



ALTERNATIVE DISPUTE RESOLUTION IN INDIA: CHALLENGES, REFORMS AND THE WAY FORWARD*

ABSTRACT

India's judicial system is burdened by more than five crore pending cases, reflecting systemic inefficiencies in the conventional litigation process. Alternative Dispute Resolution (ADR) mechanisms—arbitration, mediation, conciliation, negotiation, and Lok Adalats—have emerged as pragmatic solutions to ensure timely justice and reduce the burden on courts. This research paper analyzes the historical evolution, current legal framework, sector-wise application, comparative global practices, and contemporary reforms in ADR, with particular emphasis on the Arbitration and Conciliation (Amendment) Acts and the Mediation Bill, 2021. Drawing from judicial pronouncements, empirical data, and scholarly insights, the paper presents a holistic overview of ADR's relevance and potential in present-day India. Recommendations for strengthening institutional mechanisms, community integration, digital tools, and legal education reforms are discussed. The study concludes that for India to fulfill its constitutional promise of access to justice, ADR must be mainstreamed through national strategy and collaborative legal reform.

INTRODUCTION

Settlement of disputes in an amicable way is the hall mark of civilization. In India, the arbitration or mediation as an alternative to dispute resolution by municipal courts has been prevalent in India from Vedic times. The earliest known treatise is the Bhradarnayaka Upanishad, in which various types of arbitral bodies viz., 1) the puga ii) the Srenis iii) the Kula are referred to. These arbitral bodies, known as Panchayats, dealt with variety of disputes, such as disputes of contractual, matrimonial and even of a Criminal nature (1) The disputants would ordinarily

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accept the decision of the panchayat and hence a settlement arrived consequent to conciliation by the Panchayat would be as binding as the decision that was on clear legal obligations (2) The disputes were peacefully decided by intervention of kulas (family or clan assemblies), Srenis (guilds of men following the same occupation), parishads (assemblies of learned men who knew law) before the king came to adjudicate on disputes. (3) It is generally presumed that the commonly prevalent system of Government in Ancient India was monarchy and instances of republic were either exception or aberrations. The view is based on the apparent perception that since there were kings in ancient India, the system was that of monarchy. (4) The Vedic age, people did not have a settled life and were nomads but with development in agriculture people started to settle down in groups.

The Indian judiciary, widely respected for its independence and resilience, is currently grappling with an unprecedented case backlog. With more than five crore cases pending across various courts, litigants often wait years—sometimes decades—for resolution. This systemic delay not only undermines public trust in the justice system but also infringes upon the constitutional promise of timely access to justice under Article 21. Alternative Dispute Resolution (ADR) mechanisms such as arbitration, mediation, conciliation, negotiation, and Lok Adalats provide a viable solution to these challenges.

ADR encourages collaboration over confrontation, reduces litigation costs, and eases the burden on courts. The advent of the Arbitration and Conciliation Act, 1996, was a landmark in formalizing ADR in India. Since then, various amendments, along with judicial backing and institutional innovation, have cemented ADR's role in justice delivery. As India aspires to be a global economic and legal hub, ADR's relevance is more urgent than ever.

HISTORICAL ORIGINS OF ADR IN INDIA

ADR has deep roots in Indian history. In the ancient period, local disputes were resolved through the Panchayat system—a council of village elders who provided timely and culturally nuanced judgments. These bodies were respected and their decisions, often based on equity and community standards, were binding.

Ancient India began in search for laws since Vedic times approximately 4000 to 1000 years B.C and it is possible that some of the Vedic hymns were composed at a period earlier than 4000 B.C. The early Aryans were very vigorous and unsophisticated people full of joy for life and had behind them ages of civilized existence and thought. They primarily invoked the unwritten

law of divine wisdom, reason and prudence, which according to them governed heaven and earth. This was one of the first originating philosophies of mediation.

The era of Dharma Shastras (Code of Conduct) followed the Vedic epoch, during which period scholastic jurists developed the philosophy of basic laws. Their learned discourse recognised existing usages and customs of different communities, which included resolution of disputes by non-adversarial indigenous methods. Yajnavalkya is a brilliant scholar who propounded and set up the tribunal called KULA, which dealt with the disputes between members of the family, community, tribes, caste or races. Another tribunal known as SHRENI, a corporation of artisans following the same business dealt with their internal disputes. PUGA was a similar association of traders.

