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THE POWER OF NEGOTIATION: HARNESSING EFFECTIVE STRATEGIES FOR CONFLICT RESOLUTION

Pooja¹

I. ABSTRACT

In our society, there is an infamous line, "If there is a blessing of the god then we people never need to visit any Advocate and Doctor in our life until and unless they are practising in this field". Now, this statement reveals the mental aspects of our society such as the Multiplicity of cases in the Courts, Delay in Case Resolution, Not a sufficient mechanism for Alternative Dispute Resolution as it is only limited to the text in the Indian legal system, Costly Litigants fees, Difficult to understand their case proceedings and improper Case Management from the side of the subordinate courts and Advocates because of these negative factors people resist to go before the court or exhausted to fight in their case till the end. There are various data where we can see that there is an increase in the numbers of case filing, people are becoming aware of their rights, People raise their voices against the injustice and facilities provided by the indigenous person to file their lawsuits and so on which is easily available on the various official websites of the different news channels. Unfortunately, Reality is far worse than this sort of data because the major loophole in the procedure of our legal system is that the law only favours the people who have huge amounts of money to hire and afford the best Advocate. After all, there is a market for the advocates who never say no to taking any case even if they don't have any experience like how to deal with such cases even once or lightly handle the matter or they are just found to earn some money by rendering poor services which waste time and hard-earned money of the people. Due to their own and nearby relatives, neighbours, and friends' experiences, it is the better way to leave the matter or if any chance in the negotiation still exists then they would like to try their luck in it rather than go in those ways where there is not any end point of their journey.

¹ Rayat College of Law, Railmajra affiliated to Panjab University, Chandigarh.

II. KEYWORDS:

Pre-litigation negotiations, Delay in justice delivery, High pendency of cases, Expensive litigation process, Difficult legal procedures, Inadequate case management, Lack of experience among some advocates, Limited reach of formal justice system.

III. INTRODUCTION

Negotiation is not a new concept as it prevailed in our history for many years. Generally, in our daily lives, we negotiate with our Parents, Children, spouses, associates, Relatives, and Business connections accommodating and adjusting, giving and taking, and yielding on some points to get something more important. This is the art of finding solutions to differences by resolving disputes outside of court, saving valuable court time for more complex and serious cases. This reduces the backlog and allows courts to focus on cases that require judicial attention.

In the recent news, we can see the headlines of the Delhi Chalo protest 2024 at the Punjab-Haryana Shambhu border, near Patiala district in India where several farmer unions called protests to support their demands for debt waiver and a legal guarantee of minimum support price for all crops based on the C2+50% formula² (implementation of the Swaminathan committee's recommendations)³. A petition has been filed before the Punjab and Haryana High Court challenging the "obstructive actions" of the Central and State governments, including sealing of the border between Haryana and Punjab to "prevent the farmers from exercising their constitutional right to assembly and protest peacefully such as suspension of mobile internet services and so on"⁴ as such actions are against the provision of Article 19 of the Indian constitution.

Considering that, I am writing this research 15330(4) paper, the aim behind the negotiation is that there must be a win-win situation from both sides of the parties,

²<http://timesofindia.indiatimes.com/articleshow/108339967.cms>

utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst accessed on March 12,2024

³ https://www.business-standard.com/india-news/sc-calls-farmers-protest-serious-says-don-t-file-petitions-for-publicity-124030400471_1.html accessed on March 12,2024

⁴ <https://www.livelaw.in/high-court/punjab-and-haryana-high-court/farmer-protest-internet-suspension-haryana-border-seal-punjab-haryana-high-court-249290> accessed on March 12,2024

unlike suits. There are many legal provisions in our Indian legal system to deal with and regulate the concept of negotiation, in the developing phase.

IV. RESEARCH OBJECTIVES

Individuals/Government/Public Authorities etc., like to stand firm on their point and don't want to compromise when their interests and needs are in dispute. It implies the wastage of time, and mental as well as physical harassment to themselves but also to the people who have the same interest at large. Therefore, this approach is not beneficial for them to resolve their dispute. Unfortunately, Aggrieved people file their suits/applications/appeals/petitions before the court where such cases are already pending in bulk. Then, how can we expect the court to resolve our dispute effectively and efficiently?

