ILE JOURNAL OF ALTERNATIVE DISPUTE RESOLUTION LAW REVIEW

VOLUME 3 AND ISSUE I OF 2025

APIS – 3920 – 0046 | ISSN – 2584-2005

Published by

Institute of Legal Education

https://iledu.in

RESOLUTION WITHOUT JUDGMENT: WHEN SETTLEMENT REPLACES JUSTICE

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BEST CITATION – CHETAN KUMAR DEEP, RESOLUTION WITHOUT JUDGMENT: WHEN SETTLEMENT REPLACES JUSTICE *ILE JOURNAL OF ALTERNATIVE DISPUTE RESOLUTION LAW REVIEW (ILE JADRLR),* 3 (1) OF 2025, PG. 14-29, APIS – 3920 – 0046 | ISSN – 2584-2005.

Abstract

The growing reliance on out-of-court settlements has significantly reshaped contemporary dispute resolution, particularly in jurisdictions burdened by judicial delay and increasing case complexity. While such settlements are often celebrated for their efficiency, flexibility, and capacity to reduce judicial backlog, their normative implications for justice delivery remain under-examined. This paper critically evaluates whether out-of-court settlements are merely a pragmatic response to judicial inefficiency or whether their expanding role risks diluting the core functions of adjudication. It argues that unlike court judgments, settlements do not result in authoritative determinations of rights and liabilities, nor do they contribute to the development of legal precedent. Consequently, although victims may receive compensation or closure, they may be deprived of substantive justice, public accountability, and legal vindication. At the same time, the paper acknowledges that with the increasing technical and commercial complexity of disputes, expert-driven settlement mechanisms such as arbitration and mediation are both necessary and desirable. Through doctrinal analysis, judicial observations, and comparative perspectives, the paper contends that the problem lies not in the existence of out-of-court settlements but in their overuse as substitutes for adjudication. It concludes that settlements must function as complementary mechanisms rather than replacements for judicial decision-making, in order to preserve justice, precedent, and the law-declaring role of courts.

Keywords: Out-of-court settlement, judicial delay, access to justice, ADR, court efficiency.

1. Introduction

The administration of justice is not limited to the resolution of disputes; it also encompasses the authoritative determination of rights, the attribution of responsibility, and the articulation of legal norms that guide future conduct. Courts do not merely settle conflicts between parties—they perform a broader constitutional function by declaring the law, ensuring accountability, and reinforcing public confidence in the legal system. In recent decades, however, this adjudicatory role has increasingly been supplemented, and in some cases displaced, by out-of-court settlements.

Out-of-court settlements have come to dominate the landscape of dispute resolution across civil, commercial, and even quasi-criminal domains. Negotiation, mediation, arbitration, and statutory settlement mechanisms are now actively encouraged by courts and legislatures as efficient alternatives to traditional litigation. This shift is often justified on pragmatic grounds: excessive judicial delay, mounting case pendency, rising litigation costs, and the growing technical complexity of disputes are cited as reasons why adjudication alone is no longer sufficient to meet the demands of modern justice systems.

In India, the narrative surrounding settlements is closely tied to judicial inefficiency. Chronic backlog, procedural delays, and infrastructural constraints have made litigation an arduous

and time-consuming process, prompting litigants to seek faster resolutions outside the courtroom. As a result, settlements are frequently portrayed as an inevitable and desirable response to systemic shortcomings. Yet, this efficiency-oriented narrative tends to obscure a more fundamental question: **does settlement deliver justice in the same manner as adjudication?**

Unlike court judgments, out-of-court settlements do not culminate in a reasoned determination of legality or wrongdoing. They focus primarily on compromise, compensation, or mutually agreeable terms, rather than on the vindication of rights or the imposition of responsibility. While such outcomes may provide closure to the parties involved, they do not generate precedents, clarify legal principles, or contribute to the development of the law. Consequently, the broader societal function of adjudication—the articulation of norms and the creation of legal certainty—remains unfulfilled.

This concern assumes particular significance from the perspective of victims and aggrieved parties. Justice, in its substantive sense, extends beyond monetary compensation or negotiated resolution. It includes public acknowledgment of harm, accountability of the wrongdoer, and moral as well as legal validation of the victim's claim. When disputes are routinely diverted into private settlement processes, victims may obtain relief without justice, and disputes may be resolved without responsibility being formally assigned.

At the same time, it would be reductive to dismiss out-of-court settlements as inherently deficient. The increasing complexity of contemporary disputes—particularly in areas such as commercial law, taxation, infrastructure, intellectual property, and finance—often necessitates expert-driven resolution mechanisms. Traditional courts, constrained by rigid procedures and limited technical specialization, may not always be best suited to adjudicate such matters efficiently or effectively. In this context, arbitration and mediation serve a valuable function by incorporating subject-matter expertise, procedural flexibility, and efficiency into dispute resolution.

The tension, therefore, lies not between adjudication and settlement per se, but between **justice and mere resolution**. The central problem is the growing tendency to treat settlements as substitutes for adjudication rather than as complementary mechanisms within a pluralistic justice system. When settlements are over-relied upon to compensate for judicial inefficiency, there is a risk that justice becomes privatized, precedent is sacrificed, and the law-declaring function of courts is weakened.

