



RESTRUCTURING THE INDIAN LEGAL SYSTEM BY: ALTERNATIVE DISPUTE RESOLUTION

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ABSTRACT

Alternative Dispute Resolution (ADR) has revolutionized the Indian judicial system. India, a country with a long history of using traditional dispute resolution techniques, has adopted more contemporary ADR processes including arbitration and mediation. These have greatly lessened the backlog of court cases, offered affordable solutions, and given people and companies the ability to resolve conflicts amicably and quickly. Even while alternative dispute resolution (ADR) has many advantages, it also has drawbacks, such as problems with enforcement and the requirement for skilled practitioners. Nevertheless, ADR is still a potent instrument for changing judicial systems around the globe in a way that promotes justice, easy access, and convenience. Its ongoing development and incorporation into legal frameworks bode well for a more just and efficient method of resolving conflicts. The disruptive function of Alternative Dispute Resolution methods within the Indian judicial system is the subject of this research article. It explores the development, applications, and kinds of alternative dispute resolution (ADR) in India, examining their effects on the conventional litigation process, the availability of justice, and the legal system as a whole. The difficulties and possibilities of incorporating ADR inside the Indian judicial system are also covered in the study. ADR provides parties with alternate channels for resolving conflicts outside of the conventional courts. It includes a variety of procedures, including arbitration, mediation, negotiation, and conciliation. It has become more well-known around the world as a result of several strong benefits. ADR primarily encourages cost-efficiency by cutting down on the time and expense of drawn-out judicial cases. Secondly, it promotes secrecy, allowing involved parties to maintain sensitive and private issues. Third, ADR promotes adaptability, enabling tailored solutions to satisfy the particular requirements of conflicting parties.

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INTRODUCTION

It indicates that the arbitration may be a dispute settlement mechanism outside the court system.¹

Evolution of Alternate Dispute Resolution in India

The citizens of this nation are also not unfamiliar with the alternate dispute resolution process. Since the beginning of time, it has been common in India.

1) Ancient India

The Bhradanayaka Upanishad is said to contain references to Puga, the Sreni, and Kula, among other types of arbitral bodies, making it one of the oldest known treaties. The kingdom of Gupta had a distinct and independent juridical structure. The lowest tier of the administrative structure was the village forum or trade guild. The majority of peasants in the Mughal Dynasty settled their disputes at the village courts and then appealed through the caste courts, which arbitrated disputes by an unbiased third party. The legal system in Islam was widely used. In Islamic law, qazis and muftis frequently employed arbitration and mediation to resolve conflicts about contracts, trading, and family problems.

2) Pre- Independence: British rule

Anglo-Indian courts were formed by British colonial administrations to adjudicate conflicts among British and Indian people. These courts occasionally permitted arbitration and mediation and frequently acknowledged customary practices. Arbitration and the referral of parties to arbitrators in civil proceedings were permitted by the Bengal Regulation Act of 1793. Provisions that acknowledged and encouraged arbitration agreements were found in the Indian Contract Act of 1872. Parties may include a set of arbitration terms in their contracts by including them in the 2 schedule to the Act.

The Arbitration (Protocol and Convention) Act, of 1937 is a comparable piece of legislation that was established after, in 1937, India acceded to and accepted the Geneva Convention. 2nd schedule section 89 of the CPC and the Indian Arbitration Act, 1899 were abolished in 1940

¹ O.P.Malhotra, the Law and Practice of Arbitration and Conciliation, LexisNexis *Butterworths*, (2nd Ed, 2006).

and amended by the Arbitration Act, 1940. The 1937 and 1961 Acts were intended to enforce foreign arbitration rulings, while the 1940 Act served as the basic legislation governing arbitration in the nation of India in the manner of the British Arbitration Act of 1934. (The 1961 Act implements the New York Convention 1958².)

In India, Panchayats were incredibly successful in settling conflicts at the municipal level in communities.

3) Arbitration Act, 1996

Following the adoption of the 1996 Arbitration and Conciliation Act instead of the Arbitration Act of 1899. The issues about family settlements are covered under the 1984 CPC amendment. The provisions for reconciliation were created by the Special Marriage Act of 1954 and the Hindu Marriage Act of 1955. The 1984 Law Governing Family Courts mandates that the family court attempt to mediate a solution between the involved parties. The introduction of section 89 in the 1999 amendment to the Code of Civil Procedure, 1908, is seen as a crucial step forward by the Indian legislature in the execution of “Court Referred Alternative Disputes Resolution”. The 1996 Arbitration and Conciliation Act also provides arbitral complaints, which are informal, far less costly, and relatively quicker than criminal proceedings, and which have shown to be a useful avenue for resolving disputes when obligated subjects arise out of criminal relationships and variations between the parties³.