Moreover, the Judiciary prefer negotiation in those cases whenever possible and in those cases where the state is a subject in dispute but cannot interfere in the work of the government. Whatsoever still it can direct the government to find ways to satisfy the needs and interests of the parties concerned with your schemes/laws/rules/regulations. However, the government can perform a vital role in resolving conflicts and there must be a focus on the interest of the public at large rather than making laws to enhance the powers of the businessmen. Therefore, there is a need to explore the application and significance of negotiation principles in various legal settings such as civil litigation, commercial transactions, labour disputes, international contracts, etc., and ensure critical analysis challenges, limitations and ethical issues that may hinder the negotiation process. This helps establish effective recommendations.

It is crucial to study significant court cases and real-life examples that demonstrate the power of negotiation but also lessons from failed negotiations. The aim is to distil practical insights. The negotiation aims to balance the interests of both the disputant sides, and it is a better option instead of avoiding the situation which costs the future.

V. RESEARCH QUESTIONS

1. In what kind of circumstances, the role of the government in negotiation is important for the resolution of disputes?
2. What power dynamics influence negotiation outcomes?
3. How can negotiation skills be leveraged to resolve complex disputes?
4. What strategies can promote the systematic use of negotiation?

VI. RESEARCH HYPOTHESIS

A. Circumstances Where The Role Of Government In Negotiation Is Important

- **Regulatory/policy disputes:** The Government plays a key role in negotiation through consultation workshops to develop regulations acceptable to stakeholders for smooth implementation. E.g. environmental laws.
- **Industrial relations disputes:** The Government acts as a neutral facilitator in negotiations between unions/management to resolve issues quickly and avoid economic disruption through timely intervention and mediation.
- **Community conflicts:** The Government promotes out-of-court mediation cells/committees to resolve disputes related to issues like land acquisition, and public projects through citizen participation and negotiated compromise.

B. Power Dynamics In Negotiations

- **Public opinion influence:** The balances power asymmetry between conflicting groups by taking an impartial standpoint keeping public interest in mind during negotiations on contentious issues.
- **Dependency relationships:** The Government leverages its authority and funding influence over dependent organizations/sectors to bring more balanced negotiations on policy reforms and program delivery.

- **Knowledge asymmetry:** The government supports negotiations by facilitating access to expert advisory panels and research to address information gaps between negotiating parties.

C. Leveraging Negotiation Skills

- **Joint fact-finding:** The government sponsors joint studies involving all stakeholders to address knowledge gaps and enable negotiations on findings of commonly agreed facts.
- **Trust building:** The government leads by example displaying integrity and accountability to foster a cooperative spirit through transparent and principled negotiations.

D. Strategies To Promote Negotiation

- **Mediation policy:** The Government enacts legislation recognizing court-annexed mediation and establishes special mediation courts/councils to promote out-of-court ADR systematically.
- **Training programs:** The Government imparts negotiation training to public representatives, lawyers, and bureaucrats to encourage early dispute prevention and management through negotiation role modelling.
- **Incentivizing settlements:** The Government policy creates performance incentives for The Government bodies/public officials preferring negotiated settlements over litigation-oriented functioning.

VII. RESEARCH METHODOLOGY

The research methodology adopted in this paper is purely doctrinal. Doctrinal research, also known as library-based research, is a distinctive method of conducting legal research that involves the study and analysis of existing legal provisions, case laws, and scholarly works. This methodology is well-suited for examining the theoretical and conceptual aspects of law and for providing a systematic exposition of legal doctrines and principles. The primary sources relied upon in doctrinal research include statutory materials, judicial precedents, and authoritative texts,

while secondary sources such as commentaries, articles and legal digests are also consulted. The research process involves the identification, collection, and critical analysis of these sources to draw logical conclusions and offer insights into the legal issues under investigation. Through doctrinal research, this paper seeks to provide a comprehensive and coherent understanding of the legal framework governing the subject matter at hand.