Against this backdrop, this paper examines whether out-of-court settlements are primarily the result of judicial inefficiency or whether they reflect a deliberate and rational response to the demands of modern dispute resolution. It argues that while settlements are indispensable in complex and technical disputes, their increasing dominance raises serious concerns regarding justice delivery, accountability, and legal development. The paper seeks to critically evaluate the implications of this shift and to propose a framework in which settlements enhance efficiency without undermining the foundational role of adjudication.

2. Conceptual Framework: Out-of-Court Settlements, Justice, and Adjudication

A meaningful analysis of out-of-court settlements requires conceptual clarity regarding three interrelated ideas: *settlement*, *justice*, and *adjudication*. Much of the contemporary debate surrounding alternative dispute resolution suffers from conceptual conflation, where efficiency of resolution is equated with justice delivery. This section seeks to disentangle these concepts and establish the analytical foundation for the arguments that follow.

2.1 Out-of-Court Settlements: Meaning and Forms

Out-of-court settlements refer to the resolution of disputes without a full adjudication on merits by a court of law. Such settlements may occur prior to the initiation of litigation, during the pendency of judicial proceedings, or even at the appellate stage. The defining characteristic of an out-of-court settlement is that the dispute is resolved through agreement or private determination rather than through a reasoned judicial decision declaring rights and liabilities.

Out-of-court settlements may take several forms, including:

- **Negotiated settlements**, where parties directly agree on terms without third-party intervention.
- **Mediation**, where a neutral facilitator assists parties in arriving at a mutually acceptable resolution.
- **Arbitration**, where disputes are decided by a privately appointed tribunal whose award is binding.
- **Statutory settlement mechanisms**, such as Lok Adalat or compounding frameworks.
- **Consent decrees**, where courts formally record settlements without adjudicating the underlying dispute.

While these mechanisms differ in procedure and degree of formality, they share a common outcome: the absence of a judicial pronouncement determining fault, legality, or entitlement on the basis of law.

2.2 Resolution versus Justice: A Normative Distinction

A central premise of this paper is that *resolution of a dispute is not synonymous with delivery of justice*. Resolution refers to the termination of conflict between parties, often through compromise or compensation. Justice, by contrast, is a broader normative concept encompassing fairness, accountability, legitimacy, and the recognition of rights.

Judicial adjudication performs multiple functions beyond dispute resolution. It involves:

- Determination of legal rights and obligations;
- Attribution of responsibility or wrongdoing;
- Articulation and clarification of legal principles;
- Creation of binding precedent;
- Public affirmation of legal norms.

Out-of-court settlements, by design, prioritise resolution over adjudication. They are concerned with ending disputes efficiently, not with declaring law or assigning fault. Consequently, while settlements may satisfy the private interests of the parties, they may fall short of fulfilling the public and normative functions traditionally associated with justice.

2.3 Absence of Judgment and Accountability

One of the most significant limitations of out-of-court settlements is the absence of a reasoned judgment. A judicial decision represents the application of law to facts, accompanied by reasons that explain why one party succeeds and another fails. This process ensures transparency, accountability, and legitimacy.

Settlements, however, do not require parties to admit wrongdoing, nor do they compel decision-makers to justify outcomes through legal reasoning. Liability is often neither established nor denied. As a result, while compensation may be paid, responsibility remains formally unassigned. This raises serious concerns, particularly in cases involving victims, where justice is not merely compensatory but also declaratory and affirmatory.

From the victim's perspective, the absence of a judgment may result in closure without vindication. The harm suffered is addressed monetarily, but the moral and legal recognition of wrongdoing—an essential component of justice—is often absent.

2.4 Non-Precedential Nature of Settlements

Another defining feature of out-of-court settlements is their inability to generate precedent. Judicial precedents perform a critical systemic function by ensuring consistency, predictability, and coherence in the application of law. They guide future conduct, inform legal interpretation, and contribute to the evolution of jurisprudence.

Settlements, by contrast, are case-specific and private. They neither clarify ambiguities in law nor establish principles applicable to future disputes. When disputes are routinely resolved through settlement, particularly in emerging or complex areas of law, opportunities for legal development are lost. This may result in stagnation, uncertainty, or inconsistent outcomes across similar cases.

The increasing diversion of disputes away from adjudication therefore has implications not only for individual litigants but also for the integrity and growth of the legal system as a whole.

2.5 Judicial Inefficiency as a Contextual, Not Conceptual, Factor

Judicial inefficiency often provides the context within which settlements occur, but it should not be conflated with the conceptual justification for settlements. Delay, backlog, and cost may explain why parties choose settlement, but they do not transform settlement into an equivalent substitute for adjudication.

When settlements are promoted primarily as tools to manage judicial inefficiency, there is a risk of treating symptoms rather than addressing underlying structural problems. More importantly, such an approach risks redefining justice itself in purely instrumental terms, where efficiency outweighs accountability, and closure replaces legal determination.

2.6 Necessity of Settlements in Complex and Technical Disputes

Despite these limitations, out-of-court settlements cannot be dismissed as normatively inferior in all contexts. The increasing complexity of modern disputes—particularly in areas involving specialised technical, financial, or commercial issues—has strained the capacity of traditional courts.

