollution Control Boards sometimes hold hearings (quasi-judicial proceedings) to decide on penalties or closures for polluters, but again their orders may be challenged in the NGT or courts. On occasion, the government sets up **negotiation committees** or expert groups to try resolving a dispute – for instance, committees to oversee implementation of large projects with stakeholder representation – but these are ad hoc and may lack binding authority.

Given these mechanisms, **why consider mediation?** The crux is that even with specialized courts and tribunals, the process remains **adjudicatory and adversarial**. Judges (or tribunal members) give a judgment based on law and evidence, which produces a **winning and losing party**. Environmental disputes, however, often do not lend themselves to win-lose resolutions – they may require trade-offs and ongoing cooperation. Litigation also tends to sideline direct communication between parties; it focuses on legal rights and liabilities rather than underlying **interests** and creative problem-solving. Moreover, as noted, the sheer volume of cases means justice is often delayed. Delays in environmental cases can be especially damaging: if a harmful activity continues during litigation, the environment may suffer irreparable harm by the time a judgment comes (for example, years of unchecked pollution or deforestation). **Speedy resolution is critical**, yet hard to attain in current processes.

Mediation promises to address some of these issues by providing a forum for **collaborative resolution**. Before diving into how mediation can be applied, the next section outlines what mediation entails in the environmental context and how other jurisdictions have utilized it.

**Mediation as an Alternative: Concept and Global Perspective**

**Mediation** is an ADR process in which a neutral third-party (the mediator) facilitates a negotiated settlement between disputing parties, without imposing a decision. It is a voluntary, confidential process focused on the parties' interests and mutual agreement. In the context of environmental disputes, mediation is sometimes termed "**environmental mediation**" or "green mediation." Rather than a judge determining the outcome, the stakeholders themselves work out a solution with the mediator's help. This approach has several distinctive features that can be advantageous for environmental conflicts:

- **Stakeholder Control and Flexibility:** Unlike courtroom litigation which follows formal procedures and evidence rules, mediation allows parties a greater degree of control over both process and outcome. The process can be tailored to the dispute – for instance, it can be more informal, allow site visits, or involve extended discussions that are not strictly bound by legal relevance. The parties can speak directly (not only through lawyers) and can explore creative solutions beyond what a court might order. This flexibility is useful in environmental matters where scientific, technical, and community issues are intertwined. A mediated agreement could include measures like habitat restoration, community benefit-sharing, or joint monitoring committees – remedies that a court ruling might not explicitly provide.
- **Voluntary and Consensual Nature:** Mediation is premised on **voluntary participation** and consensus. Parties are not forced to settle; they can opt out if no satisfactory solution emerges. This is important in environmental disputes as it ensures that any agreement has buy-in from those who must implement it. For example, if a company and community mediate a pollution dispute and reach a settlement on emission reductions and compensation, both sides are more likely to adhere to it since they crafted it together, as opposed to an externally imposed order.
- **Confidentiality:** The process is typically confidential (information disclosed in mediation cannot be used in court if the mediation fails). This confidentiality can encourage frank discussions and admissions that parties might withhold in a public courtroom. In environmental cases, a polluter might be more willing to acknowledge responsibility or share data about emissions in a private mediation setting, facilitating a quicker resolution. (However, confidentiality can also be a double-edged sword in public-interest matters – a point we will revisit under challenges.)
- **Reduced Adversarial Tension:** By emphasizing mutual interest rather than adversarial positions, mediation can **preserve or repair relationships** between stakeholders. Environmental disputes often involve parties (like local residents and a company, or neighboring states) that have an ongoing relationship. Mediation's collaborative approach may reduce bitterness and pave the way for long-term cooperation – for instance, joint water management by states, or a community monitoring arrangement with an industry. Litigation, in contrast, can deepen mistrust ("winners" vs "losers") and close off communication.

Given these potential benefits, environmental mediation has been experimented with in various countries. **Globally, there is precedent for successfully mediating environmental conflicts.** One of the earliest known environmental mediations took place in the United States in 1973 – the **Snoqualmie River dispute** in Washington State. In that case, local residents opposed a proposed dam over a river, fearing harm to the wilderness, while others wanted flood control. Through mediation, a consensus was reached to build a smaller dam that protected farmers from floods while preserving more of the natural area. This win-win outcome demonstrated how mediation can craft **compromise solutions** in environmental matters, rather than a binary approve-or-reject outcome.