UNDER MARATHAS

The Maratha Empire established Panchayats; they were the first instrument of the civil administration of justice under the Marathas to adjudicate cases of simple and minor nature. The disputing parties were to sign an agreement regarding the abiding of the rules and regulations of the Panchayat. It was upto the Panchayat to study the case and pass its judgment impartially or without any bias to any party. A “Mamlatdar”, the higher office in the succession of judicial administration was to confirm the judgment. Generally, the Mamlatdar the panchayat used to adjudicate the cases which were upheld by the Maratha government.

UNDER MUSLIMS

The Muslim rule in India saw the incorporation of the principles of Muslim law in the Indian culture. Those laws were systematically compiled in the form of a commentary and came to be known as Hedaya. During Muslim rule, all Muslims in India were governed by Islamic laws- the Shariah as contained in the Hedaya. The Hedaya contains provisions for arbitration as well. The Arabic word for arbitration is Takheem, while the word for an arbitrator is Hakam. An arbitrator was required to possess their qualities essential for a Kазee- an official Judge presiding over a court of Law whose decision was binding on the parties subject to legality and validity of the award. The court has the jurisdiction to enforce such awards given under Shariah though it is not entitled to review the merits of the dispute or the reasoning of the arbitrator.

UNDER BRITISH RAJ

Alternative Dispute Resolution picked up pace in the country, with the coming of the East India Company. The British government gave legislative form to the law of arbitration by

promulgating regulations in the three presidency towns: Calcutta, Bombay and Madras. Bengal Regulation Act, 1772 and Bengal Regulation Act, 1781 provided parties to submit the dispute to the arbitrator, appointed after mutual agreement and whose verdict shall be binding on both the parties. These remained in force, till the Civil Procedure Code 1859 and were extended in 1862 to the Presidency towns.

ADR received legislative recognition in India, after the enactment of Civil Procedure Code, 1859. The Code of Civil Procedure, 1859 in its sections 312 to 325 dealt with arbitration without Court intervention. The Indian Arbitration Act, 1899 was substantially based on the British Arbitration Act of 1889. It expanded the area of arbitration by defining the expression 'submission' to mean "a written agreement to submit present and future differences to arbitration whether an arbitrator is named therein or not".

The Geneva Protocol on Arbitration clauses 1923 and the Geneva Convention Execution of Foreign Arbitral Awards 1927 were implemented in India by the Arbitration (Protocol and Convention) Act, 1937. The Arbitration Act of 1940 dealt with only domestic arbitration. Under the 1940 Act, intervention of the Court was required in all the three stages of arbitration in the tribunal i.e., prior to the reference of the dispute, in the duration of the proceedings and after the award was passed.

During the Mughal period, the Islamic concept of Tahkeem (arbitration) introduced structured ADR into commercial and personal affairs. With British colonialism, formal legal systems were introduced, but early arbitration laws such as the Indian Arbitration Act of 1899 remained limited. The post-independence era saw further efforts to institutionalize ADR, culminating in the Arbitration Act of 1940 and later, a modern overhaul via the Arbitration and Conciliation Act, 1996. In parallel, the Legal Services Authorities Act, 1987 institutionalized Lok Adalats, enabling mass resolution of disputes with minimal formalities.

Thus ADR system was adopted from the old age and thus it was a substitute for litigation. ADR provided for a winning at both ends situation. Today when about 3.32 Crore cases are pending in our courts, the ADR like mechanisms particularly Lok Adalats will play a major role in the settlement of disputes.

