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GREEN MEDIATION IN ENVIRONMENTAL JUSTICE: ANALYZING IN COMPARATIVE DOMAIN

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ABSTRACT

The growing intricacy of environmental issues resulting from such factors as climate change, growth of industries, and conflicting developmental needs has compelled the need for a more dynamic and accommodating form of dispute resolution mechanism. The tension between ecology and economy has always been there. This research article will analyze the application of the concept of green mediation in Alternative Dispute Resolution (ADR) as a means of promoting environmental justice. In contrast to conventional litigation which is characterized by contentiousness, lengthy process, and rigidity, green mediation is more cooperative, dialogic, and participatory in nature. Through critical analysis, the research article will examine how green mediation fosters a holistic resolution process by combining sustainability concerns with socio-economic issues. This will entail understanding the participatory aspect of mediation through which all the relevant stakeholders can negotiate towards achieving balanced environmental justice. In addition, the research takes a comparative perspective by focusing on the analysis of the role of mediation within the environmental governance framework in terms of identifying the best practices from well-established legal regimes and at the same time examining the issues that hinder the application of mediation in developing nations such as institutional constraints, awareness gaps, and enforcement issues. Despite issues such as unequal power distribution and poor enforcement capabilities, this paper will highlight the immense potential that green

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mediation possesses in revolutionizing the way environmental disputes are resolved. It will be shown that through green mediation, sustainable development and environmental justice can be realized through proper legal backing and capacity building.

Keywords: *Green Mediation, Environmental Justice, Alternative Dispute Resolution (ADR), Sustainable Development.*

I. INTRODUCTION

The process of resolving environmental disputes has become difficult due to fast-paced industrialization and climate change. While litigation continues to play a vital role in the development of environmental law, it is slow and often requires a lot of time and resources to be used effectively. A number of courts in different countries, including India, have faced severe backlogs in handling environmental cases. As a result, ADR techniques have been increasingly recognized as important tools for environmental governance.[1]

One of such ADR techniques is Mediation. The main purpose of resorting to this technique to resolve environmental disputes is to find a mutually acceptable solution for parties in conflict which takes into account their interests and values in an effective way mediation, which is also known as environmental mediation, is one of the conflict resolution processes which is led by a mediator being a third person known as a neutral also. The mediator promotes dialogues between the parties so as to engage them in discussion by doing ice breaking sessions, taking parties into caucuses so that parties may leave their rigid positions and agree to settle their dispute [2].

The use of consensual dispute resolution techniques is not entirely new. The disputes were generally resolved in an amicable manner. Traditionally, disputes in villages were resolved by a group of five respected individuals known as *Panch* under the panchayat system. Although the process was informal and lacked a structured procedure, it closely resembled what we today understand as mediation. Different

1 Dipankar Sharma & Aditi Choudhary, *Environmental Disputes and Resolution Through Mediation in India: A Study of Environmental Dispute Resolution Mechanism*, 11 INT'L J. ENV'T SCIS. 41, 47 (2025), https://doi.org/10.64252/jpv96w23.

2 Mohak Kasat & Shruti Sharma, *Green Mediation- A Way Forward for Resolving Environmental Disputes*, 5 INT'L J. FOR MULTIDISCIPLINARY RSCH., NO. 6, 2023, AT 1, 9, https://doi.org/10.36948/ijfmr.2023.v05i06.8844.

methods were adopted for resolving such disputes, traces of which can still be found in present-day ADR mechanisms.

With the advancement of society, these informal methods of resolving disputes gradually evolved into more organized and structured systems, eventually becoming part of the formal legal framework. As defined by Marian Liebmann[3], *"Process by which an impartial third party helps two or more disputants work out how to resolve a conflict, the disputants, not the mediators, decide the terms of any agreement reached. Mediation focuses on future rather than past behaviour."*[4] Similarly, Nobel- prize-winning economist *Elinor Ostrom's eight rules of managing the commons*[5], participatory decision-making, and having means of conflict resolution that are informal, cheap, and straightforward are significant to maintain a healthy ecosystem and practicing sustainable development.[6]

In India, mediation has been formally recognized within the legal system. The establishment of Lok Adalat under the Legal Services Authorities Act, 1987[7] marked an important step in promoting amicable dispute resolution. Further, the insertion of Section 89 through the Code of Civil Procedure (Amendment) Act, 1999 empowered courts to refer disputes to ADR mechanisms, including mediation, "*Where it appears to the courts that there exist elements of settlement which may be acceptable to the parties.*" The importance of mediation has also been acknowledged by the judiciary, particularly in *M.R. Krishna Murthi v. New India Assurance Co. Ltd*[8]*.,* where the Supreme Court highlighted the need for a comprehensive legal framework governing mediation. Recently, the mediation Act, 2023, marks the formal general statutory framework of mediation in India.[9] However, environmental disputes require specially curated statutory norms and provisions keeping in mind the public interest, third-party rights, ecological harms and regulatory obligations. Therefore, a specialised mediation framework within the NGT system is needed.

3 Marian Liebmann, *Restorative Justice: How It Works 25* (2007).

4 Rory Ridley-Duff & Anthony Bennett, *Towards Mediation: Developing a Theoretical Framework to Understand Alternative Dispute Resolution*, 42 INDUS. REL. J. 106, 112–13 (2011).

5 Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* 90–102 (1990).

6 Isha Ahlawat, *Alternate Dispute Resolution in Environmental Disputes in India: Learning from International Experience*, 3 INT'L J. ADVANCED LEGAL RSCH., NO. 2, NOV. 2022, AT 1.

7 Legal Services Authorities Act, 1987, No. 39, Acts of Parliament, 1987, §§ 19–22 (India).

8 M.R. Krishna Murthi v. New India Assurance Co. Ltd., 2019 SCC OnLine SC 315.

9 Mediation Act, No. 32 of 2023, Acts of Parliament, 2023 (India).

Despite such recognition, mediation in India has not been fully developed as an effective alternative dispute resolution mechanism in environmental disputes. An informal application of mediation-like techniques has been adopted by the courts from time to time to meet the ends of justice. In the environmental context, mediation assumes a distinct character because the subject matter is not purely private. Environmental issues include ecological harm, scientific uncertainty which often involves vulnerable communities and public rights. Green Mediation, therefore, be encapsulated as a process which is participatory and sustainability-oriented dispute resolution technique.

