



## ALTERNATIVE DISPUTE RESOLUTION IN INDIA: AN OVERVIEW

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Khushi\*

### ABSTRACT

*Alternative Dispute Resolution (ADR) has emerged as an effective mechanism for resolving disputes outside the conventional judicial system. In India, ADR plays a crucial role in reducing judicial backlog, ensuring cost-effective dispute resolution, and promoting consensual settlement of disputes. This article provides an overview of the concept of ADR, its major mechanisms, advantages, and the legal framework governing ADR in India. It also briefly examines recent legislative developments, including the Bharatiya Nyaya Sanhita, 2023,<sup>1</sup> Bharatiya Nagarik Suraksha Sanhita, 2023,<sup>2</sup> and Bharatiya Sakshya Adhinyam, 2023,<sup>3</sup> which reflect a growing institutional emphasis on alternative modes of justice delivery.*

**Keywords:** Alternative Dispute Resolution, Arbitration, Mediation, Lok Adalat, Indian Judiciary.

### INTRODUCTION

Alternative Dispute Resolution (ADR) refers to a collection of processes through which disputes are resolved outside traditional court litigation. In India, ADR has gained increasing importance due to persistent delays, high costs, and excessive pendency of cases in courts. The objective of ADR is not merely to reduce the burden on courts but also to provide parties with efficient, flexible, and amicable means of dispute resolution.

The Indian legal system has progressively incorporated ADR mechanisms through legislative measures and judicial encouragement, recognising their potential to enhance access to justice and promote social harmony.

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\*BA LLB (HONS.), SECOND YEAR, IILM UNIVERSITY, GREATER NOIDA.

<sup>1</sup> Bharatiya Nyaya Sanhita, 2023

<sup>2</sup> Bharatiya Nagarik Suraksha Sanhita, 2023

<sup>3</sup> Bharatiya Sakshya Adhinyam, 2023

## EVOLUTION OF ALTERNATIVE DISPUTE RESOLUTION IN INDIA

The concept of Alternative Dispute Resolution is not new to the Indian legal system. Long before the formal establishment of courts, dispute resolution in India was largely community-based. Village councils, panchayats, and elders played a central role in resolving disputes through consensus and mediation. These informal mechanisms emphasised reconciliation and social harmony rather than adversarial adjudication.

During the colonial period, the British introduced formal judicial institutions, which gradually reduced the prominence of traditional dispute resolution mechanisms. However, the rigid and adversarial nature of colonial courts led to delays, high costs, and procedural complexities. Recognising these shortcomings, the need for alternative mechanisms resurfaced in the post-independence era.

The modern evolution of ADR in India began with legislative recognition. The enactment of the Arbitration Act, 1940, marked an early attempt to formalise arbitration. However, the Act was criticised for excessive judicial intervention. This led to the enactment of the Arbitration and Conciliation Act, 1996, based on the UNCITRAL Model Law, which sought to promote party autonomy and minimise court interference.

Judicial reforms and Law Commission reports have further emphasised the importance of ADR as an effective tool to improve access to justice and reduce pendency in courts.

## KEY ADR MECHANISMS IN INDIA

The Indian legal framework recognises several ADR methods, each serving a distinct purpose:

**Arbitration:** Arbitration is a formal dispute resolution process in which parties agree to submit their dispute to one or more neutral arbitrators, whose decision—known as an arbitral award—is binding. Arbitration in India is governed by the Arbitration and Conciliation Act, 1996<sup>4</sup> and is widely used in commercial, contractual, and international disputes.

**Mediation:** Mediation is a voluntary and non-binding process in which a neutral mediator facilitates dialogue between disputing parties to help them arrive at a mutually acceptable

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<sup>4</sup> Arbitration and Conciliation Act, 1996

settlement. The mediator does not impose a decision but assists parties in exploring possible solutions. Mediation is increasingly encouraged by courts due to its collaborative nature.

**Conciliation:** Conciliation is similar to mediation but allows the conciliator to take a more proactive role by suggesting terms of settlement. Like arbitration, conciliation is also governed by the Arbitration and Conciliation Act, 1996.

**Lok Adalats:** Lok Adalats, popularly known as “People’s Courts,” are statutory forums established under the Legal Services Authorities Act, 1987.<sup>5</sup> They aim to provide speedy and inexpensive justice, particularly to economically weaker sections. Awards passed by Lok Adalats are deemed to be decrees of civil courts and are binding on the parties.

**Negotiation:** Negotiation is the simplest form of dispute resolution, involving direct communication between parties without the intervention of a third party. It is informal, flexible, and entirely party-driven.