IMPORTANCE OF ADR IN INDIA

Undoubtedly, litigants in India are facing a great hardship in seeking their rights redressed from the court at every stage, as the courts in India are dealing with formidable task in disposing of the arrears of millions of cases and the process of adjudication stands crumbled at large. The

reasons being lack of infrastructure, inadequate staff, less number of judicial officers from lower judiciary to higher judiciary, uncontrolled urbanization, overpopulation and sluggish attitude of the self styled bureaucrats are the chief reasons for flooding of litigations. To deal with the situation of pendency of cases in courts of India, ADR plays a significant role in India by its diverse techniques. Alternative Dispute Resolution mechanism provides scientifically developed techniques to Indian judiciary which helps in reducing the burden on the courts. ADR provides various modes of settlement including, arbitration, conciliation, mediation, negotiation and lok Adalat. Here, negotiation means self-counseling between the parties to resolve their dispute but it doesn't have any statutory recognition in India. ADR is also founded on such fundamental rights, article 14 and 21 which deals with equality before law and right to life and personal liberty respectively. ADR's motive is to provide social-economic and political justice and maintain integrity in the society enshrined in the preamble. ADR also strive to achieve equal justice and free legal aid provided under article 39-A relating to Directive Principle of State Policy (DPSP).

In a country, which aims to protect the socio-economic and cultural rights of citizens, it is extremely important to quickly dispose the cases in India, as the Courts alone cannot handle the huge backlog of cases. This can be effectively achieved by applying the mechanisms of alternative dispute resolution. These are the reasons behind the introduction of alternative dispute resolution in India. Human ingenuity in law has given birth to various alternative dispute resolution systems in departure from the traditional time-tested and well established system and procedure of courts. The purpose of alternative dispute resolution is to encourage the peaceable/satisfactory resolution of disputes and litigation through voluntary settlement procedures. A dispute between two or more parties is usually based upon a difference in perception of rights/obligations and expectations between individuals or corporation. The ultimate goal of alternative dispute resolution systems is to resolve disputes and arrive at a consensus – a mutually acceptable agreement that takes into consideration the interests of all concerned parties. A settlement or agreement reached through consensus may not satisfy each participant's interests equally or receive a similar level of support from all participants. Yet, for reasons of practicability, it finds acceptable. There are several reasons why attention must be given to alternate disputes resolution, the first of which though not in the order of importance is the unsuitability of uniform court procedures to one and everything. To illustrate, for the ailment in question, if the Allopathic system of medicine is unsuitable, or the patient's is sensitive/allergic to those drugs, or the strain of organism is resistant to known medicines, one must look to the Ayurvedic or Homeopathic form of medicine, or even plain Nature Cure. However, if the main Allopathic system is suitable, but the queue outside the public dispensary or the wait for

the medication is so long that a person is not likely to survive the wait, a look at the alternative systems becomes imperative. These alternative systems are then resorted to not because of the comparative efficacy of the alternative system, but because of the inefficiency and inability as distinct from suitability of the main system to do its task and serve the purpose. Alternative dispute resolution by reason of its operational mechanics which revolve around informal discussions and exchange of thoughts as also listening to the other provides a greater opportunity to each to realize where the correct right, entitlement or liability lies. There is re-verification of perceptions and correction of any 'errors' therein. Alternative dispute resolution is also suitable, in fact require, where factors of confidentiality and privacy come into play. Family disputes are one and business disputes are another. Privacy apart, alternative dispute resolution is best suited for disputes where the parties are having some permanent relationship or ties, viz., family members, trade partners, employer-employee, etc. In such disputes, though the Court would render a decision as per law, it would leave the parties with a strained relationship. These disputes, more than 'resolution', need a 'solution', which can only come through alternative dispute resolution and not from a court.

ADVANTAGES OF ALTERNATIVE DISPUTE RESOLUTION

The various advantages of alternative dispute resolution are:

- It can be used at any time, even when a case is pending before a Court of Law. Similarly it can be terminated at any stage by any one of disputing parties (except in the case of binding arbitration).
- It can provide a better solution to disputes more expeditiously and at less cost than litigation. ADR procedures take only a day or a few days to arrive at a settlement.
- It can be used with or without a lawyer. ADR programmes are also flexible and not afflicted with rigours of rules of procedure. The time and place of hearing can be chosen by parties according to their convenience. Similarly the parties can choose their own rules or procedures for dispute settlement.
- ADR procedure protects the parties from the loss atmosphere of business reputations, goodwill, and ongoing relations in litigations.
- It can enable the parties to resolve the dispute and bury the past; preserve the present relationship; and paves a better future without unnecessary confirmation and conflict and acrimony.
- It can be effectively reduces the work-load of the Court.