Tapping the term 'Green Mediation'

Green mediation, as the term suggests, is a mediation process which is applied to the disputes relating to the environment involving environmental harm, natural resources, pollution development projects and ecological protection. It can be understood as a collaborative process in which a neutral third party assists the disputing parties in resolving environmental conflicts. It primarily aims at encouraging dialogue, building mutual understanding, and arriving at solutions that are acceptable to all stakeholders involved. The process is guided by certain key principles-

Firstly, participation is voluntary, meaning that all parties must agree to engage in the mediation process willingly. And that's how the mediated settlement derives its legitimacy from the informed consent. However, voluntariness must not prevent a court or tribunal from directing parties to attempt mediation.

Secondly, the mediator acts as a neutral facilitator and does not take sides, but instead helps in improving communication between the parties by enabling discussions and generating options for settlement. In environmental disputes, the mediator may also try to translate the complex technical jargons into understandable form and may facilitate interaction between legal representatives, scientific experts, government authorities, industries and affected communities.

Thirdly, the process of mediation is confidential, which allows the parties to express their concerns openly without fear that every statement will subsequently be used against them. Such a setting may encourage candid communication and facilitate settlement. The information concerning serious pollution or environmental harm or threats to public safety should not be concealed merely because it was disclosed during mediation.

Lastly, green mediation emphasizes collaborative problem-solving, where parties work together to develop creative and sustainable solutions that balance their interests with environmental concerns involving restoration of the affected environment, compensation to victims, monitoring, community participation etc. such remedies may prove to be more flexible and responsive than a simple order directing closure or imposing compensation.

This approach is especially useful in dealing with complex environmental issues, as it promotes cooperation and helps in achieving long-term and sustainable outcomes. But in the case of severe environmental degradation where restorative approach is not of much help, this contrasts significantly with the traditional system of legal battles, in which the decision-making power lies with judges. [10]The benefit of mediation becomes especially apparent when applied to environmental issues, which are associated with scientific uncertainty and have far-reaching ecological repercussions. Environmental Justice adds weight to the significance of green mediation as it is concerned with the equitable distribution of environmental costs and benefits in society, and it ensures that vulnerable groups are not adversely affected due to environmental degradation.

Internationally, there have been many developments in the field of environmental mediation along with the emergence of various frameworks of environmental laws and regulations. From early attempts of mediation in the U.S. during the 1970s to the institutionalization of mediation in Europe and its incorporation in international environmental regimes in the *European Union's Sixth Environmental Action Programme (2002–2012)* inclined member states to use ADR and mediation for resolution of environmental disputes.[11] There have been growing numbers of countries adopting this approach of alternative dispute resolution. For example, many countries have adopted mediation procedures for solving disputes involving water rights, industrial pollution, and land disputes. Mediation procedures in India have traditionally been part of community dispute-resolution systems like panchayat systems.

In spite of all the positive qualities that it brings to the table, green mediation is not devoid of problems. The issues like power disparities between parties, non-enforceability, ignorance about the process, and the lack of expertise among mediators may hamper its functioning. However, it can serve as a powerful alternative dispute

10 Dipankar Sharma & Aditi Choudhary, *Environmental Disputes and Resolution Through Mediation in India: A Study of Environmental Dispute Resolution Mechanism*, 11 Int'l J. Env't Scis. 41, 47 (2025).

11 *Id.*

resolution tool because of its ability to provide quicker, less expensive, and localized solutions. ADRs are not only useful for resolving disputes but also act as preventive measures.[12]

When comparing the practices followed in various regions, it becomes clear that there exist significant differences in the ways that environmental mediation has been used in each of these regions due to the varying socio-political conditions prevalent in these regions.[13] In order to fully appreciate the significance of green mediation as an instrument for environmental justice, it is important to recognize these distinctions.

The purpose of this research paper is to compare the role of green mediation in environmental justice from various perspectives with respect to its theories and implications, and highlight its potential for the future.

II. Statutory Foundations Of Green Mediation And Environmental Justice

Recognizing the need to preserve, protect, and improve the environment, the Constitution of India incorporates provisions such as Article 48-A [14]and Article 51-A(g)[15]. Article 48-A directs the State to take necessary measures for the protection and improvement of the environment, and for safeguarding the forests and wildlife. while Article 51-A(g) imposes a fundamental duty upon the citizens to protect and improve the natural environment and show compassion towards all living beings. In furtherance of these objectives, the legislature has enacted various environmental laws aimed at conserving natural resources, wildlife, and ecological balance which are enforced by designated agencies to ensure the effective implementation of these laws. A structured dispute resolution mechanism has gradually developed to address conflicts arising in the environmental domain.

The constitutional framework for environment protection has been robustly reinforced by judicial pronouncements. *In M.C. Mehta v. Union of India*[16] , the Apex

12 Dipankar Sharma & Aditi Choudhary, *Environmental Disputes and Resolution Through Mediation in India: A Study of Environmental Dispute Resolution Mechanism*, 11 Int'l J. Env't Scis. 41, 47 (2025).

13 Maria José Azar-Baud, *Environmental Proceedings from a Comparative Perspective When Substance Drives Proceedings*, in Comparative Procedural Law and Justice, pt. XII, ch. 5, ¶ 75 (Burkhard Hess et al. eds., Feb. 2025), https://www.cplj.org/a/12-5.

14 India Const. art. 48A.

15 India Const. art. 51A(g).

16 M.C. Mehta v. Union of India, (1987) 1 S.C.C. 395, 421 (India).

court evolved the principle of Absolute liability for enterprises engaged in hazardous or inherently dangerous activities. Also, in *Vellore Citizens' Welfare forum v. Union of India*, the Supreme court recognised the two important principles, precautionary principle and the polluter pays' principle as essential features of the concept of sustainable development. And also emphasized that environmental protection is linked to article 21 of the constitution.[17] The constitutional nexus between environmental protection and the right to life was legally recognised in *Subhash Kumar v. State of Bihar*. The Supreme Court held that the right to life under Article 21 includes the right to enjoy pollution-free water and air.[18] Although the petition was ultimately dismissed because it had been filed to advance the petitioner's private interest rather than genuine public interest, the decision established an important environmental-rights principle. Green mediation must therefore not only protect the private interests of the negotiating parties but also the vested constitutional environmental rights of affected communities and the public at large.