Since then, countries like **Australia, Canada, China, and Thailand** have incorporated mediation in environmental decision-making. International environmental disputes have also seen mediation and conciliation – for example, the **United Nations Convention on the Law of the Sea (UNCLOS)** provides for conciliation of maritime boundary and resource disputes, and the **Vienna Convention on protection of the Ozone Layer** encourages negotiated solutions. A notable success story is the **Indus Waters Treaty (IWT) of 1960** between India and Pakistan – a treaty over sharing the Indus river system waters which was **mediated by the World Bank** after eight years of negotiations. The IWT has endured for decades as a framework for cooperation, illustrating that even highly sensitive environmental-resource disputes can be resolved through facilitated negotiation. Under the treaty, Pakistan was given rights over the three "western" rivers of the Indus system and India over the three "eastern" rivers, with detailed mechanisms

for mutual cooperation. The fact that this agreement has survived numerous conflicts between the two countries is frequently cited as an exemplar of successful mediation in an environmental context.

In many jurisdictions, governments have institutionalized environmental mediation. The United States, for instance, passed the **Environmental Policy and Conflict Resolution Act of 1998** establishing the U.S. Institute for Environmental Conflict Resolution. The European Union's Sixth Environmental Action Programme (2002–2012) encouraged member states to use ADR and mediation for environmental disputes. New Zealand, in managing resource consent disputes, often employs mediation as part of its environmental planning processes. These examples indicate a broad recognition that mediation can be a valuable tool in the environmental sector.

However, it is also true that not all environmental disputes are easily resolved by mediation. The approach requires certain conditions – willing stakeholders, a conducive legal framework, and skilled mediators with subject-matter knowledge. India's experience with environmental mediation to date has been limited and mixed, which we shall explore. Before that, we must consider how Indian law currently views mediation, especially in the context of environmental cases.

**Indian Legal Framework for Mediation and its Relevance to Environmental Disputes**

India has traditionally relied more on **adjudication** than mediation, but the scenario is gradually changing. Until recently, mediation in India was largely driven by court-referred initiatives and was not governed by a comprehensive statute. Key developments in the legal framework include:

- **Section 89 of the Code of Civil Procedure (CPC), 1908:** Introduced through an amendment in 2002, this provision empowers civil courts to refer pending cases to ADR, including **mediation, conciliation, arbitration, or Lok Adalat**, if the court deems it fit. This was a significant step in mainstreaming mediation, as it led to the establishment of court-annexed mediation centers in various High Courts and districts. For example, the Madras High Court set up one of the first court-annexed mediation centers in 2001 and since then mediation has been increasingly used in civil disputes like matrimonial or commercial cases. In practice, however, environmental cases constituted only a tiny fraction of referrals under Section 89, possibly because many environmental matters come via writ petitions (to which Section 89 does not directly apply) or are handled by the NGT (which has its own procedure).
- **Legal Services Authorities Act, 1987 (Lok Adalats):** Lok Adalats (people's courts) are a form of ADR where pending cases or pre-litigation disputes can be settled based on compromise. Some states have organized **"Environmental Lok Adalats"** on occasion – essentially special drives where cases related to environment (often smaller matters like pollution fine disputes or tree-cutting compensation cases) are settled. For instance, there have been regional Lok Adalats reviewing issues like pollution in certain districts. While not formal mediation, Lok Adalats operate on similar principles of amicable settlement, and their use in environmental issues shows an appetite for non-litigious resolution. That said, Lok Adalat awards require an element of compromise and consent of parties, so they work best when liability is relatively undisputed and parties mainly negotiate quantum of compensation or remedial steps.
- **Arbitration and Conciliation Act, 1996:** This Act implements the UNCITRAL model law and in Part III recognizes **conciliation** – which is very akin to mediation – as a valid process, whose settlement agreements can be given legal effect equivalent to an arbitral award (Section 74). In theory, parties to an environmental dispute could engage in conciliation under this Act. In practice, this has been rare because environmental conflicts often involve questions of public rights and are not seen as "commercial" disputes between two parties that can simply be negotiated privately. The conciliation route is more commonly seen in commercial contract contexts.
- **Draft National Mediation Bill and the Mediation Act 2023:** A major recent development is India's effort to enact a standalone mediation law. The **Mediation Bill, 2021** was introduced in Parliament with the aim of institutionalizing mediation and making it a **mandatory first step** before court litigation in certain cases. After consultations and amendments, this Bill was passed and received Presidential assent in September 2023, becoming the **Mediation Act, 2023**. The Act for the first time provides a detailed framework for conducting mediation, recognizing online mediation, and enforcing settlement agreements as court decrees. It also establishes a **Mediation Council of India** to oversee

mediator accreditation and mediation service providers. Importantly, the Act aims to **promote mediation as a preferred method** by requiring that parties attempt mediation before approaching courts in certain civil disputes.