In such cases, expert-driven settlement mechanisms, especially arbitration and specialised mediation, offer clear advantages. They allow for informed decision-making, procedural flexibility, and efficient resolution. In this sense, settlements respond not merely to inefficiency but to the evolving nature of disputes themselves.

The challenge, therefore, lies in distinguishing between disputes where settlement enhances justice and those where it undermines it.

2.7 Conceptual Position of the Paper

This paper adopts the position that out-of-court settlements are **procedural tools**, not substitutes for justice. While they are indispensable in certain categories of disputes, their increasing dominance—particularly when driven by judicial inefficiency—raises serious concerns about accountability, precedent, and the law-declaring function of courts.

Accordingly, the paper does not reject settlements but calls for a principled balance in which adjudication remains central to justice delivery, and settlements operate as complementary mechanisms within a broader institutional framework.

3. Judicial Inefficiency in India: Structural Causes and Consequences

Judicial inefficiency in India is neither incidental nor attributable to individual failings of judges; rather, it is the outcome of deep-rooted structural and institutional constraints. Any meaningful analysis of out-of-court settlements must therefore situate them within this broader systemic context. Understanding the causes and consequences of judicial inefficiency is essential to evaluate whether settlements represent a voluntary evolution of dispute resolution or a compelled response to institutional limitations.

3.1 Structural Causes of Judicial Inefficiency

One of the most persistent causes of judicial inefficiency in India is **chronic case backlog**. Courts at all levels—subordinate courts, High Courts, and the Supreme Court—are burdened with an overwhelming volume of cases. This backlog is exacerbated by an inadequate judge-to-population ratio, which remains significantly lower than global benchmarks. Judicial capacity has not expanded proportionately with population growth, economic development, and the increasing legalisation of social and commercial relations.

Procedural complexity further compounds delay. Civil and criminal procedure laws, though amended periodically, continue to permit frequent adjournments, interlocutory applications, and prolonged evidentiary stages. These procedural safeguards, originally intended to ensure fairness, often operate in practice as tools for delay. The execution stage presents an additional bottleneck, where even successfully adjudicated claims may take years to translate into actual relief.

Infrastructure constraints—such as insufficient courtrooms, limited technological integration, and administrative inefficiencies—also contribute to delays. Despite recent efforts at digitisation and case management reform, access to justice remains uneven and slow, particularly in subordinate courts where the majority of litigation is concentrated.

3.2 Delay as a Systemic Feature, Not an Exception

Judicial delay in India is not an aberration affecting isolated cases; it has become a systemic feature of litigation. Litigants often enter the judicial process with the expectation that resolution will take several years, if not decades. This anticipation of delay shapes litigation strategy from the outset, influencing decisions regarding filing, defence, and settlement.

Importantly, delay operates independently of the merits of a case. A strong legal claim does not guarantee timely adjudication, nor does a weak defence ensure swift dismissal. As a result, adjudication loses its predictive and deterrent value, undermining the normative authority of law.

3.3 Consequences for Litigant Behaviour

The structural inefficiencies of the judicial system significantly affect how litigants perceive and engage with the law. Faced with prolonged timelines, escalating costs, and uncertainty, parties increasingly view litigation not as a pathway to justice, but as a strategic burden to be managed or avoided.

This perception directly incentivises out-of-court settlements. For many litigants, particularly individuals and small entities, settlement becomes the only viable option to obtain timely relief. Even where legal rights are clear, the prospect of prolonged litigation may render adjudication practically meaningless. In such circumstances, settlement represents not a preference for compromise, but a rational response to institutional delay.

3.4 Differential Impact on Weaker Parties

Judicial inefficiency does not affect all litigants equally. Parties with greater financial and institutional resources—such as corporations, banks, and the State—are better equipped to withstand prolonged litigation. Individuals, small businesses, and victims of rights violations often lack the capacity to endure years of legal proceedings.

This asymmetry enables stronger parties to leverage delay as a strategic advantage. Prolonged litigation can be used to exhaust opponents financially and psychologically, increasing pressure to settle on unfavourable terms. When settlements occur under such conditions, they raise serious concerns about voluntariness and fairness.

From a justice-oriented perspective, this dynamic is deeply problematic. Settlements induced by systemic delay risk legitimising inequality by allowing power disparities to dictate outcomes rather than legal merit.

3.5 Institutional Reliance on Settlements as a Management Tool

Judicial inefficiency has also influenced institutional behaviour. Courts increasingly encourage settlement as a means of managing caseloads and reducing pendency. While such encouragement is often well-intentioned and pragmatic, it carries normative implications.

When settlement is promoted primarily as a solution to backlog, adjudication risks being reframed as a last resort rather than the central mechanism of justice delivery. This shift subtly alters the role of courts—from law-declaring institutions to dispute managers—potentially weakening their constitutional function.

3.6 Implications for Justice and Legal Development

The structural inefficiencies of the judicial system thus create a context in which settlements flourish, but not without cost. When disputes are resolved through settlement rather than adjudication:

- Legal questions remain unanswered
- Precedent is not developed
- Wrongdoing may go unacknowledged
- Victims may receive compensation without justice

Judicial inefficiency, therefore, has consequences that extend beyond delay. It reshapes dispute resolution in ways that affect accountability, transparency, and the evolution of law.