VARIOUS MODES OF ALTERNATIVE DISPUTE RESOLUTION

The various modes of Alternative Dispute Resolution are:

- 1. ARBITRATION:** The process of Arbitration cannot exist without valid arbitration agreement prior to the emergence of dispute. In this technique of resolution parties refer their dispute to one or more persons called arbitrators. Decision of arbitrator is bound on parties and their decision is called 'Award'. The object of Arbitration is to obtain fair settlement of dispute outside of court without necessary delay and expense.
- 2. MEDIATION:** Mediation is an Alternative Dispute resolution where a third neutral party aims to assist two or more disputants in reaching agreement. It is an easy and uncomplicated party centered negotiation process where third party acts as a mediator to resolve dispute amicably by using appropriate communication and negotiation techniques. This process is totally controlled by the parties. Mediator's work is just to facilitate the parties to reach settlement of their dispute. Mediator doesn't impose his views and make no decision about what a fair settlement should be.
- 3. CONCILIATION:** Conciliation is a form of arbitration but it is less formal in nature. It is the process of facilitating an amicable resolution between the parties, whereby the parties to the dispute use conciliator who meets with the parties separately to settle their dispute. Conciliator meets separately to lower the tension between parties, improving communication, interpreting issue to bring about a negotiated settlement. There is no need of prior agreement and cannot be forced on party who is not intending for conciliation. It is different from arbitration in that way.
- 4. LOK ADALAT:** Lok Adalat is called 'People's Court' presided over by a sitting or retired judicial officer, social activists or members of Legal profession as the chairman. National Legal Service Authority(NALSA) along with other Legal Services Institutions conducts Lok Adalats on regular intervals for exercising such jurisdiction. Any case pending in regular court or any dispute which has not been brought before any court of law can be referred to Lok Adalat. There is no court fees and rigid procedure followed, which makes the process fast. If any matter pending in court of referred to the Lok Adalat

and is settled subsequently, the court fee originally paid in the court when the petition filed is also refunded back to the parties. Parties are in direct interaction with the judge, which is not possible in regular courts. It depends on the parties if both the parties agree on case long pending in regular court can be transferred to Lok Adalat. The persons deciding the cases have the role of statutory conciliators only, they can only persuade the parties to come to a conclusion for settling the dispute outside the regular court in the Lok Adalat. Legal Services Authorities (State or District) as the case may be on receipt of an application from one of the parties at a pre-litigation stage may refer such matter to the Lok Adalat for which notice would then be issued to the other party. Lok Adalats do not have any jurisdiction to deal with cases of non-compoundable offenses.

LEGISLATIVE EVOLUTION AND MODERN FRAMEWORK

Alternative Dispute Resolution is a new avenue for the people to settle their disputes in present situation where courts are already overburdened with cases, however as held by Hon'ble High Court of Madras in *Convinio Shopping Nine 2 Nine v. Olympia Opaline Owners Association*, 2019 SCC OnLine Mad 646, Order dated 04.03.2019 at para 9 states “the role of judicial authority to refer parties to arbitration will arise only upon an application being made by a party to the arbitration agreement or a person claiming under or through him. This window is given only to enable the defendant who is not desirous of having the dispute settled by arbitration to waive his right for having the dispute referred to arbitration (emphasis added)”. In view of the above awareness among the litigants, lawyers and judges has been brought through holding seminars, workshops, literacy programs etc. Extensive training to the ADR practitioner should be provided so that they will become more capable to bring the estranged parties together. More and more ADR centers have to open.

The Arbitration and Conciliation Act, 1996, modeled on the UNCITRAL Model Law, consolidated and modernized India's arbitration laws. It governs both domestic and international commercial arbitration, as well as conciliation. Major reforms came through amendments:

- The 2015 Amendment reduced judicial intervention, introduced timelines for arbitral awards (Section 29A), and empowered tribunals with cost allocation (Section 31A);
- The 2019 Amendment established the Arbitration Council of India (ACI) for accrediting institutions and arbitrators, thus institutionalizing arbitration;
- The 2021 Amendment further ensured neutrality by disqualifying arbitrators with conflicts of interest and strengthened enforcement of awards.