For environmental disputes, the Mediation Act 2023 carries a notable provision: **Schedule I of the Act explicitly excludes disputes falling under the jurisdiction of the NGT from the ambit of pre-litigation mediation**. In other words, matters that would go to the NGT (which covers most environmental litigation such as pollution cases, environmental clearances, and forest conservation issues) are carved out as **not suitable for mediation** under the current law. The rationale for this exclusion, as gleaned from the Parliamentary debates and the Standing Committee report, is that environmental disputes often affect the rights of third parties or have a public interest element, making them less amenable to private settlement. Indeed, the Act also excludes disputes relating to claims of environmental damage affecting numerous persons, recognizing that such matters may require authoritative adjudication rather than negotiation. That said, the law does provide that the central government may **amend the exclusions by notification** in future – implying that if it is found feasible to mediate certain environmental disputes, the bar could be lifted or modified.

Apart from the exclusion, the Mediation Act's general provisions still have some relevance. It empowers courts or tribunals to refer parties to mediation at any stage of proceedings. This suggests that even if not mandated as pre-litigation, an NGT or court could encourage mediation in an environmental case where appropriate. The Act also sets a **time-limit of 180 days** (extendable by another 180 with consent) for completing mediation, emphasizing speed. This time-bound approach could particularly benefit environmental cases where "time is of the essence" to prevent ongoing harm. Furthermore, India's Chief Justice (as of 2022) N. V. Ramana highlighted that courts should actively push negotiations and mediation as part of case management, noting that ADR can be a tool of social justice and lead to **win-win outcomes** unlike zero-sum litigation. This endorsement from the highest judiciary bodes well for a culture shift towards embracing mediation even in non-traditional areas like environmental law.

- **Institutional Mediation Initiatives:** Even before the Act, some groundwork for environmental mediation had been laid in India. One early attempt was the *"Kentucky Research Foundation – India" project in 2001*, which tried to set up **environment-specific mediation centers**. That initiative did not meet with success at the time, partly because mediation itself was nascent in India then, and stakeholders were not ready to entrust environmental disputes to mediation. In recent years, however, general mediation centers have proliferated and there is greater awareness. Some High Courts, when faced with certain environmental matters (especially those involving private damages or local issues), have occasionally referred them to mediation or Lok Adalats. For example, disputes involving **rehabilitation of project-affected people**, or compensation for pollution accidents, have seen judges encourage settlements out of court. Still, these instances are relatively few and ad hoc.

In summary, Indian law is cautiously opening the door to mediation, but has so far **kept core environmental disputes mostly within the adjudicatory domain**. The explicit exclusion of NGT-jurisdiction cases in the 2023 Act underscores a lingering skepticism about mediating matters that have broad public impact. The following parts of this paper explore whether this skepticism is justified by examining case studies and the pros and cons of environmental mediation.

**Case Studies: Mediation and Settlement in Environmental Conflicts**

To ground the discussion, we review a few notable instances – both domestic and international – where mediation or mediated settlement played a role in environmental dispute resolution involving India. These illustrate the circumstances that led to success or failure of mediation in practice.

- **The Indus Waters Treaty (1960):** As mentioned earlier, this landmark India-Pakistan treaty was reached after years of negotiation facilitated by the World Bank. The dispute over sharing the Indus river basin could be characterized as an environmental/resource conflict between two nations. The successful mediation resulted in a durable agreement, showing that even deeply complex disputes (in this case involving technical water management questions and national security concerns) can be resolved through a mediated process when parties negotiate in good faith and the mediator provides expertise and trust. The Indus mediation was aided by robust scientific analysis of river flows and the crafting of a detailed,

interest-based agreement (each country got exclusive rights over certain rivers rather than splitting all waters, which met both sides' core needs). This example is often cited to argue that **mediation can yield stable solutions in environmental disputes**, especially when the conflict is protracted and parties have much to lose from failure. Notably, it was an **international dispute** – in domestic contexts within India, one might compare inter-state water disputes.