VIII. LITERATURE REVIEW

The paper draws upon constitutional law and other relevant statutes based on these Fundamental Rights under Articles 14, 19, and 21 guarantee rights to life, equality and livelihood which are better respected through negotiated settlements than prolonged litigation. Avoidance of Litigation Preservation of Relationships Cost-Effectiveness Confidentiality and more advantages are mentioned by the renowned author Dr. HARMAN SHERGILL SULLAR in his book *Alternate Dispute Resolution*.

The paper analyses in depth several Supreme Court judgments such as *Afcons Infrastructure Ltd. v Cherian* AIR 2010 SC 2468, *Vidya Drolia v Durga Prasad Drolia*, (1995) 2 SCC 444, *Shriram City Union Finance Corporation v Rama Chandran Menon*, (2013) 5 SCC 454, *Brahmbhatt Pratapbhai Bhimabhai v Kantaben Vinodbhai*, SCA 1562/2015. In these judgements, the court itself accepted the hindrances in the judicial procedure and reiterated its object that justice must be awarded to everyone whose rights are hampered. For their own sake, Individuals shall prefer to resolve their matter themselves by negotiation as they deem fit.

The literature reviewed in the paper provides a comprehensive view of the emergence of the need for negotiation because most of the cases have been filed for the sake of taking revenge, satisfying their ego, harassing others and more ulterior motives. However, negotiation is only successful when both parties are ready to agree at one point. The paper seeks to analyze the nuances of the law on this subject by examining statutory provisions alongside authoritative judicial pronouncements.

IX. MEANING, DEFINITION AND EXPLANATION

Negotiation is an interchange between two or more parties in an attempt to reach a compromise and is communication for persuasion. It is a process central to amicable dispute resolution globally. In India, the relevant legal framework requires comprehensive review. This paper examines the negotiation system through statutory provisions, precedents and scope for reforms.

Negotiation means a dialogue between two or more parties to resolve their differences and arrive at a mutually agreeable settlement. It involves direct contact between the parties who themselves engage in the discussion⁵.

Negotiation refers to a voluntary discussion between parties aimed at reaching an agreement. It involves flexibility, communication and compromise to address conflicts cooperatively rather than through litigation. Bargaining denotes assertion of demands while mediation refers to intervention by third parties facilitating negotiations. The short of resolution by an adjudicative body like a court, or the use of muscle or money to shock or buy out then negotiation is the way to find an answer to end the dispute. The more the dispute affects the parties, the greater the need to negotiate⁶. Example: It can take place between buyers and sellers, employers and prospective employees, two or more governments, and other parties⁷.

X. HISTORICAL BACKGROUND AND EVOLUTION

Ancient Indian texts like Arthashastra advocated for dispute avoidance through diplomacy⁸. After independence, Law Commission reports recommended the ADR system⁹. In 1976, The Supreme Court passed a resolution for the establishment of mediation centres. Pre-litigation compulsory referrals emerged in 2001. Commercial Courts Act 2015 promoted voluntary negotiations.

⁵ Alternate Dispute Resolution by DR. Harman Shergill Sullar , Topic ADR Techniques and Process, Subtopic Negotiation on the page no.56.

⁶ Black's Law Dictionary, Definition of 'Negotiation' (11th Ed., 2019).

⁷ <https://www.investopedia.com/terms/n/negotiation.asp> accessed on March 13,2024.

⁸ Kautilya, Arthashastra (Trans. by R. Shamasastri, 1909), Bk. 3, Ch. 10-13.

⁹ Law Commission of India, 1st Report (1955), Ch. 16.

XI. COMPARISON WITH OTHER COUNTRIES

In the USA, the Federal Arbitration Act of 1925 promoted arbitration but ADR Courts were established under the Alternative Dispute Resolution Act of 1988¹⁰. In the UK, the UK Civil Procedure Rules 1998 mandate pre-action protocols for early settlement¹¹. In Singapore, the Singapore Mediation Act 2017 established authority for court me¹²on. Indian laws are at an early stage compared to developed mediation cultures abroad.