3.7 Linking Inefficiency to the Central Thesis

This section does not suggest that judicial inefficiency alone explains the rise of out-of-court settlements. Rather, it establishes that inefficiency creates the conditions under which settlements become dominant—even in cases where adjudication would better serve justice and legal development.

The central concern is not that settlements exist, but that they increasingly operate as substitutes for adjudication in response to systemic constraints. This substitution risks redefining justice in purely instrumental terms, where efficiency outweighs accountability and resolution replaces adjudication.

4. Out-of-Court Settlements: Resolution Without Judgment

Out-of-court settlements are often praised for their ability to bring disputes to a swift and mutually agreeable conclusion. However, the very feature that makes settlements attractive—the absence of formal adjudication—also constitutes their most significant limitation. Settlements resolve disputes, but they do not deliver judgments. This distinction lies at the heart of the tension between efficiency and justice in contemporary dispute resolution.

4.1 Absence of Judicial Determination

A judicial judgment is not merely an outcome; it is a reasoned declaration of law. Through adjudication, courts determine rights and liabilities, assess evidence, apply legal principles, and articulate reasons that justify the outcome. This process confers legitimacy on the decision and reinforces the authority of law.

Out-of-court settlements, by contrast, do not involve any authoritative determination of legality or wrongdoing. They are premised on compromise rather than correctness. Parties may agree to settle for a variety of reasons—cost, delay, uncertainty, or commercial expediency—none of which necessarily correlate with legal merit. As a result, settlement outcomes often remain silent on who was right or wrong.

This absence of judicial determination raises a fundamental concern: when disputes are resolved without judgment, law ceases to function as a standard of conduct and becomes merely a bargaining tool.

4.2 Compensation Without Justice

Settlements frequently focus on monetary compensation or mutually agreed terms, offering closure to parties without addressing the normative dimension of justice. For victims and aggrieved parties, justice entails more than

financial redress. It includes recognition of harm, validation of claims, and accountability of the wrongdoer.

When disputes are settled privately, victims may receive compensation but are denied the symbolic and legal affirmation that accompanies a judicial finding in their favour. The wrongdoer, in turn, avoids a formal declaration of liability. This dynamic risks transforming justice into a transactional exchange, where accountability is negotiable and wrongdoing is obscured.

Such outcomes may be efficient, but they are normatively incomplete.

4.3 Erosion of the Law-Declaring Function of Courts

Courts perform a critical law-declaring function by interpreting statutes, resolving ambiguities, and developing legal principles through precedent. This function serves not only the immediate parties but also society at large by providing clarity, predictability, and guidance for future conduct.

Out-of-court settlements, being private and case-specific, do not contribute to this process. Legal questions remain unanswered, doctrinal uncertainty persists, and similar disputes may be resolved inconsistently. Over time, excessive reliance on settlements can lead to stagnation in legal development, particularly in emerging or evolving areas of law.

The loss is therefore systemic: justice is privatised, and law is deprived of the opportunity to evolve through adjudication.

4.4 Settlements and the Problem of Invisibility

Another significant consequence of settlement-driven dispute resolution is invisibility. Court judgments are public documents, subject to scrutiny, appeal, and academic analysis. Settlements, however, often occur behind closed doors, shielded by confidentiality clauses.

This invisibility limits public awareness of wrongdoing, suppresses patterns of harm, and weakens deterrence. In disputes involving systemic issues—such as corporate misconduct, regulatory violations, or institutional abuse—the absence of public adjudication undermines accountability and reform.

Efficiency achieved at the cost of transparency raises serious concerns for a justice system committed to rule of law.

4.5 Judicial Endorsement Without Adjudication

In some cases, settlements are formally recorded by courts through consent decrees or settlement orders. While such endorsement confers enforceability, it does not transform settlement into adjudication. Courts typically refrain from examining the merits of the dispute or the fairness of the outcome beyond procedural compliance.

This limited role reinforces the distinction between settlement and judgment. The court becomes a facilitator of resolution rather than an arbiter of justice. While this may be appropriate in certain contexts, its expansion as a default mode of dispute resolution risks diluting the judicial function.

4.6 Normative Implications for Justice

The cumulative effect of resolving disputes without judgment is a subtle but significant redefinition of justice. When resolution becomes the primary objective, justice risks being reduced to efficiency, and law to negotiation. This shift may be defensible in purely private disputes, but it is deeply problematic in cases involving rights, accountability, and public interest.

The concern, therefore, is not that settlements exist, but that they are increasingly treated as equivalent—or superior—to adjudication, even where the latter is normatively necessary.

4.7 Link to the Central Thesis

This section reinforces the paper's central argument: out-of-court settlements, while effective in resolving disputes, cannot substitute

for adjudication without compromising justice, accountability, and legal development. Their growing dominance reflects not only pragmatic adaptation but also a response to judicial inefficiency that risks reshaping the justice system in unintended ways.

5. Expert-Driven Settlements and the Necessity of ADR in Complex Disputes

While the limitations of out-of-court settlements in delivering justice and precedent are significant, it would be neither accurate nor desirable to dismiss such mechanisms altogether. The increasing complexity of modern disputes has fundamentally altered the nature of adjudication, exposing the limitations of traditional court-centric models. In this context, expert-driven settlement mechanisms perform an indispensable role.