Further, *In A.P pollution Control Board v. Prof. M.V. Nayudu*[19]. The court stressed on the scientific complexity and uncertainty involved in environmental adjudication. Thereby highlighting the need for expert knowledge. These decisions significantly strengthened environmental protection in India through a thorough interpretation of the environment and the constitutional laws.

Environmental law disputes must be treated as matters of urgency, as they involve the interests of multiple stakeholders and often have irreversible consequences. The quality of environmental justice depends upon how speedy and effective the relief is. Any delay in resolution may allow ecological damage to continue, thereby increasing the cost of restoration which consequently deepens the conflict between the affected communities, industries and public authorities. This delay directly affects the quality of justice, particularly in environmental matters where time is a crucial factor.[20]

It is noticeable that the present judicial system is under severe strain due to the heavy backlog of cases. As rightly observed by Justice Antonio Herman Benjamin of Brazil, that environmental conflicts require a prompt response which may be

17 Vellore Citizens' Welfare Forum v. Union of India, (1996) 5 S.C.C. 647, 658, 660 (India).

18 Subhash Kumar v. State of Bihar, (1991) 1 S.C.C. 598, 604 (India).

19 A.P. Pollution Control Board II v. Prof. M.V. Nayudu, (2001) 2 S.C.C. 62 (India).

20 Mohak Kasat & Shruti Sharma, *Green Mediation- A Way Forward for Resolving Environmental Disputes*, 5 Int'l J. Multidisciplinary Rsch. No. 6, 1, 9 (Nov.–Dec. 2023).

incompatible with the slow pace, bureaucracy and technical formalities of traditional court systems. In his words, "*Environmental conflicts require quick action or response, which is incompatible with the slow pace of the Court system that, due to its bureaucracy and technical rituals, eventually becomes an obstacle to effective protection of the environment and economic progress.*"[21]

The Data below, further highlights the gravity of the situation. According to the Environmental Justice Atlas (EJ Atlas)[22], India ranks among the leading countries in terms of environmental conflicts, with the highest number of documented disputes. Indian judiciary is burdened with over 5.3 crore pending cases, reflecting a significant imbalance between mounting number of cases and available judicial capacity [23]Undoubtedly, environmental disputes contribute to the broader challenge of the existing backlog of cases. cases[24]. According to analysis by the Centre for science and environment, in 2019 alone, more than 50,000 environmental cases were pending[25]. Furthermore, according to the information submitted by the government in Rajya Sabha, on August 6, 2018, around 110 cases before the Supreme Court and approximately 3,573 before the National Green Tribunal. This reflects a serious imbalance between the volume of cases and the available judicial capacity.[26]

The judiciary itself has acknowledged this concern. In *Bengaluru Development Authority v. Sudhakar Hegde*, Justice Dr. D.Y. Chandrachud highlighted the growing burden of environmental litigation and observed that "*Courts today are faced with increasing environmental litigation. A development project that was conceptualized as early as in the year 2005 has surfaced before this Court over 15 years later……the period that has led up to the present litigation has involved a myriad of decisions and processes, each contributing to the delay of a project that was outlined to subserve a salient development policy of decongesting the city……it is not only the environment that suffers a serious setback, but also the development of the nation.*" [27]

21 Antonio Herman Benjamin, *We, the Judges, and the Environment*, 29 PACE ENVTL. L. REV. 582, 584 (2012).

22 EJATLAS, *India*, https://ejatlas.org/country/india (last visited June 26, 2026).

23 Government of India, Ministry of Law and Justice, Department of Justice, *Pendency of Cases*, Lok Sabha Unstarred Question No. 2362, annexes I–II (Feb. 13, 2026).

24 Ministry of Law & Justice, *Year End Review: Department of Justice*, PRESS INFO. BUREAU (Dec. 30, 2021).

25 State of India's Environment 2021 (Sunita Narain et al. eds., 2021).

26 MINISTRY OF ENV'T, FOREST & CLIMATE CHANGE, *Cases Pending in Supreme Court and NGT*, PRESS INFO. BUREAU (Aug. 6, 2018, 5:52 PM).

27 Bengaluru Development Authority v. Sudhakar Hegde, (2020) 15 SCC 63.

Referring to United Nations', '*Environmental Rule of Law: First Global Report' (2019)*[28]', the Court observed that environmental rule of law refers to environmental governance that is undergirded by the fundamental tenets of rule of law. The Court reiterated that the rule of law regime is one that has effective, accountable, and transparent institutions; responsive, inclusive, participatory, and representative decision-making; and public access to information[29]. Referring to its earlier decision in *H.P. Bus-Stand Management & Development Authority v. Central Empowered Committee*[30], the Supreme Court observed that rule of law recognises the vital role that institutions play in governance and focuses on defining the structural norms and processes that guide institutional decision-making.[31]

Further, the importance of the features of mediation like transparency, expert evaluation and public participation was further emphasised in *Hanuman Laxman Aroskar v. Union of India*. The case was concerned with the environmental clearance granted for the Mopa Airport project.[32] The Supreme Court held that environmental decision-making must be based on adequate disclosure, reasoned expert appraisal and meaningful consideration of environmental concerns. It described responsive, inclusive, participatory and representative decision-making as an essential component of environmental rule of law.

Therefore, this decision is particularly relevant because consensual settlement cannot replace statutory environmental assessment or public participation. Mediation must supplement these safeguards and should not permit project proponents and government authorities to privately compromise environmental obligations or third-party rights.