XII. LEGAL PROVISIONS AND PROCEDURE

A. Constitutional Law¹³

1. *“Article 38(2) - The state shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. This lays the foundation for alternative dispute resolution mechanisms like negotiation which promote social justice.”*
2. *“Article 39A - The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen because of economic or other disabilities. This allows for measures like court-annexed mediation which promotes access to justice through negotiation.”*
3. *Directive Principles of State Policy under Article 38¹⁴ promote principles like settlement of disputes by arbitration/mediation.*
4. *“Under Articles 14, 19, and 21¹⁵ guarantees fundamental Rights rights to life, equality and livelihood which are better respected through negotiated settlements than prolonged litigation.”rolonged litigation.”*

¹⁰ Alternative Dispute Resolution Act, Pub. L. No. 101-552, § 2, 104 Stat. 2736 (1990).

¹¹ Civil Procedure Rules, 1998, Part 36 (UK).

¹² Mediation Act, 2017, No. 9 (Singapore)

¹³ <https://legislative.gov.in/constitution-india> accessed on March 15,2024

¹⁴ <https://legislative.gov.in/constitution-india> accessed on March 15,2024

¹⁵ <https://legislative.gov.in/constitution-india> accessed on March,152024

5. *"A concurrent List under the Seventh Schedule¹⁶ enables the Centre and States to enact legislation for mediation/conciliation as part of the administration of justice."*
6. *"Article 253¹⁷ empowers Parliament to enact laws implementing international treaties to which India is a signatory, promoting cross-border commercial arbitration and settlements."*

B. Code of Civil Procedure 1908¹⁸

"Under Orders X and XXIII, courts can refer disputes to judicial mediation or mediation centres to explore the possibility of settlement through negotiation before a full-fledged trial."

C. Code of Criminal Procedure, 1973¹⁹

"Section 265 provides for the settlement of criminal cases through negotiation and compromise before filing of charge sheet subject to the court's approval."

D. Legal Services Authorities Act, 1987²⁰

"Established National and State Legal Services Authorities to provide free legal aid and facilitate alternative dispute mechanisms including lok adalats where cases are settled through negotiation."

E. Commercial Courts Act, 2015²¹

"Section 12A mandates case management hearings for exploring pre-trial settlements by commercial courts for exploring the possibility of settlement/negotiation before trial wherever feasible."

F. Specific law statutes

"Certain special enactments like the Indian Contract Act, of 1872²², Family Courts Act²³, of 1984, and Industrial Disputes Act, of 1947²⁴ deal with facets of negotiated settlements in their respective realms."

¹⁶ <https://legislative.gov.in/sites/default/files/COI-English.pdf> accessed on March 15, 2024.

¹⁷ <https://legislative.gov.in/constitution-india> accessed on March 15, 2024.

¹⁸ <http://indiacode.nic.in/handle/123456789/2150?locale=en> accessed on March 15, 2024

¹⁹ <https://indiacode.nic.in/handle/123456789/2155?locale=en> accessed on March 15, 2024.

²⁰

<https://legalservicesauthority.gov.in/sites/default/files/THE%20LEGAL%20SERVICES%20AUTHORITIES%20ACT%201987.pdf> accessed on March 15, 2024

²¹ Commercial Courts Act, 2015

- <https://commercialcourts.gov.in/writereaddata/Portal/Image/Notification%20pdf/Act-Commercial-Courts-2015.pdf> accessed on March 15, 2024

G. Competitions Act, 2002²⁵

“Provides for settlement of competition law disputes through negotiations between parties with CCI approval to avoid lengthy litigation.”

H. Arbitration and Conciliation Act, 1996²⁶

“Provides the legal framework for arbitration, conciliation and alternative dispute resolution mechanisms in India. Promotes negotiated settlements through arbitration and conciliation. Assembling relevant statutory frameworks indicated widespread acknowledgement yet a lack of a coherent systematic approach.”