- **Inter-State River Water Disputes (Cauvery water dispute):** The Cauvery dispute between the states of Karnataka, Tamil Nadu (and to some extent Kerala and Puducherry) over the Cauvery river has raged for over a century (since 1892 agreements), and flared into **violent protests** as recently as 2016. Various attempts at negotiated settlement were made, including involvement of Prime Ministers, and at one point the Supreme Court also pushed for an amicable settlement, effectively taking a mediation-like role between state governments. Despite these efforts, mediation **failed to produce a consensus**. Eventually, the Supreme Court delivered a final adjudicatory verdict in 2018 reallocating water shares slightly. The failure of mediation in Cauvery was attributed by commentators to the absence of a proper institutional framework and the highly politicized nature of the dispute. Without clear rules or a neutral facilitating body that all sides trusted, negotiations repeatedly broke down. This underlines that **mediation is not a panacea** – especially where parties approach the table only due to judicial prodding and remain intransigent, or where the dispute is seen as zero-sum (water allocation in a drought year can indeed seem that way). It also suggests that had there been a structured mediation law or a skilled neutral mediator accepted by all states, the outcome might have been different. The Cauvery dispute reveals the need for **legal and political support** for mediation efforts, and perhaps the benefit of confidentiality – as public pressure and political posturing often impeded compromise in that case.
- **Bhopal Gas Tragedy (1984) settlement:** The Bhopal disaster was an industrial gas leak that killed thousands and injured many more – one of the world's worst industrial accidents. The legal aftermath involved complex litigation in U.S. and Indian courts. In 1989, the Supreme Court of India took the unusual step of brokering a **settlement** between the Union of India (representing the victims) and Union Carbide (the company) for $470 million. This can be seen as a form of **court-mediated settlement**, though not mediation in the strict sense of a voluntary ADR – it was a court-driven negotiation. The Supreme Court's mediation-like role was significant: it ended the protracted litigation by convincing both sides to accept a deal. Union Carbide agreed to pay compensation and **accepted moral responsibility** in what was described as a settlement reached through the "mediation" of the Supreme Court. However, this outcome was and remains controversial. Many victims and activists felt the amount was grossly inadequate for the scale of damage, and that their voices were not directly represented in the settlement process (the government negotiated on their behalf). The court perhaps prioritized a quick resolution to ensure at least some relief was delivered, fearing that endless litigation would delay any payout. The *Bhopal case* thus offers a cautionary tale: while mediation/settlement can expedite relief (the victims received compensation sooner than if all cases dragged on through trials and appeals), it also raises issues of **fairness and representation**. In environmental mass torts, if mediation is attempted, it is crucial to ensure all affected groups are heard and the settlement is just – otherwise the outcome can undermine public trust. Notably, after the 1989 settlement, litigation resurfaced years later seeking additional compensation, indicating that an unsatisfactory "resolution" can spawn further disputes.
- **Local Environmental Disputes and Community Mediation:** There have also been smaller-scale examples. In some pollution cases involving a specific factory and villagers, local authorities have sometimes acted as mediators. For instance, a state pollution control board or district magistrate might facilitate talks where a factory agrees to install better pollution controls or provide compensation to affected farmers for crop damage, in exchange for the villagers withdrawing a court case. These are usually off-record settlements and hence not widely reported. One reported attempt is from the state of Gujarat, where a local NGO mediated between a chemical industry and villagers complaining of groundwater contamination, resulting in the company agreeing to supply alternate drinking water and fund village development projects (while the villagers ceased agitation). Such instances show the **potential of mediation at a grassroots level**, especially when the dispute is localized and the parties have an interest in maintaining a good ongoing relationship (the company, for its social license to operate; the community,

for jobs or assistance from the company). The key is having a trusted neutral party – here possibly the NGO or an enlightened government official – and the willingness of the company to engage rather than litigate.