Parallelly, Green mediation has a theoretical basis in the overall concept of alternative dispute resolution (ADR). The principles of cooperation, flexibility, and justice through participation underpin the ADR framework. In the context of environment-related issues, these theoretical perspectives have close links with those of sustainable

28 United Nations Environment Programme, *Environmental Rule of Law: First Global Report* (2019), https://www.unep.org/resources/assessment/environmental-rule-law-first-global-report.

29 In re T.N. Godavarman Thirumulpad v. Union of India, 2024 SCC OnLine SC 86, ¶ 23 (India).

30 H.P. Bus-Stand Management & Development Authority v. Central Empowered Committee, (2021) 4 SCC 309, ¶¶ 47–50 (India).

31 Editor, *'Constitutional Courts Monitor Functioning of Environmental Bodies to Protect Environment and Ecology'; SC Lays Down Guidelines for Effective Functioning of Authorities*, SCC Times (Feb. 1, 2024), https://www.scconline.com/blog/post/2024/02/01/sc-lays-guidelines-for-effective-functioning-of-environmental-authorities-legal-news/.

32 Hanuman Laxman Aroskar v. Union of India, (2019) 15 S.C.C. 401 (India).

development, intergenerational justice, and the precautionary approach. Sustainable development is propounded in the Brundtland report as "*development that meets the needs of the present without compromising the ability of future generations to meet their own needs*"[33] . Environmental conflicts tend to be complex and often are particularly suited to negotiation-based processes rather than confrontation since most involve multiple parties and complex scientific and technical considerations.[34]

Environment Justice represents a fundamental principle of Green Mediation since it concerns equitable consideration of environmental costs and benefits for all concerned parties[35]. ADR, particularly mediation, allows for greater inclusivity and the inclusion of voices from marginalized sectors of society, which conforms to the principles of democracy and equity.

Green mediation gains its legality from the perspective of domestic and international laws. For instance, in India, section 89 of Code of Civil Procedure, 1908 [36]enables courts to refer disputes, inclusive of environmental disputes, to ADR processes such as mediation and conciliation. The applicability of Section 89 was elaborated by the Apex Court in *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.* It explained that courts must consider whether disputes are suitable for ADR, although actual referral is not required in categories that are inherently unsuitable. Significantly, representative proceedings involving public interest or the interests of persons who are not before the court were identified as ordinarily unsuitable for conventional ADR.[37]

This limitation is directly relevant to environmental disputes, which frequently affects communities, future generations and ecological interests that cannot participate as ordinary negotiating parties. Consequently, Section 89 alone cannot provide a complete foundation for green mediation. A specialised environmental mediation framework must require stakeholder representation, public notice, scientific scrutiny and judicial or NGT supervision.

33 World Comm'n on Env't & Dev., *Our Common Future* 43 (1987).

34 Lisa Nakachwa, *Alternative Dispute Resolution in Environmental and Climate Change Disputes*, 4 NCIA Alt. Disp. Resol. J. 63, 68-69(2024).

35 Rawnak Miraj Ul Azam, *The Integrated Environmental Justice ADR Paradigm: Institutionalizing Equity and Reciprocity in Transboundary Conflict Resolution*, 43 Conflict Resol. Q. 441,447-48 (2026).

36 Code of Civil Procedure, 1908, § 89, No. 5, Acts of Parliament, 1908 (India).

37 Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd., (2010) 8 S.C.C. 24, ¶¶ 18–19 (India).

Further, section 19 and section 20 of National Green Tribunal Act, 2010[38] directly enable natural justice and sustainable development, indirectly promoting environmental mediation through its procedure. Legal Services Authorities Act, 1987 makes provisions for Lok Adalat, another form of similar ADR mechanism. Thus, the aforementioned laws create an enabling legal framework for environmental mediation.

From an international perspective, some examples include Permanent Court of Arbitration (PCA) Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or the Environment (2001).[39] It establishes special rules for dealing with disputes relating to natural resources and the environment. Another example would be the principle 10 of Rio Declaration on Environment and Development (1992)[40].

The other crucial theoretical element is the movement from right-centered litigation to interest-centered negotiations. Whereas courts are concerned with the question of rights and responsibilities, mediation centers on exploring the interests involved, allowing for the development of innovative and sustainable solutions. This point is especially critical for environmental disputes, where long-lasting impacts on the ecology have to be considered, as well as many other stakeholder groups.[41]

In conclusion, it could be argued that the theoretical basis of green mediation lies in the convergence of environmental legislation, issues of social justice, and participatory governance. Through combining the legislative elements and principles of alternative dispute resolution, green mediation becomes an effective tool for achieving sustainability.

III. Role Of Mediation In Environmental Justice: The Prospects And Concerns

The role of mediation in dispute resolution has become the need of the hour in the environmental sphere because of its ability to resolve multifaceted and multi-

38 National Green Tribunal Act, 2010, §§ 19–20, No. 19, Acts of Parliament, 2010 (India).

39 Sai Ramani Garimella, *Environmental Dispute Resolution, ADR Methods and the PCA Arbitration Rules*, ILI L. Rev., Summer 2016, at 212–14.

40 Rio Declaration on Environment and Development, annex I, princ. 10, U.N. Doc. A/CONF.151/26 (Vol. I) (Aug. 12, 1992).

41 Nuraisyah Chua Abdullah, *Going Green in Urbanisation Area: Environmental Alternative Dispute Resolution as an Option*, 170 Procedia Soc. & Behav. Sci. 401, 405 (2015).

stakeholder disputes. Mediation, however, creates an environment for discussion and agreement on how best to resolve disputes while taking into account the needs of all parties involved. The participants of the environmental disputes include government agencies, companies, local communities, as well as organizations from civil society. The nature of such disputes precludes the use of traditional legal instruments, as there can be several parties to a dispute, which have different interests and perspectives[42].

Stakeholder participation has become one of the major aspects of the process of mediating environmental disputes. Environmental disputes are likely to affect the local population, including marginalized individuals who may not have sufficient access to traditional legal processes. Thus, mediation offers stakeholders a possibility to express their positions and to contribute to the resolution of the dispute. Such an inclusive approach corresponds to the broader concept of environmental justice, which aims at promoting inclusive processes of decision-making.[43]

One other important function of mediation is the creation of innovative solutions. As noted above, many environmental disputes cannot be resolved using purely legal means because they often require scientific knowledge and expertise. Courts are always bound by law, while mediations allow people to create innovative solutions to their problems. For example, mediators may develop environmental restoration projects that will restore ecological balance to an area. Other examples of innovative solutions developed during mediations include compensation schemes and community development projects.

