

**FORMATION OF MOTOR ACCIDENTS MEDIATION CELL (MAMC) IN INDIA**

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*India continues to experience an ever-increasing number of motor accidents over the past few decades. The disputes that arise from motor accidents constitute a burden that a large section of the society in India cannot afford to carry. The settlement of such disputes through litigation has become tedious and inaccessible due to rising costs. A large chunk of the population that is impacted by motor accidents has no access to the justice delivery framework in India. Even though India’s economy is experiencing steady growth, the legal system in India is severely lagging behind. The pendency of cases in India is an endemic problem that needs to be tackled to ensure that India has an efficient and robust justice delivery framework. In order to tackle the rising pendency of cases, the Courts in India have considered alternative dispute resolution (ADR) processes like mediation as a tool for the resolution of disputes. Mediation has the potential to be a panacea for judicial efficiency due to its flexibility, affordability, and accessibility. In light of this backdrop, this article examines the impact of the decision of the Supreme Court of India in *M.R. Krishna Murthi v. New India Assurance Co. Ltd.* to create Motor Accidents Mediation Cell (MAMC) in every district in India.*

**Keywords:** *Mediation, Dispute Resolution, Conflict Management, Justice.*

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**I. INTRODUCTION**

The last two decades have seen a rise in the use of alternative dispute resolution (ADR) processes, like arbitration and mediation. These ADR processes are seen as an alternative to traditional litigation.<sup>1</sup> Litigation has become expensive and time-consuming, causing inordinate delays in the resolution of disputes.<sup>2</sup> Moreover, arbitration is no longer a viable ‘alternative’ to litigation as rising costs and delays have become a common feature in this field. The Supreme Court of India (Supreme Court) has remarked that it is ‘unfortunate’ that arbitration has become a “highly expensive” and “time-consuming” means for dispute resolution in India.<sup>3</sup> As a result, the focus has shifted to mediation, as it provides parties with a speedier, cost-effective and party-driven option to resolve their disputes. Mediation is a non-adversarial process and is referred to as a negotiation that a neutral third party facilitates.<sup>4</sup> The mediator guides the mediation process and acts as a facilitator of

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<sup>1</sup>See Judy Gutman, ‘Litigation as a Measure of Last Resort: Opportunities and Challenges for Legal Practitioners with the Rise of ADR’, [2011] 14 LEGAL ETHICS 1.

<sup>2</sup>Jay E. Grenig, *Alternative Dispute Resolution*, (4th edn. 2016).

<sup>3</sup>*Dolphin Drilling Ltd. v. ONGC*, (2010) 3 SCC 267, 271 (India).

<sup>4</sup>Bennett G. Picker, *Mediation Practice Guide* 2–3 (2d ed. 2003).

communication between the parties.<sup>5</sup> The mediation process supports an interest-based approach towards dispute resolution wherein parties to a dispute get to move past their positions and focus on their underlying interests (or needs).

In 2011, a survey was conducted by Scheinman Institute on Conflict Resolution at Cornell University, the Straus Institute for Dispute Resolution at the Pepperdine University School of Law, and the International Institute for Conflict Prevention & Resolution to understand the experience of some of the world's largest corporations (Fortune 1000 companies).<sup>6</sup> As per the survey, more companies are embracing the ADR processes such as mediation today (as against to the mid-1990s) because there is evidence of increasing emphasis by corporations on controlling the process of managing conflict.<sup>7</sup> This is one of the unique features of mediation that it gives the power to resolve the dispute in the hands of the parties (as compared to a judge or an arbitrator).<sup>8</sup> The enactment of the United Nations Convention on International Settlement Agreements Resulting from Mediation<sup>9</sup> (also known as Singapore Convention on Mediation) is a much-needed boost for mediation at the international level. The multilateral treaty is the culmination of efforts of the United Nations Commission on International Trade Law (UNCITRAL). The Singapore Convention on Mediation is applicable to international settlement agreements arising out of the process of mediation wherein the process of mediation is undertaken to resolve commercial disputes. It would enable the parties to a dispute to enforce such mediated settlement agreements across borders. Overall, the emergence of the mediation process has been recent, but it is timeless in its existence and relevance.