5.1 Evolution of Disputes in a Complex Legal Economy

Contemporary disputes increasingly arise from highly technical and specialised domains such as commercial transactions, taxation, infrastructure projects, intellectual property, securities regulation, and financial services. These disputes often involve intricate factual matrices, sophisticated contractual arrangements, and sector-specific regulatory frameworks.

Generalist courts, constrained by rigid procedures and limited technical specialisation, may struggle to efficiently and accurately adjudicate such matters. Lengthy trials, frequent expert testimony, and procedural delays can significantly prolong resolution, undermining both efficiency and effectiveness.

5.2 Arbitration and Subject-Matter Expertise

Arbitration offers a distinct advantage in complex disputes by allowing parties to appoint arbitrators with subject-matter expertise. Technical competence enables informed evaluation of evidence, nuanced interpretation of contracts, and context-sensitive resolution. Expert adjudication enhances accuracy and predictability, particularly in commercial and technical disputes where legal correctness is closely tied to industry practice. In such cases, arbitration may deliver outcomes that are not only faster but substantively superior to those produced by overburdened courts.

5.3 Mediation and Flexible Problem-Solving

Mediation, particularly in complex multi-party disputes, facilitates creative problem-solving that courts are ill-equipped to provide. Mediators with domain expertise can assist parties in identifying underlying interests, managing risk, and crafting solutions beyond the binary win–lose framework of litigation.

Such flexibility is especially valuable in disputes where ongoing relationships, regulatory compliance, or long-term cooperation are at stake. In these contexts, resolution may be more important than formal adjudication.

5.4 Efficiency Without Adjudicatory Overreach

Expert-driven settlements respond not merely to judicial inefficiency but to the substantive demands of complexity. They offer procedural efficiency without necessarily compromising fairness, provided adequate safeguards are in place.

Importantly, these mechanisms do not inherently undermine justice. The normative problem arises only when they are employed indiscriminately, including in disputes where adjudication is essential for accountability, precedent, or public interest.

5.5 Differentiating Between Dispute Categories

A critical contribution of this paper is the argument that **not all disputes are alike**, and therefore, not all disputes should be resolved in the same manner. Complex, technical, and commercially sensitive disputes are well-suited for expert-driven settlement mechanisms. Rights-based disputes, matters involving vulnerable parties, or cases raising significant legal questions, however, require adjudication.

Failure to distinguish between these categories risks applying settlement mechanisms where justice demands judicial determination.

5.6 Settlements as Complementary, Not Substitutive, Mechanisms

Expert-driven settlements should function as complements to adjudication rather than substitutes. Courts must retain the authority to determine which disputes are appropriate for settlement and which require judicial scrutiny. This balance preserves efficiency while safeguarding the law-declaring function of courts.

5.7 Link to the Central Thesis

This section reinforces the paper's central position: out-of-court settlements are necessary and valuable in complex disputes, but their legitimacy depends on context, consent, and purpose. When settlements respond to complexity, they enhance justice; when they compensate for judicial inefficiency, they risk undermining it.

6. Judicial and Legislative Promotion of Settlements in India

The increasing prevalence of out-of-court settlements in India is not merely the result of private party choice; it is also a consequence of active judicial and legislative promotion. Over the past few decades, settlement-oriented mechanisms have been institutionalised as a core component of the Indian justice system. While this promotion is motivated by pragmatic concerns of efficiency and access, it also raises important normative questions about the evolving role of courts and the meaning of justice.

6.1 Legislative Framework Encouraging Settlements

The legislative endorsement of settlements is most visibly reflected in procedural law. Section 89 of the Code of Civil Procedure, 1908, mandates courts to explore the possibility of settlement after framing issues. The provision expressly recognises mediation, arbitration, conciliation, and judicial settlement as alternatives to adjudication.

Similarly, statutory mechanisms such as Lok Adalats under the Legal Services Authorities framework aim to provide expeditious and cost-effective resolution of disputes. Pre-litigation mediation requirements in certain categories of disputes further reinforce the legislative preference for settlement-based resolution.

These measures reflect a clear policy choice: reducing the burden on courts by diverting disputes away from full adjudication.

6.2 Judicial Endorsement of Settlement-Oriented Justice

Indian courts have consistently supported settlement mechanisms as a means of improving efficiency and access to justice. The Supreme Court, in **Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co.**, clarified the scope of Section 89 and emphasised the importance of ADR mechanisms in alleviating judicial backlog. The Court recognised mediation and conciliation as particularly suitable for disputes involving private interests.

Similarly, in **Salem Advocate Bar Association v. Union of India**, the Court acknowledged that procedural delays necessitate alternative mechanisms capable of delivering timely resolution.

Through such decisions, the judiciary has actively encouraged a settlement culture, positioning courts as facilitators of resolution rather than exclusive adjudicators of disputes.

6.3 Court-Annexed Mediation and Institutionalisation of Settlements

The establishment of court-annexed mediation centres across India represents a significant institutional shift. Judges routinely refer matters to mediation at various stages of litigation, often as a default procedural step. This practice reflects an understanding that not all disputes require adjudication and that consensual resolution may better serve the interests of parties.

However, the routine referral of cases to settlement mechanisms also raises concerns. When referral becomes automatic rather than discretionary, there is a risk that disputes requiring judicial determination—particularly those involving rights, accountability, or public interest—may be prematurely diverted away from adjudication.