These case studies collectively demonstrate that **mediation in environmental disputes can lead to mutually agreeable solutions**, but success depends on context. International and intergovernmental disputes may require formal mediators (like the World Bank in Indus). Domestic disputes involving private parties might succeed if there is an impartial mediator and incentives to settle. Conversely, where issues are highly politicized or stakes are perceived as all-or-nothing (as in some inter-state disputes), mediation faces an uphill battle. Nonetheless, even partial successes highlight benefits worth striving for. In the next section, we summarize the key **benefits of mediation** for environmental dispute resolution, followed by the specific **challenges and concerns** that need to be addressed to make it effective.

**Benefits of Mediation in Environmental Dispute Resolution**

Mediation offers several **advantages** that align well with the needs of environmental dispute resolution:

- **Speed and Efficiency:** Mediation can be arranged and concluded much faster than a lawsuit. Courts and the NGT, despite best efforts, can take years to resolve cases due to formal procedures and heavy caseloads. In mediation, the parties can meet immediately and even resolve a dispute in a matter of days or weeks (with the new Mediation Act capping the process at 180 days, extendable by another 180). Quicker resolution means timely environmental protection – for example, a polluter agreeing to abate pollution in months rather than waiting for an injunction after years of litigation. Swift outcomes are crucial since **delays in environmental matters can cause irreversible damage**. By arriving at interim solutions (say, a mediated interim agreement to halt certain activities pending a final settlement), mediation can also provide stop-gap protection.
- **Expertise in Decision-Making:** In mediation, parties can choose a mediator with **technical or scientific expertise** relevant to the dispute. For instance, in a dispute about environmental flow in a river, the mediator could be a water management expert or an ecologist who understands the subject. This contrasts with litigation where judges may have to rely on expert witnesses and navigate technical evidence without specialized background. An expert mediator can help interpret scientific data for both sides, build common ground on facts, and suggest practical solutions that are scientifically sound. This use of expertise can lead to **better-informed outcomes** and avoid the scenario where parties battle dueling experts in court.
- **Creative, Tailored Solutions:** Mediation is not limited to the remedies available in law. Parties can agree on **innovative solutions** beyond what a court could order. For example, in a mediated settlement over industrial pollution, the resolution could include the company funding a local health clinic or reforestation of affected areas – remedies that a court ruling might not directly provide (a court might simply impose a fine or order closure). Such creative agreements can more holistically address the problem, providing environmental restoration as well as community benefits. This flexibility is particularly useful in sustainable development contexts, where a balance of interests is needed. Mediation allows solutions where **both environment and development considerations** can be accommodated, rather than one side winning outright.
- **Stakeholder Participation and Ownership:** Environmental conflicts often leave communities feeling that decisions are made far away (in courts or government offices) without their input. Mediation **gives stakeholders a voice** in crafting the outcome. Each party's concerns can be aired and acknowledged. This participatory aspect not only makes the process more democratic, it also yields agreements that parties are committed to. When a solution is self-crafted, compliance is generally higher. For instance, if villagers negotiate and consent to a certain buffer zone for a mining project in mediation, they are more likely to accept the project thereafter than if a court simply dismisses their objections. As one commentary noted, mediation allows parties to view the dispute from each other's vantage points, fostering empathy and understanding. Such humanization of the opponent is valuable in environmental disputes, which can be emotionally charged (people fighting for their health or habitat vs. people fighting for jobs and investment).

- **Reduced Burden on Courts:** From a systemic perspective, wider use of mediation in environmental disputes can **help unclog the courts and NGT**, reserving judicial time for those cases that truly require authoritative judgments. Even if a fraction of the 50,000-odd pending environmental cases (circa 2019) were resolved through mediation, it would free up resources to deal with cases of major legal contention or those where mediation fails. This was one of the motivations behind introducing mandatory mediation in commercial disputes, and it applies similarly to environmental matters – that ADR can lighten the caseload and thereby indirectly improve overall justice delivery. Moreover, mediated settlements can often be reached before a conflict escalates into a full legal dispute, thus nipping potential litigation in the bud.
- **Preservation of Relationships and Long-Term Cooperation:** Unlike litigation, which often results in strained or cutoff relationships, mediation can preserve or even improve working relationships between parties. This is important in environmental scenarios where parties may need to cooperate in the future. For example, in a mediated inter-state river dispute, states that find a mutually acceptable water-sharing arrangement are more likely to cooperate on river basin management going forward, as opposed to states that feel aggrieved by a court-imposed award. In community-industry disputes, a mediated settlement can establish channels for ongoing dialogue (such as a liaison committee or periodic meetings) which help prevent future conflicts. Essentially, mediation can transform an adversarial dynamic into a **partnership approach** to solving environmental problems.