Environment Mediation also helps save time and money in resolving environmental disputes. The process of litigation usually takes a lot of time, which is a problem when there are urgent environmental issues involved. Moreover, most courts are burdened with heavy caseloads and delays are not uncommon. On the contrary, it does not involve the court process, and therefore can help resolve cases faster. Mediation may also save litigants money because they do not have to pay court fees and lawyer's fees.[44]

42 Shyam Divan & Armin Rosencranz, Environmental Law and Policy in India: Cases, Materials, and Statutes 45 (2d ed. 2001).

43 Madhuri D. Kharat & Ajay B. Sonawane, *Significance of Mediation as an Alternative Dispute Resolution (ADR) Mechanism for Environmental Disputes in India*, in Justice in Transition: Law and Society in Changing *India* 25 (Tejaswi R. Avhad & Neeruja Sagar eds., 2026).

44 Madhuri D. Kharat & Ajay B. Sonawane, *Significance of Mediation as an Alternative Dispute Resolution (ADR) Mechanism for Environmental Disputes in India*, in Justice in Transition: Law and Society in

Apart from being a conflict settlement technique, mediation helps prevent future conflicts while also creating and fostering relationships between the parties involved. The occurrence of environmental disputes occurs due to continued interaction between stakeholders in the process. By promoting mediation, communication, and cooperation can be fostered, enabling better understanding and exchange of opinions. This way, not only is the immediate dispute resolved, but the chances of similar future conflicts are minimized as well. This preventive role is crucial when dealing with environmental disputes because of the need for sustainability.[45]

Mediation has also found its way in the settling of climate change disputes. With the rise of climate litigation on a global level, ADR techniques have been utilized to settle disputes concerning carbon emissions, renewable energy initiatives, and other environmental compliance matters. Not only will mediation allow for faster settlement of disputes without lengthy court processes that might delay climate action, but the process will incorporate science and policy as part of the solution.

Also, mediation complements the principle of restorative environmental justice, which seeks to restore damaged environments, focusing on healing rather than punishment and accountability. This principle entails addressing environmental injustice by involving communities, seeking accountability from wrongdoers, and implementing ecological restoration projects. Green mediation shares many characteristics with the restorative justice model, hence reinforcing the idea of restorative environmental justice.[46]

While mediation offers numerous benefits, it also has some limitations. For instance, the process may be biased due to disparities between the parties involved, making the settlement unenforceable. Also, the parties may not know about environmental mediation, hindering the process. These problems can be overcome through capacity building programs aimed at training individuals in environmental mediation techniques and skills. On the international end, the trend of integrating ADR processes into environmental treaties and legal instruments is gaining momentum.[47]

CHANGING INDIA 25 (Tejaswi R. Avhad & Neeruja Sagar eds., 2026).

45 Aasmi Bali, *Green Dispute Resolution: The Role of ADR in Climate Change Litigation*, NICKELED & DIMED (Sept. 18, 2025), https://nickledanddimed.com/2025/09/18/green-dispute-resolution-the-role-of-adr-in-climate-change-litigation/.

46 Deni Setiyawan, Wahab Aznul Hidaya, Hadi Tuasikal & Siti Afiyah, *Green Restorative Justice: Environmental Enforcement and Justice*, 18 REV. GESTÃO SOC. AMBIENT., NO. 2, ART. E05194, AT 5–6 (2024).

47 Sai Ramani Garimella, *Environmental Dispute Resolution, ADR Methods and the PCA Arbitration Rules*, ILI L. REV., SUMMER 2016, AT 212–14.

In summary, mediation is a multi-faceted strategy in environmental disputes that promotes participation, innovation, reduces costs and delays, and encourages collaboration between parties. It is due to its suitability to the objectives of environmental justice and sustainability that it is a necessity in today's environmental policy. It should be expected that, as environmental problems escalate, mediation will become increasingly significant as a viable option for settling disputes in a practical manner.

IV. Comparative Analysis Of Frameworks On Green Mediation Globally

Comparative study of green mediation shows that various approaches have been undertaken by different jurisdictions depending upon their legal systems, capacities, and environmental concerns. A meaningful comparison should not merely list national statutes. Thus, sections cover five systems against seven criteria: legal authority, institutional location, mediator expertise, accessibility and participation, transparency, enforceability, and evidence of outcomes.

New Zealand: Specialist Court Integration

New Zealand's model is institutionally strong because mediation is embedded in the environmental court rather than left to ad hoc private referral. The court that appeals is assessed by an environment judge and except in rare unsuitable cases, referred to an environment commissioner for mediation. Commissioners are trained in ADR and bring planning or environment expertise. this arrangement reduces referral friction, connects settlement with formal proceedings and places technical competence inside the institution. [48]

The effectiveness must be stated carefully; however, the court publishes timeliness statistics showing 359 judgements in 2024[49], with most delivered within three months, but the published table does not isolate mediation settlement rates. The model demonstrates institutional use and procedure integration, not concluding proof that every mediated outcome is environmentally superior. Its most transferable features are early screening, specialist neutrals, and judicial oversight. The dialogue-based approach has been successful in resolving issues related to pollution and land use in

48 Environment Court of New Zealand, *Mediation*, https://environmentcourt.govt.nz/court-process/mediation/ (last updated Oct. 29, 2024).

49 Environment Court of New Zealand, *Annual Statistics*, https://www.environmentcourt.govt.nz/annual-statistics/ (last updated Aug. 22, 2025).

a short period of time.[50]

Canada: Regulator - Based ADR and Reported Outcomes

Section 73 of the Canadian Energy Regulator Act[51] requires the regulator to provide ADR where all parties consent. The service addresses property damage, compensation, route location, crossings, negotiated agreements, land acquisitions, and post -construction reclamation. The regulator reports that approximately 98% of disputes referred to ADR are resolved outside a formal hearing.[52] This is the clearest quantitative claim among the systems considered.