At its core, this article explores the importance of the decision of the Supreme Court in *M.R. Krishna Murthi v. New India Assurance Co. Ltd.*<sup>10</sup>(M.R. Krishna Murthi) for India's mediation movement, as in this case, the Supreme Court directed the central government to create Motor Accidents Mediation Cell (MAMC) in every district in India.

Part I of the article is devoted to the factual background of the *M.R. Krishna Murthi* case. It traces the case's origins from its initiation to the final appeal before the Supreme Court. Part II is focused on the decision of the Supreme Court, which conceptualizes the creation of the MAMC with help from the Senior Counsel representing the appellant. Part III discusses and analyses the concerns regarding 'access to justice' when there are delays in the dispensation of compensation in motor accident disputes in India. Part IV is devoted to understanding the procedure that is to be followed in MAMC and some of the questions that need to be addressed regarding its functioning. Part V offers concluding reflections of the author on the future of MAMC and mediation in India.

## II. BACKGROUND OF THE CASE

In *M.R. Krishna Murthi*, the appellant suffered an accident at the age of 18 years when he was travelling from Delhi (India) to Mussoorie (India) on 26 May, 1988. Due to the accident, his entire left leg was crushed, and he was hospitalized for two months after having surgery on 31 May 1988. The treatment continued for over six years, during which he had to

<sup>5</sup> Carrie Menkel-Meadow et al., *Mediation: Practice, Policy, and Ethics* 91 (2006).

<sup>6</sup> Thomas J. Stipanowich & J. Ryan Lamare, 'Living with ADR: Evolving Perceptions and Use of Mediation Arbitration, and Conflict Management in Fortune 1000 Corporations', [2014] 19 HARV. NEGOT. L. REV. 1, 2.

<sup>7</sup> *ibid.*, at 5-6.

<sup>8</sup> *ibid.*

<sup>9</sup> G.A. Res. 73/198, United Nations Convention on International Settlement Agreements Resulting from Mediation, (Aug. 7, 2019) (entered into force on Sept. 12, 2020).

<sup>10</sup> (2020) 15 SCC 493 (India).

undergo three operations. The first was for putting the plates and screws, the second was for removing of plates and screws from the femur bone, and the third was for removing of a lump in the right leg that developed after the accident. The doctor discovered that he could not remove the plates and screws of the femur bone. As a result, the appellant still has plates and screws in the femur bone, him to the risk of another fracture anytime.

The appellant highlighted that he is suffering from a permanent disability as he faces difficulty and pain in moving because of the accident. The disability claimed by the appellant was certified by the District Government Hospital, Muzaffarnagar, at 40% as per the disability certificate (dated 10 December 2005).

The appellant filed an application claiming compensation before the Motor Accidents Claims Tribunal (MACT), Muzaffarnagar, Uttar Pradesh (India), as the accident had taken place in the area within the jurisdiction. On 12 January, 1998, the appellant filed an application to transfer the case to MACT, Patiala House, New Delhi (India). The award was rendered by MACT on 23 May, 2007, holding the driver of the Ambassador car accountable for negligence. The driver of the vehicle, the insurance company (New India Assurance Co. Ltd.) and the vehicle owner were arrayed as respondents. MACT awarded a sum of Rs. 8,48,000 with an interest of 7% for ten years, as the claim petition had defaulted twice.

Thereafter, the appeal was preferred by the appellant before the High Court. As the appellant did not appear and was not represented on many occasions, the High Court decided the matter (dated 17 May 2016) on merits after hearing the counsel for the Insurance Company and examining the record.<sup>11</sup> The main contention of the appellant in the appeal was that MACT did not consider the disability certificate. The High Court rejected the submission with the observation that MACT did, in fact, take into consideration the disability certificate while calculating the future loss of income.