With components of equitable law, common law, civil law, and conventional and religious rules, India has a unique legal system.

- **The Constitution of India:** - The highest authority on law is this.
- **Statutes:** - Parliament and the legislatures of states are the bodies that enact laws. Local authorities, which include government agencies, municipalities, gram Panchayats, and metropolitan corporations, adopt subordinate designated legislation, which includes rules, regulations, and bylaws.
- **Laws of custom:** - Local traditions and customs, which are often religious and do not violate any laws or moral principles, may also apply in some circumstances.

² The New York Convention of 1958.

³ Lalit Sharma; Evolution of ADR Mechanisms in India, SCC ONLINE, <https://www.sconline.com/blog/post/2021/02/07/evolution-of-adr-mechanisms-in-india/>

- **Judicial decisions:** - Although not legally binding, rulings from higher courts, such as the Indian Supreme Court and High Courts, constitute a significant body of legal precedent.

REASONS FOR THE GROWTH OF ADR

- There is a significant disparity between the number of courts and cases, which makes the method of delivering justice inadequate and unpredictable.
- People are discouraged from choosing litigation by the complicated, drawn-out laws, difficult legal procedures, and certain outdated, pre-expiring legal legislation that are still in effect.
- Another point of vilification is the rising expenditure of litigation when bringing or defending a lawsuit; court costs, attorney fees, and other incidentals are all rising as they always do. On the other hand, actual circumstances indicate that arbitration in India, especially ad hoc arbitration, is getting more and more costly in comparison to conventional litigation⁴.
- The delay in case resolution results in more cases being pending in all courts, which happens to be one of the main things that divert parties involved in a dispute.

REFORMS

Alternative dispute resolution (ADR) is a process for settling legal disputes that is effective and cost-effective. In the legal community, this strategy has recently garnered a lot of popularity. The alternative dispute resolution (ADR) framework in India has significantly contributed to the decline in the court system's burden and enhanced accessibility to the legal system. However, to address newly emerging issues and enhance its efficacy, the Alternative Dispute Resolution (ADR) law in India has to be revised notwithstanding its achievements. This article looks at a few important areas where Indian alternate dispute resolution law needs to be revised. If specialized institutions are formed to oversee and administer alternative dispute resolution (ADR) procedures, there is a great deal of potential for enhanced efficiency in these processes. It is necessary to create new specialized organizations at the national and regional levels in addition to strengthening already-existing ones, such as the Indian Institute of

⁴ Krishna Sarma, Momota Oinam, Angshuman Kaushik , DEVELOPMENT AND PRACTICE OF ARBITRATION IN INDIA – HAS IT EVOLVED AS AN EFFECTIVE LEGAL INSTITUTION, https://fsi-live.s3.us-west-1.amazonaws.com/s3fs-public/No_103_Sarma_India_Arbitration_India_509.pdf.

Arbitration and the Global Centre over alternative forms of dispute resolution. This is essential. ADR practitioners must have access to these organizations' advice, accreditation, and oversight to guarantee that they are competent and uphold ethical standards.

Any gaps or ambiguities can be resolved by routinely reviewing and updating ADR-related laws, which include the Arbitration and Conciliation Act. Simplifying processes, guaranteeing the enforcement of ADR decisions, and bringing the legal system into line with global best practices are possible reform areas. To guarantee the professionalism and competency of ADR practitioners, norms and certification procedures should be established. ADR service quality may be monitored, training can be given, and standards can be established by establishing accreditation organizations. As a result, stakeholders may become more confident, and consistent and trustworthy ADR procedures may be encouraged.

ADR procedures may be completely transformed by embracing technology-driven solutions. Creating easily navigable web-based platforms for virtual hearings, secure document sharing, and dispute settlement can improve accessibility, cut expenses, and speed up the resolution process. Prioritizing data confidentiality and safety safeguards is important. Promotion of Mediation and Conciliation these two processes should be promoted as the best means of settling conflicts. This may be accomplished by creating mediation centers around the nation, increasing awareness, and offering incentives to parties to participate in mediation. A qualified pool of professionals may be developed with the use of training programs for conciliators and mediators. Institutional strengthening of enough money, the creation of infrastructure, and capacity-building programs can all help to enhance ADR institutions like arbitration and mediation centers. Exchanges of best practices and information can be facilitated by partnerships with global ADR groups.