### **ADVANTAGES OF ADR IN INDIA**

ADR offers several significant advantages over traditional litigation:

**Reduction of Judicial Backlog:** ADR diverts a large number of cases from courts, helping reduce pendency.

**Cost-Effectiveness:** ADR mechanisms generally involve lower legal and procedural costs.

**Speedy Resolution:** Disputes are often resolved faster compared to court proceedings.

**Flexibility and Autonomy:** Parties enjoy greater control over procedures and outcomes.

**Confidentiality:** ADR proceedings are private, protecting sensitive information.

**Preservation of Relationships:** The consensual nature of ADR helps maintain personal and commercial relationships.

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<sup>5</sup> Legal Services Authorities Act, 1987

## JUDICIAL APPROACH TOWARDS ADR IN INDIA

The Indian judiciary has played a pivotal role in promoting and strengthening ADR mechanisms. Courts have consistently emphasised that ADR is not merely an alternative but an essential component of the justice delivery system.

In *Salem Advocate Bar Association v. Union of India* (2005),<sup>6</sup> the Supreme Court upheld the constitutional validity of Section 89 of the Code of Civil Procedure, 1908,<sup>7</sup> and encouraged courts to actively refer suitable cases to ADR mechanisms. The Court observed that ADR provides an effective means to resolve disputes efficiently and amicably.

Similarly, in *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.* (2010),<sup>8</sup> the Supreme Court laid down clear guidelines on the types of disputes suitable for ADR, such as commercial, matrimonial, and contractual disputes, while excluding matters involving serious allegations of fraud or criminal offences.

Through such decisions, Indian courts have reinforced the importance of ADR in reducing litigation burden and fostering a culture of settlement rather than confrontation.

The judiciary has also emphasised that ADR should not be treated as a secondary or inferior mode of justice. Courts have repeatedly observed that consensual dispute resolution helps reduce hostility between parties and preserves long-term relationships. In family disputes, commercial matters, and contractual disagreements, courts have actively encouraged mediation and conciliation as the first step before resorting to adversarial litigation.

In *Salem Advocate Bar Association v. Union of India* (2005), the Supreme Court clarified that Section 89 of the Code of Civil Procedure, 1908, was introduced to promote ADR and ensure early settlement of disputes. The Court highlighted that judges have a responsibility to identify cases suitable for ADR and refer them accordingly. This judgment strengthened judicial confidence in alternative dispute resolution mechanisms.

Further, in *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.* (2010), the Supreme Court laid down practical guidelines for courts to determine which disputes are appropriate for ADR. The Court categorised disputes suitable for ADR, such as commercial

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<sup>6</sup> *Saket Advocate Bar Association v. Union of India* (2005)

<sup>7</sup> Section 89 of the Code of Civil Procedure, 1908

<sup>8</sup> *Afcons Infrastructure Ltd. V. Cherian Varkey Construction Co. (P) Ltd.* (2010)

contracts, partnership disputes, and matrimonial matters, while excluding serious criminal cases and matters involving public interest. These judicial pronouncements demonstrate that courts view ADR as an essential part of procedural justice rather than merely an optional alternative.

### **CHALLENGES AND LIMITATIONS OF ADR IN INDIA**

Despite its advantages, ADR in India faces several challenges. One major concern is the lack of awareness among litigants about ADR mechanisms and their benefits. Many parties still perceive litigation as the primary means of seeking justice.

Another challenge is the quality and availability of trained mediators and arbitrators. Inadequate training and lack of uniform standards may affect the effectiveness of ADR processes. Additionally, delays in arbitration proceedings and excessive judicial intervention in arbitral awards have, at times, undermined confidence in arbitration.

Enforcement of arbitral awards and settlement agreements also remains a concern, particularly in cross-border disputes. Addressing these challenges requires institutional strengthening, capacity building, and greater awareness initiatives.

Despite its growing acceptance, ADR in India faces several structural and practical challenges. One significant limitation is the lack of awareness among litigants, particularly in rural and semi-urban areas. Many individuals remain unfamiliar with ADR mechanisms or lack confidence in their effectiveness, leading them to prefer traditional litigation.

Another concern relates to arbitration proceedings, which are often criticised for becoming as time-consuming and expensive as court litigation. Excessive adjournments, procedural delays, and frequent judicial intervention have, in some cases, diluted the efficiency of arbitration. This undermines the fundamental objective of ADR, which is speedy dispute resolution.

Additionally, the absence of uniform training standards for mediators and conciliators affects the quality of dispute resolution. Institutional capacity remains limited, and there is a need for greater professionalisation of ADR practitioners. Addressing these challenges requires stronger institutional frameworks, judicial restraint, and increased awareness among stakeholders.