The High Court also took note of the income tax returns that were filed by the appellant, but as per the High Court, these income tax returns (2003-04, 2004-05, 2005-06) were irrelevant and could not be taken into consideration as the accident took place in 1988. The High Court awarded a lump sum damage of Rs. 50,000, given the nature of the disability and that appellant would need the services of a driver until the age of 70 years.

The appellant preferred a review petition as per Order 47 Rule 1 of the Code of Civil Procedure seeking a review of the judgement delivered by the High Court on 17 May, 2016. It was pointed out that the MACT made an error as it had applied a multiplier of 17, whereas a multiplier of 18 should have been applied as the appellant was 18 years old when he suffered the injuries. This was accepted by the High Court (dated 19 May, 2017) and it applied the multiplier of 18, which resulted in an enhancement of compensation by Rs. 24,000 together with corresponding interest.<sup>12</sup> The judgments dated 17 May, 2016 and 19 May, 2017 were the subject matter of the appeal before the Supreme Court.

### **III. FORMATION OF THE MOTOR ACCIDENTS MEDIATION CELL (MAMC)**

At appeal before the Supreme Court, the Senior Counsel appearing on behalf of the appellant made two submissions. At first, the counsel argued that the High Court had erred in calculating the future earnings by fixing the income at Rs. 5000 only. The second submission was for reforming the whole system concerning the claims for dispensation of compensation involved in motor accidents. One of the unique aspects of this case is that the submission for

<sup>11</sup>*M.R. Krishna Murthi v. New India Assurance Co. Ltd.*, (2016) SCC OnLine (Del.) 3355 (India).

<sup>12</sup>*M.R. Krishna Murthi v. New India Assurance Co. Ltd.*, (2017) SCC OnLine (Del.) 12769 (India).

the introduction of reforms has been initiated by the Senior Counsel instead of the Court. The Senior Counsel made the submission for reforming the legal system at different levels –

“(a) On-road safety and grant of adequate compensation to the victims without any delay. For ensuring expeditious settlement of claims, resort to alternate means which may include innovative measures.

(b) Taking adequate steps including adopting innovative measures, to ensure fast track disposal of cases by MACTs.

(c) Ensuring receipt of compensation in the safe hands of victims and/or kith and kin of victims, that too over a sustained period.”<sup>13</sup>

The Senior Counsel called for the creation of Motor Accidents Mediation Authority (MAMA) in every district.<sup>14</sup> The Senior Counsel presented two proposals –

“As a Solution to these problems, there are two proposals:

1. establishing a Motor Accidents Mediation Authority (MAMA) in every district;
2. making it compulsory for the accident investigator to:
  - a) send a copy of his Report to MAMA;
  - b) send e-mail to National Road Safety Council’s cell

identifying the accident spot and how similar accidents could be prevented in future.”<sup>15</sup>

The Senior Counsel highlighted the procedure that will be followed at MAMA –

“MAMA will follow the following procedure –

1. MAMA will then issue notices to the claimants and others.
2. interim compensation (with recourse) of few thousand rupees a month pending adjudication as direct credit to Aadhaar linked bank account;
3. completion of paperwork at MAMA;
4. mediation proceedings at MAMA;
5. complete safety in the hands of the recipient.

The amount settled is not given as rupees (or even FDRs), but as Annuity Certificates, which have

<sup>13</sup>Murthy (n 11) 499.

<sup>14</sup>Murthy (n 11) 500.