XIII. CASE LAWS AND PRECEDENTS :

- *Vidya Drolia & Ors v Durga Prasad Drolia & Ors (1995)*²⁷: Delhi HC held that the settlement of family disputes through Arbitration/Mediation over litigation and even non-compoundable disputed matters can be settled through negotiation upheld by the court and enforced. Also, upheld mediated family dispute settlements.
- *Afcons Infrastructure Ltd. v Cherian Varkey Construction Co. (P) Ltd. & Anr., (2010)*²⁸: SC emphasized the benefits of timely mediation such as reducing case pendency and costs and recognized pre-litigation mediation benefits. Upheld pre-litigation compulsory mediation reference under O. VIII Rule 1-A CPC. Thereby, Settlement through MoU negotiated under mediation was recognized, avoiding protracted litigation. mediation such as reducing case pendency and costs and recognized pre-litigation mediation benefits. Upheld pre-litigation compulsory mediation reference under O. VIII Rule 1-A CPC. Thereby, Settlement through MoU negotiated under mediation was recognized, avoiding protracted litigation.

²² <https://indiacode.nic.in/handle/123456789/2156?locale=en> accessed on March 15,2024.

²³ <http://indiacode.nic.in/handle/123456789/1708?locale=en> accessed on March 15,2023

²⁴ <https://legislative.gov.in/industrial-disputes-act-1947> accessed on March 15,2024.

²⁵ https://www.cci.gov.in/sites/default/files/cci_pdf/competitionact2012.pdf accessed on March 15, 2024

²⁶ https://indiacode.nic.in/handle/123456789/1978?sam_handle=123456789/1362 accessed on March 15,2024.

²⁷ (1995) 2 SCC 444

²⁸ AIR 2010 SC 2468

- *Shriram City Union Finance Corporation Ltd. v. Rama Chandran Menon* (2013)²⁹: SC emphasized the importance of neutral/impartial mediators for effective alternate dispute resolution. Highlighted the blurred line between mediation and adjudication if presiding officers act as mediators as well. It highlighted the need for neutral mediators. highlighted the need for neutral mediators.
- *Brahmbhatt Pratapbhai Bhimabhai v Kantaben Vinodbhai* ³⁰ : Gujarat HC directed focusing on disputed issues rather than positional arguments during negotiations and suggested effective case management to explore out-of-court settlements and focused on issues, not positional stances during negotiations.
- *Rupa Ashok Hurra v Ashok Hurra & Anr* (2002)³¹: SC directed separating family issues based on emotions from factual matters for counselling-mediated talks. Also, recognized negotiation as a viable means of resolving family disputes amicably over prolonged litigation. Overall, this case differentiated family dispute issues from emotions. Landmark rulings evinced a progressive judicial outlook yet the need for clear guidelines remained. differentiated family dispute issues from emotions. Landmark rulings evinced a progressive judicial outlook yet the need for clear guidelines remained.

XIV. DOCTRINES AND THEORIES

A. Pacta Sunt Servanda:

This term is derived from the Latin maxim, and it means "agreements must be kept". It is a fundamental principle of contract law that negotiated settlements entered during mediation/arbitration must be honoured. Indian courts have consistently upheld this doctrine, treating mediated settlements at par with decrees to provide finality and certainty to dispute resolution and obligates upholding negotiated agreements under contract law.

²⁹ (2013) 5 SCC 454

³⁰ SCA 1562/2015

³¹ Writ Petition (civil) 509 of 1997 <https://Indian%20Kanoon%3A-https%3A//indiankanoon.org/doc/123456797/,%2D%20Rupa%20Ashok%20Hurra> accessed on March 15, 2024.

<https://www.legalserviceindia.com/legal/article-1930-rupa-ashok-hurra-v-s-ashok-hurra-and-anr-the-birth-of-curative-petition.html>

B. Interest-Based Bargaining Theory:

This theory propounded by Fisher and Ury emphasizes separating people from problems and focusing on interests rather than positions. It encourages focusing on mutual needs rather than inflexible demands. That means exploring mutually acceptable options through cooperation instead of competing stances during negotiations. Indian precedents like *Brahmbhatt*⁶ have endorsed shifting focus from arguments to actual concerns, incorporating this bargaining theory in practice.