In light of these benefits, it is evident why scholars and judges have called for exploring "green mediation" as a way forward in India. If implemented properly, mediation could provide **quick and efficient redressal without compromising on justice**. It is argued that mediation, even if made a routine part of environmental case processing, need not dilute environmental law principles – a settlement can still uphold the **polluter pays** principle, ensure **precautionary measures**, and further the goal of **sustainable development**. In fact, a mediated solution can explicitly incorporate these principles as terms of agreement (for instance, an agreement could require the polluter to pay for restoration and adopt precautionary technology, embodying the principles in practice).

However, alongside these advantages, there are significant **challenges and concerns** when applying mediation to environmental disputes. These must be addressed to harness mediation's potential effectively.

**Challenges and Concerns in Environmental Mediation**

While mediation holds promise, several factors make environmental disputes particularly **challenging to resolve through mediation**:

- **Public Interest and Third-Party Rights:** Perhaps the most fundamental concern is that many environmental issues affect people who are not directly "at the table." Unlike a simple civil dispute between two private parties, an environmental conflict (say, over pollution of a river) might impact an entire downstream community, or an endangered species, or future generations. **Who represents these diffuse interests in a mediation?** There is a risk that a mediated settlement between, for example, an industry and a few community leaders might neglect wider public rights. In litigation, the courts ostensibly represent the public interest – a judge is bound to apply environmental law and cannot approve a settlement that, say, allows illegal pollution. In mediation, if not carefully handled, parties could agree to a deal that trades off some environmental protection for compensation, potentially undermining regulatory standards. This is why the Mediation Act 2023 excluded NGT matters – because environmental laws often serve public rights beyond the negotiators' own interests. To mitigate this, any environmental mediation must ensure **inclusive representation**. For instance, mediators might insist on involving local government or additional stakeholder groups in the process. Additionally, outcomes could be made subject to public consultation or court approval to ensure they meet statutory environmental requirements.
- **Power Imbalances:** Environmental disputes can involve **significant power asymmetry** between parties. A large corporation or government entity on one side and impoverished villagers on the other do not enter mediation on equal footing. The weaker party may feel pressure to settle for less than what they need or what justice would dictate – especially if they lack technical knowledge or resources to negotiate

effectively. In litigation, at least in theory, a court can protect weaker parties by strictly enforcing rights (for example, ordering a polluter to compensate fully for all damage, regardless of whether victims would have settled for less out of desperation). In mediation, the dynamic could be skewed by power differences. A mediator must be trained to **balance power**, perhaps by caucusing separately with the weaker side to ensure their voice is heard, or bringing in independent experts to level the information playing field. Providing access to legal aid or advisors for affected communities during mediation can also help. Nonetheless, this remains a concern – if mediation is not conducted fairly, it could lead to **unjust outcomes that favor the more powerful polluters or developers**.