<sup>15</sup> ibid.

more return for the same value-meaning lesser payout by the insurance sector with full receipt by the claimant.”<sup>16</sup>

The Senior Counsel submitted that the Supreme Court could ask the government to frame procedures and that the Life Insurance Corporation (LIC) or Reserve Bank of India (RBI) can provide for the availability of annuity certificates in consultation with the Pension Fund Regulatory and Development Authority. While considering the recommendations made by the Senior Counsel, the Supreme Court noted that the recommendations were ‘visionary’ in nature.<sup>17</sup> The Supreme Court recognised that the increase in the number of accidents is giving rise to a “phenomenal quantum jump in such cases”.<sup>18</sup> While agreeing with the Senior Counsel on the need for the use of mediation in cases concerning claims for dispensation of compensation in motor accident disputes, the Supreme Court recommended the creation of Motor Accidents Mediation Cell (MAMC). While the Senior Counsel recommended the creation of MAMA, the Supreme Court changed the nomenclature to include ‘Cell’ instead of ‘Authority’ (thus MAMC as against MAMA).

The Supreme Court directed National Legal Services Authority (NALSA) to take this up as a ‘project’ and to submit a complete report regarding the creation of MAMC within two months.<sup>19</sup> The report should also be shared with the State Legal Service Authorities (SLSA) to ensure that they are implemented through their respective District Legal Service Authorities (DLSA).<sup>20</sup> The Supreme Court suggested that MAMC can either function under the aegis of NALSA or it can be handed over to the Mediation and Conciliation Project Committee (MCPC) in the Supreme Court.<sup>21</sup> The Supreme Court recommended the creation of MAMC so as to fast-track the disposal of cases before the MACTs in the country. As was seen in this case, there is a considerable amount of delay before the families of the victim are able to receive compensation. The inordinate delay in dispensation of compensation to the families of the victims involved in motor accidents raises serious questions concerning ‘access to justice’.

#### IV. CONCERNS REGARDING ACCESS TO JUSTICE

As per the reports of the Ministry of Road Transport & Highways, 80888 people lost their lives in accidents in 2001<sup>22</sup> while in 2020<sup>23</sup> this number has risen to 131714. The Report titled “Traffic Crash Injuries and Disabilities: The Burden on Indian Society” by the World Bank highlights that even though India has 1% of the world’s vehicles, it accounts for 11% of the global deaths in road accidents.<sup>24</sup> The Report also highlights that more than 75% of the poor households in India reported a decline in their income because of road traffic

<sup>16</sup> *ibid.*

<sup>17</sup> *ibid.*, 510.

<sup>18</sup> *ibid.*

<sup>19</sup> *ibid.*

<sup>20</sup> *ibid.*

<sup>21</sup> *ibid.*, 516.

<sup>22</sup> Ministry of Road Transport and Highways, *Road Accidents in India 2008*, (Government of India) <[https://morth.nic.in/sites/default/files/Road\\_Accidents\\_in\\_India\\_2008\\_compressed.pdf](https://morth.nic.in/sites/default/files/Road_Accidents_in_India_2008_compressed.pdf)>

<sup>23</sup> Ministry of Road Transport and Highways, *Road Accidents in India 2020* (Government of India) <[https://morth.nic.in/sites/default/files/RA\\_2020.pdf](https://morth.nic.in/sites/default/files/RA_2020.pdf)>

<sup>24</sup> World Bank, *Traffic crash Injuries and Disabilities: The Burden on Indian Society 2* (2021), <<http://documents.worldbank.org/curated/en/761181612392067411/Traffic-Crash-Injuries-and-Disabilities-The-Burden-on-Indian-Society>>; See also Press Release, <<https://www.worldbank.org/en/news/press-release/2021/02/13/road-crashes-in-india-increase-household-poverty-and-debt>>

accidents.<sup>25</sup> As per the World Bank Report released in 2019, the cost of fatalities and serious injuries estimate at 7.5% of India’s Gross Domestic Product (GDP).<sup>26</sup>