The figure shouldn't be generalized to all environmental controversies. Referral is voluntary. The case mixes in concentrated in regulated energy projects which often involve bilateral or bounded disputes. Moreover, resolution doesn't independently establish fairness or ecological performance. Even so, the Canadian model supports three practical conclusions: free institutional facilitation matters; pre-mediation assessment improves suitability screening; and unresolved issues must remain capable of returning back to the formal regulator. Gradually, 20 private and public intuitions were developed to resolve such issues and mediation has been incorporated into the impact assessment process by the Impact Assessment Act.[53]

United States: A Portfolio Showing Success and Failure

The United States institutional federal environmental collaboration through the national centre environmental conflict resolution, which provides assessment, convening mediation, facilitation, stakeholder engagement and technical process design federal environmental disputes. Its portfolio includes water allocation, contaminated lakes, endangered species, forest management, transportation, tribal consultation, and ecological restoration. The variety demonstrates that environmental mediation is not confined to post litigation settlement, it can shape planning, inter agency coordination and adaptive management. [54] The environmental

50 Anusha M. Virupannavar, *A Comparative Analysis: Composition of Environmental Courts of India, New Zealand, and Australia*, 2 Ann. Int'l J. Vaikunta Baliga Coll. L. 273, 280–81 (2025).

51 Canadian Energy Regulator Act, S.C. 2019, c. 28, s. 10, § 73 (Can.).

52 Canada Energy Regulator, *Alternative Dispute Resolution*, https://www.cer-rec.gc.ca/en/consultation-engagement/alternative-dispute-resolution/ (last modified Jan. 31, 2022).

53 Zahra Bakhtiari, *A Review of Environmental Conflict Resolution: Approaches, Challenges, and Emerging Trends*, 3 Discover Glob. Soc'y, art. 131, at 5–6 (2025).

54 Permanent Ct. Arb., *Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or the Environment* art. 1 (June 19, 2001).

dispute resolution through mediation began when *Gerald W. Cormick and Jane E. McCarthy* helped settle a long-standing conflict over the construction of a dam on the *Snoqualmie River*.[55]

Failure to settle may therefore still create procedural value, while apparent consensus may conceal exclusion. Evaluation should measure learning, narrowed issues, compliance, restoration, and durability as well as settlement[56]

South Africa: Strong Statutory Design, Uneven Capacity

Chapter 4 of South Africa's National Environmental Management Act expressly addresses fair decision making and conflict management. Section 17 and 18 authorise referral to conciliation, appointment of facilitators and conciliators, mediation recommendations and even court or tribunal referral while proceedings are suspended. The statute is normatively notable because conciliators must take account of environmental – management principles, including environmental justice and participation. [57]

South Africa, offers a better statutory template for developing jurisdictions than a purely general mediation law. Statutory permission is merely the first layer of institutional feasibility; without a funded roster, transparent referral rules, community support, technical experts, published outcome data, and monitoring, a sophisticated chapter may remain underused; the comparison thus separates formal legal design from operational capacity. The department of Forestry, Fisheries, and the Environment (DFFE) have a mediation unit as well as mediators. The process can be started by an individual and it should be prompt and cost effective.[58]

Japan: Administrative Pollution -Dispute Resolution

Japan's pollution- dispute settlement system is institutionally distinct from court -connected and regulator project models. The environmental Dispute coordination commission and prefectural commissions provide conciliation, mediation

55 American Bar Association, *Environmental Dispute Resolution: Past, Present, and Future*, https://www.americanbar.org/groups/dispute_resolution/resources/magazine/archive/environmental-dispute-resolution-past-present-future/ (last visited June 27, 2026).

56 Morris K. Udall & Stewart L. Udall Found., *John S. McCain III National Center for Environmental Conflict Resolution*.

57 National Environmental Management Act 107 of 1998 §§ 17–18 (S. Afr.).

58 Sithe Odwa Ngombane, *Alternative Dispute Resolution: A Mechanism for Resolving Environmental Disputes in South Africa* 35–36 (2018) (unpublished LL.M. thesis, University of the Free State).

arbitration, and adjudicatory procedures for disputes involving air pollution, water contamination, noise, vibration, offensive odour, ground subsidence, and soil pollution.[59] The model responds to the difficulty which victims individually may face in proving causation and sustaining ordinary civil litigation against technically sophisticated enterprises.[60]

Comparative Synthesis

No single model is universally superior. The focus of the legal system in these jurisdictions is on mediation systems that are well-structured, with trained professionals carrying out the process and under proper regulatory supervision. However, an analysis of the chosen jurisdictions clearly shows the trends regarding the implementation of green mediation.

Court- annexed mediation offers authority and an easy path back to adjudication, but may inherit court delay and legalism. Regulator- based mediation possesses technical and project specific knowledge but neutrality may be questioned where the regulator approved or supervised the pointed activity. While independent public centres convene broad collaborations but again, it all depends on voluntary agency support. Statutory conciliation provisions provide legitimacy, yet may remain dormant without staff, budgets, referral routines and published evaluation. At the international arena, ADR processes gain more legitimacy through the existence of specialized frameworks such as the PCA Optional Rules for Environmental Disputes (2001). The PCA Optional Rules offer a set of procedures specifically designed to address disputes related to natural resources and environmental problems. These specialized procedures show the increasing relevance of ADR processes within international law.[61]

These design features recur in the stronger models. Mediation is offered by a recognisable public institution, specialist environmental or planning expertise is available; unresolved issues can return to a court or regulator; and the process is connected to implementation through consent orders, regulatory conditions, or continuing institutional relationships. These above stated features matter more

59 Env't Dispute Coordination Comm'n, *Pollution Dispute Settlement System in Japan*, Ministry Of Internal Affs. & Commc'ns, Japan, https://www.soumu.go.jp/main_sosiki/hunso/english/index.html.

60 Env't Dispute Coordination Comm'n., *Characteristics of the System for Settling Environmental Disputes*, Ministry Of Internal Affs. & Commc'ns, Japan.