6.4 Settlements as a Tool for Managing Judicial Backlog

Judicial promotion of settlements is closely linked to the imperative of managing case pendency. Courts, faced with overwhelming caseloads, increasingly rely on settlement mechanisms to reduce docket pressure. While this approach is understandable, it risks instrumentalising settlements as administrative tools rather than justice-enhancing mechanisms.

When settlements are primarily viewed as solutions to backlog, their use may shift from being party-driven to institution-driven. This shift alters the normative basis of settlement, raising questions about voluntariness, fairness, and justice.

6.5 Normative Tension: Efficiency versus Adjudicatory Function

The judicial and legislative promotion of settlements highlights a fundamental tension within the justice system. On one hand, efficiency, speed, and access are legitimate objectives. On the other hand, courts possess a constitutional responsibility to adjudicate disputes, declare law, and ensure accountability.

Excessive reliance on settlements risks reconfiguring courts from law-declaring institutions into dispute-management forums. This transformation may improve efficiency but at the cost of precedent, transparency, and public accountability.

6.6 Judicial Caution and the Need for Balance

Notably, judicial endorsement of settlements has often been accompanied by cautionary observations. Courts have repeatedly emphasised that settlements must be voluntary and appropriate to the nature of the dispute. This indicates judicial awareness of the limits of settlement-oriented justice.

However, translating this caution into consistent practice remains a challenge, particularly in an overburdened judicial system where efficiency pressures are acute.

6.7 Link to the Central Thesis

This section reinforces the paper's central argument that the rise of out-of-court settlements is not merely a private phenomenon but an institutionally encouraged one. While such encouragement responds to genuine concerns of efficiency and complexity, it also risks normalising resolution without judgment.

The problem, therefore, lies not in the promotion of settlements per se, but in their overuse as substitutes for adjudication—especially in disputes where justice, accountability, and legal development demand judicial determination.

7. Comparative Perspective: Settlement Culture Beyond Judicial Inefficiency

A comparative examination of settlement practices across jurisdictions reveals that the prevalence of out-of-court settlements is not confined to legal systems characterised by judicial delay or inefficiency. On the contrary, even jurisdictions widely regarded as efficient, well-resourced, and institutionally robust rely heavily on settlement mechanisms. This comparative insight complicates the assumption that settlements are primarily a response to dysfunctional courts and supports the argument that their rise is driven by broader structural and functional considerations.

7.1 The United States: Settlement as the Dominant Mode of Resolution

In the **United States**, the overwhelming majority of civil disputes are resolved through settlement rather than trial. This phenomenon persists despite relatively efficient courts, advanced

case management systems, and extensive judicial resources. Trials are rare, expensive, and often strategically avoided.

Settlement culture in the United States is driven by factors such as:

- High litigation costs
- Extensive discovery obligations
- Jury unpredictability
- Risk management considerations

Importantly, this settlement dominance has attracted sustained academic criticism. Scholars have argued that excessive reliance on settlements has weakened the law-declaring function of courts, reduced transparency, and limited the development of precedent. Many disputes—particularly in tort, employment, and consumer law—are resolved privately, leaving systemic issues unaddressed.

This experience demonstrates that settlements can flourish even in efficient systems, while simultaneously raising concerns similar to those identified in the Indian context regarding justice, accountability, and legal development.

7.2 The United Kingdom: Court-Encouraged Mediation and Normative Safeguards

The **United Kingdom** presents a more institutionally moderated approach to settlement. English courts actively encourage mediation and other ADR mechanisms, often penalising unreasonable refusal to settle through adverse cost orders. Settlement is thus embedded within judicial procedure rather than positioned as an alternative outside it.

However, English courts maintain a clear distinction between settlement and adjudication. Matters involving significant questions of law, public interest, or rights-based claims are less likely to be diverted away from judicial determination. This reflects an institutional recognition that while settlement enhances efficiency, adjudication remains essential for legal clarity and precedent formation.

The UK model illustrates that settlement culture can coexist with a strong commitment to adjudication, provided clear normative boundaries are maintained.

7.3 Singapore: Efficiency with Institutional Control

Singapore is frequently cited as a model of judicial efficiency and innovation. Despite this, settlement mechanisms—particularly mediation—are extensively integrated into its legal system. The emphasis on mediation is not driven by backlog or inefficiency, but by a deliberate policy choice favouring efficient and harmonious dispute resolution.

Crucially, Singaporean courts retain strong institutional control over the settlement process. Disputes involving public law, regulatory enforcement, or significant legal interpretation are adjudicated rather than settled. This selective approach preserves the law-declaring function of courts while leveraging the efficiency of settlement mechanisms in appropriate cases.

7.4 Lessons from Comparative Jurisdictions

The comparative experience yields three important insights relevant to the Indian debate:

1. **Settlements are not unique to inefficient systems**
   Their prevalence in efficient jurisdictions undermines the claim that they arise solely from judicial failure.
2. **Efficiency does not eliminate the need for adjudication**
   Even well-functioning systems recognise that certain disputes require authoritative judicial determination.
3. **Unregulated settlement culture raises universal concerns**
   Across jurisdictions, scholars have expressed concern about the loss of precedent, transparency, and public accountability.