The numbers highlight that there is a considerable percentage of the population that is at the receiving end of loss in income and livelihood due to road accidents. In the present case, it took the appellant almost 30 years to finalise the amount of compensation. How many people in India have 30 years to wait for the dispensation of compensation? How many people in India can afford to wait for 30 years in such situations? Moreover, how many people in India have the resources to pursue a case for almost 30 years to remedy the amount of compensation? The answers to these questions shed light on the critical need for reform in the judicial system in India. As a large portion of the population in India does not have access to courts or any other adjudicatory mechanism for their disputes, they have no ‘access to justice’. As per the United Nations, “Access to justice is a basic principle of the rule of law”.<sup>27</sup> Chief Justice T.S. Thakur (as he then was) in *Anita Kushwaha v. Pushap Sudan*<sup>28</sup> stated the following -

“Four main facets that, in our opinion, constitute the essence of access to justice are:

- i) The State must provide an effective adjudicatory mechanism;
- ii) The mechanism so provided must be reasonably accessible in terms of distance;
- iii) The process of adjudication must be speedy; and
- iv) The litigant’s access to the adjudicatory process must be affordable.”<sup>29</sup>

At the bare minimum, a judicial system should have these facets (or features) to ensure ‘access to justice’. Does the current judicial system in India satisfy any of the main facets highlighted by the Supreme Court? It is difficult to answer the question in the affirmative. The ‘process of adjudication’ in itself is plagued with inordinate delays that cause intolerable levels of hardship for the litigants. The Supreme Court of India<sup>30</sup> and High Courts<sup>31</sup> in India have held that “justice delayed is justice denied”. Justice Kirpal (as he then was) in *All India Judges’ Assn. v. Union of India*<sup>32</sup> stated

<sup>25</sup> *ibid*, 3.

<sup>26</sup> World Bank, *Guide for Road Safety Opportunities and Challenges: Low and Middle Income Country Profiles* 96 (2020), <<https://openknowledge.worldbank.org/handle/10986/33363>>

<sup>27</sup> United Nations, *Access to Justice*, <<https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/#:~:text=UN%20entities%20support%20Member%20States,oversight%3B%20addressing%20challenges%20in%20the>>

<sup>28</sup> (2016) 8 SCC 509 (India).

<sup>29</sup> *ibid*, 529.

<sup>30</sup> *Anil Rai v. State of Bihar*, (2001) 7 SCC 318, 328 (India); *All India Judges’ Association v. Union of India*, (2002) 4 SCC 247, 268 (India);

<sup>31</sup> *Shivsagar Veg. Restaurant v. Asstt. Commissioner of Income Tax*, (2009) 2 (Bom.) CR 153, 155 (India); *Unique Co-ordinators v. Union of India*, (2004) 2 (Mah.) LJ 532, 533 (India); *Nagesh BanduPotdar v. Prabhadevi Bapusaheb Kumbhojkar*, (2012) 4 (Mah.) LJ 516, 519 (India).

<sup>32</sup> (2002) 4 SCC 247(India).

“An independent and efficient judicial system is one of the basic structures of our Constitution.”<sup>33</sup>

Is the current judicial system in India efficient? There is a long road ahead before we can claim to have an ‘efficient’ judicial system. We should not make a victim (of a motor accident) wait for nearly three decades to rectify the amount of compensation. Such a delay in the resolution of a dispute is not a feature of an efficient judicial system. Moreover, the Courts in India have a backlog of 40 million cases, and there is no indication that the number is going to go down anytime soon.<sup>34</sup> At present, the vacancies for judges are not filled<sup>35</sup>, there is a serious lack of infrastructure<sup>36</sup> and there is minimal budgetary support.<sup>37</sup> As we aspire to have an ‘efficient’ judicial system, we cannot ignore the role that can be played by consensual dispute resolution processes like mediation. Traditional litigation is no longer a reliable option for parties that need a quick resolution of the situation they find themselves in after motor accidents. Even though mediation as a process for the resolution of disputes arising from claims for compensation in cases of motor accidents was endorsed by the Supreme Court in *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*,<sup>38</sup> nothing came out of it. If NALSA can implement the directions issued by the Supreme Court in the present case and create MAMC in every district in India, it can make up for the time lost.