C. Best Alternative to Negotiated Agreement:

This principle asserts that negotiated settlement through open dialogue is preferable over other alternatives like litigation involving risks and costs. For effective negotiations, the BATNA of each party must be stronger than an unwillingness to agree on reasonable terms. asserts no better alternative than a mutually acceptable agreement. Indian precedents endorsed these doctrines yet lacked a comprehensive theoretical basis. Landmark cases like *Afcons* established no better solution than a mutually agreed compromise through mediation upholding this negotiation theory.

XV. FUTURE IMPLICATIONS

If pre-litigation negotiations are systematically promoted then it could provide viable solutions and cope with rising litigation and arbitration costs. The proposed mediation reforms bill and amendments to the 32/Commercial Courts Act address these issues³². However, educating the public and professionals on the benefits of negotiations³³ remains a key challenge. Therefore, proper documentation and enforceability issues require attention remains a key challenge. Standardizing documentation and enforceability issues require attention.

XVI. CONCLUSION, SUGGESTIONS & RECOMMENDATIONS

Overall, Negotiation facilitates settlements between or among the parties to avoid the time waste, expense, and uncertainty of a lawsuit. Ultimately, Settlements can preserve relationships between parties who may have otherwise become adversarial

³² <https://dashboard.doj.gov.in/eodb/reform.html> accessed on March 13,2024.

³³ <https://prsindia.org/billtrack/the-commercial-courts-commercial-division-and-commercial-appellate-division-of-high-courts-amendment-bill-2018> accessed on March 13,2024.

and are more cost-effective than pursuing a lawsuit, confidential, unlike court proceedings.

The need to opt for Negotiations because they can resolve disputes amicably quickly and efficiently without the need for formal litigation, prevent the filing of frivolous or unnecessary cases, reduce the burden on courts, facilitate agreements that resolve disputes, avoid the lengthy and costly process of traditional litigation, speed up case resolution leading to faster and more satisfactory outcomes. Moreover, Negotiations can help the courts to identify and prioritize cases that require immediate attention. This allows courts to allocate resources more effectively and manage their caseload efficiently. Additionally, it saves litigants significant time and money compared to traditional litigation. This makes justice more accessible and reduces the financial burden on individuals and businesses. Negotiations foster communication and understanding between disputing parties. Cases like *ICICI Bank Ltd. v. Prakash Industries Ltd. (2019)* & *Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd. & Ors., (2020)* where the Supreme Court of India emphasized the significance of pre-litigation mediation and settlement negotiations. The court stressed that parties must attempt alternate dispute resolution methods, including mediation, before resorting to litigation. This decision highlighted the need for parties to engage in good-faith negotiations before moving to the formal legal process.

Additionally, there is a requirement for joint efforts from the side of the legislature and executive for the Comprehensive mediation & negotiation laws, creating specialized institutions and training manpower is necessary to realize the negotiation system's true potential of furthering access to cooperative justice. No doubt, The Indian government and Judiciary have recognized the importance of pre-litigation negotiations and have implemented various initiatives to promote them, including Establishing Lok Adalat (people's courts) for quick and informal dispute resolution, Encouraging the use of mediation and conciliation centres, providing proper training and support (especially financially and keeping in mind the schedule) to lawyers and mediators. While Indian courts have contributed significantly to establishing a negotiation framework, statutory and systematic changes are required for its optimal functioning. Internationally acknowledged

theories and global best practices could strengthen dispute-resolution mechanisms at the domestic level.

Many times, it is suggested that “PREVENTION IS MUCH BETTER THAN CURE”. Likewise, planning is much easier but by the execution and implementation of these plans, we can find the loopholes and try to fix them as soon as possible instead of avoiding them. One more thing, execution demands a determination to overcome the challenges at any cost as it is not a formality but a duty. Success cannot be achieved overnight, likewise, negotiation also demands the support of our constitutional machineries and the lower-level authorities from where the foundation of the negotiation can be strong.

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- e. Legal Services Authorities Act, 1987
- f. Code of Criminal Procedure, 1973