The UNCITRAL Model Law can be adopted to further enhance India's standing as a nation that welcomes arbitration and the advancement of institutional arbitration⁵.

⁵ Article 1 of the UNCITRAL Model Law.

ALTERNATE DISPUTE RESOLUTION MECHANISMS IN INDIA

- **Mediation**

Mediation is the process of negotiation assisted by a third person, known as the mediator, who is impartial and uninterested in the resolution of the conflict. Rather, the mediator assists the parties in identifying points of agreement and helps craft a settlement agreement.

Mediation might take the shape of a scheduled settlement conference lasting all day, or it can be a casual session lasting only a few hours. This meeting might take place anywhere; try looking for the mediator's office. Both parties choose to mediate, and it is not legally binding. This means that neither party may be forced by the mediator to choose a particular path of action and do anything they both refuse to do.

There are no legal restrictions on who can act as a mediator because they are not able to make decisions or enforce them.

This neutral 3rd party comes to a mutually agreeable settlement by spotting issues exploring areas of agreement and finding areas of compromise. The mediator will usually allow each party to briefly describe the events that led up to the disagreement. Following this statement of evidence, a mediator works with each side to identify areas of common interest and reach a settlement that will benefit both parties.

In India, the mediation process is entirely private; no party may provide any information, and any prepared or filed report is prohibited and sealed. Any admissions made during mediation cannot be used against the other party in a different lawsuit, and any information given to the mediator is prohibited from sharing with them unless the other party gives the mediator permission to do so. The mediator is not permitted to testify in court or provide any information about the proceedings, nor can they be summoned as a witness.

It has shown that it has been enormously successful in Chandigarh, Nagpur, Ranchi, Jamshedpur, Delhi, and Aurangabad⁶. These initiatives will help change the perception that the

⁶ <https://main.sci.gov.in/pdf/mediation/Brochure%20-%20MCPC.pdf>

only way to resolve an issue is via litigation and encourage parties for mediation as their preferred way of conflict resolution⁷.

- **Arbitration**

The primary legislation governing arbitration in India is the Arbitration and Conciliation Act, which took effect in 1996. The UNCITRAL Model Law, which attempts to offer a thorough and approachable regulatory structure for alternative dispute resolution, serves as the foundation for the Act. Arbitration is seen as an alternate method of resolving disputes, along with conciliation and mediation. When two parties from two separate nations contact an international arbitrator—either with their cooperation or through an arbitration institution—and resolve their dispute in this way, it is referred to as international commercial arbitration. The rise in business market disputes in recent years has made alternative dispute resolution procedures more significant. They offer a quick, economical, and effective means of resolving disputes. Despite the arbiter's direct facilitation and proclamation of a decision⁸.

Arbitration Agreement-

Defined under Section 2B read with Sec.7 of the Act⁹:-

In written form, it refers to any declaration made by an electronic device for communication or an exchange of messages between the parties. The parties may choose to sign or not sign it. The agreement would be regarded as an arbitration agreement even if it included an arbitration clause.

*M/S Rickmers Verwaltung Gmb H vs The Indian Oil Corporation Ltd*¹⁰

Declared that the goal of the arbitration side is to get information via the meaning and form of language. If one party makes a statement about the contentious claim and the other side does not refute it, the statement would constitute an arbitration agreement.

⁷ Shakthi Jayanth s and Kavitha Durai, REFORMS TO BE MADE IN ADR LAWS-A COMPARITIVE STUDY WITH UK LAWS, Russian Law Journal, Volume XI (2023) Issue 3

⁸ Tusharika Singh Gaharvar, AN OVERVIEW OF INDIAN COURTS HELPING HAND: ALTERNATIVE DISPUTE RESOLUTION, Journal of Unique Law and Student, https://www.researchgate.net/publication/369810607_AN_OVERVIEW_OF_INDIAN_COURTS_HELPING_HANDALTERNATIVE_DISPUTE_RESOLUTION accessed on 6 Jan 2025

⁹ The Arbitration and Conciliation Act, 1996.