61 Sai Ramani Garimella, *Environmental Dispute Resolution, ADR Methods and the PCA Arbitration Rules*, ILI L. Rev., Summer 2016, at 210.

than whether a jurisdiction calls its process mediation, conciliation facilitation or collaborative governance.

The weakest comparative dimension is public evaluation. A credible evaluation must distinguish inputs, process, immediate outputs, and long-term outcomes. Without that distinction, green mediation is defended through selected success stories while litigation is criticized through aggregate delay

International and Cross-Border Disputes

The Permanent Court of Arbitration's Optional Rules for disputes relating to natural resources or the environment demonstrate the international demand for procedures adapted to scientific and technical complexity. Arbitration is not mediation, but the Rules reinforce a broader point: environmental dispute systems require specialized expertise and procedural adaptation. Cross-border mediation is most credible when linked to treaty duties, transparent scientific baselines, and a mechanism for recording and supervising commitments.

Position in India

India is one of the developing countries that have an enabling statutory framework for mediation but are still in an early phase of implementation. While promoting mediation at the National judicial conference on mediation and information technology, 48th CJI *N.V Ramana*, said[62] "*Active effort must be taken by courts to make negotiations and mediation mandatory as part of case management. With adequate cooperation from all stakeholders, ADR can emerge as a tool of social justice in the country. The concept of ADR, through Lok Adalats, Gram Nyayalayas, mediation and arbitration centres, has the potential to transform the legal landscape of India by providing millions of people a platform to settle their grievances." He further added: "Conflicts have a human face. One must have the foresight to look beyond the conflict. A dispute should not spoil your relationship. Prolonged litigation can drain resources and cause animosity, and conflicts can be resolved in a neutral environment, where both parties are in a win-win situation. After all, life is a balancing act*." This indicates a growing judicial recognition of ADR not merely as an auxiliary mechanism but as a structural reform tool capable of addressing pendency in specialized forums such as the NGT. While the majority of environmental cases before the National Green Tribunal are resolved via adjudicatory means, the

62 Env't Dispute Coordination Comm'n, *Characteristics of the System for Settling Environmental Disputes*, Ministry Of Internal Affs. & Commc'ns, Japan, http://www.soumu.go.jp/kouchoi/english/settlement/charact.html.

Mediation Act of 2023 provides a general framework that the courts and tribunal can follow. In the context of the National Green Tribunal, where technical complexity and high case volume often contribute to delays, such judicial endorsement strengthens the argument for institutionalizing mediation frameworks within the tribunal structure. Some cases in NGT have resulted in negotiated agreements on issues such as compensation and restoration of affected parties. Unfortunately, a lack of awareness, scarcity of mediators who are knowledgeable about both law and science, and a tendency towards judicial resolutions have hindered the widespread use of mediation in environmental matters.[63] While consensus-building in the traditional form of panchayat is available within communities, it is not yet integrated into modern environmental mediation.

Long story short, environmental mediation does not substitute for the judiciary but complements it, as long as there is an effort put into capacity development and creating awareness. This is true of countries that have implemented this strategy.[64] Mediation as a form of ADR is not widely used yet, although it is gaining ground through judicial endorsements and policy changes.[65]

Comparative Synthesis

An additional comparative analysis is related to the use of ADR mechanisms in addressing disputes associated with climate change. In most cases, disputes connected to renewable energy projects, carbon markets, and other environmental issues have been addressed through ADR mechanisms in various jurisdictions. Developed nations tend to have more developed structures of dealing with such disputes than developing nations, who are still struggling to adapt their ADR schemes to the new environment issues[66]. One of the main criticisms of using ADR to deal with such disputes is the potential influence that corporations may exert on the negotiations. Additionally, enforceability of mediated agreements varies from one country to another. In jurisdictions that are strongly supportive of ADR schemes, agreements

63 Dipankar Sharma & Aditi Choudhary, *Environmental Disputes and Resolution Through Mediation in India: A Study of Environmental Dispute Resolution Mechanism*, 11 Int'l J. Env't Scis. no. 7, 41, 47 (2025).

64 Mohak Kasat & Shruti Sharma, *Green Mediation – A Way Forward for Resolving Environmental Disputes*, 5 Int'l J. for Multidisciplinary Rsch., no. 6, at 9 (Nov.–Dec. 2023) https://doi.org/10.36948/ijfmr.2023.v05i06.8844.

65 *ADR in Environmental Law: Meaning, Mechanisms, Roles and Advantages*, The Legal School.

66 Aasmi Bali, *Green Dispute Resolution: The Role of ADR in Climate Change Litigation*, Nickeled and Dimed (Sept. 18, 2025).

reached through mediation are considered enforceable and binding by law. On the contrary, in jurisdictions with underdeveloped ADR systems, there are difficulties related to the enforcement of mediated agreements. Besides, cultural and socio-political dynamics also have a considerable impact on green mediation adoption. In some areas, traditional systems of conflict resolution involving active community engagement and reaching a consensus may perform a function comparable to that of modern mediation. Such traditional approaches may help develop new mechanisms of environmental mediation, especially when dealing with communities located outside urbanized environments[67]. Hence, comparative research proves that the mediation process should be adapted to different cultural settings, but without neglecting universal rules of environmental mediation.

Finally, the comparison demonstrates that green mediation has become quite popular internationally, although its efficiency is subject to several factors such as institutional and legislative framework and social acceptability. On one hand, developed jurisdictions provide a number of good examples of green mediation. On the other hand, developing states may contribute to the development of green mediation by introducing innovations into this field.

V. Challenges And Opportunities In Green Mediation

The developing nations like *India* have their own difficulties in adopting ADR in its green form, despite having an adequate legal framework to protect the environment. India's environmental dispute resolution process is based mainly on the courts, with institutions like the National Green Tribunal playing an instrumental part in the process. Nevertheless, ADR processes are increasingly considered supplementary means to resolve disputes.