## V. WORKING OF THE MAMC

There are some questions regarding the functioning of MAMC and the procedure it will follow that need to be addressed by NALSA.

1. Who are going to be the mediators that are going to be part of the MAMC? Will there be a separate panel of mediators for MAMC or will the mediators empanelled by DLSA also be part of the MAMC?
2. Will there be a time limit attached to the completion of the mediation proceedings at MAMA?
3. Is there an alternative to issuing annuity certificates? What happens in a case where dispensation of compensation needs to be done on an urgent basis?
4. Will the process of mediation be strictly confidential at MAMC or are there some exceptions? What happens with the mediator’s report if the mediation is not

<sup>33</sup> *ibid*, 268.

<sup>34</sup> Reuters, ‘India has court backlog of 40 million cases, Chief Justice says’ (30 April, 2022) <<https://www.reuters.com/world/india/india-has-court-backlog-40-million-cases-chief-justice-says-2022-04-30/>>

<sup>35</sup> Umang Poddar, ‘India’s lower courts are sitting on 4 crore cases, filling judicial vacancies must be a priority’ (*The Scroll*, 6 August, 2022) <<https://scroll.in/article/1028852/indias-lower-courts-are-sitting-on-4-crore-cases-filling-judicial-vacancies-must-be-a-priority>>

<sup>36</sup> Soibam Singh, ‘Judicial infrastructure, a neglected case’, (*The Hindu*, 6 December, 2021) <<https://www.thehindu.com/news/cities/Delhi/judicial-infrastructure-a-neglected-case/article37859686.ece#:~:text=The%20Indian%20judiciary's%20infrastructure%20has,20%2C143%2C%20including%20620%20rented%20halls>>

<sup>37</sup> *ibid*.

<sup>38</sup> (2010) 8 SCC 24, 39 (India).

successful? Will it be considered by the subsequent court deciding the question of the dispensation of compensation?

An answer to the question relating to the disclosure of confidential information shared during mediation proceedings can challenge the legitimacy of such mediation proceedings at MAMC itself. NALSA needs to take these questions into consideration while formulating the procedure to be followed at MAMC.

## V. CONCLUSION

The 21<sup>st</sup> century will belong to dispute resolution processes that support interest-based approaches. As mediation acquires the centre stage globally with the emphasis on Singapore Convention on Mediation, countries around the world will be encouraged to rely on mediation to improve the efficiency of their judicial systems.

At present, India has the opportunity to make use of the momentum that has been created by the Singapore Convention on Mediation globally and translate it into creating a robust judicial system. The traditional dispute-resolution mechanism in India is plagued with inordinate procedural delays, rising costs and crumbling infrastructure. The hesitation to pursue a legal remedy through litigation highlights the need for a dispute resolution process that will be quicker and less expensive. The time is ripe for India to lay the foundations of its ‘mediation ecosystem’, and the creation of MAMC can definitely be a step towards strengthening the foundation.

The Supreme Court in *M.R. Krishna Murthi v. New India Assurance Co. Ltd.* has taken the opportunity to stress the importance of mediation by creating MAMC. MAMC will play a crucial role in addressing concerns regarding the efficiency of the judicial system in India and will provide a much-needed platform for victims of motor accidents to pursue interest-based solutions. MAMC will also provide much-needed impetus for the ‘mediation movement’ in India as it will create awareness about the mediation process.

But it is important to remember that mediation is not the only answer to the questions surrounding ‘access to justice’ in India. The ‘four facets’ listed by the Supreme Court in *Anita Kushwaha v. Pushap Sudan* highlight procedural, infrastructural and financial requirements of an ‘adjudicatory mechanism’ to ensure ‘access to justice’. Mediation can definitely be a starting point on India’s journey to ensure access to justice, but it should not be the only pit stop.