¹⁰ *M/S Rickmers Verwaltung Gmb H vs The Indian Oil Corporation Ltd* on 19 November, 1998

- **Conciliation and Negotiation**

Two popular techniques in Alternative Dispute Resolution (ADR) to resolve conflicts outside of formal court processes are conciliation and bargaining. Direct communication between the parties involved in the conflict is necessary for them to reach a mutually accepted resolution. The procedure is flexible and optional, allowing the participants to talk about their issues, interests, and potential solutions. It is possible to negotiate with or without the support of an impartial third party.

In contrast to mediation and conciliation, where a third party's role is to facilitate an acceptable solution, negotiation does not include a third party intervening to help the parties achieve a consensus among the parties¹¹.

In contrast, conciliation entails the intervention of an impartial third party, referred to as a conciliator. The conciliator facilitates communication between the parties and helps them comprehend their respective points of perspective. The conciliator helps the parties come to a mutually acceptable resolution rather than imposing a choice on them. The conciliator can make recommendations, make concessions, and help keep the process moving in a positive direction.

The goals of both negotiation and conciliation are to help the opposing parties come to an understanding, communicate, and work toward a consensus. These approaches stress the significance of reaching a win-win solution, giving the parties autonomy over the process of making decisions and maybe saving their relationships in the process.

- **Lok Adalat and its importance**

A crucial part of Alternative Dispute Resolution (ADR) in India is Lok Adalat, or "People's Court," a forum for the fast and peaceful settlement of conflicts that are unresolved in regular courts or that may become the subject of future disputes. It operates on the tenets of conciliation, mediation, and compromise.

In partnership with the judiciary and other stakeholders, the National Legal Services Authority (NALSA) and State Legal Services Authorities (SLSA) coordinate Lok Adalat. The purpose

¹¹Alternative dispute resolution, Legal Information Institute, www.law.cornell.edu.

of this Adalat is to offer a forum for informal conflict resolution outside of the official legal system.

Social activists who serve as conciliators, retired judges, and legal experts all participate in the Lok Adalat process. With the conciliators' assistance, the disputing parties are urged to make their case and start discussions. The focus is on coming to a resolution that is agreeable to all sides and meets their needs.

The verdicts made in Lok Adalat are legally binding and equivalent to a civil court ruling. The settlements provide a prompt and economical way to resolve the issues because they are enforceable and typically not appealable.

When it comes to settling matters involving compoundable criminal charges, civil issues, automobile accident compensation claims, and marriage conflicts, Lok Adalat is very useful. They provide a quick and easy way to settle disputes, advancing justice and lightening the load on the established legal system.

LEGAL FRAMEWORK AND POLICY SUPPORT FOR ADR IN INDIA

The creation and dissemination of Alternative Dispute Resolution (ADR) techniques have been aided by several noteworthy case laws in India. Below are some of the noteworthy instances:

- **Afcons Infrastructure Ltd. v Cherian Varkey Construction Co. (P) Ltd¹².**

This Supreme Court ruling highlighted the value of expeditious dispute settlement and the advancement of arbitration being a successful alternative dispute resolution process. The court's ruling recommended that the Indian courts take a pro-arbitration stance and restrict its involvement in arbitral procedures. It also inferred that the absence of an arbitration agreement can't bar the parties from opting for an ADR session provided they all consent to it¹³.

¹² *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. P. Ltd.* (2010) 8 SCC 24

¹³ Niharika Gupta, *Afcons Infrastructure Ltd. and Ors. V Cherian Varkey Construction Co. (P) Ltd.* (2010), Bnw Journal, <https://bnwjournals.com/2021/02/22/afcons-infrastructure-ltd-and-ors-v-cherian-varkey-construction-co-p-ltd-2010/>

- **Salem Advocate Bar Association v. Union of India (2005)**

The code's addition (Amendment 6) about the alternate dispute resolution Mechanisms is provided in Report 2¹⁴. The Supreme Court recognized the importance of The Lok Adalat system as a successful ADR tool in this instance. The court ruled that Lok Adalat verdicts are enforceable and binding and that they have authority even in situations when a court case is still pending.

- **Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd. (2011)**

According to the ruling in Booz Allen, a disagreement can only be considered entirely beyond the purview of the courts, could the dispute be said to be non-arbitrable? The Supreme Court outlined the parameters of arbitration provisions in contracts in this historic decision. The court decided that unless otherwise specified, any disagreements, including those involving rights in Personam, may be submitted to arbitration.