These insights reinforce the argument that the problem is not settlement itself, but the absence of principled limits on its use.

7.5 Relevance to the Indian Context

In India, the comparative perspective underscores the need for differentiation rather than wholesale endorsement or rejection of settlements. While expert-driven and efficiency-oriented settlements are necessary, particularly in complex disputes, the routine diversion of disputes away from adjudication risks replicating the normative deficiencies observed elsewhere.

India's challenge is therefore not unique, but it is intensified by structural judicial inefficiencies that may push settlements beyond their legitimate scope.

7.6 Link to the Central Thesis

The comparative analysis strengthens the central thesis of this paper by demonstrating that out-of-court settlements are a global phenomenon driven by efficiency, complexity, and policy choice. However, it also confirms that excessive reliance on settlements—without regard to justice, precedent, and accountability—poses systemic risks irrespective of jurisdiction.

Settlements, therefore, must be carefully integrated into the justice system as complementary mechanisms, not treated as substitutes for adjudication.

8. Critical Evaluation: Do Out-of-Court Settlements Undermine Justice and Legal Development?

The preceding sections have established that out-of-court settlements are neither inherently deficient nor universally desirable. Their rise is shaped by judicial inefficiency, institutional encouragement, and the increasing complexity of disputes. However, a critical evaluation is necessary to assess whether the expanding reliance on settlements undermines the foundational objectives of justice delivery and legal development.

8.1 Justice Reduced to Outcome Rather Than Process

One of the most serious concerns with settlement-driven dispute resolution is the reduction of justice to mere outcomes. Settlements prioritise the *end* of a dispute, often measured in terms of compensation or compromise, while overlooking the *process* through which justice is traditionally achieved.

Judicial adjudication is not valuable solely because it resolves disputes, but because it does so through a transparent, reasoned, and principled process. The procedural safeguards of adjudication—public hearings, reasoned judgments, appellate review—confer legitimacy on outcomes and reinforce the rule of law. Settlements, by contrast, lack these features. When justice is reduced to closure or efficiency, its normative content is diluted.

This reduction is particularly problematic where disputes involve allegations of wrongdoing, abuse of power, or violation of rights. In such cases, resolution without adjudication risks obscuring responsibility and weakening deterrence.

8.2 The Victim's Perspective: Closure Without Vindication

From the perspective of victims and aggrieved parties, settlements often offer pragmatic relief but deny legal and moral vindication. Compensation may address material loss, but it does not necessarily acknowledge harm, affirm rights, or impose accountability.

Justice, especially in rights-based disputes, is expressive as well as corrective. A judicial judgment publicly affirms that a wrong has occurred and that the law stands with the aggrieved party. Settlements, by avoiding findings of fault, deprive victims of this affirmation. This may lead to a perception that justice has been compromised, even when compensation is received.

The risk is that settlements normalise harm by treating it as a negotiable inconvenience rather than a legal violation.

8.3 Undermining the Precedential Function of Courts

A justice system that resolves the majority of disputes through settlement risks stagnation. Judicial precedents are the primary means through which law evolves, adapts to new circumstances, and maintains coherence. When disputes are resolved privately, legal questions remain unanswered and doctrinal uncertainty persists.

This concern is particularly acute in emerging areas of law where judicial guidance is essential. Excessive settlement deprives courts of opportunities to clarify legal standards, resulting in fragmented and inconsistent application of law. Over time, this undermines legal certainty and predictability—core elements of the rule of law.

8.4 Privatization of Justice and Loss of Public Accountability

Settlements shift dispute resolution from the public domain to the private sphere. While this may be appropriate in purely private disputes, it is deeply problematic where disputes implicate public interest, regulatory compliance, or systemic misconduct.

Public adjudication serves an important accountability function by exposing wrongdoing, enabling scrutiny, and fostering reform. Confidential settlements, on the other hand, conceal patterns of harm and allow repeat misconduct to go unaddressed. This privatization of justice weakens institutional accountability and erodes public trust in legal institutions.

8.5 Coercion Disguised as Consent

Another critical concern is the voluntariness of settlements. While settlements are premised on consent, consent may be shaped by unequal bargaining power, financial pressure, or fear of prolonged litigation. Judicial inefficiency exacerbates these pressures, particularly for weaker parties.

When settlement becomes the only realistic option due to systemic delay, consent loses its normative force. Such settlements may comply with procedural requirements while substantively undermining fairness and equality before law.

8.6 Balancing Efficiency with Justice

It would be erroneous to conclude that settlements should be discouraged or marginalised. Efficiency, expertise, and flexibility are legitimate objectives, particularly in complex disputes. The critical issue is balance.

A justice system that values efficiency at the expense of adjudication risks hollowing out its normative core. Conversely, a system that ignores the benefits of settlement risks becoming inaccessible and unresponsive. The challenge lies in preserving adjudication for disputes that demand authoritative resolution while employing settlements where they genuinely enhance justice.

8.7 Evaluative Conclusion

Out-of-court settlements do not inherently undermine justice or legal development. However, their uncritical expansion—especially as a response to judicial inefficiency—poses serious risks. When settlements are used to manage backlog rather than to serve justice, they distort the role of law and courts.

The critical evaluation thus supports the paper's central claim: settlements must be carefully regulated and contextually deployed, ensuring that efficiency does not eclipse accountability, precedent, and justice.