- **Confidentiality vs Transparency:** Mediation's confidentiality is double-edged in environmental matters. On one hand, it fosters open dialogue; on the other, it conflicts with the principle that environmental decision-making should be transparent and participatory. Environmental disputes often generate public interest – people want to know on what terms a conflict was resolved, since it might affect their environment. A secret settlement could breed suspicion (e.g., did the community leaders take a pay-off and allow the company to continue polluting?). Moreover, environmental agreements might require public compliance or awareness (for instance, if a mediated deal imposes water use restrictions on a community, others need to know). Therefore, mediators should encourage **transparency in the outcome** even if the discussions themselves are private. One approach could be to publicly disclose the key terms of any mediated agreement and how they comply with environmental norms, to assure the broader community that public interest was safeguarded. In some jurisdictions, mediated settlements in public disputes are subject to court approval, effectively adding a layer of oversight.
- **No Precedent / Policy Impact:** Court judgments, especially by higher courts, often lay down precedents and clarify interpretations of environmental laws (for example, the Supreme Court's judgments have introduced doctrines like **public trust** or expanded Article 21 rights). These precedents guide future conduct and policy. Mediation, in contrast, results in a settlement specific to the parties, with **no broader legal precedent**. Over-reliance on mediation might mean fewer opportunities for courts to pronounce on important legal questions, potentially stagnating legal development. For instance, if all cases of a certain type (say, noise pollution disputes) just quietly settle, we might never get an authoritative ruling that could push stricter standards nationally. This implies that **not all cases should be diverted to mediation** – especially those requiring judicial clarification of law. Mediation is best for factual or interest-based disputes (how to implement solutions) rather than pure questions of legal principle.
- **Enforceability and Compliance:** While the Mediation Act 2023 now provides for mediated settlement agreements to be enforceable as court decrees, enforcement in environmental matters can still be tricky. If a party reneges on a mediated agreement (for example, a company does not install promised pollution control equipment), the other side would have to approach a court for enforcement, potentially losing time. In litigation, a court order can directly mandate action with threat of contempt. Ensuring compliance with mediated terms may require monitoring mechanisms. This is where hybrid approaches help – for instance, the settlement could be reported to the court or NGT, which could then pass a consent order incorporating the terms and retain jurisdiction to monitor compliance. Indeed, one can envision a model where NGT encourages parties to mediate but then **approves the settlement as a consent decree**, combining the flexibility of mediation with the teeth of judicial enforcement.
- **Cultural and Attitudinal Barriers:** In India, despite a long tradition of panchayat dispute resolution (often cited as a form of mediation in villages), the modern legal culture has been oriented towards courts. Changing mindsets of litigants, lawyers, and officials to genuinely embrace mediation will take time. Sometimes parties fear that suggesting mediation signals weakness, or they mistrust the process. Especially in environmental cases involving activism, activists might worry that entering mediation means "selling out" the cause, as opposed to the moral victory of a court judgment. Overcoming this requires awareness-building about mediation not as a compromise on ideals, but as a pragmatic way to achieve results. Training environmental lawyers to also act as mediators or advisors in mediation can help integrate the process. The success stories, when publicized (like if a polluted town's problems were solved through a mediated agreement), can gradually shift attitudes to see mediation as a positive and effective tool, not a second-rate justice.

In sum, while **environmental mediation in India faces hurdles, none are insurmountable**. Appropriate measures – such as including all stakeholders, balancing power dynamics, ensuring agreements conform to environmental laws, and integrating mediation with the formal legal system for oversight – can address these concerns. It is clear that mediation is not a one-size-fits-all remedy; it will work for some disputes and not for others. The policy challenge is to identify those categories of environmental conflicts where mediation can be fruitful (for example, localised disputes, compensation negotiations, compliance schedule agreements) and encourage its use there, while allowing more principle-heavy or intractable issues to proceed in court or tribunal.

**Recent Developments and Way Forward**

The legal landscape in India is evolving towards greater acceptance of ADR, and this is likely to influence how environmental disputes are handled in the future. With the **Mediation Act 2023** now in force, a structured process for mediation is available. Although environmental disputes under NGT are initially excluded, there is scope for policy change – the Act empowers the government to remove exclusions if it deems fit. One could anticipate that if mediation shows success in analogous fields (like complex infrastructure or land acquisition disputes), pressure will build to pilot it in environmental cases as well. For instance, the government might in future allow certain environmental disputes (say, related to compensation or minor permit conditions) to go through pre-litigation mediation, especially if the parties consent.

The **National Green Tribunal itself could play a role** by formulating mediation guidelines. The NGT Act does not currently have explicit provisions for ADR, but nothing prevents the tribunal from encouraging parties to explore settlement. In fact, the NGT's procedure is flexible and it could refer matters to mediation under the general power of seeking amicable resolution. A practical step could be establishing a panel of trained environmental mediators and a mediation cell attached to the NGT. When a case is filed, the tribunal might assess if it's a suitable candidate for mediation (for example, a dispute focusing on monetary compensation or compliance timelines rather than pure questions of law) and refer it before proceeding with litigation. If a settlement is reached, the NGT can then dispose of the case by recording the terms (after checking that they don't violate any law or public interest). This approach would align with Chief Justice Ramana's vision of making mediation part of case management in courts.

Additionally, learning from international experience, India could incorporate **mediation into environmental regulatory processes**. For example, during environmental clearance of big projects (a stage which often triggers disputes between project developers and local communities/NGOs), a mediation step could be built in. Rather than waiting for a project to be challenged in tribunal after clearance, the clearance authority could invite objectors and the project proponent to mediation meetings to see if concerns (like relocation of project facilities, additional safeguards, community development commitments) can be resolved by agreement. This would be a proactive use of mediation in policy implementation. Some countries use "environmental ombudsmen" or facilitators in a similar way for permitting processes.