- **Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc. (2012)**

Important rules regarding the selection of arbitrators and the degree of court meddling in the arbitration procedure were established by this decision. The Supreme Court ruled that courts have to abstain from interfering needlessly in arbitral processes and instead take a hands-off stance. Additionally, an ordinary civil suit brought under the Code of Civil Procedure to obtain interim relief would not be entertained by Indian courts, in aid of foreign-seated arbitrations¹⁵.

- **Ayyasamy v. A. Paramasivam (2016)¹⁶**

The (SC) Supreme Court upheld the parties' decision to settle their differences through arbitration in this instance, stressing the value of party sovereignty. The idea of minimum judicial involvement in arbitral procedures was reaffirmed by the court.

These instances have aided in the development and acceptance of ADR practices in India. They have strengthened the legitimacy and enforceability of Lok Adalats, arbitration, and mediation

¹⁴ Vandini Sharma, *Salem Advocates Bar Association v. Union of India*, Legal Service India, https://www.legalserviceindia.com/article/1423-Salem-Advocates-Bar-Association-v.-Union-of-India.html#google_vignette

¹⁵ Ashish Chugh, *The Bharat Aluminium Case: The Indian Supreme Court Usher in a New Era*, Kluwer Arbitration Blog, <https://arbitrationblog.kluwerarbitration.com/2012/09/26/the-bharat-aluminium-case-the-indian-supreme-court-ushers-in-a-new-era/>.

¹⁶ *Ayyasamy v. A. Paramasivam*, Oct. 4.2016, 11 S.C.R 521.

by offering clarification on several issues. Additionally, by encouraging parties to consider other conflict resolution methods, these rulings have strengthened the pro-alternative dispute resolution (ADR) stance across the Indian legal system.

CONCLUSION

In conclusion, alternative dispute resolution (ADR) has made significant strides in India's authorized landscape, offering an effective and accessible means of resolving disputes outside of traditional court proceedings. There are currently several more ways outside courtroom mediation and arbitration whereby a third person (apart from a judge) might be engaged in the resolution of disputes. Law and economics experts should do more theoretical and empirical research on whether and how alternative dispute resolution (ADR) helps to overcome obstacles to attaining effective results, as well as the implications of ADR's introduction on settlement incentives and the effectiveness of the resolution of disputes system.

Here are some suggestions and key takeaways for the further advancement of ADR in India:

1. **Education and Awareness:** The general public, professionals in law, and companies should all continue to be made aware of alternative dispute resolution (ADR) techniques. ADR's increased use can be encouraged via educational initiatives, workshops, and programs that assist spread awareness of the procedure and advantages of alternative dispute resolution.
2. **Administrative Support:** It's critical to fortify the ADR system's institutional foundation. Increasing the infrastructure and capacity of ADR organizations, such as arbitration panels and mediation centres, can improve their efficacy and legitimacy. The professionalism and experience of ADR practitioners can also be enhanced by regular education and licensing programs.
3. **Connectivity with Legal System:** ADR and the official legal system ought to work together more smoothly. By submitting matters to arbitration or mediation at an early stage, courts can actively support alternative dispute resolution. A more cordial relationship and a more seamless transition between ADR and litigation procedures can be fostered by supporting a collaborative approach between ADR experts and judges.
4. **Accreditation and Certification:** Creating uniform policies, procedures, and moral standards for ADR procedures helps improve their dependability and consistency. ADR

specialists can guarantee excellence and proficiency in the industry by being certified and accredited. Maintaining standards and resolving complaints about ADR procedures can be facilitated by creating new regulatory bodies or fortifying those that already exist.

5. **Utilization of Technology:** Using technology to its full potential can improve accessibility and expedite ADR procedures. Geographical boundaries can be eliminated and parties engaged can benefit from the ease of virtual hearings and online dispute resolution systems. The efficacy and efficiency of ADR procedures may be increased by investing in a user-friendly and secure technological infrastructure.
6. **Promoting Voluntary ADR:** Reducing court costs, expediting settlement times, and acknowledging the enforceability of ADR decisions are a few ways to incentivize parties to choose ADR over litigation.

By putting these recommendations into practice, India may improve its ADR framework even further, lighten the load on the regular court mechanism, and provide its people availability of efficient and affordable conflict resolution solutions. By encouraging peaceful resolutions, maintaining relationships, and providing justice on time, alternative dispute resolution (ADR) can support a society with greater harmony and equity.