## LEGAL FRAMEWORK AND RECENT DEVELOPMENTS

The statutory framework governing ADR in India includes:

1. The Arbitration and Conciliation Act, 1996,<sup>9</sup> which regulates arbitration and conciliation.
2. The Legal Services Authorities Act, 1987,<sup>10</sup> providing for Lok Adalats.
3. Section 89 of the Code of Civil Procedure, 1908,<sup>11</sup> which empowers courts to refer disputes to ADR mechanisms.
4. The proposed Mediation Bill, 2021,<sup>12</sup> intended to institutionalise mediation and promote pre-litigation settlement.

Further, the enactment of the Bharatiya Nyaya Sanhita, 2023,<sup>13</sup> Bharatiya Nagarik Suraksha Sanhita, 2023,<sup>14</sup> and Bharatiya Sakshya Adhinyam, 2023,<sup>15</sup> effective from 1 July 2024, reflects a modernised approach to justice delivery. Notably, the BNSS recognises Community Policing and Alternative Dispute Resolution, reinforcing the state's commitment to non-adversarial dispute resolution mechanisms.

## ADR VS. TRADITIONAL LITIGATION: A COMPARATIVE ANALYSIS

A comparative analysis of ADR and traditional litigation highlights why ADR has gained prominence in India. Litigation is often characterised by procedural rigidity, prolonged timelines, and high costs. Court proceedings may take years to conclude, causing financial and emotional strain on parties.

In contrast, ADR mechanisms offer flexibility in procedure, confidentiality, and faster resolution. Parties can choose the forum, the neutral third party, and the governing rules, ensuring greater control over the dispute resolution process. ADR also promotes cooperation rather than hostility, making it particularly suitable for disputes where ongoing relationships are important.

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<sup>9</sup> The Arbitration and Conciliation Act, 1996

<sup>10</sup> The Legal Services Authorities Act, 1987

<sup>11</sup> Code of Civil Procedure, 1908

<sup>12</sup> Mediation Bill, 2021

<sup>13</sup> Bharatiya Nyaya Sanhita, 2023

<sup>14</sup> Bharatiya Nagarik Suraksha Sanhita, 2023

<sup>15</sup> Bharatiya Sakshya Adhinyam, 2023

However, litigation continues to play a vital role in matters involving constitutional interpretation, criminal liability, and public interest issues. Thus, ADR is not a replacement but a complementary mechanism that enhances the overall justice delivery framework.

### **FUTURE SCOPE OF ADR IN INDIA**

The future of ADR in India appears promising. Legislative initiatives such as the proposed Mediation Bill and judicial support indicate a shift towards institutionalising ADR mechanisms. The increasing use of technology, including online dispute resolution (ODR), has further expanded the scope of ADR, especially in commercial and consumer disputes.

With growing emphasis on pre-litigation mediation and community-based dispute resolution, ADR is likely to become an integral part of the justice delivery system. Strengthening ADR institutions, standardising training, and promoting public awareness will be crucial in realising its full potential.

The future of ADR in India is closely linked with technological advancements and evolving legal reforms. Online Dispute Resolution (ODR) has emerged as a promising development, especially in commercial and consumer disputes. The integration of digital platforms enables cost-effective and time-efficient resolution, making ADR more accessible to a wider population.

Pre-litigation mediation is also gaining prominence as a preventive approach to dispute resolution. By encouraging parties to resolve disputes before initiating formal legal proceedings, the burden on courts can be significantly reduced. Legislative initiatives such as the Mediation Bill aim to institutionalise mediation and promote settlement as the preferred mode of dispute resolution.

With continued judicial support, legislative reforms, and technological integration, ADR has the potential to transform India's justice delivery system into a more efficient, inclusive, and participatory framework.

### **CONCLUSION**

Alternative Dispute Resolution has become an indispensable component of India's justice delivery system. By offering efficient, economical, and flexible alternatives to litigation, ADR enhances access to justice and promotes harmonious dispute resolution. With continuous

legislative support and judicial encouragement, ADR is poised to play an even greater role in shaping the future of dispute resolution in India.

In a legal system burdened by excessive pendency and procedural delays, ADR mechanisms provide a pragmatic solution by encouraging early settlement and reducing adversarial conflict. The emphasis on consensual methods such as mediation and conciliation reflects a shift towards a more participatory and relationship-oriented approach to justice. These mechanisms not only save time and costs but also help preserve long-term personal and commercial relationships.

The judiciary and legislature have played a crucial role in strengthening the ADR framework through statutory recognition and progressive judicial interpretation. Recent legislative developments further indicate the State's commitment to modernising dispute resolution and promoting non-adversarial justice. However, for ADR to realise its full potential, challenges relating to awareness, institutional capacity, and procedural efficiency must be effectively addressed.

Looking ahead, the growing use of technology, the emergence of online dispute resolution, and the promotion of pre-litigation mediation are likely to further strengthen ADR in India. With sustained reforms, institutional support, and increased public awareness, Alternative Dispute Resolution can significantly contribute to building a more efficient, accessible, and equitable justice delivery system.