Despite the proven efficacy of green mediation in the resolution of environmental disputes, there are some structural and practical barriers to its implementation. The first among them is the problem of the power gap between the involved parties often referred to as power imbalance. Usually, one party to an environmental dispute is represented by a corporation or a government institution, whereas the other side consists of small communities and socially disadvantaged people.[68] Hence,

67 Maria José Azar-Baud, *Environmental Proceedings from a Comparative Perspective When Substance Drives Proceedings*, Comparative Procedural Law and Justice, pt. XII, ch. 5, ¶ 338 (Burkhard Hess et al. eds., 2025).

68 Dipankar Sharma & Aditi Choudhary, *Environmental Disputes and Resolution Through Mediation in*

Mediation in this context, may become a tool for perpetuation of the inequality because the parties who lack resources and knowledge, may not be able to make fair negotiations.

Enforceability of mediated agreements is yet another important issue that should be addressed when discussing environmental disputes. Mediated agreements lack mandatory character since its enforcement is based only on willingness to cooperate. Consent plays a crucial role here. Which reflects the feature of party autonomy. Where the framework for alternative dispute resolution is not well-established and ambiguous, the enforcement procedures may become difficult thus diminishing the efficacy of mediation in environmental disputes.[69]

Another hurdle which arises due to this phenomenon is the lack of awareness and institutional recognition for the concept of green mediation. Environmental dispute resolution remains a process where litigation continues to play a major role, even in many other developing nations such as India. Although there have been instances where environmental tribunals have been created, still mediation does not form part of the existing system of resolving conflicts.

There also exists a problem of an insufficient number of skilled mediators and judges who hold an expertise in environmental science and law.[70]

Finally, it is important to understand that green mediation often takes place in cases where scientific expertise forms a key component of the dispute. As such, mediators have to understand any technical information that could have been gathered in regard to issues such as pollution, climate change or biodiversity.[71]

Despite the aforementioned difficulties, however, there are many opportunities inherent to green mediation, which make it a highly useful technique in environmental dispute resolution. The first one among those is the fact that the process of green mediation enables a quick and cheap settlement of disputes. Being faster than the lengthy court process, mediation helps to save time which is necessary to avoid

India: A Study of Environmental Dispute Resolution Mechanism, 11 Int'l J. Env't Scis. 41, 47 (2025).

69 Nuraisyah Chua Abdullah, *Going Green in Urbanisation Area: Environmental Alternative Dispute Resolution as an Option*, 170 Proc. Soc. & Behav. Sci. 401 (2015).

70 Christopher W. Moore, The Mediation Process: Practical Strategies for Resolving Conflict 215–16 (4th ed. 2014).

71 Dipankar Sharma & Aditi Choudhary, *Environmental Disputes and Resolution Through Mediation in India: A Study of Environmental Dispute Resolution Mechanism*, Int'l J. Env't Scis., at 41 (Sept. 2, 2025)

environmental damage and reduce expenses.[72]

Another advantage of green mediation is the possibility of reaching innovative and environmentally-friendly solutions that are not constrained by any legal considerations. For example, when disputing, the parties can come up with the idea to restore some environmental degradation and create a project that will be funded from a certain compensation for the damage caused.

An additional important opportunity is represented by the process of promoting participatory governance and environmental democracy through the use of mediation. Mediation promotes stakeholder engagement, involving such groups as local communities, NGOs, and specialists. Thus, the process becomes more transparent, which means that interests and problems of all interested parties are taken into account. Moreover, it will foster trust toward environmental governance systems.[73]

Moreover, green mediation may be extremely useful in the process of preventing any future conflicts. Through establishing relationships between stakeholders and engaging in cooperation and dialogue, prevention of conflicts is promoted. This aspect is especially relevant for environmental disputes when communication and interactions are needed for sustainable natural resources management. Thus, preventive mediation will help avoid any litigation processes.

The importance of the application of green mediation in overcoming the arising environmental problems, including the problems associated with global warming, is also being realized increasingly. As disputes involving projects on production of renewable energy, carbon dioxide emissions, and other aspects of environmental policy become more frequent, mediation offers a flexible and adaptable approach in resolving them. This type of mediation allows the use of scientific knowledge and policy considerations in dispute resolution, thus becoming suitable for dealing with complicated and intense environmental disputes.

To conclude, although there are numerous challenges in relation to green mediation, ranging from power imbalances to legal and cultural barriers, the benefits offered by green mediation outweigh potential drawbacks. In order to overcome the existing

72 Madhuri D. Kharat & Ajay B. Sonawane, *Significance of Mediation as an Alternative Dispute Resolution (ADR) Mechanism for Environmental Disputes in India*, in JUSTICE IN TRANSITION: LAW AND SOCIETY IN CHANGING INDIA 25 (Tejaswi R. Avhad & Neeruja Sagar eds., 2026).

73 Rawnak Miraj Ul Azam, *The Integrated Environmental Justice ADR Paradigm: Institutionalizing Equity and Reciprocity in Transboundary Conflict Resolution*, CONFLICT RESOL. Q. (2025).

drawbacks, it is necessary to conduct legislative and capacity-building efforts and raise awareness about the benefits of green mediation.

VI. Conclusion and Suggestions

Green mediation is a significant step towards changing the approach to environmental disputes resolution from an adversarial model to a collaborative one. It is closely linked to the principles of environmental justice through inclusiveness, equality, and sustainability. As the discussion above demonstrates, mediation is beneficial due to its ability to resolve disputes promptly, save money, involve all interested parties, and find creative and unique solutions. It is also useful for preventing future conflicts and fostering positive relations between stakeholders.

Nevertheless, some reforms should be taken into consideration for the proper use of green mediation by first and foremost, providing legal recognition and enforceability of mediated settlements. Secondly, it is necessary to build capacity through training environmental mediators due to complex technical aspects of the dispute. Thirdly, it is important to increase public awareness and institutional support in order to promote the adoption of green mediation techniques. Moreover, incorporating mediation into existing environmental regulations including NGT Act, 2010, would allow for better coordination.

Therefore, green mediation can help reconcile interests of different stakeholders when it comes to environmental problems. It can become an effective tool which will help in meeting ends of environmental justice under certain conditions.



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