- Additionally, the Mediation Act proposes to make pre-litigation mediation mandatory in certain civil and commercial cases. It recognizes community mediation and aims to establish a national Mediation Council for professional oversight.

ADR: 'APPROPRIATE DISPUTE RESOLUTION' MECHANISM?

Around all legal systems in the world, ADR is advocated as an escape route from the embittered litigation process. Both experts and executives advertised it as a cost-effective manner to keep the corporations out of the courts and the type of litigation that vandalises the winners almost as much as the losers. It is thus referred to as the opposite of the conventional court process of dispute resolution. Over the next few years, more than 1200 large corporations adopted the ADR policy statement suggested by the Centre for Public Resources, and many of these companies reported considerable savings in time and money.

Today, the lawyers around the world face a cluster of challenges. The cost of access to law and legal services is high and the returns are not always what one hankers after. Lawyers who innovate will flourish and prosper.

With the ever-increasing need and demand to properly fund and resource the courts and providing a cost-effective litigation, the governments are out, looking for certain appropriate measures. Pondering over this economic and social urgency, the governments started incorporating alternative dispute resolution as a recourse to the normal court process. While the lawyers remain fact-finders and analysts of disputes, they are also champion negotiators and know how to convey a position.

It can, with no doubt be said that sometimes, a conventional court process is the most appropriate manner to resolve a dispute, for example, to set a precedent or interpret a statutory provision for the public interest. However, a new paradigm in the form of ADR is emerging based on the premise of a smoother dispute resolution. Development of ADR around the world, especially in developing countries is a start towards the proper administration of civil justice and equality. This shift in the justice system has opened doors for the rich and poor equally, which the earlier systems failed to do. ADR is no longer a new kid in the block and has attained a well-established stance in almost every legal system.

As clear it is, ADR is a technique by which the parties can reach a harmonious settlement of dispute which is not always similar to the win-lose approach that the conventional litigation offers. This 'win-lose' situation often becomes the one brutal obstacle in the way of future relationship of the parties. Unlike this, a 'win-win' approach not only settles the disputes but

also brings about a healing to the relationship that the parties have. Putting the usual, complex legal processes, ADR follows a procedure on the option of the party and thus, is best suited. The parties in ADR control the procedure by which the dispute is to be settled which makes it a smoother, faster and cost-effective technique. One important positive side of ADR is absolute maintaining of privacy because privacy is a key value which underpins human dignity and it is a basic human right and the reasonable expectation of every person.

Another important convenience that ADR offers, is the option that either of the parties have to withdraw the case, at any time during the process and the fact that the award of a formal ADR bears the same strength as a decree of a court which makes it popular among litigants. These reasons have led to a huge majority of cases being allotted for mediation and arbitration and ADR being enacted in legislations around the world.

CONCLUSION

To achieve the inner peace of mind, the parties should attempt to settle the matter in an amicable manner which leads to harmony and efficacious results. Successful disputes management can be achieved by means of arbitration, conciliation, mediation, negotiation and lok adalats. ADR mechanism is the need of the present day and every civilized country in the world is involved in promoting settlement of disputes outside the court by adopting ADR and India should be no exception to it. Thus arbitration affords the parties the ability to select the decider whereas court litigation does not. India is moving towards the ray of light of judicial equality. The ADR system acts as a supporting agent to climb up the ladder of justice for all, therefore ADR is a solution for all.

Alternative Dispute Resolution represents the evolution of legal thought in adapting to social realities. With courts overwhelmed, ADR provides a timely, equitable, and cost-effective path to justice. Backed by judicial pronouncements, legislative reforms, and technological innovation, ADR is well-positioned to transform India's justice landscape.

Mainstreaming ADR requires integrated efforts across government, judiciary, bar councils, academia, and civil society. As India moves towards a digital-first economy, the future of dispute resolution must be flexible, inclusive, and efficient. ADR—once viewed as an alternative—must now be seen as an essential path to justice.

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