9. Conclusion

This paper set out to examine whether out-of-court settlements are primarily the result of judicial inefficiency or a deliberate and rational choice for efficient justice. Through doctrinal analysis, institutional practice, and comparative perspectives, it has demonstrated that the answer cannot be reduced to a binary. Settlements are neither merely symptoms of a

failing judiciary nor unqualified solutions to the challenges of modern dispute resolution.

Judicial inefficiency in India—manifested through chronic delay, procedural complexity, and infrastructural constraints—undoubtedly creates conditions that incentivise settlement. Faced with prolonged timelines and escalating costs, litigants often view settlement not as a preferred mode of justice but as the only practical avenue for relief. In this sense, settlements frequently operate as responses to institutional limitation rather than expressions of genuine choice.

However, the paper has also shown that the increasing reliance on out-of-court settlements cannot be explained solely by inefficiency. The complexity of contemporary disputes, particularly in commercial, technical, and regulatory domains, necessitates expert-driven and flexible resolution mechanisms that traditional courts may struggle to provide. Arbitration and mediation, when appropriately deployed, enhance efficiency and accuracy and respond to the evolving demands of a complex legal economy.

At the same time, this paper has argued that out-of-court settlements suffer from inherent normative limitations. Unlike judicial adjudication, settlements do not result in authoritative determinations of rights and liabilities. They do not assign responsibility, do not publicly acknowledge wrongdoing, and do not contribute to the development of legal precedent. For victims and aggrieved parties, settlements may offer compensation and closure, but often at the cost of justice, vindication, and accountability.

The growing institutional and judicial promotion of settlements further complicates this dynamic. When settlements are encouraged primarily as tools to manage backlog and improve efficiency, there is a risk that adjudication is marginalised and the law-declaring function of courts is weakened. Justice risks being reconceptualised as resolution, and law as negotiation.

The central conclusion of this paper is therefore clear: **out-of-court settlements must be understood as complementary mechanisms within the justice system, not as substitutes for adjudication**. Their legitimacy depends on context, consent, and purpose. Where disputes demand authoritative determination, public accountability, or legal development, adjudication remains indispensable. Where disputes involve technical complexity, commercial sensitivity, or relational considerations, expert-driven settlements may legitimately enhance justice.

Ultimately, the challenge is not to choose between settlement and adjudication, but to maintain a principled balance between efficiency and justice. A justice system that resolves disputes without judgment risks sacrificing its normative core; one that insists on adjudication in all cases risks becoming inaccessible and ineffective. The future of justice lies in recognising this balance and in ensuring that efficiency serves justice, rather than replacing it.

10. Suggestions and Reforms

If out-of-court settlements are to function as legitimate complements to adjudication rather than substitutes for justice, structural and normative reforms are necessary. The following suggestions seek to address judicial inefficiency while preserving the law-declaring, accountability-enforcing role of courts.

10.1 Differentiated Dispute Resolution Framework

A one-size-fits-all approach to dispute resolution is normatively unsustainable. Courts should adopt a differentiated framework that classifies disputes based on their nature and implications. Technical, commercial, and expert-intensive disputes may be directed toward settlement mechanisms, while rights-based disputes, cases involving vulnerable parties, or matters raising substantial questions of law should ordinarily proceed to adjudication.

Judicial discretion in referral must be guided by principled criteria rather than administrative convenience.

10.2 Strengthening Judicial Capacity Rather Than Outsourcing Justice

Settlement mechanisms should not serve as substitutes for investment in judicial capacity. Structural reforms—such as increasing the judge-to-population ratio, improving court infrastructure, and enhancing administrative efficiency—are essential to reduce delay-induced coercion.

Strengthening courts ensures that settlement remains a choice rather than a compulsion.

10.3 Safeguards Against Coercive Settlements

To protect voluntariness, courts should exercise greater scrutiny over settlements in cases marked by power imbalance. Judicial oversight should extend beyond procedural compliance to include consideration of fairness, especially where settlements involve individuals, consumers, or employees.

Informed consent must be a substantive, not merely formal, requirement.

10.4 Preserving Precedent Through Selective Adjudication

Courts should consciously retain adjudication in cases that present novel legal questions or issues of public importance. Even where settlement is possible, judicial determination may be necessary to clarify law and guide future conduct.

Institutional mechanisms may be developed to identify such cases early in the litigation process.

10.5 Enhancing Transparency Without Undermining Confidentiality

While confidentiality is a legitimate advantage of settlement, excessive secrecy undermines accountability. Aggregate, anonymised data on settlements—particularly in regulatory or systemic disputes—should be made available to enable policy analysis and reform.

This balances privacy with public interest.

10.6 Professionalisation and Quality Control of ADR Mechanisms

The legitimacy of settlements depends on the quality of ADR processes. Mediators and arbitrators should be adequately trained, accredited, and subject to ethical standards. Expert-driven settlements must be grounded in competence and neutrality.

Institutionalising quality safeguards enhances both fairness and trust.

10.7 Reaffirming the Adjudicatory Role of Courts

Finally, judicial discourse and institutional design must reaffirm that courts are not merely dispute managers but guardians of justice and law. Settlement promotion should be framed as facilitative rather than directive, preserving adjudication as the normative core of the justice system.

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