The role of **civil society and experts** is also vital. As more environmental professionals (lawyers, retired judges, professors, scientists) train in mediation, the pool of neutrals who can handle such cases will grow. Environmental NGOs with credibility could serve as mediators or observers in mediations, helping ensure that public interest is not compromised. Likewise, local institutions like **Gram Panchayats** or community councils might be empowered to mediate minor environmental disputes at the village level (for example, a disagreement over use of a village pond or common grazing land). This would echo the traditional panchayat system which informally mediated community disputes including those involving natural resources.

In terms of legal reform, if mediation in environmental matters is to be expanded, certain safeguards might need formalization. One idea is to amend laws to state that **settlements in environmental disputes must be in line with environmental laws and subject to approval**. This would reassure that mediation won't be used to circumvent regulations. Another idea is to provide **legal aid for environmental mediation**, ensuring communities have access to independent advisors during negotiations.

Overall, the **way forward** involves a balanced integration of mediation into the environmental dispute resolution framework. Courts and the NGT should remain the ultimate guarantors of environmental rights – especially when power imbalances or interpretative issues arise – but mediation can be a valuable adjunct for achieving quicker, mutually satisfactory outcomes in many cases. The trend worldwide is towards collaborative conflict resolution in environmental governance, and India is poised to follow, provided the lessons from past experiences (both successes like Indus Treaty and failures like Cauvery mediation) are heeded.

## CONCLUSION

Environmental disputes in India sit at the intersection of law, science, and human livelihoods. The traditional litigation mechanism, while crucial for upholding the rule of law, has shown clear shortcomings in delivering timely and effective resolutions to these disputes. **Mediation emerges as a promising complementary mechanism** that can address some of these gaps by facilitating dialogue, fostering consensus, and expediting solutions without sacrificing the quality of justice. As this review has discussed, India's legal context is gradually warming to mediation – evident from the new Mediation Act and judicial endorsements of ADR – yet a degree of hesitation remains in applying it to environmental conflicts.

Critically, **India's current policy keeps environmental disputes outside mandatory mediation**, reflecting caution due to public interest considerations. However, this should not be the final word. The experience from other countries and even India's own instances of mediated settlements suggest that with the right framework, **environmental mediation can work**. The key is to integrate safeguards: inclusive participation, expert mediators, adherence to environmental norms, and oversight of outcomes. If these are in place, mediation need not undermine environmental protection – on the contrary, it can enhance it by achieving faster compliance and more sustainable, locally acceptable solutions.

In the long term, a multi-pronged dispute resolution system – where **courts, tribunals, and mediation** all have their roles – is ideal. Courts would continue to set precedents and handle intractable or high-public-interest cases; tribunals like NGT would adjudicate and also channel appropriate matters to mediation; and mediation would handle the negotiable aspects of disputes (such as remediation plans, compensation amounts, implementation timelines, etc.) in a collaborative way. This integrated approach could transform environmental conflict resolution from a purely adversarial model to a **cooperative problem-solving model**.

India's environmental challenges are pressing and multitudinous, from pollution to climate change impacts to resource conflicts. To address these effectively, the country needs not just strong laws (which it has) and active courts (which it has had), but also **innovative mechanisms to resolve conflicts on the ground**. Mediation, with its human-centric and flexible approach, offers a humane and pragmatic pathway. As one analysis concluded, even if mediation is made mandatory in environmental disputes, it will not violate environmental law principles or citizens' rights – rather, it can uphold them in a time-bound, mutually beneficial manner.

In conclusion, **environmental dispute resolution in India stands to gain significantly from embracing mediation**, provided it is implemented with care. "Green mediation" could alleviate the burdens on courts, empower communities, and lead to more durable resolutions where everyone feels heard and invested in the outcome. The road ahead should involve pilot projects, capacity building, and gradual widening of mediation's ambit in environmental matters. With a robust legal framework now in place for mediation generally, it is an opportune moment to test and refine its use for the crucial realm of environmental justice. The confluence of judicial support, legislative action, and growing mediation expertise signals a future where environmental conflicts in India might increasingly be resolved not in acrimonious court battles, but around a table with dialogue and consensus – to the benefit of both people and the planet.

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